

**MASTER AGREEMENT FOR PROGRAM
MANAGEMENT SERVICES**

BETWEEN

CITY OF COPPELL

AND

**GALLAGHER CONSTRUCTION COMPANY, LP
d/b/a
GALLAGHER CONSTRUCTION SERVICES**

Dated: October 9, 2018

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SCHEDULE OF EXHIBITS

EXHIBIT “A1” SCHEDULE OF COMPENSATION

EXHIBIT “A2” REIMBURSABLE EXPENSES

EXHIBIT “B” PARTIAL WAIVER AND RELEASE OF CLAIM RIGHTS

EXHIBIT “C” FINAL WAIVER AND RELEASE OF CLAIM RIGHTS

MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES (the "Agreement") is made and entered into by and between:

City of Coppell ("Owner"), and Gallagher Construction Company, LP d/b/a Gallagher Construction Services, 3501 Token Dr., Suite 100, Richardson, TX 75082 ("Program Manager")

On and after the Effective Date, rights and obligations hereunder shall accrue only in connection with a Project covered by a Project Order ("Project Order") executed by the Owner and the Program Manager, and then, only to the extent thereof. While the Owner intends to authorize the Program Manager from time to time to perform project management services for the Owner pursuant to Project Orders, nothing herein shall require the Owner to assign any specific Project to the Program Manager. A listing of all Projects that may be assigned to the Program Manager are identified in the Owner's Capital Improvement Plan ("CIP") which is available for review on the Owner's website, and the CIP is incorporated herein by this reference; provided, however, that the CIP is subject to modification by addition, deletion, or elimination, or revision at the Owner's sole discretion. The Owner reserves the right in its sole discretion to determine which Project assignments are appropriate to be performed by the Program Manager under this Agreement. Except as otherwise provided herein, Program Manager's Services in connection with a Project shall conclude one year following final completion of a Project covered by a Project Order unless otherwise provided in such Project Order or in an amendment thereto.

The term of this Agreement shall commence on the Effective Date and shall conclude on upon completion of the projects listed within this Agreement.

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Program Manager agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Additional Services" means those services, duties, obligations and responsibilities provided in any Project Order and/or Change Order.

1.2 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies, relating to or affecting a Project, including environmental, health, safety, building, and employment laws.

1.3 "Basic Services" means all Services required of Program Manager by this Agreement, excepting only Additional Services.

1.4 "Change Order" means a written order to Program Manager executed by Owner in accordance with Article 8 of this Agreement authorizing and directing an addition to, deletion from, adjustment, revision, or a combination thereof, to the Services required of, or the compensation payable to, Program Manager or Project Order.

1.5 "Construction Contract": (a) "Construction Contract" means a contract between Owner and a Contractor for the performance of all or any portion of the Work for a Project,

including all documents defined by such contract as "Contract Documents", all documents incorporated into such contract by reference, and all additional documents, if any, defined by such contract as constituting a part thereof.

1.6 "Construction Phase": (a) "Construction Phase" means the phase of a Project commencing upon the completion of the Design Phase, or any particular phase thereof if Owner has approved staging of the design in phases, or the award of the first Construction Contract for such Project, whichever occurs first, and ending upon Owner's execution of a Certificate of Final Completion for such Project; (b) in respect of a Design/Build Project, "Construction Phase" means the phase of a Project commencing upon the completion of the Design Phase, or any particular phase thereof if Owner has approved staging of the design in phases, and ending upon Owner's execution of a Certificate of Final Completion for such Project.

1.7 "Contractor": (a) "Contractor" means a person or entity, including, without limitation, general contractors, trade or specialty contractors, and construction managers, with whom Owner contracts for performance of all or part of the Work for a Project

1.8 "Design Contract": (a) "Design Contract" means a contract between Owner and a Project Architect or design professional for design of a Project and performance of related services, and includes all documents incorporated into such contract by reference and all documents defined by such contract as constituting a part thereof.

1.9 "Design For Construction" means the complete and final design, bid documents, and construction documents, including, without limitation, plans, drawings, specifications, manuals, related materials, and all addenda, changes, and modifications thereto, prepared or provided by a Project Architect or design professional pursuant to a Design Contract for use in constructing a Project, or any particular phase thereof if Owner has approved staging of the design in phases, performing the Work for such Project, or such phase if applicable, and rendering such Project, or such phase if applicable, fully operational and usable for its intended purpose.

1.10 "Design Phase" means the phase of a Project commencing with the execution of a Design Contract for such Project, or Owner's authorization to commence design services for such Project, whichever occurs first, and ending upon completion of the Design for Construction for such Project, or any particular phase thereof if Owner has approved staging of the design in phases.

1.11 This Agreement shall become effective on the date it is executed by the last party to execute it (the "Effective Date").

1.12 "Execution Plan" means the manual of processes and procedures adopted and utilized by Owner to monitor projects.

1.13 "Final Completion" means the completion of all Work required by, and in strict compliance with, the Construction Contract for a Project, including start-up, testing, permitting, and all preparations necessary to open and operate such Project for its intended purpose.

1.14 "Owner's Representative" means the individual named by Owner, in writing, to act on Owner's behalf in the administration of this Agreement.

1.15 "Preliminary Design" means all design documents constituting the preliminary design of a Project as required by and defined in the Design Contract for such Project.

1.16 "Project" means a city facility or other facility design and construction or renovation or addition undertaking.

1.17 "Project Architect": (a) "Project Architect" means a person or entity with whom the Owner contracts for design of a Project and performance of related services.

1.18 "Reimbursable Expenses" means, and shall be limited to, those items set forth in Exhibit "A", attached hereto.

1.19 "Services" means all the services, duties, obligations and responsibilities required of Program Manager pursuant to the terms of this Agreement.

1.20 "Subcontractor" means any person or entity hired by Program Manager to perform any portion of the Services.

1.21 "Substantial Completion": (a) "Substantial Completion" means that point at which, as certified in writing by the Project Architect, a Project is at a level of completion in strict compliance with the Construction Contract such that the Owner can enjoy beneficial use or occupancy, and can use or operate it in all respects, for its intended purpose.

1.22 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by a Construction Contract for the purpose of achieving the desired and essential functions of Owner's Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. "Life Cycle Cost" means the sum of all costs of a Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

1.23 "Work" means any and all labor, supervision, work, supplies, fixtures, furnishings, vehicles, equipment, services, tools, materials, computers, utilities, items, documents and things required by a Construction Contract to construct, test, certify, permit and render a Project, and every component thereof, operational and usable for its intended purpose.

ARTICLE 2

REPRESENTATIONS

2.1 Specific Representations. By executing this Agreement and undertaking to perform its services under a Project Order, Program Manager makes the following express representations to Owner upon which Owner may fully rely:

2.1.1 Program Manager is professionally qualified to act as Program Manager for the Project and has authorizations necessary to act as Program Manager for the Project and to perform the Services required hereunder.

2.1.2 Program Manager has become familiar with the local conditions under which the Project is to be implemented.

2.1.3 Program Manager has the skill, capability and experience, including sufficient qualified and competent personnel, to effectively, efficiently and timely perform the Services and manage the Project, and Program Manager will continuously furnish sufficient personnel to progress the Project and perform the Services in a timely and proper manner.

2.1.4 Program Manager shall comply with all Applicable Laws governing the performance of the Services.

2.1.5 Program Manager assumes full responsibility to Owner for the acts and omissions of its officers, employees, agents, Subcontractors, consultants, and others employed or retained by it in connection with the Project and performance of the Services.

2.2 Enumerated Representations Not Exhaustive. Nothing contained in this Article 2 shall in any manner supersede, limit, or restrict any other duty, responsibility, representation, or warranty created by this Agreement or by law.

ARTICLE 3

PROGRAM MANAGER'S PERFORMANCE: GENERAL PROVISIONS

3.1 Standard Of Care. Program Manager shall perform all Services at a level, and to a standard of care, consistent with the standards and quality prevailing among recognized Project and construction management firms of superior knowledge, skill and experience engaged in Projects of similar size and complexity. Program Manager shall carry out and complete all Services in an efficient, thorough, timely and economical manner, and in strict accordance with the terms of this Agreement.

3.2 Owner's Agent. Program Manager shall be Owner's agent in performing the Services, shall promote and protect Owner's interests, and shall have a fiduciary obligation of undivided loyalty and trust to Owner in connection therewith. Unless otherwise directed by Owner in writing, the Program Manager shall act as Owner's agent to the Project Architect and Contractor.

3.3 Time Of The Essence. Program Manager acknowledges that time is of the essence to the Project and in the performance of Program Manager's Services. Program Manager shall perform and complete the Services in a timely manner in accordance with the Project Schedule.

3.4 Compliance With Applicable Laws. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall reasonably ensure that the Project is designed and constructed in a manner to meet the requirements of all Applicable Laws. Program Manager shall immediately report to Owner in writing any known actual or potential violation of any Applicable Law by any person or entity, including, without limitation, the Project Architect and the Contractor.

3.5 Duty To Correct Defective Services. Program Manager shall promptly correct any errors, omissions, and deficiencies in its performance of the Services, at its own cost and without additional compensation or reimbursement, and Program Manager shall not be compensated for performing any Services necessitated by its failure to perform in accordance with this Agreement.

3.6 Program Manager's Performance Not Discharged By Duties Of Others. Program Manager's Services under this Agreement shall not be changed, altered, discharged, released or satisfied by any duty, obligation or responsibility of a Project Architect or a Contractor. Program Manager is not a third-party beneficiary of any agreement by and between Owner and a Project Architect or Contractor. It is expressly acknowledged and agreed that Program Manager's Services to Owner are independent of, and are not diminished by, any duties owed to Owner by any Project Architect, Contractor or other third party.

3.7 Cooperation With Project Architect. Program Manager shall cooperate fully with the Project Architect with respect to the duties, obligations, responsibilities and services of such Project Architect, including those set forth in any applicable Design Contract. Such duty of

cooperation shall include, as the Project Architect's needs may require, furnishing information and documents to, meeting with, and consulting with, the Project Architect with respect to inspection, testing and analysis of any Work.

3.8 Program Manager Not To Perform Design Or Construction. Unless expressly authorized in writing by Owner's Representative, neither Program Manager nor any subsidiary, affiliate, or any subcontractor of the Program Manager or joint venture partner of Program Manager shall perform, or enter into any agreement to perform, any design or construction work in connection with the Project.

ARTICLE 4

PROGRAM MANAGER'S BASIC SERVICES

4.1 Generally. During the planning, design and construction of the Project, and at all times relevant thereto, without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall perform the Basic Services set forth in, or reasonably implied by or inferable from, this Article 4. Unless Owner directs otherwise in writing, and except as otherwise provided in this Agreement, Program Manager shall perform such Basic Services until construction of the Project is complete. Program Manager agrees to and accepts this scope of Basic Services.

4.2 Consultation with Owner. Program Manager shall consult in detail with Owner in order to:

- (a) Review Owner's existing facilities as applicable to the scope the Project;
- (b) Learn Owner's needs and objectives;
- (c) Review Owner's design, construction, budgetary, cash flow and operational requirements; and
- (d) Review educational specifications.

4.3 Review Applicable Laws. Program Manager shall review all Applicable Laws and notify Owner's Representative in writing of any areas that may be of concern, difficulty in compliance, or violation thereof.

4.4 Owner's Execution Plan. Program Manager shall review and comply with Owner's Execution Plan.

4.5 Monthly Reports. Program Manager shall prepare and submit to Owner's Representative on the tenth day of each month a written report summarizing the progress of the Project during the preceding month (the "Monthly Report"). Such Monthly Report shall set forth, in detail reasonably satisfactory to Owner, significant facts and events occurring during the preceding month, such that Owner will be fully informed of the progress of the Project. The Monthly Report shall describe any problems or obstacles that may adversely affect the budget or schedule of the Project or the quality of design and construction work being performed. The Monthly Report shall include, without limitation, the following:

- (a) An update of the Project Schedule, which shall identify any delays to the Project, as well as the cause and extent of such delays, and shall make recommendations for eliminating or minimizing such delays and the effects thereof;

- (b) Updates of the Project budget and cash flow analysis, subdivided into design and construction phases for the Project, showing costs incurred in the preceding month as well as month-by-month projection and forecast of future anticipated costs and payments by Owner;
- (c) A summary of all change orders approved for the Project during the preceding month, which summary shall indicate the cost and cause of each such change order, and shall give the cumulative total costs of all change orders approved to date for the Project, expressed in gross dollars and as a percentage of the Construction Contract price;
- (d) A summary of all requests or claims for additional compensation or time extensions received from the Project Architect or Contractor.

4.6 Attendance At Meetings. Program Manager shall attend such meetings as Owner's Representative requests, and shall attend any and all other meetings as necessary to protect the interests of the Project and the Owner. In addition to all meetings Program Manager is otherwise required to attend pursuant to this Agreement, Program Manager shall schedule and attend meetings with the Architect, the Contractor and others that Program Manager, in the exercise of its professional judgment, deems necessary or in the interests of the Project or Owner. Program Manager shall forward meeting minutes of each meeting attended within forty-eight (48) of the conclusion of the meeting. Program Manager shall give Owner not less than forty-eight (48) hours prior written notice of any meeting scheduled by Program Manager. Owner shall give Program Manager not less than forty-eight (48) hours prior notice of any meeting scheduled by Owner.

4.6.1 Prepare And Distribute Meeting Minutes. At every meeting Program Manager attends, Program Manager shall keep written minutes of the meeting and distribute typed copies of same to Owner and all in attendance at such meeting, as well as anyone else Program Manager believes, in the exercise of its professional judgment, should review such minutes.

4.7 Project Schedule. Program Manager shall prepare and submit to Owner's Representative within thirty (30) days of receipt of a Project Order, a schedule for the Project in such form as Owner may require (the "Project Schedule"). The Project Schedule shall establish and show milestones, including start and finish dates, for critical phases and events in the design and construction of the Project. Program Manager shall continually update the Project Schedule throughout the duration of the Project.

4.7.1 Notice Of Delays To Project Schedule. Program Manager shall, in writing, immediately notify Owner's Representative of delays or anticipated potential delays and make recommendations for eliminating or minimizing such delays and the effects thereof.

4.8 Communications And Reporting. All communications from Program Manager to Owner, excepting only ordinary and routine communications, shall be in writing and shall be directed to the Owner's Representative with copies to such other persons as may be deemed from time to time.

4.9 Document Control. Program Manager shall be responsible for the Owner's document control for the Project, including reviewing all documents received by Owner and Program Manager, copying and distribution of documents as necessary, and storage and retrieval of documents. Program Manager shall confirm that the Owner receives all documents

required to be submitted to the Owner and that the Owner acquires copies of all documents that it is in the Owner's interest to receive.

4.10 Maintain Construction Contract Documents. Program Manager shall maintain on behalf of, and for use by, Owner a complete and current set of all documents comprising or incorporated in the Construction Contract for the Project.

4.11 Preparation Of Design Schedule. Program Manager shall, within thirty (30) days of the notice to proceed to the Architect for a particular Project, prepare a design schedule for such Project. Program Manager shall monitor all design schedules throughout the Project and shall notify Owner in writing of any delays in the Design Phase, and shall make recommendations to Owner for eliminating or minimizing such delays and the effects thereof.

4.12 Project Reviews With Project Architect. Upon execution of a Design Contract, Program Manager shall meet with the Project Architect to review the Project Analysis, the design criteria, the Project budget, the design schedule, the Project Schedule, Applicable Laws affecting the Project, and channels for communications and reporting.

4.13 Verify Project Architect's Insurance. Program Manager shall review all insurance certificates and policies submitted by the Project Architect for compliance with the Design Contract, and shall seek compliance by the Project Architect where necessary. Program Manager shall verify such compliance to Owner in writing. Program Manager shall not permit the Project Architect to commence or continue with performance or provision of design services if the Project Architect is not in full compliance with insurance requirements, but shall immediately notify Owner in writing of such noncompliance.

4.14 Twice Monthly Meetings With Project Architect. During the Design Phase of the Project, Program Manager shall meet not less than twice every month with the Project Architect and Owner to review the progress of design work and identify any delays or potential delays to the design schedule, deviation from Owner's design and budget criteria, and constructability problems.

4.14.1 Identify Potential Cost Savings. During and after such meetings, Program Manager shall study and evaluate the construction materials, building systems, and equipment called for in the design for the purpose of identifying any potential savings that may be achieved through Value Engineering, commonality or similarity of materials and equipment, procurement by Owner, bulk purchasing and economies of scale. Program Manager shall also evaluate the design for the purpose of achieving maximum efficiency and cost-effectiveness in construction and installation, future expandability of the Project, Life Cycle Costs, ease of maintenance, and economy of operation.

4.15 Review Cost-Saving Recommendations With Owner. Program Manager shall consult with Owner regarding all potential cost-saving measures recommended or identified by Program Manager. Upon Owner's written authorization, Program Manager shall implement, or direct implementation of, such cost-saving measures as Owner approves.

4.16 Review Geotechnical Reports. Program Manager shall review all geotechnical reports submitted in a timely manner and promptly report to Owner in writing any impact upon cost or timely completion indicated by such reports, along with Program Manager's recommendation for cost savings and avoidance of delay.

4.17 Review And Certification Of Project Architect's Pay Requests. Program Manager

shall review each pay request submitted by a Project Architect and, within seven (7) days of receiving same, certify to Owner the amount that, in Program Manager's professional judgment, is due such Project Architect pursuant to the applicable Design Contract. Such certification by Program Manager shall be a representation to Owner that the amount certified is currently owed to such Project Architect under the terms of the Design Contract and that the Program Manager knows of no reason why any portion of such amount should be withheld.

4.18 Review Of Preliminary Design. Program Manager shall review the Preliminary Design for the Project upon submission by the Project Architect and shall evaluate same for completeness, accuracy, clarity, compliance with Project requirements, compliance with Owner's design criteria and budget, errors and omissions, coordination of drawings, constructability and compliance with Applicable Laws.

4.19 Review Of Design For Construction. Program Manager shall review the Design for Construction for the Project upon submission by the Project Architect and shall evaluate same for completeness, accuracy, clarity, compliance with Project requirements, compliance with Owner's design criteria and budget, errors and omissions, coordination of drawings, constructability and compliance with Applicable Laws.

4.20 Services During Bidding. During the bidding or proposing for construction of the Project, Program Manager shall perform the following services:

4.20.1 In consultation with Owner and, if applicable, the Project Architect, prepare all necessary bid and proposal forms and documents.

4.20.2 In consultation with Owner, prepare and publish advertisements for bids or proposals for construction. In scheduling bid or proposal dates, Program Manager shall monitor the local construction market, noting in particular the bid or proposal dates of other significant construction projects. To the fullest extent possible consistent with Owner's scheduling needs, Program Manager shall avoid setting bid or proposal dates for the Project which conflict with bid or proposal dates for other construction projects in the area, it being Owner's desire to have the maximum possible interest in bidding or proposing on its Project.

4.20.3 As necessary, or upon request by Owner, in compliance with state law concerning procurement, stimulate bidder or offeror interest by direct contact with qualified contractors and construction managers and design/builders.

4.20.4 Monitor and expedite the bidding or proposal process by tracking recipients of bid or proposal documents, obtaining and facilitating answers to bidders' or offerors' questions and furnishing necessary information, and facilitating the issuance of addenda.

4.20.5 Assist the Project Architect in preparing addenda in consultation with the Owner, as necessary. Review all addenda for accuracy and completeness, compliance with Project criteria, constructability and impact on the construction schedule and cost, and report any significant cost or schedule impacts and any problems and areas of concern to Owner prior to issuance of addenda.

4.20.6 Analyze all bids or proposals received for completeness, responsiveness, price and compliance with bid bond requirements.

4.20.7 Investigate the background of all bidders or offerors, including such bidders' or offerors' experience in the local construction market, experience in construction, and if applicable, design, of applicable projects, qualifications to construct, and if applicable,

design, the Project being bid or proposed, financial and bond capacity, and claims history. This shall include a review a list of proposed subcontractors and suppliers.

4.20.8 In consultation with the Owner, evaluate bids or proposals and make recommendations regarding selection of the Contractor.

4.21 Reducing Bid or Proposal Amounts. In the event that the lowest acceptable bid or proposal for construction of a Project, exceeds the construction portion of the Project budget, Program Manager shall, in consultation with the Owner, negotiate with the lowest responsible, responsive bidder or offeror to lower the bid or proposal to an amount acceptable to Owner. If such negotiations are unsuccessful in lowering the bid or proposal to an amount acceptable to Owner, Program Manager shall, in cooperation with the Project Architect if applicable, advise Owner on means of Value Engineering or lowering the cost of construction and, if applicable, design. Program Manager shall assist in implementing any measure decided upon by Owner to achieve such savings.

4.22 Notice To Proceed. Program Manager shall prepare and, after obtaining Owner's written approval, issue the notice to proceed to the Contractor.

4.23 Conduct Preconstruction Conference. Program Manager shall conduct a preconstruction conference with the Project Architect and the Contractor for the purpose of reviewing any special requirements related to site access, safety, coordination with city activities, communications and reporting procedures, scheduling, submittals, pay requests, change orders, inspections and any other matters relevant to the performance of the Program Manager, Project Architect, and Contractor.

4.24 Procurement Of Special Services. Program Manager shall, as Owner's agent, procure, coordinate and supervise the services of surveyors, testing laboratories, and other special consultants required for the Project. Program Manager shall monitor all test results and notify Owner and Project Architect in writing of any known or observed problems.

4.25 Perform Owner's Obligations Under Construction Contract. Unless otherwise directed by Owner, Program Manager shall coordinate with Owner to schedule, coordinate, assist with and facilitate the performance of, all of Owner's duties under the Construction Contract. In addition, and without limiting the generality of the foregoing, and any provision hereof to the contrary notwithstanding, the Program Manager shall perform, as Basic Services, all of the duties of the "Owner's Representative." Program Manager shall coordinate with Owner to schedule and coordinate the procurement, delivery and security of any materials, furnishings and equipment to be furnished to the Project or any Project by Owner. Nothing contained herein shall be construed to permit the Program Manager to give final approved without the consent of the Owner.

4.26 Permits And Licenses. Program Manager shall confirm that all permits and licenses that are required by contract or law are obtained. Program Manager shall not permit the Contractor to perform any Work requiring a permit or license unless the permit or license has been obtained.

4.27 Contractor's Bonds And Insurance Requirements. Program Manager shall review all insurance certificates and policies, payment bonds and performance bonds submitted by the Contractor for compliance with requirements of the Construction Contract, and Program Manager shall maintain on file copies of same. Program Manager shall verify to Owner in writing Contractor compliance with such requirements. Program Manager shall not permit any Contractor to commence or continue with performance of the Work or Construction Contract if such Contractor is not in compliance with all insurance and bond requirements, but shall immediately

notify Owner in writing of such noncompliance.

4.28 Review Of Construction Schedule. Program Manager shall review the construction schedule submitted by the Contractor. Program Manager shall verify that such schedule is reasonable and practical and conforms with the requirements of the Construction Contract and the Project Schedule, and Program Manager shall represent same to Owner in writing prior to approving Contractor's use of such construction schedule. Program Manager shall furnish Owner a summary of the construction schedule showing the Contractor's critical path logic, and shall keep the construction schedule and updates thereof available for Owner's use and review. When approved by Program Manager, a construction schedule shall be a basis for measuring progress of a Project and payment to the Contractor.

4.29 Construction Schedule Updates. Program Manager shall obtain and review all monthly updates of the construction schedules. Program Manager shall verify that such updates are consistent with the actual progress of construction as observed by Program Manager. Program Manager shall notify Owner in writing if an update indicates slippage in a construction schedule or delays to Project completion, and shall make recommendations for eliminating or minimizing such delays and the effects of same, as well as appropriate withholding of payment from the Contractor pursuant to the Construction Contract.

4.30 Review Contractor's Schedules Of Values. Upon receipt from the Contractor, Program Manager shall examine the Contractor's schedule of values together with all supporting documentation that may be required by the Construction Contract. The purpose of such examination shall be to protect Owner from an unbalanced schedule of values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation, or than is reasonable under the circumstances. If the schedule of values is not found to be appropriate, or if the supporting documentation is deemed to be inadequate, Program Manager shall notify Owner and the Project Architect in writing. After making its examination, if the schedule of values is found by Program Manager to be appropriate as submitted, or if necessary, as revised, Program Manager shall sign the schedule of values thereby indicating its informed belief that the schedule of values constitutes a reasonable, balanced basis for payment of the Construction Contract price to the Contractor. Program Manager shall not sign such schedule of values in the absence of such belief.

4.31 Project Administration. Program Manager shall provide a management team to administer the Projects as an agent of Owner. Program Manager shall promptly notify Owner in writing of any known material breach of a Construction Contract by a Contractor and shall take all steps necessary to remedy such breach and to minimize or eliminate the effect of such breach on the timely and proper completion of the Work. Program Manager shall coordinate communication between all parties involved in construction of the Project. Program Manager shall monitor all construction activities and, through Owner's Representative and, where applicable, coordinate same with activities and functions and other needs of the Owner.

4.32 Contract Administration By Project Architect. Program Manager shall monitor the performance of Construction Contract administration duties by the Project Architect, including, without limitation, the timeliness of the Project Architect's review of submittals, change orders and Contractor pay requests. Owner may require Program Manager to perform, as an Additional Service unless set forth elsewhere in this Agreement as a Basic Service, all contract administration duties that would otherwise be performed by the Project Architect.

4.33 Job Site Meetings. Program Manager shall schedule and conduct regular job-site meetings with the Project Architect, Contractor, and, as necessary, major subcontractors.

Such meetings shall be scheduled and held with such frequency as may be appropriate for the Project but in no event less frequent than monthly. The purpose of such meetings shall be to address all matters and issues relating to quality, quantity and progress of the Work. Program Manager shall prepare and deliver to Owner and all in attendance at such meeting detailed minutes of same.

4.34 Review Of RFI's. Program Manager shall review all requests for information and interpretation submitted by Contractors. Where appropriate, Program Manager shall provide information to Contractors on behalf of Owner. With respect to any interpretation, rendered by the Project Architect, of a requirement of the Construction Contract, Program Manager shall carefully review such interpretation and shall immediately advise Owner in writing if Program Manager disagrees with any such interpretation. Program Manager shall maintain a log of all requests for information and interpretation, which shall record the date of receipt of, a description of, and date of response to, each request.

4.35 Review Of Contractor's Pay Requests. Program Manager shall review each Contractor pay request upon receipt from the Project Architect, and shall certify to Owner the amount that, in Program Manager's professional judgment, is due the Contractor. Program Manager shall notify Owner in writing of any disagreement with the Project Architect's certification and any reasons for such disagreement. Program Manager's certification of any Contractor pay request shall be a representation to Owner that the amount certified is currently owed to the Contractor under the terms of the Construction Contract and that Program Manager knows of no reason why any portion of such amount should be withheld in accordance with the Construction Documents.

4.36 Change Order Review. Program Manager shall review all potential change order requests, change orders or proposals submitted, and, within ten (10) days after receipt thereof, or more expeditiously if necessary to avoid delay to the construction schedule, shall, after consultation with the Project Architect, advise Owner in writing as to the cause, necessity, purpose, advantages and disadvantages, likely cost, likely effect on the construction schedule and the Project Schedule and all other impacts and problems that may result from the issuance or non-issuance of a change order. Program Manager shall advise Owner of any reasonable alternatives to the change order request or proposal, and shall recommend a course of action. Program Manager shall negotiate, on Owner's behalf, cost increases and decreases and time extensions resulting from each change order with the party requesting the change order. Program Manager shall maintain a log of all change order requests and proposals, the amounts of same, all actions taken thereon, and the dates thereof.

4.37 Testing And Startup. Program Manager shall observe the testing and startup of all utilities, systems and equipment and shall report the results of same to Owner in writing. Program Manager shall deliver to Owner all written material such as operations and maintenance manuals for all equipment, and all warranties and guaranties required by the Construction Contract.

4.38 As-Built Drawings. Program Manager shall review all as-built drawings and shall certify to Owner that all as-built drawings are adequate and complete based on the Program Manager's investigation, knowledge and belief.

4.39 Owner Training. Program Manager shall arrange for training of Owner's personnel in the maintenance and operation of all equipment and systems.

4.40 Punchlists And Defective Work. Program Manager shall assist Owner and Architect in the preparation and enforcement of all punchlists and other itemizations of defective or incomplete Work. Program Manager shall report to Owner on a weekly basis the

Contractor's progress in curing and completing punchlist Work.

4.41 Certificates Of Completion. Program Manager shall review all certificates of Substantial Completion and Final Completion issued by the Project Architect. Program Manager shall immediately notify Owner in writing if Program Manager disagrees with any such certificate and shall state the reasons for such disagreement.

4.42 Transfer Of Project To Owner. Program Manager shall assist Owner in the transfer of the completed Project to Owner. Such assistance shall include, without limitation, procuring keys to the Project, transfer of Project security, obtaining the certificate of occupancy and all other matters relating to Owner's initial occupation and possession of the Project.

4.43 Claims Assistance. Program Manager shall review and evaluate any and all claims for additional compensation or time extensions submitted by the Contractor or the Project Architect. Program Manager shall consult with Owner with respect to the nature, basis and merits of such claims. If requested by Owner in writing, Program Manager shall negotiate such claims with the claimant on Owner's behalf.

ARTICLE 5

ADDITIONAL SERVICES

5.1 Generally. During the planning, design and construction of the Project, and at all times relevant thereto, Program Manager shall perform the services, duties, obligations and responsibilities set forth in, or reasonably implied by or inferable from, this Article 5, if authorized and directed by written Change Order and/or Project Order executed by Owner pursuant to Article 8 herein. Program Manager agrees to and accepts this scope of Additional Services.

5.2 Changes In The Project. Program Manager shall perform such services as may reasonably be required due to significant changes made in the Project after execution of a Project Order for the Project.

5.3 Incidental Costs: Any fee schedule for incidental costs (ie, couriers) may be developed and included in the Project Orders.

5.4 Owner's Insurance. Program Manager shall, in cooperation with Owner's risk management representative, determine Owner's insurance needs for the Project and assist Owner as needed in procuring necessary coverage.

5.5 Submission Of Documents To Reviewing Agencies. Program Manager shall ensure that all required submissions of documents to reviewing agencies, both governmental and otherwise, are complete, timely and in compliance with the requirements of such agencies.

5.6 Negotiation Of Construction Contract. Program Manager shall assist Owner in negotiating the Construction Contract with the Contractor selected by Owner. Nothing herein shall be construed to indicate that the Program Manager shall be engaged in the practice of law, or the giving of legal advice.

5.7 Review of The Work. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of

the Contractor, Program Manager shall review construction Work to determine the quality and quantity of the Work performed in comparison to the requirements of the Construction Contract, it being the intention of the parties and a requirement of the Construction Contract that all Work be performed in strict accordance with the requirements thereof. Within two (2) days after any such inspection, Program Manager shall report to Owner in writing any deficient or nonconforming Work and any facts and circumstances observed or discovered that are detrimental or potentially detrimental to the Project or Owner's interests.

5.8 Administration of Construction Contract. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall perform additional Construction Contract administration duties, beyond those required as Basic Services, including, without limitation, regular reviews of the Work, review of submittals, evaluation of requests for change orders, review and certification of Contractor pay requests, certification of Substantial Completion and Final Completion, and such other contract administration duties as Owner may request.

5.9 Owner Requested Services. Program Manager shall perform such other services related to the Project and the intent of this Agreement as Owner may reasonably request.

ARTICLE 6

OWNER'S OBLIGATIONS OTHER THAN PAYMENT

6.1 Provide Project Information. Owner shall provide Program Manager with adequate information regarding Owner's requirements for the Project, including any desired or required schedules and any budgetary requirements.

6.2 Owner's Representative. The Owner's Representative is City Manager or Designee as set forth in such Project Order. Such individual shall serve as Owner's Representative for the duration of the Project unless replaced by Owner, with written notice of such replacement furnished to Program Manager. Owner's Representative is the only representative of Owner entitled to act on behalf of Owner with respect to this Agreement and the requirements hereof. However, Owner's Representative does not have authority to waive or modify any requirement, condition or term of this Agreement.

6.3 Review Of Documents. Owner shall review any documents submitted by Program Manager requiring Owner's decision and shall render any required decisions pertaining thereto.

6.4 Access To The Site And The Work. Owner shall provide Program Manager access to the Project site and to the Work as necessary for Program Manager to perform this Agreement.

6.5 Cooperation To Secure Permits. Owner shall cooperate with Program Manager in securing any necessary licenses, permits, certificates, approvals or other necessary authorizations for the construction and occupancy of the Project.

6.6 Timely Performance. Owner shall perform those obligations set forth in the Agreement in a reasonably expeditious fashion so as to permit the orderly progress of Program Manager's Services and the Project.

6.7 Owner's Reviews, Inspections, Approvals, And Payments. Owner's review, inspection, or approval of any Preliminary Design, Design for Construction, Construction Contract, any other design or construction documents, any Work, any schedules, or any documents prepared

or submitted by Program Manager shall be solely for the purpose of determining whether same are generally consistent with the Project and Owner's requirements. No review, inspection, or approval by Owner of such Designs, Work or documents shall relieve Program Manager of its responsibility for the strict performance of its obligations under this Agreement or for the accuracy, adequacy, fitness, suitability, or coordination of its Services and work product. Payment by Owner pursuant to this Agreement shall not constitute a waiver of any of Owner's rights under this Agreement or at law.

6.8 Program Manager's Notice Of Nonperformance. If Program Manager believes that Owner is failing, or has failed, to perform properly and timely any of Owner's obligations hereunder, Program Manager shall promptly furnish written notice of same to Owner.

ARTICLE 7

PAYMENTS TO PROGRAM MANAGER

7.1 Basis Of Compensation. Owner shall pay, and Program Manager shall accept, as full and complete compensation for Program Manager's assumption and performance of all of the Basic Services required herein, the sum of (a) the Program Manager's Fee, for the period of time and to the extent of the utilization of personnel set forth in a Project Order and (b) the Program Manager's Reimbursable Expenses as allowed by Exhibit "A1" and Exhibit "A2", and reasonably incurred in furtherance of the Project.

7.2 Taxes And Fees. The Program Manager's compensation shall be deemed to include, and Program Manager shall be responsible for payment of, all federal, state and local taxes, assessments and fees related to this Agreement and the performance thereof which are enacted and effective as of the date of this Contract.

7.3 Program Manager's Pay Request. On or before the fifth day of each month after Program Manager commences performance of its services pursuant to a Project Order, Program Manager shall submit to Owner a request for payment ("Pay Request") for the Services performed by Program Manager through the last day of the Program Manager's last two-week pay period of the preceding month. Pay Requests shall be in such form and with such supporting data as Owner may require. In its Pay Request, Program Manager may request payment for that portion of the Program Manager's compensation earned and not previously paid through the pay period covered by the Pay Request. The Pay Request shall be supported by such documentation as Owner may require. Copies of paid receipts for expenses for which Program Manager seeks payment shall be furnished as part of the Pay Request. Unless otherwise directed by Owner's Representative, Pay Requests shall be submitted to Owner's Representative for approval.

7.4 Certification Relating To Pay Requests. Each Pay Request shall bear the signature of Program Manager's Project Coordinator, which signature shall constitute Program Manager's representation to Owner that the Services indicated in the Pay Request have progressed to the level indicated and have been properly and timely performed as required herein, that the Reimbursable Expenses included in the Pay Request have been actually, reasonably and properly incurred, that all obligations of Program Manager covered by prior Pay Requests have been paid in full, and that, to the best of Program Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Program Manager that payment of any portion thereof should be withheld. Submission of Program Manager's Pay Request for final payment shall further constitute Program Manager's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of

Program Manager to others incurred in connection with the Project, will be paid in full. In the event that Owner becomes credibly informed that any of the foregoing representations by Program Manager are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Program Manager until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

7.5 Payment Of Pay Requests. Owner shall make payment to Program Manager of all sums properly invoiced and approved under the provisions of this Article 7, less any withheld amount authorized by this Agreement and less any amounts owed by Program Manager to Owner, not more than thirty (30) days following Owner's receipt of the Pay Request, provided that the Pay Request is in proper order, is supported by all required documentation, and that all conditions precedent to payment have been satisfied; otherwise, the time for payment of such Pay Requests shall be extended by the amount of time required to cure such deficiencies.

7.6 Withholding Of Payment. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make a payment or payments to Program Manager otherwise due or thereafter to become due, to the extent that any one or more of the following conditions exists:

- (a) Program Manager's Pay Request is not in the form or supported by the documentation required by this Agreement;
- (b) Program Manager is in default of any of its obligations hereunder or under the applicable Project Order;
- (c) Any part of such payment is attributable to performance by Program Manager which Owner adjudges to be deficient or not conforming with the requirements of this Agreement or the applicable Project Order; provided, however, that payment shall be made as to the part thereof attributable to performance which is rendered in accordance with this Agreement or the applicable Project Order and is not deficient, subject to other provisions hereof;
- (d) Program Manager has failed to make payments promptly to its Subcontractors, consultants, employees, or others performing Services in connection with the Project in accordance with any agreement therefore, or any person has filed a claim that Program Manager has failed to make payments due to such person; or
- (e) Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Program Manager.

In the event that any of the foregoing conditions exist, Owner shall be entitled to retain from any sum then due or thereafter to become due an amount sufficient in the judgment of Owner to satisfy, discharge, and defend against such claims, to make good any losses, prospective losses, costs, attorney's fees, and other expenses which may result from the existence of such conditions.

7.7 Disputed Pay Request. In the event Owner's Representative disagrees with or questions all or any portion of any Pay Request, the amount due to Program Manager, or the sufficiency of the information and documentation submitted by Program Manager, Owner's Representative shall notify Program Manager in writing and Owner shall pay the undisputed parts of such Pay Request. If Owner's Representative and Program Manager are able to agree on the amount due under the disputed part of any Pay Request, payment will be made by the payment due date on the original Pay Request or twenty (20) days after receipt of a new Pay Request representing the agreed amount, whichever is later.

7.8 Conditions Precedent To Payment. In addition to all other conditions contained in this Agreement, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Program Manager not be in material breach of this Agreement or the applicable Project Order; (b) Program Manager have submitted all documents required by this Agreement or the applicable Project Order; and (c) Program Manager have submitted its Pay Requests and backup documentation in the time, form, and manner required by this Agreement and/or performed in accordance with applicable Project Order for each project.

ARTICLE 8

CHANGE ORDERS

8.1 Owner's Authority To Order Changes. Owner may, without affecting the validity or enforceability of this Agreement or the applicable Project Order, direct changes in the Services, including additions, deletions, modifications, and revisions thereto, and direct Program Manager to perform Additional Services. Program Manager shall promptly proceed with the performance of the Services in accordance with Owner's directions, and failure to agree on the specific terms of a Change Order shall not be cause for Program Manager's failure to perform the Services or to proceed with any directed change, so long as Owner and Program Manager agree that there has been a change to the Services.

8.1.1. Basis Of Compensation Increase. Any increase to Program Manager's compensation pursuant to a Change Order shall be made in accordance with the rates set forth in Exhibit "A".

8.2 Reductions In Program Manager's Compensation. If the Program Manager's Services are reduced in time or scope, the Program Manager's compensation shall be equitably adjusted by Change Order.

8.3 Payment. Payment for Services performed pursuant to a Change Order shall be requested and made in accordance with, and shall be subject to, the provisions of Article 7.

8.4 Change Orders Final. The parties' agreement on any Change Order shall constitute a final settlement on all items covered by such Change Order, as well as all issues and matters related in any way to the circumstances forming the basis for the Change Order.

ARTICLE 9

PERSONNEL, SUBCONTRACTORS AND CONSULTANTS

9.1 Approval Of Program Manager's Subcontractors Required/Required Subcontract Terms. Program Manager shall not subcontract to any person or entity (including affiliates of Program Manager) any part of the Services to be rendered by Program Manager under this Agreement without Owner's prior written approval. Program Manager shall provide Owner with such information as Owner deems necessary in order to determine whether to approve any such subcontracts. All such subcontracts shall afford Program Manager rights against its Subcontractors and consultants which correspond to the rights afforded to Owner against Program Manager herein, including, without limitation, those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor and consultant charges as set forth herein.

9.2 Program Manager Responsible For Acts Of Subcontractors. Should Program

Manager subcontract all or any part of the Services required under this Agreement, such subcontracting of the Services shall not relieve Program Manager from any liability or obligation under this Agreement or under any Applicable Law, and Program Manager shall be responsible for any and all acts, defaults, omissions and negligence of its Subcontractors and consultants. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Program Manager, and a provision to this effect shall be inserted into all agreements between Program Manager and its Subcontractors and consultants.

9.3 Program Manager's Personnel. Program Manager shall assign only qualified personnel to perform the Services and any functions related to the Project.

9.3.1 Chief Executive. Upon forty-eight (48) hours notice from Owner, Program Manager's Chief Executive Officer, or equal, shall be made available for consultation with Owner as Owner, in its sole discretion, deems necessary.

9.3.2 Prior Approval By Owner. Program Manager shall not assign any personnel to the Project without first obtaining written approval of such assignment from Owner's Representative. In order to permit Owner to evaluate Program Manager's prospective personnel assignments, Program Manager shall make all such personnel available for interviews by Owner and Owner's staff, at Owner's place of business, and shall furnish resumes of prospective personnel. At the time of execution of this Agreement, the individuals listed in Exhibit "A" have been approved by Owner. Subsequent personnel assignments shall be added to Exhibit "A", upon approval in accordance with this paragraph 9.3. Individuals listed in Exhibit "A", shall not be changed unless: (a) Owner exercises its rights set forth in paragraph 9.4, (b) Owner gives prior written authorization for such change, or (c) any such individual ceases to be employed or retained by Program Manager or any parent, affiliate, subsidiary, or joint venture partner thereof, in which case immediate written notice of same shall be given to Owner.

9.4 Removal Of Personnel And Subcontractors. If at any time during the course of the Project, Owner reasonably determines that the performance or conduct of any member of Program Manager's staff or any of Program Manager's Subcontractors or consultants working on the Project is unsatisfactory, Owner's Representative may require Program Manager to remove such staff member or terminate such Subcontractor or consultant from the Project immediately and replace the staff member or Subcontractor or consultant, subject to approval in accordance with paragraph 9.3, at no cost or penalty to Owner for delays or inefficiencies the change may cause.

9.5 Employment Taxes. Program Manager shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.

ARTICLE 10

PROJECT DOCUMENTS

10.1 Use And Ownership. All Preliminary Designs, Designs for Construction, schedules and schedule updates, Construction Contracts, including, but not limited to, drawings, plans, specifications, and other documents or things pertaining to the Project are the sole property of Owner. Such drawings, specifications and other documents and things shall not be used by Program Manager for any purpose other than the design and construction of the Project unless Owner shall first agree otherwise in writing. Program Manager shall indemnify and save Owner harmless from any and all liabilities, costs, claims, damages, losses and expenses, including

reasonable attorneys' fees, arising out of, or resulting from, any unauthorized use of said documents and things by Program Manager.

10.2 Availability Of Project Records To Owner. All records, documents and things relating to the Project which are in the possession of Program Manager, including without limitation Program Manager's books and records relating to the Project, shall be made available to Owner, its designee, and any governmental authority for auditing, inspection and copying upon written request made by Owner. Such records also include, without limitation, all drawings, plans, specifications, Construction Contracts, Submittals, daily logs and dairies, correspondence, minutes and notes of meetings, memoranda, audio or video tape recordings, computer-based files and storage instruments, and other writings or things which document the Project, its design, and its construction for a period of sixty (60) calendar days after Substantial Completion of each project..

10.3 Maintenance Of Project Records. Program Manager shall maintain and protect all Project-related documents, records and things for not less than one (1) year after Final Completion of the Project. Program Manager shall give Owner thirty (30) days written notice prior to disposal or destruction of any such documents, records and things.

ARTICLE 11

INDEMNITY

Program Manager shall indemnify and hold harmless Owner from and against all liability, claims, losses, damages, costs and expense of any nature or kind, including attorneys' fees and all litigation-related expenses, sustained or incurred by Owner to the extent arising out of and attributable to the negligence or wrongful Services, or breach of this Agreement by Program Manager, or negligent acts and omissions of Program Manager, its Subcontractors, employees, agents, and consultants. This duty to indemnify Owner shall extend to, but not be limited to, claims for bodily injury (including death), for damage to or loss of property, and for environmental damage and liabilities, incurred or sustained by Owner or any third person to the extent resulting from and attributable to any breach of contract, negligent or wrongful acts or omissions of Program Manager, its employees, Subcontractors, agents, and consultants.

ARTICLE 12

INSURANCE

12.1 Coverage Required. Program Manager shall, throughout the duration of this Agreement, and for a period of one (1) year after final completion of each Project, maintain the following insurance, written by insurers acceptable to Owner and in a form acceptable for Owner:

12.1.1 Workers' Compensation to statutory limits.

12.1.2 Employers Liability - One Million dollars (\$1,000,000) per occurrence.

12.1.3 Comprehensive General Liability, with combined limit for bodily injury, sickness or disease, death, and property damage of not less than One Million dollars (\$1,000,000) per occurrence.

12.1.4 Automobile Liability covering all owned, non-owned or hired vehicles, with

combined single limit of One Million dollars (\$1,000,000) per occurrence.

12.1.5 Excess/Umbrella Liability in excess of items 12.1.2, 12.1.3, and 12.1.4, above, in the amount of Five Million dollars (\$5,000,000) per occurrence.

12.1.6 Professional Errors and Omissions insurance, with a limit of one Million Dollars (\$1,000,000.00).

12.2 Owner As Additional Insured. Owner shall be included as an additional insured on the coverages specified in subparagraphs 12.1.3, 12.1.4 and 12.1.5, and shall be indicated as such on certificates of insurance required herein.

12.3 Certificates Of Insurance/Cancellation Notice. Not later than ten (10) days after execution of this Agreement, Program Manager shall furnish to Owner original signed certificates of insurance showing that the insurance required by this Article 12 is in force. Such certificates shall provide for thirty (30) days written notice to Owner prior to cancellation or material change in any insurance coverage or policy.

12.4 Subcontractor/Consultant Coverage. Unless expressly waived by Owner in writing, Program Manager shall permit no Subcontractor or consultant retained by Program Manager to enter upon any Project site or perform any Services unless such Subcontractor or consultant is and remains insured in accordance with the requirements of paragraphs 12.1, 12.2 and 12.3. Program Manager shall indemnify Owner for any loss or damage suffered by Owner as a result of the failure of any of Program Manager's Subcontractors or consultants to be so insured.

ARTICLE 13

SUSPENSION

13.1 Owner's Right To Suspend. Owner may for any reason whatsoever suspend, in whole or in part, the Project, performance of any Work, and performance of Program Manager's Services under this Agreement or an applicable Project Order. Owner shall give written notice of such suspension to Program Manager specifying when such suspension is to become effective and the scope thereof.

13.2 Ceasing Performance Upon Suspension. From and upon the effective date of any suspension ordered by Owner, Program Manager shall incur no further expense or obligations in connection with the suspended portion of the Project or the Services, and Program Manager shall cease performing Services under the applicable Project Order as directed by Owner. Program Manager shall also promptly suspend any of its open or outstanding contracts, subcontracts, or purchase orders related to the suspended portion of the Project or the Services.

13.3 Resumption Of Work After Suspension. If Owner lifts the suspension it shall do so in writing, and Program Manager shall resume performance of the Services required by this Agreement and an applicable Project Order unless, prior to receiving the notice to resume the Services, Program Manager has exercised its right of termination as provided in Paragraph 14.8 herein.

13.4 Claim For Costs Of Suspension. Within forty-five (45) days after either the resumption of the suspended portion of the Project or Services or termination by Program Manager pursuant to paragraph 14.8, Program Manager shall submit an itemization of expense and time expended as a result of the suspension, together with costs, pricing or other data required by Owner. Program Manager's failure to provide such itemized information

within such forty-five (45) day time period shall constitute a waiver of any claim to compensation relating to the suspension of Program Manager's work under this Agreement and an applicable Project Order. Owner shall promptly review Program Manager's itemization and shall issue a Change Order providing for payment to Program Manager of such amounts as may be due on account of the suspension, which amounts shall be limited to direct costs resulting from the suspension, and shall not include lost profits or other consequential damages related to or resulting from the suspension.

ARTICLE 14

TERMINATION

14.1 Termination For Convenience. Owner may for any reason whatsoever terminate, in whole or in part, one or more Projects, this Agreement, or Program Manager's employment under this Agreement, for Owner's convenience. Owner shall give written notice of such termination to Program Manager specifying when termination becomes effective and the scope of the termination.

14.2 Ceasing Performance Upon Termination. Program Manager shall incur no further obligations in connection with the terminated portion of a Project or this Agreement and Program Manager shall cease performance of Services when and to the extent such termination becomes effective. In the event of termination under this paragraph, Program Manager shall promptly terminate outstanding contracts, subcontracts, and purchase orders related to the terminated portion of a Project, Program Manager's employment or this Agreement unless directed to do otherwise by Owner. Owner may direct Program Manager to assign Program Manager's right, title and interest under open or terminated contracts, purchase orders, or subcontracts to Owner or its designee. Unless directed otherwise by Owner, Program Manager shall settle the liabilities and claims arising out of the termination of the contracts, subcontracts, and purchase orders.

14.3 Submission Of Termination Claim. In the event of termination for convenience, Program Manager shall, within ninety (90) days of such termination, submit a written termination claim to Owner specifying the amounts due because of the termination together with cost, pricing, and other supporting documentation or data required by Owner. Program Manager's failure to file a termination claim within such ninety (90) day period shall constitute a waiver of any claim to compensation relating to the termination. If a proper termination claim is submitted, then Owner shall pay Program Manager an amount derived in accordance with paragraph 14.4 herein.

14.4 Compensation For Termination For Convenience. As full compensation to Program Manager for any termination for convenience, Owner shall pay Program Manager the following amounts:

- (a) The value, based upon the provisions of Article 7 hereinabove, of Services performed and accepted under this Agreement;
- (b) Reasonable costs (i) incurred prior to termination in preparing to perform and in performing the terminated portion of this Agreement, and (ii) incurred in terminating Program Manager's performance; and
- (c) Reasonable costs of settling and paying claims arising out of the termination of contracts, subcontracts, and purchase orders pursuant to this Article 14.

The total sum to be paid under this paragraph 14.4, as properly adjusted and as reduced by the

amount of payments otherwise made, shall in no event include duplication of payment.

14.5 Termination For Cause. If Program Manager refuses or fails to perform its Services and responsibilities under this Agreement in a timely manner, supply enough properly skilled personnel, make prompt payment to its Subcontractors or consultants, or comply with Applicable Laws, or if Program Manager is otherwise guilty of a material breach of this Agreement or any representations or warranty made herein, then Owner may, by written notice to Program Manager, and without prejudice to any other right or remedy, terminate the employment of Program Manager and take possession of all design documents, Construction Contracts, and all other Project-related documents and things in the possession of Program Manager, and finish the Project by whatever methods it deems expedient.

14.6 Erroneous Termination For Cause. In the event the employment of Program Manager is terminated by Owner for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was, for any reason, without just or proper cause, then such termination shall thereupon be deemed a Termination for Convenience under paragraph 14.1 and the provisions of paragraph 14.4 regarding compensation shall apply.

14.7 Completion By Owner And Survival Of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the Project and the Services by whatever means Owner deems most expedient. Program Manager's obligations and all provisions of this Agreement and the applicable Project Order shall continue in full force and effect as to all Services performed prior to the effective date of the termination and as to that portion of the Project and Services not affected by the termination.

14.8 Termination By Program Manager. If one or more Project Orders are suspended for a period of more than thirty (30) consecutive days by governmental authority or by direction or neglect of Owner's Representative, and through no fault of Program Manager, or if Owner fails to pay Program Manager any undisputed amount due on any undisputed invoice within thirty (30) days after receipt of written notification from Program Manager that such payment is overdue, then Program Manager may, upon seven (7) days prior written notice to Owner, terminate its Services on the related Project.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 Notices. Any notice required to be given herein shall be deemed to have been given to the other party if (a) given by first class mail, registered air express mail, courier service, or hand delivery; or (b) by telex or fax, provided that such notice is also confirmed by first class mail, registered air express mail, courier service, or hand delivery, to the following addresses:

To Owner:

Mike Land
City of Coppell
255 Parkway Blvd.
Coppell, TX 75019-9478

To Program Manager

Lisa Gallagher
Gallagher Construction Company, LP
3501 Token Dr., Suite 100
Richardson, TX 75082

or other designee with authority:

Lisa Gallagher Ellrich

All notices shall be effective upon receipt.

15.2 Successors And Assigns. Program Manager shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without Owner's prior written consent. Owner shall have the right to assign its rights under this Agreement. Subject to the provisions of the immediately preceding sentence, Owner and Program Manager, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Agreement.

15.3 No Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including, without limitation, any Project Architect, Contractor, supplier, subcontractor or consultant.

15.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions of this Agreement shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.

15.5 Headings. The headings used in this Agreement are merely for convenience and have no other force or effect.

15.6 Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of this Agreement.

15.7 "Including". The terms "including", "includes", and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."

15.8 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without regard to principles of conflict of law.

15.9 Entire Agreement/Amendments In Writing. This Agreement represents the entire agreement between Owner and Program Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Program Manager. When construing this Agreement and Project Orders issued hereunder, any conflict in the provisions of this Agreement and Project Orders, the Project Orders shall control and construed to Amend the provisions hereof for such project.

15.10 Hazardous Materials. Program Manager and its consultants will have no responsibility for the discovery, presence, handling, removal or exposure of persons to hazardous materials in any form at any project site.

15.11 Delays Beyond Reasonable Control. Neither Owner nor Program Manager will be responsible for any delays beyond its reasonable control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

EXECUTED this _____ day of _____, 2018.

CITY OF COPPELL, TEXAS

By: _____
MIKE LAND, City Manager

ATTEST:

By: _____
CHRISTEL PETTINOS, City Secretary

APPROVED AS TO FORM:

By: _____
ROBERT HAGER, City Attorney

EXECUTED this _____ day of _____, 2018.

GALLAGHER CONSTRUCTION COMPANY, LP

By: _____
Lisa Gallagher, Vice President

**SCHEDULE OF EXHIBITS
TO MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES**

EXHIBIT "A" Schedule of Compensation

EXHIBIT "B" Partial Waiver and Release of Claim Rights

EXHIBIT "C" Final Waiver and Release of Claim Rights

EXHIBIT "A"

SCHEDULE OF COMPENSATION

The Program Manager shall be compensated by the Owner, as to each Project assigned to the Program Manager by a Project Order unless the duration of the Project is extended through no fault of the Program Manager in which event the duration of such compensation shall be increased or accordingly. Services provided shall be compensated on a monthly basis. Generally, Services on a monthly basis will be required on a Project through Final Completion of the Project.

Fee Structure

Fire Station #4 and Resource Center

Budget - \$7,400,000
Design Phase – TBD
Bid Phase – 2 months
Construction Phase – 12 months
PM Fee - \$240,000

Fire Station #1

Budget - \$5,000,000
Design Phase – TBD
Bid Phase – 2 months
Construction Phase – 12 months
PM Fee - \$162,500

Gallagher Construction Services will attempt in every way to ensure these projects are completed on or ahead of schedule. However, if the timeframes are extended, through no fault of Gallagher, the fees may be increased.

Additional projects can be added to this Program Management Agreement, at any time, by the City of Coppell under these Terms and Conditions. Pricing structure will be negotiated on an as each Project basis.

Personnel:

Von Gallagher	Principal in Charge
Lance Aaron	Estimator/ Project Manager
Jeff Fisher	Pre-Construction Project Manager
Al Duffey	Construction Observation/ Quality Control
Mike Spoerl	Mechanical Observation/ Quality Control

Reimbursable Expenses

The Owner shall provide office space, office telephones, furniture, office supplies, and file cabinets for the Program Manager, if mutually agreed upon by Owner and Program Manager. All other costs of the Program Manager's office shall be borne by the Program Manager and are included in the Fee Structure set forth above.

The Program Manager shall be reimbursed at cost and without mark-up for reasonable out of town travel expenses if requested in advance by the Owner. The cost of printing, for drawings, specifications, and bid packages shall be paid by the Owner.

Normal expenses incurred by the Program Manager in the course of work on the Project(s) shall be reimbursed to the Program Manager. These would include but not limited to the following: photography, long distance telephone, and courier and overnight deliveries.

EXAMPLE - EXHIBIT "B"
PARTIAL WAIVER AND RELEASE OF CLAIM RIGHTS

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, and any and all equitable rights and claims for all labor, subcontract work, equipment, materials and services supplied to City of Coppell through the date indicated below, excepting only those claims for which City of Coppell has received, prior to the date indicated below, written notice furnished in strict compliance with paragraph 6.8 of Article 6 of the Master Agreement for Project Management Services Between City of Coppell and _____ dated _____.

This RELEASE and WAIVER shall inure to the benefit of, and may be relied upon by, City of Coppell.

The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials or renting equipment, or both, to the undersigned have been paid in full.

DATED: _____

FIRM: _____

BY: _____

TITLE: _____

STATE OF _____
COUNTY OF _____

Subscribed to and sworn before me this _____ day of _____, 20____.

Notary Public

EXAMPLE - EXHIBIT "C"
FINAL WAIVER AND RELEASE OF CLAIM RIGHTS

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, and any and all equitable rights and claims for all labor, subcontract work, equipment, materials and services supplied to City of Coppell.

This RELEASE and WAIVER shall inure to the benefit of, and may be relied upon by, City of Coppell.

The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials or renting equipment, or both, to the undersigned have been paid in full.

DATED: _____

FIRM: _____

BY: _____

TITLE: _____

STATE OF _____
COUNTY OF _____

Subscribed to and sworn before me this _____ day of _____, _____.

Notary Public