
Agreement Between Owner and Program Manager

AGREEMENT

made as of the ____ day of _____ in the year of Two Thousand and Eight.

BETWEEN the Owner: Beeville Independent School District
 2400 North St. Mary's
 Beeville, Texas 78102

and the Program Manager: Owners Building Resource, LP
 P.O. Box 470
 Bremond, Texas 76629

For the following Projects:

(Include detailed description of Project location and scope.)

Program Management Services the 2008 Bond Projects:

The Owner and the Program Manager (PM) agree as set forth below.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER
AND PROGRAM MANAGER

ARTICLE 1
PRE-BOND SERVICES

Not Applicable.

ARTICLE 2
PROGRAM MANAGER'S SERVICES AND RESPONSIBILITIES

The Program Manager covenants with the Owner to further the interests of the Owner by furnishing the Program Manager's best skill and judgment in cooperation with the services of an Architect. The Program Manager agrees to furnish business and construction administration and management services and to perform in an expeditious and economical manner consistent with the sole representation of the interests of the Owner.

The Program Manager shall perform all services in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the recognized standards of a Texas program management firm and the standards and practices specified in this Agreement. The Program Manager shall be responsible to the Owner for all costs and damages resulting from failure of the Program Manager to comply with the terms of this Agreement. The Program Manager's services shall be provided in conjunction with the services of an architect. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Program Manager upon request

BASIC SERVICES:

The Program Manager's Basic Services consist of the following:

2.1 PRECONSTRUCTION

- 2.1.1** Provide preliminary evaluation of the Program, as well as the schedule and budget requirements for each Project, each in terms of the other. Assist the Owner and the Architect in achieving a mutually agreed upon Program and Project budget requirements and other design parameters.
- 2.1.2** Review design documents during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide consultation and recommendations regarding relative feasibility of construction methods, availability of materials and labor, time requirements for procurements, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics. . Such work shall be performed so as to not delay the progress of the Architect's services.
- 2.1.3** Provide for the Architect's and the Owner's review and acceptance, and periodically update, a Master Schedule that coordinates and integrates the Program Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules.
- 2.1.4** Coordinate Contract Documents by consulting with the Owner and the Architect's regarding Drawings and Specifications as they are being prepared, and make recommendations regarding alternative solutions

whenever design details affect construction feasibility, cost or schedules.

- 2.1.4.1** Together with Owner's Attorney, verify that the requirements and assignment of responsibilities are included in the proposed Construction Contract Documents.
- 2.1.5** Develop a Project Schedule for each Project providing for all major elements of the Project Work, including phasing of construction and times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of the Owner for each separate Project. Provide the current Project construction schedule for each set of bid documents on each Project. Such schedules shall be updated at intervals appropriate to the progress of the work.
- 2.1.6** 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.
- 2.1.7** Receive proposals with the Owner, prepare bid/proposal analyses and make written recommendations to the Owner for award of Contract(s) or rejection of bid/proposals.
- 2.1.8** Conduct pre-award conferences with successful Contractors/Vendors. In conjunction with the Owner's Attorney, assist the Owner in preparing a draft of the Construction Contracts for inclusion in the bidding documents. Advise the Owner on the acceptability of Subcontractors and material suppliers proposed by the Contractors and notify Owner of appropriate time to issue Notice to Proceed.

2.2. CONSTRUCTION PHASE

The Construction Phase for each Project in the Program will commence with the award of the Construction Contract for each Project, and, together with the Program Manager's obligation to provide Basic Services under this Agreement, will end thirty (30) days after final payment to all Contractors on each respective Project.

- 2.2.1** Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Program Manager, in cooperation with the Architect, shall provide administration support of the Contracts for General Construction. The Owner may bid and award separate specialty contracts. Specialty contractors shall have the same responsibilities as general contractors over their specialized portion of the work. Where two or more specialty or general contractors are working on the same project or in close proximity, the Program Manager shall provide coordination of services between these parties.
- 2.2.2** Provide administrative, management and related services as required to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Program Manager, the Owner and the Architect to complete each 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.
 - 2.2.2.1** Schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Coordinate the preparation and prompt distribution of minutes of such meetings.
 - 2.2.2.2** Consistent with the Project Construction Schedule issued with the Proposal Documents, and utilizing the Contractor's Construction Schedules, update the Master Program Construction Schedule incorporating the activities of the Contractor on the Project. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority. Update and reissue the Master Program Construction Schedule, as required, showing current conditions and revisions required by actual experience. If any update

- indicates that a previously approved Project construction schedule may not be met, the Program Manager shall recommend corrective action to Owner and Architect.
- 2.2.2.3** Endeavor to obtain 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.
- 2.2.3** The Program Manager shall develop cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.
- 2.2.3.1** Provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks, by way of comparison with such approved estimates. Identify variances between actual and budgeted or estimated costs, and advise the Owner and the Architect whenever projected costs exceed budgets or estimates.
- 2.2.3.2** 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.
- 2.2.3.3** Recommend necessary or desirable changes to the Architect and the Owner, review requests for changes, assist in negotiating Contractor/Vendor proposals, and submit recommendations to the Owner.
- 2.2.3.4** Develop and implement procedures for the review and processing of Applications by Contractor for progress and final payments. Make recommendations to the Owner for payments.
- 2.2.3.5** Based on the Program Manager's on site inspection, observations and evaluations of each Contractor's Applications for Payment, the Program Manager shall review and certify the amounts due the respective Contractors
- 2.2.4** The Program Manager is not ultimately responsible for Contractor's means or methods of construction or safety conditions or requirements; however, it is the Program Manager's responsibility to report to the Owner any noted deviations from the Construction Documents and/or safety conditions or requirements. The Program Manager shall, however, review the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other Contractors and employees of the Program Manager or Owner. The Program Manager's responsibilities for coordination of safety programs shall not extend to direct control or charge of the acts and omissions of the Contractors, Subcontractors, or agents or employees of the Contractors or Subcontractors. The Program Manager shall be responsible for safety programs for agents and employees of the Program Manager .
- 2.2.5** 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.
- 2.2.6** If requested, assist the Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories required for each Project. Coordinate their services.
- 2.2.7** Determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring 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, advise Owner when Work does not conform to the requirements of the Contract Documents and assist Owner in remedy thereof.

- 2.2.8** With respect to each Contractor's own work, the Program Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the Contractor in the performance of, the Work, or for safety precautions and programs in connection with their Work. The Program Manager shall not have control over or charge of and shall not be responsible for the failure of Contractor to carry out Work in accordance with the Contract Documents. The Program Manager shall not have control over or charge of acts or omissions of the Contractors or subcontractors, or their agents or employees or any other persons performing portions of the Work not directly employed by the Program Manager.
- 2.2.9** Transmit to the Architect if Contractor requests interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions which may arise.
- 2.2.10** Receive Certificates of Insurance from the Contractor, and forward them to the Owner with a copy to the Architect. The Program Manager shall, as a condition precedent to allowing any Contractor to proceed with any work on the Project, require that the Contractor provide proof of the existence of all workers' compensation and other insurance coverage, statutory performance bonds, and statutory payment bonds required by the Contract for Construction, and shall verify that such insurance and bonds are in the amount and form required by the Contract Documents. The Program Manager shall maintain records of all required certificates of insurance and performance and payment bonds provided by the Contractors, and shall forward copies to the Owner and the Architect.
- 2.2.11** In collaboration with the Architect, establish and implement procedures for expediting the processing, review and approval of Shop Drawings, Product Data, Samples and other submittals.
- 2.2.12** Record the progress of the Project. Submit written progress reports to the Owner and 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. The Program Manager shall keep a log of all site visits containing a record of weather, each Contractor's Work on the Site, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.
- 2.2.13** With the Architect and the Owner's maintenance personnel, observe the Contractor's final start-up and testing of utilities, operational systems and equipment.
- 2.2.14** When the Program Manager in conjunction with the Architect considers Contractor's Work or a designated portion thereof substantially complete, the Program Manager shall assist the Architect in conducting inspections. After the Architect certifies the Date of Substantial Completion of the Work, or a designated portion thereof, the Program Manager shall coordinate the correction and completion of the Work. As a condition to the Project being considered Substantially Complete, the Program Manager shall certify with the Architect that the facility has been constructed in general accordance with the Construction Documents as required by 19 Texas Administrative Code ' 61.1036.
- 2.2.15** 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 Contractor 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. Cause to be delivered all keys, manuals, record drawings and maintenance stocks to the Owner.
- 2.2.16** The extent of the duties, responsibilities and limitations of authority of the Program Manager as a representative of the Owner during construction shall not be modified or extended without the written consent of the Owner. The Program Manager will only advise and make recommendations to the Owner. The Owner shall make all final decisions related to any design or construction activities.

- 2.2.1.7** As part of Basic Services the Program Manager shall conduct, with the Owner, Architect and Contractors a review of each Project, eleven months after the date of Substantial Completion to identify items under warranty which require action by the Contractor.

2.3 TASK ASSIGNMENTS (ADDITIONAL SERVICES)

The services described in Paragraph 2.3 are not included in Basic Services and they shall be paid for by the Owner as specified in a Task Assignment for Additional Services. The services described under Paragraph 2.3 shall only be provided if authorized, in writing, by the Owner.

- 2.3.1** Long range facilities planning.
- 2.3.2** Services related to investigations or verification of the accuracy of existing drawings or other information furnished by the Owner including services to make measured drawings in as-built documentation that is not available or currently accurate.
- 2.3.3** Special engineering consultant services outside the general scope of services, including but not limited to: Specialized evaluations (Specialized technical evaluation of existing conditions necessary as many of the projects are additions/alterations), demographic studies, detailed civil related drainage studies, traffic studies, land platting and related activities, models, renderings, kitchen design consultants, acoustics studies, noise studies/consultants, soils (geotechnical) testing, graphic design. Most of the aforementioned will be contracted directly by the Owner.
- 2.3.4** Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.
- 2.3.5** Other services not otherwise included in this agreement as requested by the Owner in writing.

2.4 TASK ASSIGNMENT PROCEDURE

- 2.4.1** At the Owner's request, the Program Manager shall develop/or obtain a fee proposal for a specified additional "task" as presented by the Owner. The Program Manager shall provide a written proposal defining the project scope and fee amount. The Owner will provide written approval authorizing performance each approved task
- 2.4.2** After Owner's approval of the Construction Documents, the Program Manager shall not make or approve any change in the Work without the prior written consent of the Owner. The Program Manager shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Program Manager without the Owner's prior written consent.
- 2.4.3** Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Program Manager's failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered Basic Services

ARTICLE 3 **THE OWNER'S RESPONSIBILITIES**

- 3.1** The Owner is the Board of Trustees of the Beeville Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the

Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise specifically provided herein, the Architect does not have the authority to bind the Owner.

- 3.2 The Owner shall provide general scope information regarding the requirements of the Program and its Projects, including Owner's objectives, constraints and criteria and expandability requirements, special equipment and systems.
- 3.3 The Owner shall establish and update a budget for the Program and its Projects, based on consultation with the Program Manager and the Architect, which shall include contingencies for bidding, changes during construction and other costs which are the responsibility of the Owner.
- 3.4 The Owner shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Program Manager's services.
- 3.5 The Owner may retain one or more Architects to provide professional design services for the Projects.
- 3.6 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections, and reports as required by law or the Contract Documents. The Owner and Program Manager agree any services, information and reports provided by Owner may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of such documents, either express or implied. Execution of this Agreement by the Program Manager is a representation that the Program Manager has thoroughly reviewed and become familiar with such documents and that the Program Manager is not aware of any errors, inconsistencies or omissions in such documents which would delay the performance of the Work. The Program Manager shall not be entitled to any damages or increase in the Program Manager's fee due to delays or disruptions to the Work.
- 3.7 The Owner shall furnish the Program Manager a sufficient quantity of Construction Documents.
- 3.8 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 Program Manager and the Architect. This condition shall be reciprocal.
- 3.9 The Owner shall furnish the required information and services and shall render approvals and decisions, including property selections, as expeditiously as necessary for the orderly progress of the Program Manager's services and the Work of the Contractor.
- 3.10 The Program Manager and Program Manager's consultants shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. The Program Manager and the Program Manager's consultants shall have no responsibility to initially discover the presence of such hazardous materials on the Project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Program Manager or the Program Manager's consultants to be present on the Project site.

ARTICLE 4

OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 4.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Program Manager may retain one record set. The Program Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated

the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Program Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Program Manager, are for use solely with respect to this Project. They are not to be used by the Program Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Program Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Program Manager's services under this Agreement.

- 4.2 All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

ARTICLE 5

DISPUTE RESOLUTION

- 5.1 In the event that the Owner or the Program Manager shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request a mediation of the dispute.
- 5.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.
- 5.3 In the event the Owner and the Program Manager are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 5.4 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Program Manager may not bring a legal action against the Owner unless:
- 5.4.1. the Program Manager has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within 91 days after the date of the start of the event giving rise to the Program Manager's Claim, dispute or other matter, and
- 5.4.2. the legal action is brought within two years and one day after the date of the start of the event giving rise to Program Manager's Claim, dispute or other matter.
- 5.5 Venue for any mediation arising under this contract shall be in Bee County, Texas.
- 5.6 At all times during the course of any dispute resolution process, the Program Manager shall continue diligently and without delay to perform the services and obligations of the Owner/Program Manager Agreement.

ARTICLE 6.

TERMINATION, SUSPENSION OR ABANDONMENT

- 6.1 This Agreement may be terminated by either party upon not less than thirty days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

- 6.2** If the Project is suspended by the Owner for more than 90 consecutive days, the Program Manager may terminate this Agreement upon not less than seven days written notice. Should the Program Manager elect to so terminate this Agreement, the Program Manager shall be compensated for services actually performed and expenses actually incurred prior to notice of such termination and for profits only performed prior to termination.
- 6.3** If the Owner fails to make payments to the Program Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination, or at the Program Manager's option, cause for suspension of performance of services under this Agreement if not cured by the Owner within thirty days following notice of any past-due payment.
- 6.4** If the Owner fails to make payment when due the Program Manager for services and expenses, the Program Manager may, upon thirty days written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Program Manager within thirty days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services pursuant to this subparagraph, the Program Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services
- 6.5** In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated only for services actually performed and expenses actually incurred prior to termination and for profits only on the work performed prior to termination.

ARTICLE 7. INSURANCE

- 7.1** The Program Manager shall provide and maintain in effect during the performance of the work under the Agreement insurance of the following types and with indemnification limits not less than the amounts indicated:

<u>Workmen's Compensation:</u> (Including Waiver of Subrogation Endorsement)	Statutory
<u>Comprehensive General Liability:</u>	
<u>Occurrence</u>	\$1,000,000.00
<u>Aggregate</u>	\$2,000,000.00
<u>Personal Injury</u> (Coverage to include groups A, B, & C w/exclusion AC@ aggregate removed.)	\$1,000,000.00 each person
<u>Automobile Liability:</u>	
<u>Bodily Injury/Property Damage</u>	\$1,000,000.00 combined single limit
<u>Property Damage</u>	\$1,000,000.00 each occurrence
Program Manager's Consultants	(Same limits as above)

- 7.1.1** The required insurance must be written by a company licensed to do business in Texas at the time the

policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

- 7.1.2** The Policy so issued in the name of Program Manager shall also name the Owner as additional insured, except for professional liability insurance. To the extent a Program Manager's Consultant is named as an additional insured on any policy held by the Program Manager, separate coverage shall not be required of the Program Manager's Consultants. All policies held by the Program Manager shall be primary coverage.
- 7.1.3** Program Manager shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner. Program Manager shall permit Owner to examine the insurance policies, or at Owner's option, Program Manager shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Program Manager neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Program Manager's expense.
- 7.1.4** Insurance provided pursuant to this paragraph shall be considered a part of the Program Manager's basic services and shall not be a Reimbursable Expense within the scope of this Agreement.

ARTICLE 8

PAYMENTS TO THE PROGRAM MANAGER

8.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

- 8.1.1** Payments for Basic Services, as described in Article 2, shall be made monthly and where applicable shall be in proportion to the services performed within each phase of service.
- 8.1.2** If and to the extent that the time initially established for Program Completion (30 months) is exceeded through no fault of the Program Manager, the sum payable for Basic Services shall be equitably adjusted to and such adjustment in the Contract Sum reduced to writing and signed by both Owner and Program Manager.

8.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES (TASK ASSIGNMENTS)

- 8.2.1** Payments on account of the Program Manager's Additional Services, as defined in Paragraph 2.3 having been approved in writing in advance of the rendering of such services, shall be made monthly upon presentation of the Program Manager's statement of services rendered and associated permitted reimbursable expenses incurred. Additional Services shall be invoiced separately from Basic Services and shall reference the writing agreement authorizing same. Payment for such services and expenses shall be in proportion to the services performed and expenses incurred during the month immediately preceding the one in which the invoice is submitted.

8.3 PAYMENTS WITHHELD

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

8.4 PAYMENTS DUE

8.4.1 Payments are due and payable thirty (30) days from the date of the Program Manager's invoice. Interest on overdue payments shall be in accordance with Texas Government Code Chapter 2251

8.5 PROGRAM MANAGER'S ACCOUNTING RECORDS

8.5.1 Records of 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 upon request.

**ARTICLE 9.
MISCELLANEOUS**

9.1 This Agreement shall be governed by the law of the State of Texas. Venue for any lawsuit arising under this contract shall be in Bee County, Texas. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

9.2 The Owner and Program 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 the other party with respect to all covenants of this Agreement. Neither Owner nor Program Manager shall assign this agreement without the written consent of the other.

9.3 This Agreement represents the entire and integrated agreement between the Owner and Program 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 Owner and Program Manager.

9.5 Nothing contained herein shall be deemed to create any contractual relationship with or cause of action in favor of a third party against either the Owner or Program Manager.

9.6 Prohibition on Ownership or Financial Interest in Contractors. Neither the Program Manager nor the owners, principals, or employees of the Program Manager may have any ownership or financial interest in any Contractor performing work on the Project.

**ARTICLE 10
BASIS OF COMPENSATION**

The Owner shall compensate the Program Manager, as follows:

10.1 BASIC COMPENSATION

10.1.1 FOR BASIC SERVICES, as described in Articles 2 and any other services included in the Agreement as part of Basic Services, Basic Compensation shall be computed as follows:

The Program Manager shall be entitled to payment of a fixed fee for Basic Services of \$332,500.00 plus reimbursable expenses. Such fee and reimbursable expenses shall be billed monthly in accordance with Section 8.1.1. Program Manager's shall invoice monthly for services during the month immediately preceding the one in which the invoice is submitted.

Reimbursable expenses shall include such items as postage, printing, copies, long distance phone calls, mileage, per diem, lodging, etc.

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 FOR TASK ASSIGNMENTS/ADDITIONAL SERVICES OF THE PROGRAM MANAGER, as described in Paragraph 2.3, and any other services not included in Article 2, compensation shall be computed as follows:

Fixed Lump Sum Fee as agreed to in writing, which shall include Additional Services and all expenses associated with providing such services, which are not specifically excluded from such sum in the written agreement.

10.4 Payments due the Program Manager and unpaid under this agreement shall bear interest as provided for in the Texas Prompt Payment Act.

10.5 The Owner and the Program Manager agree in accordance with the Terms and Conditions of this Agreement that if the Scope of the Program or the Program Manager's Services is materially and substantially changed, the amounts of compensation shall be equitably adjusted.

This Agreement executed the day and year first written above.

OWNER

BEEVILLE INDEPENDENT SCHOOL DISTRICT
2400 North St. Mary's
Beeville, Texas 78102

PROGRAM MANAGER

OWNERS BUILDING RESOURCE, LLP
P.O. Box 470
Bremond, Texas 76629

Name: _____

Date: _____

Robert Gadbois, P.E, Executive Vice President
Date: _____