

A Addison Airport - Frito-Lay Contractor's Agreement **MEMO**  
2003

**AGREEMENT FOR SERVICES**  
**PROVIDED TO FRITO-LAY, INC.**

THIS AGREEMENT for Services (hereinafter referred to as "Agreement") is made effective as of the 14<sup>th</sup> day of October, 2003, by and between FRITO-LAY, INC., a Delaware corporation (hereinafter referred to as "Frito-Lay"), its parent, divisions, subsidiaries and affiliates, and Constructors & Associates, Inc, its parent, divisions, subsidiaries and affiliates (hereinafter referred to as "Contractor"), having an office and principal place of business at 3333 Welborn, Suite 200, Dallas, Tx. 75219.

In consideration of the mutual promises of performance by Contractor and payment by Frito-Lay to Contractor for services, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Frito-Lay and Contractor agree to the following terms and conditions:

**1. THE SERVICES**

- 1.1 This Agreement shall govern all services performed by Contractor for Frito-Lay ("Services"), until the termination hereof. Schedule A, attached hereto and made a part of this Agreement, contains the scope of work and all specific terms of the project and Services to be performed by Contractor. In case of a conflict or inconsistency between the terms of this Agreement and the terms of Schedule A, the terms of this Agreement shall control. The terms of Schedule A may be amended, modified or changed in accordance with the procedures set forth in Paragraph 2 of this Agreement.
- 1.2 Frito-Lay will provide to Contractor reasonable, necessary, non-exclusive access to the property or facility designated in Schedule A for the sole purpose of performing the Services. Contractor will at all times exercise its best efforts to coordinate the Services with Frito-Lay's designated representatives and other contractors or consultants providing services to Frito-Lay. Frito-Lay may, from time to time, schedule and coordinate Contractor's Services in conjunction with the work of others, and Contractor agrees to use its best efforts to comply strictly with the scheduling and coordination.

**2. PROJECT CHANGES**

- 2.1 Frito-Lay may at any time authorize changes in the Services, require additional Services or direct the omission of Services previously ordered as set forth below; provided, however, Contractor shall not proceed with any change without the prior written consent of the Frito-Lay Project Manager for the Services, whose name may be set forth on Schedule A ("Project Manager").
- 2.2 If either party requests a change in the Services or additional Services, Contractor shall promptly furnish to Frito-Lay a statement setting forth, in detail acceptable to Frito-Lay, the actual change in the cost of the Services (including all reasonable overhead and profit) and any resulting change in the schedule for the Services, which will result from the requested change. If the Project Manager approves of Contractor's statement in writing, the request for the change and Contractor's statement shall constitute a Change Order, and the scope of work for the Services as set forth on Schedule A, including the amount of compensation, expenses, timetable and schedule shall be revised accordingly. Unless approved in advance in writing by the Project Manager, Frito-Lay will not pay any additional charges or expenses related to any change other than the charges set forth in the applicable Change Orders.

**3. CONTRACTOR'S SERVICES TEAM**

- 3.1 Contractor shall designate on Schedule A, the name of its key project employee who will manage the project and Services, and all other employees, agents, independent contractors and subcontractors who will perform the Services (collectively referred to as "Contractor's Services Team"). Contractor's Services Team shall be subject to approval by Frito-Lay. Contractor shall not subcontract or delegate the performance of any of its duties hereunder without Frito-Lay's prior written approval.
- 3.2 Contractor warrants that all Services supplied by Contractor's Service Team shall be supplied by personnel who are careful, skilled, experienced, licensed or certified as necessary, and competent in their respective trades or professions.

- 3.3 Contractor must obtain the Project Manager's prior written consent in order to remove or substitute its key project employee or any other member of Contractor's Service Team (as listed on Schedule A) or to add any person to Contractor's Services Team prior to the completion of the Services. If Contractor requests any such change, it shall follow the procedures in Paragraph 2.2 and, if approved by the Project Manager, the parties shall amend Schedule A accordingly.
- 3.4 Frito-Lay may require removal of any individual named to Contractor's Services Team at any time by written notification to the Contractor effective upon receipt.
- 3.5 Contractor is and will perform the Services as an independent contractor and will have complete control over and be responsible for all personnel comprising and all operations conducted or performed by Contractor's Services Team. Neither Contractor nor any member of Contractor's Services Team shall be deemed to be Frito-Lay's servants, employees, or agents. Nothing contained herein shall be deemed to create the relationship of partners, principal and agent, or joint ventures between the parties. Contractor agrees that it has no right or authority (i) to incur obligations of any kind in the name of or for the account of Frito-Lay; (ii) to commit or bind Frito-Lay to any contract or other obligation; and that (iii) all contracts entered into by it in the performance of the Services shall be entered into by Contractor as principal.
4. **COMPENSATION**
- 4.1 Frito-Lay shall pay Contractor and Contractor shall accept, the sum set forth in Schedule A, in full payment for the proper performance of this Agreement and all obligations of Contractor under this Agreement, subject to the additions and deductions provided for in this Section 4 and Section 14 of this Agreement.
- 4.2 In order to receive payment, Contractor will submit invoices to Frito-Lay, in a form acceptable to Frito-Lay, for any and all pre-approved actual costs and expenses due for the Services immediately upon completion of the Services described in the invoices. If Contractor will submit multiple invoices throughout the course of the Services, Frito-Lay may retain up to ten percent (10%) of the amount due in each invoice ("Retainage") until final completion of Contractor's Services. In addition to the Retainage, Frito-Lay may withhold from each invoice, or from any single invoice for Services, additional sums for (i) invoice amounts which are not adequately supported; (ii) defective Services or materials not corrected; (iii) Contractor's failure to make proper payments to subcontractors, suppliers and the like; and/or (iv) if the Services, or any part of the Services, have not been completed in accordance with this Agreement. Frito-Lay shall pay the amount in Contractor's invoices, less any amounts retained or withheld under this Paragraph, within thirty-five (35) days from Frito-Lay's receipt of the invoice. If the grounds for Frito-Lay's withholding payments under this Paragraph are removed, Frito-Lay will promptly pay to Contractor all withheld amounts; provided, however, that Frito-Lay will not be liable for interest or late penalty payments related to any retained or withheld amounts.
- 4.3 In order to receive final payment of any and all amounts due upon completion of the Services, Contractor shall provide Frito-Lay with (i) an affidavit indicating that all bills for labor, materials, taxes, services, and other expenses relating to the Services for which Frito-Lay could be held responsible have been paid; (ii) complete releases with regard to any and all liens arising out of the Services or receipts in full in lieu thereof; and (iii) if applicable, a statement by the surety on Contractor's performance and payment bonds consenting to final payment and indemnifying Frito-Lay for any claims relating to bills and expenses.
- 4.4 Frito-Lay shall not be liable for payment of any invoice submitted by Contractor after ninety (90) calendar days from the completion of the Services included in the invoice.
- 4.5 The total sum payable to Contractor under Schedule A shall include all costs, expenses, overhead, taxes, royalties and fees in connection with the Services. If Contractor desires additional payments for any costs, expenses, overhead, taxes, royalties or fees which are not included in the sum set forth on Schedule A, Contractor must first obtain the Project Manager's prior written approval for any and all such expenses, including, without limitation, any out of pocket or travel expenses. In order to obtain approval, Contractor shall follow the procedure set forth in Section 2 of this Agreement. Frito-Lay will not be financially obligated in any way under this Agreement for any obligations or expenses incurred by Contractor unless Contractor has obtained the Project Manager's written approval for the obligations or expenses.

- 4.6 In the event of a dispute regarding payment, Contractor shall remain obligated to and, at Frito-Lay's option, will continue to perform Services pending resolution of the dispute.

5. RECORDS

Contractor shall maintain all cost, expense, payroll and related financial records and accounts pertaining to Services performed by Contractor under this Agreement (the "Records") for a period of three years after the Services are paid for by Frito-Lay or until the conclusion of any litigation or administrative proceeding arising under or materially concerning this Agreement or the Services. Frito-Lay shall have the right to audit, copy and inspect the Records at all reasonable times during the course of the Services and for the period during which the Records are maintained under this Paragraph 5.

6. CONFIDENTIALITY

- 6.1 During the term of this Agreement, Frito-Lay may indirectly or directly disclose to Contractor and/or Contractor's Service Team, Frito-Lay's confidential proprietary information relating to the operation of Frito-Lay's business, including without limitation, information and data relating to packaging, research, operations, development, production, control, sale and marketing of foods, in such form as economic information, business plans, marketing strategy, technical information, knowledge, process and production information, environmental concerns, and methods of manufacture (hereinafter "Confidential Information"). Contractor and/or Contractor's Service Team will hold in confidence and not disclose to others without Frito-Lay's prior written consent, all Confidential Information that has been or will be disclosed to Contractor either directly or indirectly. Contractor will limit its use of Confidential Information solely in conjunction with the performance of the Services. The foregoing obligations of confidentiality and non-use do not apply to any information Contractor can show (i) to be in the public domain; or (ii) which was in Contractor's possession prior to beginning performance of the Services and which was not acquired directly or indirectly from Frito-Lay.

- 6.2 All Confidential Information is and shall remain Frito-Lay's property and all documents, work sheets, drawings, photographs, work product and other tangibles or intangibles made or received by Contractor in the performance of Services that are based in whole or in part on Confidential Information will be Frito-Lay's sole property and subject to the aforementioned obligations of confidentiality and non-use. Upon completion or termination of the Services, or upon Frito-Lay's written request, Contractor agrees to deliver to Frito-Lay all tangible forms of Confidential Information.

- 6.3 Without Frito-Lay's prior written approval, Contractor shall not disclose to the public or to any third party this Agreement, or any documents, worksheets, drawings, work product, correspondence or other tangible or intangible matters relating to the Services, except as necessary to comply with laws, rules and regulations applicable to the Services.

- 6.4 The provisions of this Section 6 will survive the termination of this Agreement and the termination of the Services hereunder.

7. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

- 7.1 All tangible and intangible information, materials and intellectual property, including, without limitation, ideas, concepts, compositions, inventions, drawings, photographs and specifications, developed or prepared by Contractor's Services Team in connection with the Services paid for by Frito-Lay ("Work") shall be deemed "works made for hire" under all applicable laws and shall be Frito-Lay's sole property to use in any manner. If for any reason any Work is not considered "works made for hire" Contractor shall obtain all rights, title and interest to the Work and Contractor hereby irrevocably assigns, conveys and transfers to Frito-Lay all rights, title and interests worldwide in and to all Work and all copyrights, trade secrets, patents, trademarks and other intellectual property rights and all contract and licensing rights, and all claims with respect to any of the Work, whether known or unknown. Contractor shall deliver all Work to Frito-Lay upon completion or termination of the Services or upon Frito-Lay's written demand and Frito-Lay reserves the unilateral and unrestricted right to use the Work in any way that Frito-Lay desires.
- 7.2 All documents, reports, memoranda, drawings, specifications, photographs and other tangible and intangible information, as well as all intellectual property, including, without limitation, ideas, concepts, compositions, and inventions provided by Frito-Lay shall remain Frito-Lay's property and shall be

returned to Frito-Lay upon request, completion, or earlier termination of the Services.

8. **REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Contractor, on behalf of itself, its employees, agents and subcontractors hereby represents, warrants, and covenants as follows:

- 8.1 It is knowledgeable and experienced in providing services comparable to the Services and it will at all times perform Services in a professional and responsible manner consistent with the standard of care, diligence and skill ordinarily exercised by similar professionals under similar circumstances in accordance with customarily accepted, good and sound professional practices and procedures.
- 8.2 It has all professional licenses, certifications and similar governmental authorizations required for contractors performing services such as the Services and will obtain all necessary licenses, building and other permits and similar authorizations from local, state and federal authorities required for it to perform the Services.
- 8.3 It has inspected and/or considered the location(s) of the Services and all information relating to the location(s), including without limitation, the condition of and access to the premises where the Services are to be performed, all space limitations and constraints, locations of utilities, and quantities of electrical, mechanical and all other materials to be supplied by Contractor, and has satisfied itself as to the condition thereof and that the sum set forth on Schedule A is just and reasonable compensation for all of the Services.
- 8.4 All materials prepared hereunder by it will be its sole and original work and that there neither is nor will there be any adverse claim by any employee of Contractor nor any third party to or in the materials prepared hereunder.
- 8.5 All equipment, goods and materials furnished and used in connection with the Services shall be (i) of good and merchantable quality; (ii) free from defects in design, materials and workmanship; (iii) possess the characteristics represented by any specifications described in Schedule A; (iv) fit for the purpose for which designed; (v) capable of meeting all applicable performance criteria; and (vi) new, unused and in original unbroken packaging upon delivery to Frito-Lay, unless otherwise agreed.
- 8.6 During and upon the completion of the Services, it will: (i) keep the premises under its control clean, neat and orderly; (ii) protect all work in progress and all property under its control from damage; (iii) remove all trash, debris, waste materials, and rubbish, as well as its tools, equipment, machinery, surplus materials, from and around the premises; and (iv) remove and properly recycle or dispose of all hazardous materials (new, used or waste materials) in accordance with all applicable laws. If Contractor fails to comply with this Paragraph, Frito-Lay may do so at Contractor's expense.
- 8.7 It shall make (or cause to be made) full payments when due of all compensation to Contractor's Service Team, all vendors, and any other persons rendering Services or furnishing materials in connection with this Agreement.
- 8.8 It will take all necessary precautions for the safety of its employees, agents, subcontractors, independent contractors and any other persons under its control performing the Services.
- 8.9 It will not permit any lien arising from the Services filed by any subcontractor, vendor, laborer or employee to remain upon the property, provided that Frito-Lay has made all payments currently due under the terms of this Agreement. Contractor may bond off or otherwise protect Frito-Lay against any unreasonable or improper lien that Contractor wishes to contest.
- 8.10 During the performance of the Services, it shall comply with all Frito-Lay rules and regulations and any and all federal, state and local laws, rules, regulations, and orders of public authority applicable to the Services and the premises where the Services are to be performed, including, but not limited to, federal and state tax and social security laws, the Occupational Safety and Health Act, the Fair Labor Standards Act and the Americans with Disabilities Act.
- 8.11 It will file all reports required to be filed in the name of Contractor and shall pay all taxes, fees and charges required by all applicable laws, rules, regulations, and orders, including without limitation, all

taxes, fees, contributions, assessments or other charges applicable to its income, personal property and employees in connection with the Services.

8.12 During its performance of the Services, it has not and will not enter into any contracts or agreements which implicitly or expressly prevent Contractor from engaging in activities of the type envisioned hereunder or which would result in a conflict with Contractor's obligations under this Agreement.

8.13 All products and/or Services (including, without limitation, all original and third party software, hardware, integrated circuits, data and other components provided or included in any equipment, materials and Services supplied under this or a related agreement) and, if applicable, such products and/or Services performing as a system, shall be Year 2000 Compliant through the twenty-first century. Year 2000 Compliant means that before, on and after midnight December 31, 1999, all such products and/or Services will accurately process date/time data (including without limitation, calculating, comparing, providing, receiving, recording, saving and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, without any loss of functionality, performance or interruption.

8.13.1 In the event of a breach of the foregoing representation and warranty, Contractor shall restore the products and/or Services to the same level of performance as warranted in this Agreement, or repair or replace the products and/or Services with conforming products and/or Services so as to minimize the interruption to Frito-Lay's business processes, time being of the essence, at Contractor's sole cost and expense. If Contractor fails to correct defects in or replace non-conforming or defective products and/or Services promptly, Frito-Lay, after reasonable notice to Contractor, may restore, repair or replace such products and/or Services and charge Contractor for all reasonable costs incurred by Frito-Lay in doing so.

8.13.2 Contractor further represents and warrants that during the term of this Agreement it shall (i) supply products and/or Services to Frito-Lay without error or interruption, and (ii) use its best efforts to ensure its own and its supplier's original and third party software, hardware, integrated circuits, data and other components are Year 2000 Compliant.

8.13.3 The foregoing representations and warranties regarding Contractor's Year 2000 compliance shall not be subject to any disclaimers or exclusions of warranty or any limitation of Contractor's liability under this or a related agreement and shall survive any warranty expiration period or termination of this or a related agreement.

## 9. INDEMNIFICATION

9.1 Contractor will release, defend, indemnify and hold Frito-Lay and others claiming through Frito-Lay harmless from all claims, damages, liabilities, liens or claims of lien, fines, penalties, demands, actions, judicial or administrative proceedings, settlements, losses and expenses (including reasonable legal fees, litigation related expenses and PUNITIVE DAMAGES) arising out of or related to the performance of the Services and/or any breach of the warranties set forth in this Agreement, but only to the extent caused in whole or in part by the acts or omissions of Contractor, any member of Contractor's Services Team, or anyone directly or indirectly employed by them or for whose acts they may be liable.

9.2 Contractor's obligation under this Section 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under worker's or workmen's compensation acts or any employee benefit acts.

9.3 Contractor agrees to obtain, maintain and pay for such general liability insurance as will insure the provisions of Paragraph 9.1 and other contractual indemnities assumed by Contractor in this Agreement; provided, however, that Contractor's obtaining or failing to obtain such insurance or the adequacy of the limits of such insurance, shall not act as a limit on Contractor's liability hereunder.

9.4 The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement and the completion or earlier termination of Services hereunder.

## 10. APPROVAL/ACCEPTANCE AND TESTING

10.1 Frito-Lay's partial or full payment of any sums due for the Services and any goods and/or materials

provided hereunder shall not constitute acceptance of such Services, goods or materials. Frito-Lay shall have final authority to inspect and test all Services, goods and materials and Frito-Lay may, within a reasonable time, accept or reject any and all Services, goods and/or materials which are, in Frito-Lay's discretion, defective, non-conforming, and/or not in compliance with the terms of this Agreement or Schedule A. Neither Frito-Lay's inspection or testing, nor its failure to inspect or test the Services and any goods and/or materials provided hereunder will waive its rights under Paragraph 10.2.

- 10.2 Upon Frito-Lay's notice and access for Contractor to the premises and/or equipment or materials at issue, Contractor agrees to (i) re-execute, at no additional cost to Frito-Lay, any Services which were not performed in compliance with this Agreement and/or Schedule A; (ii) remedy, at no additional cost to Frito-Lay, any defects due to faulty materials or workmanship (including, if applicable, the repair or replacement of any materials, goods, or equipment supplied as part of the Services), which appear within a period of one (1) year from the time of Frito-Lay's final payment to Contractor of all sums due for the Services; and (iii) repair, replace or restore, at no additional cost to Frito-Lay, any other goods, equipment, materials, fixtures, equipment or other items which are injured or damaged by Contractor's noncompliant or defective Services, materials, goods or equipment. If Contractor does not begin to correct any deficiency within a reasonable time from Frito-Lay's notice, Frito-Lay shall have the right to re-perform the Services with its own labor or by contract with others and to repair or replace any defective or noncompliant goods, materials or equipment and to charge Contractor with all reasonable expenses and costs relating thereto. Frito-Lay's rights under this Paragraph 10.2 are nonexclusive and are in addition to Frito-Lay's other rights in law and equity.

#### 11. INSURANCE

Throughout the term of this Agreement, Contractor shall maintain, at its sole cost and expense, the following types of insurance naming Frito-Lay as additional insured, which shall be primary insurance and not excess over nor contributing with any other insurance procured and maintained by Frito-Lay, as follows:

- a. **Worker's Compensation:** Statutory Limits for the state(s) in which Services will be performed. If Contractor is self-insured, a copy of a current self-insured certificate from the state(s) in which the Services are to be performed must be provided prior to the Services being performed.
- b. **Employer's Liability** with limits of not less than \$500,000 per occurrence.
- c. **Commercial General Liability ("CGL"),** and, if necessary, commercial umbrella insurance with limits of not less than \$3,000,000 combined single limit per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Services or project described in Schedule A. The CGL insurance shall be written on an occurrence form and shall cover liability arising from (1) premises; (2) products and completed operations extending two years after the final completion of the Services; (3) broad form property damage, including completed operations; (4) personal injury; (5) independent contractor's liability; (6) contractual liability covering this Agreement as an "insured contract."
- d. **Business Auto Liability** (including coverage for all owned, hired and non-owned automobiles used in connection with the Services): \$2,000,000.00 each accident. If Contractor is to remove and haul hazardous or toxic materials as part of the Services or if the Services involve similar exposure to liability under any federal, state or local environmental health or safety law or regulation or under common law, the policy shall provide pollution liability coverage.
- e. **Pollution Liability,** if applicable to the Services, with limits of at least \$2,000,000.

Contractor shall obtain the Insurance policies required by this Section from a company licensed to do business in the state where the project site is located at the time the policies are issued. Such policies shall not be canceled or materially changed without thirty (30) days prior written notice from the insurer to Frito-Lay. **PRIOR TO COMMENCING ANY SERVICES, CONTRACTOR MUST OBTAIN THE REQUIRED MINIMUM INSURANCE AND PROVIDE CERTIFICATES OF INSURANCE TO FRITO-LAY IN A FORM ACCEPTABLE TO FRITO-LAY WHICH EVIDENCE THAT CONTRACTOR HAS PROCURED THE INSURANCE REQUIRED BY THIS SECTION.** Frito-Lay shall be under no duty to examine such certificates or to advise Contractor if its insurance is not in

compliance with this Agreement. Contractor shall require all members of Contractor's Services Team who are not Contractor's employees to comply with the terms of this Section.

The insurance requirements set forth herein are minimal coverage requirements and are not to be construed in any way as a limitation on Contractor's liability under this Agreement.

12. **BONDS**

Upon Frito-Lay's request at any time prior to or during the Services, Contractor will, within ten (10) days, furnish performance and payment bonds to Frito-Lay in a form and in an amount acceptable to Frito-Lay.

13. **TITLE AND RISK OF LOSS OR DAMAGE**

Contractor shall be responsible and bear the risk of loss or damage (i) for any goods, equipment or materials related to the Services until they are delivered at the designated delivery point, paid for, and accepted by Frito-Lay, and (ii) for the cost of all returns, including without limitation, freight, insurance, packaging, and labor as to rejected goods, equipment or materials.

14. **TERM AND TERMINATION**

14.1 Unless terminated in accordance with this Section 14, the term of this Agreement shall commence as of the date of this Agreement and shall continue until the completion of the Services.

14.2 Frito-Lay may immediately terminate this Agreement for cause, including any or all of the Services specified on Schedule A, in the event of any default by Contractor of the terms of this Agreement; provided however, that Frito-Lay has provided written notice of the default to Contractor and Contractor has failed to cure the default within five (5) days of its receipt of Frito-Lay's notice.

14.3 Frito-Lay may terminate this Agreement and/or require Contractor to stop any or all of the Services immediately for Frito-Lay's convenience without Contractor being at fault, upon fifteen (15) calendar days' prior written notice. Unless otherwise agreed by the parties in writing, in the event of such termination, Frito-Lay shall pay Contractor for all pre-approved costs and expenses incurred in connection with the Services performed up to the date of Contractor's receipt of the termination notice. Frito-Lay shall not pay Contractor for any Services performed after Contractor's receipt of Frito-Lay's notice and shall not pay any other costs, expenses or prospective profits on Services not performed.

15. **MBEWBE PARTICIPATION**

Frito-Lay has a corporate commitment and goal to providing maximum opportunities for qualified minority and women's business enterprises (MBEWBE) to participate in its work. Contractor will ensure that qualified MBE/WBE's are considered and to the maximum extent possible included as subcontractors and/or suppliers on any Services being bid on.

16. **FORCE MAJEURE**

Neither party shall be responsible for delays or defaults under this Agreement if such a delay or default is occasioned by war, strikes, fire, an act of God, labor or transportation difficulties or other causes beyond either party's control. If such an occurrence or event delays or threatens to delay the timely performance of this Agreement, each party shall promptly communicate relevant information with respect thereto to the other party. The occurrence of a force majeure event shall not prevent Frito-Lay from terminating this Agreement in accordance with the termination provision hereof.

17. **GENERAL PROVISIONS**

a. **Entire Agreement and Amendment**

This Agreement sets forth the full understanding of the parties as of the date first above stated, and it supersedes any and all agreements and representations between the parties made or dated prior to the date of this Agreement. This Agreement may be amended only by written agreement of the parties. If signed by appropriate representatives of both parties, all amendments will be binding on the parties, despite any lack of legal consideration.

b. **Notices**

All notices pertaining to this Agreement shall be in writing, and shall be deemed to have been duly given upon receipt if hand delivered and within three (3) business days after the postmark



date if mailed by certified or registered mail, postage prepaid, and it addressed to the party at the address shown above.

- c. Assignment  
This Agreement shall not be assignable by either party without the prior written consent of the other party. When duly assigned in accordance with this Paragraph, this Agreement shall be binding upon and shall inure to the benefit of the assignee.
- d. Time of the Essence  
Time is of the essence in the performance of Contractor's Services hereunder.
- e. Waiver  
Waiver by either party of the performance of any condition or covenant of this Agreement shall not invalidate this Agreement, nor shall it be deemed a waiver of any other covenant or condition. No waiver of any condition or covenant shall be valid unless given in writing and executed by both parties.
- f. Captions and Interpretation  
The captions used herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the intent of any Section or Paragraph hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against either party based upon any attribution to such party as to the source of the language at issue.
- g. Governing Law  
THE LAWS OF THE STATE OF TEXAS SHALL GOVERN THIS AGREEMENT AND THE PARTIES AGREE TO THE JURISDICTION AND VENUE OF THE U.S. DISTRICT COURTS FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION OR THE TEXAS STATE COURTS LOCATED IN DALLAS COUNTY, TEXAS.
- h. Severability  
in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- i. Advertising or Publicity  
Without Frito-Lay's prior written consent, Contractor will not use Frito-Lay's name in any advertising or publicity releases.
- j. Offers of Employment  
Contractor agrees that it will not make an offer of employment to an employee of Frito-Lay without giving Frito-Lay at least sixty (60) days' written notice of its intention to make the offer of employment.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands as of the effective date and year set forth above.

FRITO-LAY, INC.

By: LEE STEELE  
(Printed Name)

Signed: [Signature]

Title: CORP. FACILITIES

Constructors & Associates, Inc.

By: Joseph J. Criffin  
(Printed Name)

Signed: [Signature]

Title: V.P.

**SCHEDULE A: THE SERVICES**

Pursuant to the Agreement for Services between Constructors & Associates Inc ("Contractor") and Frito-Lay, Inc. ("Frito-Lay"), dated July 28, 2003, and subject to that Agreement in all respects, this Schedule A, sets forth specifications, costs and other details of the Services, project and/or work to be performed by Contractor.

Name, title and/or general nature of the Services, project and/or work to be performed by Contractor:

FLNA Corporate Hangar

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**A. PROJECT SPECIFICATIONS AND SERVICES TO BE PERFORMED ("Scope of Work"):**

**1. Project Schedule/ Timetable/Completion Date:**

134 Working Days from Start of Construction to Completion. Anticipated Start is October 10, with completion on April 16, 2004.

**2. Services to be provided by Contractor:**

Construct new corporate hangar at Addison Airport, located on airport parkway.

**3. Specifications for all materials, equipment or goods to be supplied as part of the Services:**

See attached document list Attachment A3.

**B. CONTRACTOR'S SERVICES TEAM - The individuals named below, including without limitation, Contractor's employees, agents, independent contractors, and subcontractors, shall be responsible for the completion of the Services, project and/or work described in this Schedule:**

David Weatherford - Project Manager.

Carson Coleman - Project Superintendent

**C. COST - (Total sums to be paid to Contractor for all Services, equipment, materials and goods) AND PAYMENT SCHEDULE:**

See attached GMP summary Attachment A1 dated 10/24/03

**E. INVOICE INSTRUCTIONS - (Address and contact for sending/delivering invoices to Frito-Lay):**

Monthly invoices to be submitted along with AIA Pay Application forms by the 30<sup>th</sup> of each month.

Submit to: David Stack  
The Staubach Company  
15601 Dallas Parkway, Suite 400  
Addison, TX 75001

F. ADDITIONAL DETAILS AND TERMS REGARDING THE SERVICES - (Including all applicable performance criteria):

This Agreement shall be performed under a Guaranteed Maximum Price Contract as outlined in Attachment A2

G. FRITO-LAY'S PROJECT MANAGER FOR THE SERVICES:

Lee Steele  
7701 Legacy Drive  
Plano, TX 75024

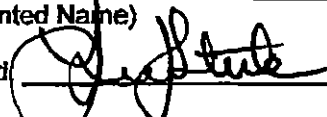
The signing of this Schedule by appropriate representatives of Frito-Lay and Contractor signifies acceptance by both parties of the specifications, cost estimates, and other details of the Services, project and/or work contained in this Schedule.

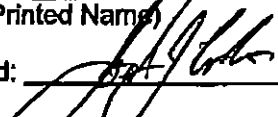
ACCEPTED FOR FRITO-LAY, INC.

ACCEPTED FOR Constructors & Associates Inc

By: Lee Steele  
(Printed Name)

By: Joseph J. Cribbin  
(Printed Name)

Signed: 

Signed: 

Title: Group Manager, Corporate Facilities

Title: Vice President

Date: 12.01.03

Date: 11/21/03

Attachment A1- GMP Summary**CONSTRUCTORS**

Project : **Frito Lay - Corporate Hangar**  
 Address : Addison Airport  
 Addison, TX  
 Architect : Corgan Associates

Bid Date : November 10, 2003  
 Square Footage : 20,032  
 Proposal Number : 2003-39708

## GMP (excluding Owner's Contingency)

Building	\$1,753,855
Sitework	\$632,954
	<hr/>
	\$2,386,809

**Accepted Alternates**

Alternate #3 - Change lay-in ceiling @ conference room	\$359
Alternate #4 - Add chair rail in conference room	\$1,025
Alternate #5 - Kynar finish on storefront	\$615
Alternate #6 - Masonry blast wall along Airport Pkwy	\$33,397
Alternate #7 - Ceramic tile at Commisary	\$794
Alternate #8 - Mag locks with touch bar in lieu of electric panics	(\$2,665)
Alternate #9 - Provide brick & cmu veneer at blast wall	\$4,510
Alternate #10 - Furnish new mech units in lieu of relocate existing	\$42,058
Alternate #11 - Provide ceiling fans at hangar	\$7,739
Alternate #12B - Electric eye with receiver at hangar door	\$1,518
Alternate #13 - Add 480V outlets for power carts	\$1,082
Alternate #14A - Provide conx for rental generator	TBD
	<hr/>
	\$90,432
<b>Total GMP</b>	<hr/>
	\$2,477,241

**Attachment A2****1. Guaranteed Maximum Price**

The parties hereto agree that, when the Drawings and Specifications for the construction of the entire Work of the Project, including all agreed-upon phases and packages are sufficiently complete to permit the Contractor to fix the estimated Cost of the entire Work of the Project with some reasonable degree of reliability and predictability, the Contractor shall propose a maximum sum of the Cost of the Work and the Contractor's Fee that Contractor will guarantee not to exceed, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or "GMP". Once the GMP has been accepted by the Owner, any costs or expenses which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

Notwithstanding any other provision, the GMP shall be the sum of the following:

- a. the Contractor's Estimated Cost of the Work (as approved by the Owner) which consists of the sum of the guaranteed or fixed prices of the Work and the reasonable, good faith estimate of the cost of the balance of the Work;
- b. General Conditions of a fixed amount \$115,507.00;
- c. a deductive amount for buy-out and/or savings incurred for completed or partially completed Work included in duly executed Work Authorization Amendments approved prior to establishing the GMP;
- d. the Construction Contingency; if applicable
- e. the Contractor's Fee; and
- f. Allowances as approved by the Owner.

The Guaranteed Maximum Price of the Work shall not contain a separately identified contingency factor (the "Construction Contingency").

The Contractor and the Owner agree and acknowledge that the cost of certain portions of the Work may be incapable of exact determination at the time that the Guaranteed Maximum Price is established and accepted by the Owner. The Contractor and the Owner will establish reasonable estimates of these costs based upon availability of information for such portions of the Work. The estimates are herein called "Allowances" and will be shown in the Guaranteed Maximum Price as "Allowances" and subject to Paragraph 3.8 of the General Conditions.

The extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

All savings in Cost of the Work under the GMP shall not be charged to the Owner. Any reduction in the Cost of Work found during the review of Final Accounting for the Project shall be returned to the Owner or deducted from the final payment to the Contractor.

**2. Costs to be Reimbursed****2.1 Cost of the Work**

The term Cost of the Work shall mean reasonable (to the fullest extent of Contractor's control) costs necessarily incurred by the Contractor in good faith and in the proper performance of the

Work in accordance with the Contract Documents. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

## **2.2 Subcontractor Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts properly entered into under the Contract.

## **2.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall be properly stored, or in accordance with the Owner's direction become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## **2.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

Costs, including transportation, machinery, installation, dismantling, removal and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools (not owned by the workmen) consumed in the performance of the Work. Any items used but not consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. The Contractor may, however, agree to purchase any such items from the Owner at a purchase price equal to the original cost to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or at such other price which is mutually acceptable to the Owner and Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items are not used in connection with the Work.

Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

Costs of removal of debris from the site, subject to the limitations imposed on Contractor's Reimbursable Conditions Costs, and only to the extent that such work is not covered within the scope of one or more subcontractors.

Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, subject to the limitations imposed on Contractor's Reimbursable Conditions Costs.

That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work, subject to the limitations imposed on Contractor's Reimbursable Conditions Costs under Paragraph 7.8 below.

Costs of materials and equipment suitable stored off the site at a mutually acceptable location, if approved in advance by the Owner.

## **2.5 Miscellaneous Costs**

That portion of insurance and bond premiums at the lowest available and authorized rates for coverage required by the Contract, less all rebates, dividends or refunds of such premiums, that can be directly attributed to this Contract:

Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable, provided, however, that such sales or use taxes must be paid at point of sale or specifically identified and separately stated so that taxes are not incurred on labor or other matters not subject to sales and use.

Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents.

Deposits lost for causes due to Owner's negligence or failure to fulfill a specific responsibility to the Contractor as set forth in the Contract Documents.

Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

## **2.6 Other Costs and Emergencies**

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997 and not caused by the Contractor, a Subcontractor or anyone for whom either is responsible, or that is capable of being prevented through timely notice of an unsafe condition to the Owner.

## **2.7 Contractor's Reimbursable Conditions Costs**

The Owner and Contractor have hereby agreed that those certain administrative and supervisory personnel costs, direct overhead, and other onsite costs and expenses incurred by Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract described or itemized in Contractor's Reimbursable Conditions Costs Schedule attached hereto as Exhibit F, shall, notwithstanding the other terms of this Article 7, be reimbursable to the Contractor subject to the limitations and restrictions expressly set forth in such Schedule. The GMP shall include \$115,507.00 for General Conditions as accepted by the Owner. Contractor's right to reimbursement shall be limited to such an amount, subject to provisions relating to changes in the work (see Article 6 above).

### **Costs not to be Reimbursed**

The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided herein.

2. Expenses of the Contractor's principal office and offices other than the site office, to include, but not limited to, data processing costs and in house partnering, project accounting, legal, and scheduling services.
3. Overhead and general expenses, except as may be expressly included herein.
4. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
5. Rental costs of machinery and equipment, except as specifically provided herein.
6. Except as provided herein of this Agreement, costs due to the negligence or failure to comply with the Contract Documents or to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
7. Any cost not specifically and expressly described herein including trade and professional association dues, fees and assessments, even if the amount thereof is based upon the amount of the compensation paid under the Contract to Contractor.
8. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
9. Costs and expenses arising from Contractor's indemnity obligations, including but not limited to Contractor's costs and expenses in removing or defending against a mechanic's lien claim asserted against the Owner and/or its property, unless such mechanic's lien arises from Owner's wrongful failure to make timely payments.
10. Any cost or expenses for which payment has already been sought by Contractor and paid by Owner, except as to any unreimbursed costs or expenses incurred by Contractor as a result of Owner's wrongful withholding of payment. In the event a claim or lien is asserted by a Subcontractor or any tier claiming through Contractor against Owner for an item of work for which payment has already been made to Contractor by Owner and, if Owner pays or has paid all or a portion of such claim to claimant, such additional payment shall not be included in the Cost of the Work but shall reduce the Contract Sum accordingly.
11. Taxes, other than sales or use taxes as authorized by this Agreement, incurred by Contractor, including but not limited to franchise, property, or income taxes.
12. Insurance deductibles and other costs, including co-payments and excess liability, not reimbursed by insurance, including but not limited to deductibles incurred by Contractor for losses covered under a Contractor Controlled Insurance Plan implemented pursuant to this Agreement.
13. Penalties for the failure of the Contractor or a subcontractor or another party for whom Contractor is responsible under the Contract to comply with applicable laws and regulations, unless the penalties are the result of the Contractor's compliance with the Contract Documents.
14. Costs and expenses arising from Contractor's performance of the Work prior to the Owner's acceptance of the GMP for the entire Work without prior written authorization.
15. Costs of record storage and retrieval for documents and records relating to the Contract.



16. **Costs to repair defective Work and other costs to comply with Contractor's warranty obligations under the Contract.**
17. **Notwithstanding the breakdown or categorization of any costs to be reimbursed in Article 2 above or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.**

**Attachment A3**

<b>Cover Page &amp; Index</b>	
<b>Civil/Landscape</b>	
C1.1	Demolition Plan
C2.1	Dimensional Control Plan
C3.1	Grading Plan
C4.1	Drainage Plan
C5.1	Water & Sanitary Sewer
C6.1	Paving Plan & Details
C7.1	Erosion Control Plan & Details
<b>Structural</b>	
S1.01	General Notes
S2.01	Foundation & Ground Floor Plan
S3.01	Typical Concrete Sections & Details
S3.02	Concrete Sections & Details
S4.01	Masonry & Steel Details
<b>Architectural</b>	
A1.01	Site Plan
A1.02	Site Details
A2.01	Floor Plans & Door Schedule
A2.02	Roof Plan
A2.10	Enlarged Plan & Wall Types
A2.11	Enlarged Restroom Plans & Details
A3.01	Reflected Ceiling Plans
A4.01	Exterior Elevations
A4.10	Building Sections
A5.01	Exterior Wall Sections
A5.02	Exterior Wall Sections
A5.10	Plan Details
A5.20	Section Details
A5.21	Section Details
A6.01	Stairs & Details
A7.01	Finish Plan
A8.01	Furniture Plan
A9.01	Schematic Electrical Plan
A9.02	Schematic Security Plan
A10.01	Schematic Mechanical & Plumbing Plan