



**Procurement
Operations**

Request for Qualifications

For

Construction Manager-At-Risk

San Jacinto Memorial Building Renovation, Central College

Project No. 11-39

REQUEST FOR QUALIFICATIONS

TABLE OF CONTENTS

Construction Manager-At-Risk

Cover Page		Page
Table of Contents		1
I.	General Information	2-3
III.	Document Submission	3
IV.	Inquiries	3-4
V.	Document Format & Content	4-7
VI.	Evaluation Criteria	7-8
VII.	Scope of Services	8-9
VIII.	Eligibility for Award	9-10
IX.	Indemnification	10
X.	Small Business Development Program (SBDP)	10-11
XI.	Prohibited Communications	11-12
XII.	Drug Policy	12
XIII.	Conflict of Interest	12
XIV.	Ethics Conduct	12
XV.	Submission Waiver	12

Attachments

Attachment No. 1	Proposer/Contract Award	13-14
Attachment No. 2	Determination of Good Faith Effort	15-16
Attachment No. 3	Small Business Unavailability Certificate	17
Attachment No. 4	Contractor & Subcontractor Participation Form	18
Attachment No. 5	Small Business Development Questionnaire	19
Attachment No. 6	Proposer Certifications	20-21
Attachment No. 7	Vendor Application	22
Attachment No. 8	Conflict of Interest Questionnaire	23
Attachment No. 9	Disclosures	24-26
Attachment No. 10	Sample Contract: Agreement between Owner & CMR	27

HOUSTON COMMUNITY COLLEGE

REQUEST FOR QUALIFICATIONS

September 6, 2011

Subject: Request for Qualifications (RFQ) for Construction Manager-At-Risk

HCC Project No. 11-39

I. General

The Houston Community College ("HCC") is seeking statements of qualifications from firms interested in providing HCC with Construction Manager-At-Risk Services for the renovation of the San Jacinto Memorial Building located in mid-town Houston at HCC Central College, 1300 Holman Avenue, Houston, TX. The selected firm will be expected to perform the services in accordance with the Scope of Services set forth in Section VII, below and in accordance with the requirements of this solicitation

The Request for Qualifications (RFQ) is the first step in a two-step process and provides the information necessary to prepare and submit qualifications for consideration and initial ranking by HCC based on the listed criteria. HCC reserves the right to request additional clarification and oral interviews from a short-list of the top rated firms solely on the written responses to this request for qualifications. Based on the initial ranking of firms submitting their statement of qualifications, HCC may select five (5) or fewer of the top ranked firms to respond to a separate Request for Proposals in the second step of the process pursuant to Section 44.038 of the Texas Education Code.

In the second step of the process, Request for Proposals ("RFP"), the selected Statement of Qualification respondents will be required to submit additional information to HCC, including, but not limited to, a project approach fee proposal and construction schedule. HCC will rank the proposals in the order that they provide the "best value" for HCC based on the published selection criteria and on the ranking evaluations. As part of the second step of the process, the "most qualified" respondents may be requested to make oral presentations to HCC. HCC will then rank the remaining "most qualified" respondents in order to identify a "best value".

HCC reserves the right to reject any or all qualification submittals or to accept any qualification submittals it considers most favorable to HCC, or to waive irregularities in the qualification and submittal process. HCC further reserves the right to reject all qualification submittals and terminate the solicitation process or seek new qualification submittals when such procedure is reasonably in the best interest of HCC.

This RFQ solicitation does not in any way obligate HCC to award a contract or pay any expense or cost incurred in the preparation and submission of qualification statements responding to this RFQ.

All applicable attachments contained in the RFQ shall be completed. Failure to do so may result in the firm's Qualifications Submittal being declared non-responsive to the solicitation requirements and subject to disqualification

Note: In addition to signature, Attachment Nos. 1, 6, and 9 must be notarized.

Information provided in response to the Request for Qualifications is subject to the Texas Public Information Act and may be subject to public disclosure.

HCC reserves the right to reject any or all submittals, negotiate changes in the scope of services sought, and waive technicalities or irregularities in the RFQ. This RFQ does not obligate HCC to select a particular firm or individual for any of the services specified in the RFQ. HCC shall not be responsible or liable for any expenses or costs incurred by any party responding to the RFQ. By submitting its Qualifications in response to this RFQ, respondent accepts the evaluation process and acknowledges and accepts that determination of "most-qualified" firm(s) will require subjective judgments by the Evaluation Committee.

Qualifications shall not include any information regarding respondent's fees, pricing or other compensation. Such information will be solicited from the qualified firms who are selected by HCC, in accordance with the published evaluation criteria, to participate in step 2 of the CMR selection process

II. Pre-proposal Meeting: A non-mandatory pre-proposal meeting will be held in the Central College Learning HUB/Science Building located at 1300B Holman (Conference Room LH100), Houston, TX 77004 on Thursday, September 22, 2011 at 10:00 a.m. (local time).

III. Document Submission:

Interested firms shall submit original and **five (5) printed** copies of their statement of qualifications documents to the below address no later than Friday, **October 14th, 2011 @ 2:00 p.m.** (local time). Original and copies of the submission should be accompanied by one (1) CD or flash drive with electronic copies of the submission. The electronic copies should be in non-editable .PDF format and should include the entire submission.

**Houston Community College
Procurement Operations
Attn: Shiela Perla, Senior Buyer
3100 Main Street (11th Floor, Room No. 11A06)
Houston, Texas 77002
Construction Manager-At-Risk, Ref: Project No. 11-39**

Please complete and return the following documents in your statement of qualifications package:

- Response to Section V
- Attachment No. 1 Proposer/Contract Award
- Attachment No. 2 Determination of Good Faith Effort
- Attachment No. 3 Small Business Unavailability Certificate
- Attachment No. 4 Contractor & Subcontractor Participation Form
- Attachment No. 5 Small Business Development Questionnaire
- Attachment No. 6 Proposer Certifications
- Attachment No. 7 Vendor Application
- Attachment No. 8 Conflict of Interest Questionnaire
- Attachment No. 9 Disclosures

IV. Inquiries

Interested firms may make written inquiries only concerning this Request for Qualifications to obtain clarification of the requirements. Written inquiries shall be submitted no later than 3:00 P.M. (local time) on September 29, 2011, and must be addressed to:

**Houston Community College
Procurement Operations
Attn: Shiela Perla, Senior Buyer
3100 Main Street (11th Floor)
Houston, Texas 77002
Reference: Project No. 11-39 Construction Manager-At-Risk
E-mail: shiela.perla@hccs.edu**

V. Document Format and Content

A. Responses shall be submitted in 8 ½" x 11" sizes. Responses must be typed and should not include any unnecessarily elaborate or promotional material. The form, content and sequence of the response should follow the outline presented below.

B. Document Content:

1. Transmittal Letter/Introduction (1 Page maximum): The letter of transmittal shall be addressed to Shiela Perla, Senior Buyer, and must, at a minimum, contain the following:

- Identification of the offering firm(s), including name, mailing address, e-mail address, telephone number and fax number of each firm;
- Acknowledgement of receipt of RFQ amendments, if any;
- Name, title, address and telephone number and fax number of a contact person for the firm(s);
- Identification of any information contained in the response documents which the respondent deems to be, and establishes as, confidential or proprietary and wishes to be withheld from disclosure to others under the Texas Open Records Act (a blanket statement that all contents of the response document are confidential or proprietary will not be honored by HCC); and signature of a person authorized to bind the offering firm to the terms of the response documents.

2. Table of Contents

Immediately following the transmittal letter and introduction, include a complete table of contents for material included in the response documents.

3. Company Profile, Qualification and Experience: Briefly furnish background information about your firm, including date of founding, legal form (sole proprietorship, partnership, corporation/state of incorporation), number and location of offices, and principal lines of business. Certify that the firm is legally permitted or licensed to conduct business in the State of Texas for the services offered. **Only individual firms or lawfully formed business organizations may apply (This does not preclude a respondent from using consultants.) HCC will contract only with the individual firm or formal organization that submits a Qualification.**

4. Proposed Staffing and Organization: This section should discuss the staff of the responding firm who would provide the Construction Manager-At-Risk ("CMR") services.

4.1 Key Personnel: Identify the Key personnel that would be assigned to HCC and will provide CMR services for the San Jacinto Memorial building renovation project. Please include the following:

- a brief description of their unique qualifications as it pertains to this project,
- availability and commitment of the respondent, its principal(s) and assigned professionals to undertake the project,
- Respondent's job functions and office location.
- Designate the Principal-in-charge who is authorized to sign and enter into any resulting contract.

- Detail the Project Manager and Superintendent's experience in similar CMR projects,
 - Provide brief resumes (not more than one (1) page) for each key personnel.
- 4.2 Include and organizational chart, which identifies key personnel and their particular roles in the CMR services.
- 5. Past Performance:** This section should establish the ability of the respondent (and its sub-consultant), if any to satisfactorily perform the required CMR work. Provide examples of similar project experience; public institutions or public entities, preferred. HCC may verify all information furnished. As a minimum, include the following per project experience:
- Project Name, Location – Year Completed; contract delivery method
 - Brief project description describing your experience, work performed by your firm and work subcontracted.
 - Owner Name, title, and current phone number..
 - Construction budget vs. final Construction Cost and describe any difference between them.
- 6. Firm's Financial Status:**
- 6.1 Provide your financial statements for the **last 3 years;**
- 6.2 Indicate your total bonding capacity; available bonding capacity and current backlog;
- 6.3 Attach a letter of intent from a surety company indicating your firm's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the firm may be bonded for each stage/phase of the project, with a potential construction cost of \$35million;
- 6.4 Identify if your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity? If so, please explain the impact both in organization and company direction and the estimated timing for the transaction to be completed.
- 6.5 Provide details of any past or pending litigation, or claims filed, against your firm that may affect your performance under a Contract with HCC.
- 6.6 Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances, and prospects for resolution.
- 7. Small Business Commitment:**
- For this Project HCC has a small business participation goal of **35%**. At a minimum, your response must include: (a) a description of previous projects where your firm has successfully subcontracted work to small businesses, minority/women owned businesses, and/ or disadvantaged businesses including the percentage (%) of work subcontracted to these firms under each project; (b) a narrative outlining your overall approach to subcontracting and how you will solicit and select small businesses, minority/women owned businesses, and/ or disadvantaged businesses for participation as part of this Project; and (c) indicate what challenges you anticipate in attaining HCC's goal of 35% **(see Texas Educ. Code 44.038 (h))**
- Note:** Refer to Attachment Nos. 2,3 & 4, Determination of Good Faith Effort, Contractor and Subcontractor Participation Form, and Small Business Unavailability Certificate, respectively These forms are provided as Samples only and do not need to be completed by Respondents at this time.
- 8. Subcontracting:**
- 8.1 Describe your methodology for advertising, evaluating and selecting trade contractors for as a Construction Manager at Risk.
- 8.2 As the Construction Manager at Risk, describe your relationship with the local subcontracting community.
- 9. Business Relationship Strength**
- "Business Relationship Strength" for the purpose of this RFQ shall mean the definition and commitment of the respondent towards a mutually successful "relationship" between the CMR and the HCC for the duration of the Project.

Respondent's Qualification Statement must include their definition, proposal and commitment to forge, foster and maintain a mutually successful "relationship" with HCC. At a minimum, your response must include: (a) your definition of a mutually successful "relationship" between your firm and HCC; and (b) your firm's commitment to a mutually successful "relationship" in the form of at least three, and not more than five, specific, obtainable criteria, activities, agreements or requirements that shall, subject to negotiation and mutual consent, become features of the awarded contract and shall guide the HCC-CMR relationship for the duration of the Project

10. Respondent's Ability to Establish Budgets and Control costs on Past Projects.

- 10.1 Describe your fiduciary responsibility as a Construction Manager at Risk using Guaranteed Maximum Price contracts for publicly funded projects.
- 10.2 Describe your cost estimating methods. From any of three (3) projects listed in response to Section V.B.5 of this RFQ, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved.
- 10.3 From any three (3) projects listed in response to Section V.B.5 of this RFQ, describe your cost control methods during construction including examples of techniques used and the degree of accuracy achieved.
- 10.4 Describe your methodology for working with the Project Architect/Engineer and their consultants to deliver a Guaranteed Maximum Price and to maintain the GMP throughout the design and construction process.
- 10.5 Provide a sample of a cost estimate used to establish a contract amount from any project you listed in Section V.B.5 of this RFQ.
- 10.6 HCC intends to accept a Guaranteed Maximum Price prior to completion of Construction Documents. Describe 1) Your process for ensuring that the Design Documents provide the information necessary to arrive at a complete GMP, including all HCC requirements with reasonable contingencies, and 2) Your process for subsequently ensuring that the 100% Construction Documents align with the project scope in the previously accepted GMP proposal documents.

11. Respondent's Ability to Meet Schedules on Past Projects.

- 11.1 Describe how you will develop, maintain and update the project schedule during design and construction.
- 11.2 Describe your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary. From any three (3) of the projects listed in response to Section V.B.5 of this RFQ; provide examples of how these techniques were used, including specific scheduling challenges/requirements and actual solutions.
- 11.3 Describe how you develop and maintain work schedules during design and construction to coordinate with the Owner's project schedule. From any three (3) projects listed in response to Section V.B.5 of this RFQ, provide examples of how these techniques were used.

12. Respondent's Knowledge of Current Construction Methodologies, Technologies, and Best Practices

- 12.1 Describe your quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used from any three (3) projects listed in response to Section V.5 of this RFQ.
- 12.2 Describe your procedures for implementing industry's "best practices" as defined by the Construction Industry Institute and similar organizations for:
 - Establishing and tracking project objectives
 - Using project scope definition resources (i.e. Project Definitions Rating Index (PDRI)) in order to obtain complete and accurate design and construction documents from the A/E
 - Partnering

- Cost tracking
 - Change (order) management systems
 - Total quality management for each phase, including close-out and commissioning
- 12.3 Provide an example of a successful constructability program used to maintain project budgets without sacrificing quality.

13. Respondent’s Ability To Identify and Resolve Problems on Past Projects

- 13.1 Describe your understanding of the administrative challenges and opportunities associated with providing Preconstruction and Construction services on this project, and your strategy for resolving these issues.
- 13.2 Describe your plan for communicating constructability, phasing, value engineering and other budget options in a form that will quickly facilitate the HCC’s decision making.
- 13.3 For any combination of three (3) projects listed in response to Section V.B.5 of this RFQ, describe any conflicts with HCC, Consultants, Architect/Engineer, or subcontractors and describe the methods used by the Respondent to resolve those conflicts.

14. Safety Record and Training

- 14.1 How do you ensure a safe work site?
- 14.2 What safety training programs do you have in place for your employees; subcontractors?
- 14.3 Provide details of any and all safety violations your company was cited by OSHA or any other regulatory entity.
- 14.4 For the projects you listed in Section V.B.5, how many lost days of work were recorded due to safety violations or accidents?

Provide any other details regarding special services, products, advantages or other benefits offered to HCC by the Respondent.

VI. Evaluation Criteria

Selection of the most qualified firm(s) will be made on the basis of demonstrated competence and qualifications to perform the CMR services. An Evaluation Committee will review the statement of qualifications submitted in response to the solicitation. Evaluation factors for the selection of the firm(s) are as follows:

Evaluation Criteria	Available Points
Professional Qualifications and Experience (See description at Section V.3 and V.12)	25
Staffing and Organization (See description at Section V.4)	25
Past Performance (See description at Section V.5, V.10, V.11, and V.13)	25
Firm’s Financial Status (See description at Section V.6)	15
Small Business Commitment & Subcontracting (See description at Section V.7, V.8)	acceptable/unacceptable
Business Relationship Strength (See description at Section V.9)	5
Safety Record & Training (See description at Section V.14)	5
Total Weighted Points	100

HCC reserves the right to request additional clarification and oral interviews from a short-list of the top rated firms solely on the written responses to this request for qualifications.

VII. Scope of Services

A. Background

The San Jacinto Memorial Building (approximately 170,000 sq ft., three floors), located at HCC Central College 1300 Holman Avenue, Houston, TX was originally built in 1914 and was renovated several times in the last 100 years. The most recent structural changes to the building are the Auditorium and Gymnasium which were added in the early twentieth century. The intent of this project is to completely renovate and redevelop the building into an administrative and academic classroom building and restore the exterior of the building back to its original design, as much as possible. The finished building interior design shall highlight the past and create spaces for the College's future academic and education environment.

The estimated project construction cost is \$35 million.

B. Scope

The majority of the original building interior finishes will be demolished back to the building structure. Existing building components (i.e. exterior fire escapes, windows, two-tone masonry coating) shall be removed and replaced as part of the demolition and renovation work. The existing windows will be replaced with a new modern energy efficient window system. The exterior two-tone masonry coating will be removed to the cast stone masonry and limestone. The existing auditorium and gymnasium will maintain its original appearance and will be updated with new lighting and mechanical system. A new Mechanical, Electrical, Plumbing (MEP) and Information Technology (IT) system is planned to be installed. In the process of upgrading the building to current building codes and installing the new mechanical system, new stairs and mechanical systems towers will be added. The toilets and IT rooms in the building will be consolidated.

Space use programming for the renovated building is complete. A preliminary schematic design and building demolition documents have been prepared and will be made available to the top ranked qualification firms. The Construction Manager-at-Risk (CMR) responsibilities:

A. Pre-construction Phase Services:

1. The Construction Manager-at-Risk (CMR) shall provide a preliminary evaluation of the HCC program and Project budget requirements, each in terms of the other.
2. Visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.
3. Review and understand the standards and requirements in the HCC Design Guidelines Manuals and perform all services in accordance with those standards and requirements.
4. Participate in meetings as a member of the Project Team that consists of the Project Architect, Program Manager (PM)/HCC, and other consultants as required during the development of the Project.
5. CMR shall recommend to the Project Team a schedule for procurement of long-lead time items which will constitute part of the Work as required or meet the Project Schedule.
6. Preparation of a specific project management plan.
7. Consult with the Architect and PM/HCC regarding site use and improvements, and the selection of materials, building systems, and equipment.
8. Provide recommendations on construction feasibility, actions designed to minimize adverse effects of labor or material shortage; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimated of alternative designs or materials and preliminary budgets.

9. Prepare Preliminary cost estimate utilizing area, volume or similar conceptual estimate techniques.
10. Prepare a detailed estimate, with supporting data, using the PM/HCC approved Schematic Design Documents.
11. When Design Development Documents have been prepared by the Architect and approved by the PM/HCC, the CMR shall prepare a more detailed estimate with supporting data.
12. If the CMR exceeds previously approved estimates or HCC budgets, the CMR will make appropriate recommendations to the Architect and PM/HCC to bring the project estimates and budgets to within HCC budgets.
13. Publicly advertise for and select subcontractors in coordination with PM/HCC.
14. Review all Drawings, Specifications, and other Construction Documents as they are developed by the Architect during design development and construction documents design phase of the Project.
15. When the Drawings and Specifications are sufficiently complete, the CMR shall propose a Guaranteed Maximum price (GMP), which shall be the sum of the estimated Cost of the Work and the CMR Fee.

B. Construction Phase Services:

1. Provide overall management of Project construction including all trades and subcontractors.
2. Estimated project duration is approximately 500 calendar days.
3. Construct the Work in strict accordance with the Construction Documents and as required by the Uniform and Supplementary General Conditions and HCC Specifications within the time required by the Project Schedule approved by PM/HCC.
4. Organize and maintain a competent, full-time staff at the Project site with clearly defined authority and communication.
5. Develop a Critical Path Method Schedule for organizing the construction activities, monitor and direct the progress of the work.
6. Attend PM/HCC regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, cost, quality and changes.
7. Coordinate delivery and installation of HCC procured materials and equipment.
8. Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents.
9. Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.
10. Be responsible for all construction means, method, techniques, sequences and procedures, and for coordinating all portions of the work.
11. CMR shall promptly correct any defective work at the CMR sole expenses.

C. Post Construction Phase Services

1. Prepare as-built drawings and collect all construction close-out documents for distribution to the PM/HCC.
2. Assist in obtaining occupancy permits.
3. Provide services during warranty periods.
4. Timely prepare a punch list of defective work before the end of one (1) year warranty period.

VIII. Eligibility for Award

- a. In order for a respondent to this solicitation to be eligible for selection for Step 2 of the selection process and subsequently to be eligible to be awarded the contract, the Qualification submittal

must be responsive to the solicitation and HCC must be able to determine that the respondent is responsible and has the resources and capacity to perform the resulting contract satisfactorily.

- b. Responsive Qualification submittals are those that comply with all material aspects of the solicitation, conform to the solicitation documents and meet the requirements set forth in this solicitation. Qualification submittals, which do not comply with all the terms and conditions of this solicitation, will be rejected as non-responsive.
- c. Responsible respondents, at a minimum, must meet the following requirements:
 - Have adequate financial resources, or the ability to obtain such resources as required during the performance of any resulting contract:
 - Be able to comply with the required performance schedule, taking into consideration all existing business commitments:
 - Have a satisfactory record of past performance:
 - Have necessary personnel and management capability to perform any resulting contract:
 - Be qualified as an established firm regularly engaged in the type of business necessary to fulfill the contract requirements:
 - Certify that the firm is not delinquent in any tax owed the State of Texas under Chapter 171, Tax Code; and is not delinquent in taxes owed to the Houston Community College System; signing and submitting the proposal is so certifying to such non-delinquency:
 - Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- d. Respondents(s) may be requested to submit additional written evidence verifying that the firm meets the minimum requirements described in Section VIII. (c) and as necessary to perform the requirements of the solicitation and be determined a responsible proposer. Failure to provide any requested additional information may result in the proposer being declared non-responsive and the proposal being rejected.
- e. A person is not eligible to be considered for award of this solicitation or any resulting contract or to be a subcontractor of the proposer or prime contractor if the person assisted in the development of this solicitation or any part of this solicitation or if the person participated in a project related to this solicitation when such participation would give the person special knowledge that would give that person or a prime contractor an unfair advantage over other bidders.
- f. A person or proposer shall not be eligible to be considered for this solicitation if the person or proposer engaged in or attempted to engage in prohibited communications as described in Section XI of this solicitation.

IX. Indemnification

Consultant shall indemnify, pay for the defense of, and hold harmless District and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of Consultant's negligence, recklessness, or willful acts and/or omission in rendering any services hereunder. Consultant shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, Workers' Compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning Consultant or any employee and shall further indemnify, pay for the defense of, and hold harmless District of and from any such payment or liability arising out of or in any manner connected with Consultant's performance under this Agreement.

X. Small Business Development Program (SBDP)

a. HCC has adopted a Small Business Development Program for small businesses attempting to provide goods and/or services as prime contractors or as subcontractors to other prime contractors to HCC. The program is designed to prevent discrimination by ensuring that small, underutilized and

disadvantaged businesses are informed and prepared to compete for HCC procurements. HCC will neither discriminate nor select vendors on the basis of race, color, national origin, religion, gender, age, veteran status, sexual orientation or disability in its procurement selection process.

b. Small businesses whose gross annual income averaged over the past three (3) years does not exceed the Small Business Administration's size standard as specified in 13 CFR Part 121 are eligible to apply for participation in the program.

c. For this solicitation, HCC has established **35%** as its goal for Small Business participation.

d. Good Faith Efforts- HCC will make a good faith effort to utilize small businesses in all contracts. The annual program goals may be met by contracting directly with small businesses or indirectly through subcontracting opportunities. Therefore, any business that contracts with HCC will be required to make a good faith effort to award subcontracts to small businesses. The subcontracting goal applies to all vendors regardless of their status by implementing the following procedures, a contractor shall be presumed to have made a good faith effort:

e. To the extent consistent with industry practices, divide the contract work into reasonable lots.

f. Give notice to SBDP eligible firms of subcontract opportunities or post notices of such opportunities in newspapers and other circulars.

g. Document reasons for rejecting a firm that submitted a proposal for subcontracting opportunities.

To the extent required by the solicitation, the contract shall require the selected contractor to agree to attain small business participation goal or target set forth in the solicitation.

XI. Prohibited Communications Except as provided in exceptions below, the following communications regarding this solicitation or any other invitation for bids, requests for proposal, requests for qualifications, or other solicitation are prohibited:

- [1] Between a potential vendor, subcontractor to vendor, service provider, proposer, Offeror, lobbyist or consultant and any Trustee;
- [2] Between any Trustee and any member of a selection or evaluation committee; and
- [3] Between any Trustee and administrator or employee.

The communications prohibition shall be imposed from the day the solicitation is first advertised through the day the contract documents are signed by all parties. During this period, no HCC Trustee and no vendor shall communicate in any way concerning any pending Solicitation involving the Vendor, subject to the penalties stated herein.

In the event the Board refers the recommendation back to the staff for reconsideration, the communication prohibition shall be re-imposed.

The communications prohibition shall not apply to the following:

- [1] Duly noted pre-bid or pre-proposal conferences.
- [2] Communications with the HCC General Counsel.
- [3] Emergency contracts.
- [4] Presentations made to the Board during any duly-noticed public meeting.
- [5] Unless otherwise prohibited in the solicitation documents, any written communications between any parties, provided that the originator shall immediately file a copy of any written communication with the Board Services Office. The Board Services Office shall make copies available to any person upon request.
- [6] Nothing contained herein shall prohibit any person or entity from publicly addressing the Board during any duly-noticed public meeting, in accordance with applicable Board policies, regarding action on the contract.

Any potential vendor, subcontractor vendor, service provider, bidder, offeror, lobbyist or consultant who engages or attempts to engage in prohibited communications shall not be eligible for the award of any resulting contract under this solicitation. Any other direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify bidders, vendors, service providers, lobbyist, consultants, and contractors from both this current and any future consideration for participation in HCC orders and contracts.

XII. Drug Policy

HCC is a drug-free workforce and workplace. The manufacture, sale, distribution, dispensation, possession or use of illegal drugs (except legally prescribed medications under physician's prescription and in the original container) or alcohol by vendors or contractors while on HCC's premises is strictly prohibited.

XIII. Conflict of Interest

If a firm, proposer, contractor or other person responding to this solicitation knows of any material personal interest, direct or indirect, that any member, official or employee of HCC would have in any contract resulting from this solicitation, the firm must disclose this information to HCC. Persons submitting a proposal or response to this solicitation must comply with all applicable laws, ordinances, and regulations of the State of Texas Government Code, including, without limitation, Chapter 171 and 176 of the Local Government Code. The person /proposer submitting a response to this solicitation must complete (as applicable), sign and submit Attachment No. 16, Conflict of Interest Questionnaire Form, and Attachment No. 17, Disclosures – Financial Interest and Potential Conflict of interests with the proposal package. HCC expects the selected contractor to comply with Chapter 176 of the Local Government Code and that failure to comply will be grounds for termination of the contract.

Note: Attachment No. 16 and Attachment No. 17 shall be completed signed and returned to HCC. Enter N/A in those areas on the Attachments that are not applicable to your company. Failure to complete, sign and notarize (if applicable) these Attachments shall render your proposal non-responsive.

XIV. Ethics Conduct

Any direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify vendors and contractors from current and future consideration for participation in HCC orders and contracts.

XV. Submission Waiver

By submitting a response to this RFP, the Offerer or respondent agrees to waive any claim it has or may have against Houston Community College System and its trustees, employees or agents arising out of or in connection with (1) the Administration, evaluation or recommendation of any offer or response; (2) any requirements under the solicitation, the solicitation or response package or related documents; (3) the rejection of any offer or any response or any part of any offer or response; and/or (4) the award of a contract, if any.

ATTACHMENT NO. 1

PROPOSAL/CONTRACT AWARD FORM

PROJECT TITLE: Construction Manager-At-Risk ("CMR")

PROJECT NO.: 11-39

Name of Proposer/Contractor: _____

Federal Employer Identification Number _____
(Note: please refer to Attachment No. 14, Vendor Application Instructions)

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Receipt of Proposal Amendment Number(s): _____

In compliance with the requirements of this Request for Qualifications for Construction Manager-At-Risk, the undersigned hereby proposes to furnish all necessary resources required to perform the services in accordance with our Statement of Qualifications dated _____ and as mutually agreed upon by subsequent negotiations, if any.

The undersigned certifies that he/she has read, understands and agrees to be bound by the requirements and terms and conditions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned understands and agrees that when evaluating Statement of Qualifications, HCC relies on the truth and accuracy of the statements and representations presented in the Statement of Qualification response. Accordingly, HCC has the right to suspend or debar the undersigned from its procurement process and/or terminate any contract award that may have resulted from this solicitation if HCC determines that any statements or representations made were not true and accurate.

Signed By: _____

Name: _____
(Type or Print)

Title: _____
(Type or Print)

State of _____

Sworn to and subscribed before me at _____
(City) (State)

this the _____ day of _____, 2011.

Notary Public for the State of: _____

Balance of page intentionally left blank.

**ATTACHMENT NO. 2
DETERMINATION OF GOOD FAITH EFFORT
PROJECT NO. 11-39**

Proposer _____

Address _____

Phone _____ Fax Number _____

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form as directed below:

Section 1.

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the Proposer must determine what portion(s) of work, including goods or services, will be subcontracted. Check the appropriate box that identifies your subcontracting intentions:

Yes, I will be subcontracting portion(s) of the contract.

(If Yes, please complete Section 2, below and Attachments No.4 Contractor/Subcontractor Participation Form and No. 5 SBD Questionnaire)

No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources. (If No, complete Section 3, below.)

Section 2.

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form Section and submit supporting documentation explaining in what ways the Proposer has made a good faith effort to attain the goal. The Proposer will respond by answering "yes" or "no" to the following and provide supporting documentation.

- (1) Whether the Proposer provided written notices and/or advertising to at least five (5) certified small businesses or advertised in general circulation, trade association and/or small businesses focus media concerning subcontracting opportunities.
- (2) Whether the Proposer divided the work into the reasonable portions in accordance with standard industry practices.
- (3) Whether the Proposer documented reasons for rejection or met with the rejected small business to discuss the rejection.
- (4) Whether the Proposer negotiated in good faith with small businesses, not rejecting qualified subcontractors who were also the lowest responsive bidder.

NOTE: If the Proposer is subcontracting a portion of the work and is unable to meet the solicitation goal or if any of the above items (1-4) are answered "no", the Proposer must submit a letter of justification.

Section 3.

SELF PERFORMANCE JUSTIFICATION

If you responded "No" in SECTION 1, please explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

(Signature of Proposer)

(Title)

(Date)

Balance of page intentionally left blank.

**ATTACHMENT NO. 3
 SMALL BUSINESS UNAVAILABILITY CERTIFICATE
 PROJECT NO. 11-39 CONSTRUCTION MANAGER-AT-RISK**

I. _____ TITLE _____
 OF _____ FIRM NAME _____ CERTIFY THAT ON _____ DATE _____

THE SMALL BUSINESSES LISTED HEREIN WERE CONTACTED TO SOLICIT PROPOSALS FOR MATERIALS OR SERVICES TO BE USED ON THE ABOVE STATED PROJECT.

DATE	SMALL BUSINESS	TELEPHONE #	CONTACT PERSON	MATERIALS OR SERVICES	RESULTS
1.					
2.					
3.					
4.					
5.					
6.					

TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SMALL BUSINESS WAS UNAVAILABLE FOR THIS SOLICITATION, UNABLE TO PREPARE A PROPOSAL THAT WAS REJECTED FOR THE REASON(S) STATED IN THE ***RESULTS*** COLUMN ABOVE.

THE ABOVE STATEMENT IS A TRUE AND ACCURATE ACCOUNT OF WHY I AM UNABLE TO COMMIT TO AWARDING SUBCONTRACT(S) OR SUPPLY ORDER(S) TO THE SMALL BUSINESS LISTED ABOVE.

***NOTE: THIS FORM TO BE SUBMITTED WITH ALL PROPOSAL DOCUMENTS FOR WAIVER OF SMALL BUSINESS PARTICIPATION
 (SEE PROPOSER INSTRUCTIONS)***

 PRINTED NAME

 TITLE

 SIGNATURE

 DATE

**ATTACHMENT NO. 4
HCC PROJECT NO. 11-39 Construction Manager-At-Risk
CONTRACTOR AND SUBCONTRACTOR PARTICIPATION FORM**

PROPOSER/OFFERER PRESENTS THE FOLLOWING PARTICIPANTS IN THIS SOLICITATION AND ANY RESULTING CONTRACT. ALL PROPOSERS/OFFERORS, INCLUDING SMALL BUSINESSES SUBMITTING PROPSALS AS PRIME CONTRACTORS, ARE REQUIRED TO DEMONSTRATE GOOD FAITH EFFORTS TO INCLUDE SMALL BUSINESS IN THEIR PROPOSAL SUBMISSIONS.

CONTRACTOR	TYPE OF WORK TO BE DONE	TYPE OF SMALL BUSINESS CERTIFICATION	PERCENT OF CONTRACT EFFORT	PRICE \$
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
NON-SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				

BUSINESS NAME: _____
ADDRESS: _____
SUBMITTED BY: _____
TELEPHONE/FAX: _____
E-MAIL ADDRESS: _____

	DATE SUBMITTED	_____
CONTRACTOR'S PRICE/TOTAL SMALL BUSINESS	\$	_____
SUBCONTRACTOR(S) PRICE/TOTAL NON- SMALL BUSINESS	\$	_____
SUB-CONTRACTOR'S PRICE/TOTAL	\$	_____
GRAND TOTAL	\$	_____

**ATTACHMENT NO. 5
SMALL BUSINESS DEVELOPMENT QUESTIONNAIRE
PROJECT NO. 11-39**

Note: Vendors are to complete this form along with a **copy** of the Contractor and First Tier Subcontractor/Supplier Participation Form

FIRM NAME: _____

FIRM ADDRESS: _____

TELEPHONE: _____

FAX NUMBER: _____

EMAIL ADDRESS: _____

CONTACT PERSON'S NAME AND PHONE NO. _____

SIGNATURE OF FIRM'S AUTHORIZED OFFICIAL: _____

NAME AND TITLE (Type or Print): _____

COMPANY MAJORITY OWNERSHIP (Check one in each column)

<u>ETHNICITY</u>	<u>GENDER</u>	<u>LOCATION</u>
<input type="checkbox"/> African American (AA)	<input type="checkbox"/> Male	<input type="checkbox"/> Houston (H)
<input type="checkbox"/> Asian Pacific American (APA)	<input type="checkbox"/> Female	<input type="checkbox"/> Texas (T)
<input type="checkbox"/> Caucasian (C)		<input type="checkbox"/> Out of State (O)
<input type="checkbox"/> Hispanic American (HA)		Specify State _____
<input type="checkbox"/> Native American (NA) <input type="checkbox"/> Public Owned (PO)		
<input type="checkbox"/> Other (O) Specify _____		

BUSINESS CLASSIFICATION

DBE Disadvantaged Business Enterprise **SB** Small Business
 WBE Women Owned Business Enterprise **MBE** Minority Business Enterprise
 HUB Historically Underutilized Business Other: _____

Please provide information regarding certifying agency (if any)

Name of Agency	Certificate Number	Expiration Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

**ATTACHMENT NO. 6
PROPOSER CERTIFICATIONS
PROJECT NO. 11-39**

1. NON-DISCRIMINATION STATEMENT:

The undersigned certifies that he/she will not discriminate against any employee or applicant for employment or in the selection of subcontractors because of race, color, age, religion, gender, national origin or disability. The undersigned shall also take action to ensure that applicants are employed, and treated during employment, without regard to their race, color, religion, gender, age, national origin or disability. Such action shall include, but shall not be limited to, the following non-discriminatory employment practices: employment, upgrading or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other compensation and selection for training, including apprenticeship.

2. ASSURANCE OF SBDP GOAL:

The undersigned certifies that he/she has read, understands and agrees to be bound by the small business provisions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned will enter into formal agreement(s) for work identified on the CONTRACTOR AND SUBCONTRACTOR PARTICIPATION form conditioned upon execution of a contract with HCC. The undersigned agrees to attain the small business utilization percentages of the total offer amount as set forth below:

Small Business Participation Goal = 35%

The undersigned certifies that the firm shown below has not discriminated against any small business or other potential subcontractor because of race, color, religion, gender, age, veteran's status, disability or national origin, but has provided full and equal opportunity to all potential subcontractors irrespective of race, color, religion, gender, age, disability, national origin or veteran status.

The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated commitments set forth herein without prior approval of HCC's Chancellor or the duly authorized representative, the Proposer may be subject to the loss of the contract or the termination thereof

3. CERTIFICATION AND DISCLOSURE STATEMENT:

A person or business entity entering into a contract with HCC is required by Texas Law to disclose, in advance of the contract award, if the person or an owner or operator of the business entity has been convicted of a felony. The disclosure should include a general description of the conduct resulting in the conviction of a felony as provided in section 44.034 of the Texas Education Code. The requested

information is being collected in accordance with applicable law. This requirement does not apply to a publicly held corporation.

If an individual:

Have you been convicted of a felony? YES or NO

If a business entity: YES or NO

Has any owner of your business entity been convicted of a felony? _____

Has any operator of your business entity been convicted of a felony? _____

If you answered yes to any of the above questions, please provide a general description of the conduct resulting in the conviction of the felony, including the Case Number, the applicable dates, the State and County where the conviction occurred, and the sentence.

I attest that I have answered the questions truthfully and to the best of my knowledge.

Signed: _____

Name of Company: _____

Address of Company: _____

State of _____

Sworn to and subscribed before me at _____ (City) _____ (State),

this the _____ day of _____, 2011.

Notary Public for the State of: _____

Balance of page intentionally left blank.

ATTACHMENT NO. 7 VENDOR APPLICATION INSTRUCTIONS

The Houston Community College Procurement Operations department has developed an online vendor application. This is designed to allow firms or individuals that are interested in doing business with HCC to register online and become part of our vendor database. Once registered, you will receive a password and personal login information that will allow you to modify your vendor information anytime a change occurs with your company. You will have the flexibility to add or delete commodity lines, update phone numbers and contact information, etc. This database will allow HCC to notify, via email, all companies that match the desired commodity criteria for procurement opportunities within Houston Community College. What a great way to never miss out on an HCC bid or proposal opportunity again.

Please take a moment to go to the Houston Community College Procurement Operations department website and register as a vendor. The website address to access the vendor registration form is [http://hccs.aecglobal.com/Supplier Registration Form.asp](http://hccs.aecglobal.com/Supplier_Registration_Form.asp)

If you do not have internet access you are welcome to use a computer at any HCC library to access the website and register.

A PROPERLY COMPLETED VENDOR APPLICATION IS REQUIRED AND IS A CONDITION OF CONTRACT AWARD

Balance of page intentionally left blank.

ATTACHMENT NO. 8

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	OFFICE USE ONLY Date Received	
<p>1 Name of person who has a business relationship with local governmental entity.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="text-align: center; font-size: small;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>		
<p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;">_____</p> <p style="text-align: center; font-size: x-small;">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p>4</p> <p style="text-align: center;">_____</p> <p style="text-align: center; font-size: x-small;">Signature of person doing business with the governmental entity</p> <p style="text-align: center; margin-left: 300px;">_____</p> <p style="text-align: center; margin-left: 300px; font-size: x-small;">Date</p>		

Adopted 06/29/2007

Note: When completing this Questionnaire, please be certain to answer each and every question; indicate "Not Applicable", if appropriate and sign the document.

**ATTACHMENT NO. 9
DISCLOSURES
FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS
PROJECT NO. 11-39**

Texas Local Government Code Chapter 176 requires that vendors desiring to enter into certain contracts with a local governmental entity must disclose the financial and potential conflict of interest information as specified below.

Vendor shall disclose the financial interest and potential conflict of interest information identified in Sections 1 through 3 below as a condition of receiving an award or contract. Submit this information along with your bid, proposal, or offer. **This form must be received by HCC Office of Systemwide Compliance before the vendor's bid, proposal, or offer will be considered received or evaluated.** Completed forms must be **NOTARIZED** and delivered to:

**Houston Community College
Attn: Procurement
3100 Main Street
Houston, TX 77002**

With a copy to:

**Houston Community College
Attn: Office of System-wide Compliance, Compliance Officers
3100 Main. Street
Houston, TX 77002**

This requirement applies to contracts with a value exceeding \$50,000.

Section 1 - Disclosure of Financial Interest in the Vendor

a. If any officers or employees of HCC ("individuals") have one of the following financial interests in the vendor (or its principal) or its subcontractor(s), please show their name and address and check all that apply and (include additional documents if needed):

Name: _____
Address: _____

- Ownership interest exceeding 10% ()
Ownership interest exceeding \$15,000 or more of the fair market value of vendor ()
Distributive Income Share from Vendor exceeding 10% of individual's gross income ()
Real property interest with fair market value of at least \$2,500 ()
Person related to or married to individual has ownership or real property interest in Vendor ()
No individuals have any of the above financial interests ()
(If none, go to Section 2)

b. For each individual named above, show the type of ownership/distributable income share:
sole proprietorship ___ stock ___ partnership ____

other (explain)_____

c. For each individual named above, show the **dollar value or proportionate share** of the ownership interest in the vendor (or its principal) or its subcontractor (s) as follows:

If the proportionate share of the named individual(s) in the ownership of the vendor (or its principal) or subcontractor of vendor is 10% or less, and if the value of the ownership interest of the named individual(s) is \$15,000 or less of the fair market value of vendor, check here (___).

If the proportionate share of ownership exceeds 10%, or the value of the ownership interest exceeds \$15,000 of the fair market value of vendor, show either:

the percent of ownership _____%, or
the value of the ownership interest \$ _____

Section 2 - Disclosure of Potential Conflicts of Interest

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Employment, currently or in the previous eighteen (18) months, including but not limited to contractual employment for services for vendor. Yes ____ No ____

b. Employment of individual's spouse, father, mother, son, or daughter, including but not limited to contractual employment for services for vendor in the previous eighteen (18) months.

Yes ____ No ____

Section 3- Disclosure of Gifts

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Received a gift from vendor (or principal), or subcontractor of vendor, of \$250 or more within the preceding 12 months.

Yes ____ No ____

b. Individual's spouse, father, mother, son, or daughter has received a gift from vendor (or principal), or subcontractor of vendor, of \$250 or more within the preceding 12 months.

Yes ____ No

This disclosure is submitted on behalf of

(Name of Vendor)

Certification. I hereby certify that to the best of my knowledge and belief the information provided by me in this disclosure statement is true and correct. I understand that failure to disclose the information requested may result in my bid, proposal, or offer, being rejected, and/or may result in prosecution for knowingly violating the requirements of **Texas Local Government Code Chapter 176**. I understand that it is my responsibility to comply with the requirements set forth by HCC as it relates to this disclosure. I also understand that I must submit an updated disclosure form within seven (7) days of discovering changes in the significant financial interests of the individuals I identified in Section 1 of this disclosure or if individuals that were not identified, later receive a financial interest in my company or a subcontractor of my company.

Official authorized to sign on behalf of vendor:

Name (Printed) _____ Title _____

Signature _____ Date _____

AFFIX NOTARY SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.

"NOTE: RESPONDENT MUST COMPLETE THE ABOVE "DISCLOSURE OF FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS" FORM. FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR OFFER MAY RESULT IN YOUR OFFER BEING CONSIDERED AS "NON-RESPONSIVE" TO THIS SOLICITATION."

For assistance with completing this form, please contact the **Office of System-wide Compliance** at (713)718-8233 or 8295.

**ATTACHMENT NO. 10
SAMPLE CONTRACT**

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK**

This Agreement is made as of _____, 20____ (the “Effective Date”), by and between

The **Owner:** The Houston Community College System
3100 Main Street
Houston, TX 77002

and **Construction Manager:** [INSERT NAME HERE]
[INSERT ADDRESS HERE]
[INSERT ADDRESS HERE]

for the **Project:** [INSERT PROJECT NAME HERE]

located at:
[INSERT LOCATION HERE]
Houston, Texas

Project Architect: [INSERT NAME HERE]
[INSERT ADDRESS HERE]
Houston, Texas 77036

The Owner and the Construction Manager agree as follows:

TABLE OF CONTENTS

ARTICLE

- 1 SCOPE OF WORK
- 2 CONTRACT DOCUMENTS
- 3 DEFINITIONS
- 4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBLY
- 5 PRE-CONSTRUCTION PHASE SERVICES
 - 5.1 General Coordination
 - 5.2 Constructability Program
 - 5.3 Scheduling
 - 5.4 Budget and Cost Consultation
 - 5.5 Coordination of Design and Construction Contract Documents
 - 5.6 Construction Planning and Bid Package Strategy
 - 5.7 Obtaining Bids/Proposals for the Work
 - 5.8 Safety
- 6 PRE-CONSTRUCTION PHASE FEE
- 7 GUARANTEED MAXIMUM PRICE PROPOSAL
- 8 CONSTRUCTION PHASE SERVICES
- 9 OWNER'S RESPONSIBILITIES
- 10 OWNERSHIP AND USE OF DOCUMENTS
- 11 TIME
- 12 PAYMENTS
 - 12.1 General Requirements
 - 12.2 Pre-Construction Phase Payments
 - 12.3 Construction Phase Payments
- 13 DIRECT CONSTRUCTION COST
 - 13.1 General Conditions and General Requirements Costs
 - 13.2 Cost of the Work
 - 13.3 Construction Manager's Contingency
- 14 CONSTRUCTION PHASE FEE
- 15 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS
- 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS
- 17 BONDS AND INSURANCE

ARTICLE

- 18 DISPUTE RESOLUTION
- 19 PROJECT TERMINATION & SUSPENSION
- 20 INDEMNITY
- 21 SPECIAL WARRANTIES
- 22 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK
- 23 MISCELLANEOUS PROVISIONS
- 24 COMPENSATION
 - 24.1 Construction Cost Limitation
 - 24.2 Pre-Construction Phase Fee
 - 24.3 Construction Phase Fee
 - 24.4 Limitation on General Condition Costs
- 25 OTHER TERMS AND CONDITIONS
 - 25.1 Time of Completion
 - 25.2 Liquidated Damages
 - 25.3 Estimated Construction Cost Reports
 - 25.4 Notices
 - 25.5 Party Representatives
 - 25.6 Construction Document Sets
 - 25.7 OCIP Insured Project
 - 25.8 List of Exhibits
 - Exhibit A Uniform General & Supplementary Conditions
 - Exhibit B Owner's Specifications
 - Exhibit C General Conditions, General Requirements, Insurances, Taxes and Bonds Line Items
 - Exhibit D Guaranteed Maximum Price Proposal Form
 - Exhibit E CM@Risk Personnel & Monthly Salary Rate
 - Exhibit F Constructability Implementation Program
 - Exhibit G Policy on Utilization of SB Program
 - Exhibit H Additional Services Proposal
 - Exhibit I Payroll for Contractor's Optional Use (U.S. Dept. of Labor)

ARTICLE 1 SCOPE OF WORK

The Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General and Supplementary Conditions for Building Construction Contracts for Houston Community College System ("Uniform General and Supplementary Conditions" or "UGC");
- c. Special Conditions and Owner's Specifications;
- d. All Addenda issued prior to the Effective Date of this Agreement;
- e. The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by the parties;
- f. All Change Orders issued after the Effective Date of this Agreement;
- g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
- h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
- i. The SB Subcontracting plan submitted by the Construction Manager in response to the Request for Proposals issued by the Owner for this Project.

2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral.

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

ARTICLE 3

DEFINITIONS

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

3.1 **“Construction Cost Limitation”** (CCL) means the maximum monetary amount payable to the Construction Manager for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and the Construction Manager’s Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the Construction Manager’s Pre-Construction Phase Fee, or Owner’s Construction Contingency or Owner’s Special Cash Allowance.

3.2 **“Construction Documents”** means, collectively, the UGCs, Owner’s Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders and other documents prepared by the Project Architect, its consultants and by the Owner’s other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

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

3.4 **“Contract Sum”** means the total amount of all compensation payable to the Construction Manager for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.

3.5 **“Direct Construction Cost”** means the sum of the amounts that the Construction Manager actually and necessarily incurs for General

Conditions Costs, General Requirements, Insurance, Bonds and other Costs of the Work and Construction Manager's Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.

3.6 "**Estimated Construction Cost**" (ECC) means the amount calculated by the Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the EEC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager's Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

3.7 "**Guaranteed Maximum Price**" or "GMP" means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's Construction Phase Fee, the General Conditions Costs, the Cost of the Work and Construction Manager's Construction Contingency amount.

3.8 "**General Conditions and General Requirements Costs**" means costs incurred and minor work performed by the Construction Manager without the need for competitive bids/proposals as allowed under Texas Education Code section 51.782(i), as amended.

General Conditions include only the Construction Manager's salaried personnel, and their associated labor burden, as further described and limited to by attached Exhibit "C" under General Conditions. General Conditions are a fixed percentage of 3.20% of the total construction costs per the Construction Manager's proposal for the General Conditions Fee and in accordance with Article 24.4.1 of this Agreement.

General Requirements items are generally described, although not necessarily limited to, those items listed on the attached Exhibit "C" under General Requirements and do not include other "Cost of Work" items such as Insurances and bonds.

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

3.10 “**Owner’s Specifications**” means the construction and contract administration requirements and standards detailed in the Owner’s Specifications exhibit attached to this Agreement.

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

3.12 “**Preliminary Project Cost**” (PPC) means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by the Owner prior to the commencement of design.

3.13 “**Project Architect**” means the professional architect or engineer employed by the Owner as architect or engineer of record for the Project and its consultants.

3.14 “**Project Team**” means the Owner, Construction Manager, Project Architect and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

3.15 “**Subcontractor**” means a person or entity that has an agreement with the Construction Manager to perform any portion of the Work. The term Subcontractor does not include the Project Architect or any person or entity hired directly by the Owner.

3.16 “**Total Project Cost**” (TPC) means the total budget established for the Project by the Board of Regents or the Chancellor of Houston Community College System at the end of the design development phase (subject to subsequent modification by Owner). The TPC includes, but is not limited to, Construction Manager’s Pre-Construction Fee, Guaranteed Maximum Price Proposal(s), Project Architect and other professional service fees, and other miscellaneous Project costs.

3.17 “**Work**” means the provision of all services, labor, materials, supplies, and equipment that are required of the Construction Manager to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

3.18 “**Worker Wage Rate**” means a worker, laborer, or mechanic employed on a public work, exclusive of maintenance work, by or on behalf of Houston Community College shall be paid not less than the general prevailing rate of per diem wages. *Gov’t Code 2258.002*. The general prevailing rate of per diem wages is the rate of per diem wages for work of a similar character in the locality in which the work is performed at the time the Request for Proposal (RFP) for the work is posted, and also includes the rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for public work with the College District. *Gov’t Code 2258.001, 2258.021*. HCC shall pay the federal rate if the contract is awarded from federal moneys and is a requirement under the federal contract.

ARTICLE 4 CONSTRUCTION MANAGER’S GENERAL RESPONSIBILITIES

4.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably

inferable from the Construction Documents as necessary for completion of the Work and the Project. Construction Manager agrees to perform these services using its best efforts, skills, judgments and abilities.

4.2 Construction Manager shall cooperate with the Project Architect and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

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

4.4 Construction Manager shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

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

4.6 Fast Track/Multiple Completion Times. If the Owner elects to "fast-track" or develop the Project in multiple stages, Construction Manager shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific Construction Cost Limitation, at Owner's discretion.

4.7 Attend and participate in Owner's "Small Business Participation Goal" Program for all phases of the Project.

4.8 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. **After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent,** which consent shall

not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update the list of persons and consultants if they change during the course of the Project.

4.9 The Owner's Policy on the Utilization of Small Businesses ("Policy") is described in an attached exhibit. Construction Manager, as a provision of the Agreement, must comply with the requirements of the Policy and adhere to the SB Subcontracting Plans submitted for Pre-Construction Phase and Construction Phase Services. No changes to the SB Subcontracting Plans can be made by the Construction Manager without the written approval of Owner in accordance with the Policy.

ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services.

5.1 General Coordination

5.1.1 The Construction Manager's Pre-construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

5.1.2 Provide a preliminary evaluation of the Owner's Design Criteria and the Construction Cost Limitation, each in terms of the other.

5.1.3 Review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

5.1.4 Visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

5.1.5 Participate as a member of the Project Team in the development of-the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.

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

5.1.7 Assist the Owner in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants hired by the Owner to develop additional information for the design or construction of the Project.

5.1.8 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.2 Constructability Program

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

5.2.2 Prepare a “Constructability Report” that identifies items that, in the Construction Manager’s opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase.

5.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Owner and updated at least monthly during the Pre-Construction Phase.

5.3 Scheduling

5.3.1 Develop a critical path method schedule (“CPM Schedule”) for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect’s design services, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in

accordance with the Owner's Specifications using the Owner specified format and software.

5.3.2 The Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases as described in the Owner's Specifications.

5.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

5.4 Budget and Cost Consultation

5.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

5.4.2 Provided Estimated Construction Cost (ECC) reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project as required in Article 25. The Estimated Construction Cost reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications MASTER Format 2009 for each portion of the Work.

5.4.3 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that the most current ECC will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend

reasonable strategies for bringing the Project in line with the CCL and the Schedule.

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

5.4.5 Should any ECC exceed or fall significantly below the approved CCL, the Owner and Construction Manager shall negotiate changes to the Project requirements or the CCL as required.

5.5 Coordination of Design and Construction Contract Documents

5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.

5.5.2 Consult with Owner and Project Architect on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.5.3 Advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

5.5.4 Advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the CCL.

5.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Houston Community College System requirements.

5.6 Construction Planning and Bid Package Strategy

5.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

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

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

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

5.6.5 Assist the Owner, the Project Architect, Owner's other consultants, and the Owner's separate contractors in obtaining all

applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

5.6.6 Refine, implement and monitor required SB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

5.6.7 Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

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

5.6.9 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations that minimize adverse effects of labor shortages.

5.6.10 Furniture, Fixtures and Equipment. Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Owner's furniture, fixture, and equipment Consultant as may be required to meet the Schedule.

5.7 Obtaining Bids/Proposals for the Work

5.7.1 In accordance with *Texas Education Code* section 51.782, as amended, Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions or General Requirements. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the

Project Team and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

5.7.2 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

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

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

5.7.5 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

5.7.6 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors

or Subcontractors. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

5.7.7 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

5.7.8 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

5.8 Safety

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

5.8.2 Construction Manager shall provide recommendations and information to Owner and Project Architect regarding the assignment

of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Construction Manager's safety responsibilities.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

6.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner. The Pre-Construction Phase Fee shall be a lump sum amount based on the CCL established in this Agreement.

6.2 Except as specifically allowed in paragraph 6.4, the Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

6.3 Costs associated with the following items are specifically, but not exclusively, in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

6.4 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. If the CCL is changed materially before acceptance of the GMP Proposal, the Pre-Construction Phase Fee shall be adjusted in proportion to the change in the CCL. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

6.5 For Additional Pre-Construction Phase Services that are approved in advance and in writing by the Owner, Construction Manager shall be entitled to additional compensation computed as a:

6.4.1 A pre-established lump sum amount; or

6.4.2 The hourly cost of Construction Manager's employee's or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

6.4.3 As otherwise agreed to by the parties in advance of performing the Additional Pre-Construction Phase Services.

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, Construction Manager shall prepare and submit a Guaranteed Maximum Price ("GMP") Proposal to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner in the attached exhibits. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to the Owner.

7.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made

by the Construction Manager in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's estimated General Conditions Costs and estimated Costs of the Work organized by trade; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.

7.4 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.5 The GMP Proposal may include a Construction Manager's Contingency amount as allowed under Direct Construction Cost.

7.6 Guaranteed Maximum Price Proposal and Contract Time. As stipulated in the AIA:

Article 2.2.1. When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

Article 2.2.2. As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is 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.

Article 2.2.3. The Construction Manager's base bid includes the amount shown in the Guaranteed Maximum Price proposal approved by the Owner's Board of Trustees as a contingency allowance to cover the cost of conditions that the Construction Manager could not have anticipated that develop during the completion of the Work. This contingency amount shall not include an amount for the Construction Manager's overhead and profit. The Construction manager's

overhead and profit shall be included in the total base bid price. If the Construction Manager encounters hidden, concealed, or unanticipated conditions, the Construction Manager for any work covered under the contingency unless the Owner has provided the Construction Manager with written authorization to proceed.

Article 2.2.4. Basis of Guaranteed Maximum Price. The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis;
3. A list of the clarifications and assumptions, if any, made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;
4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price;
5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based; and
6. The date upon which the proposal shall expire.

7.7 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

7.8 Basis of Guaranteed Maximum Price. AIA Article 2.2.4 states that the Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
2. A list of allowances and a statement of their basis;
3. A list of the clarifications and assumptions, if any, made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;
4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price;
5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based; and
6. The date upon which the proposal shall expire.

7.9 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

7.10 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Owner. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.

7.11 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

7.12 §2.2.7 of the AIA. Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

7.13 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Owner and the Construction Manager. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.

7.14 Following Owner acceptance of the GMP Proposal, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

7.15 The Construction Manager shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except

taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.16 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work. In proposing a lump sum amount, the Construction Manager shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

1. The stage of completion of the Project;
2. The trade packages that have been completely bought out;
3. The trade packages remaining that have not been bought out;
4. A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
5. An accounting of all savings amounts that are to be returned to the Owner as part of the lump sum calculation; and
6. Any other Project information requested by the Owner.

7.17 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price proposal and shall report this information to the Owner monthly and with Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package.

ARTICLE 8 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by

Owner of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services.

8.1 Construct the Work in strict accordance with the Construction Documents and as required by the Uniform General and Supplementary General Conditions and Owner's Specifications within the time required by the Project Schedule approved by Owner.

8.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

8.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Construction Manager in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

8.4 Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.

8.5 In addition to attending Owner's regularly scheduled Project progress meetings, Construction Manager shall schedule, direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

8.6 Coordinate delivery and installation of Owner-procured material and equipment.

8.7 In accordance with Owner's Standard Uniform General and Supplementary Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation,

and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

8.8 Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist Owner or Project Architect in obtaining all approvals required from authorities having jurisdiction over the Project.

8.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

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

8.11 Construction Manager shall promptly correct any defective Work at Construction Manager's sole expense, unless the Owner specifically agrees to accept the Work.

8.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. The Construction Manager shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

8.13 In accordance with the Uniform General and Supplemental Conditions regarding Record Documents and the Owner's Project Closeout Specification, the Construction Manager shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

ARTICLE 9

OWNER'S RESPONSIBILITIES

9.1 The Owner will designate a Project Architect for the Project.

9.2 The Owner will provide the Preliminary Project Cost and general schedule for the Project. The PPC will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

9.3 The Owner will identify a person as its Owner Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative shall examine the documents submitted by the Construction Manager and shall render decisions on behalf of the Owner.

9.4 The Owner will identify a person as its Owner Designated Representative authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the Construction Manager and equitable backcharges against the Construction Manager.

9.5 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and inspections, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

9.6 The Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents.

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

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

9.9 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Construction Manager's responsibility for the Work. Construction Manager is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

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

9.11 Owner shall furnish to the Construction Manager the number of Construction Document sets as required by this Agreement.

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

10.1 Drawings, specifications and other documents prepared by the Project Architect, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the Construction Manager (the "Construction Documents") are instruments of service and shall remain the property of their authors whether the Project for which they are made is executed or not. The Construction Manager shall be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents shall be returned to their respective authors or suitably accounted for. The Construction Manager and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. The Construction Manager and its Subcontractors shall not use the Construction Documents on any other projects.

10.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the Project Architect's or other author's rights.

ARTICLE 11 TIME

11.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.

11.2 Unless otherwise approved, the Owner and the Construction Manager shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

11.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, the Construction Manager shall submit an up-to-date CPM Schedule for the performance of Construction Phase Services as specified. The CPM Schedule shall include reasonable periods of time for the Owner's and Project Architect's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.

ARTICLE 12 PAYMENTS

12.1 General Requirements

12.1.1 Once each month, the Owner shall make a progress payment to the Construction Manager on the basis of a duly certified and approved estimate of the Work performed during the preceding month under this Contract. To insure the proper performance of the Contract, the Owner will retain five percent (5%) of the amount of each estimate of the completed work less General Conditions and fee amounts. All materials and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Construction Manager from the sole responsibility for the care and protection of materials and Work upon which payment have been made, or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract. Payments to the Construction Manager

12.1.2 The Owner may, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or

amounts applied for by the Construction Manager and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

12.1.3 The Owner shall have no obligation to pay or see any money to a Subcontractor or Subsubcontractor.

12.1.4 Payment to material suppliers shall be treated in a manner similar to that provided above.

12.1.5 The American Institute of Architects "AIA" Section §7.1.4 states, with each Application for Payment, the Construction Manager shall submit one of the following, CERTIFIED payrolls, invoices with check vouchers, or the optional U.S. Department of Labor Payroll for Contractor's form as provided in Exhibit I. The Construction Manager, subcontractor or subsubcontractor will provide Unconditional Partial release on previously paid applications, and Conditional release on each current application, and any other evidence required by the Owner and Architect, including monthly reports identified in the attached SBDP "Instructions to Bidders" item 7: Reporting, to demonstrate that cash disbursement already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) retainage; less (3) that portion of those progress payments attributable to the Construction Manager's Fee; plus (4) payrolls for the period covered by the present Application for Payment.

12.1.6 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Construction Manager's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

12.1.7 Retainage as specified in the Uniform General and Supplementary Conditions will be withheld from the Cost of the Work line item amounts approved in an Application for Payment, but shall not be withheld from General Conditions or the Construction Manager's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

12.1.8 Owner is a political subdivision of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Construction Manager is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

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

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

12.1.11 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment, to Construction Manager under any of the following circumstances:

12.1.11.1 Construction Manager persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;

12.1.11.2 The payment request includes services that are not performed in accordance with the Construction Documents;

provided, however, Owner shall pay for those services performed in accordance with the Construction Documents;

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

12.1.11.4 Construction Manager is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Construction Manager;

12.1.11.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;

12.1.11.6 Construction Manager has persistently failed to complete the Work in accordance with the CPM Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the contract time;

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

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

12.1.12 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of Construction Manager from any of its obligations or liabilities with respect to the Work.

12.1.13 Owner shall have the right to verify and audit the details of Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's employees; (4) visiting the Project site; and (5) any other reasonable action. Construction Manager's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board and organized by each Application for Payment period.

12.2 Pre-Construction Phase Payments

12.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Construction Manager's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the following schedule:

Schematic Design Stage	15%
Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	5%

12.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner and includes all required attachments identifying payments to Small Businesses and to all Subcontractors.

12.3 Construction Phase Payments

12.3.1 Payments for Construction Phase Services shall be made as provided for in the Uniform General and Supplementary Conditions and the Owner's Specifications. All payment requests shall be submitted on an Application for Payment with a schedule of values

approved by the Owner and includes all required attachments identifying payments to Small Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of the Construction Manager's Application for Payment. Failure to submit "SB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment Application will cause rejection of the application by the Owner and its return to the Construction Manager.

12.3.2 The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

12.3.3 The General Conditions Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's General Conditions Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

12.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

12.3.5 Construction Manager's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a conditional release by the Construction Manager of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit that, to the best of Construction Manager information, knowledge and belief,

the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied.

12.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Construction Manager and has been audited and verified by Owner or Owner's representatives. However, Final Payment will not be withheld for any unreasonable period of time should the Owner elect to audit the project costs prior to making Final Payment.

12.3.7 Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager. The total amount of all Construction Phase payments to the Construction Manager shall not exceed the actual verified Direct Construction Cost for the Project plus the Construction Manager's Construction Phase Fee.

12.3.8 The acceptance by Construction Manager or Construction Manager's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the Request for Final Payment.

ARTICLE 13 DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that the Construction Manager actually and necessarily incurs constructing the Work in strict compliance with the Construction Documents. Direct Construction Cost includes only the cost categories set forth in this Article

and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

References in the Uniform General and Supplementary Conditions to adjustments in “cost” or “costs” mean the Direct Construction Cost.

13.1 General Conditions and General Requirements Costs

Construction Manager is entitled to receive payment for the fixed percentage fee for General Conditions and all actual General Requirements costs incurred-through Final Completion of the Project.

General Condition items include only the Construction Manager’s salaried personnel and their associated labor burden. The cost of General Conditions is a fixed percentage of 3.2% per the Construction Manager’s proposal for the General Conditions Fee and in accordance with Article 24.4.1 of this Agreement.

All General Requirements items, whether or not specifically identified below, or by attached Exhibit “C” are considered to be Cost of the Work. These items shall be included in the General Requirements cost amount shown as a line item, or within other direct cost line items as appropriate, in the Guaranteed Maximum Price Proposal and as detailed on the schedule of values.

13.1.1 Non-supervisory Personnel Costs. The actual Worker Wage Rate for Construction Manager’s non-supervisory hourly employees employed on the job.

13.1.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager’s jobsite office if incurred at the Project site and directly and solely in support of the Work.

13.1.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction

Manager, if such items are fully consumed in the construction of the Work. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

13.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

13.1.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.

13.1.6 Permit and inspection fees that are not subject to exemption.

13.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project.

13.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

13.2 Cost of the Work

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

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

13.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations.

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

13.2.4 Payments earned by Construction Manager for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner.

13.2.5 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

13.2.6 Costs for general clean-up, building cleaning, dumpsters, final cleaning, street cleaning, street rental, barricades, temporary construction fencing, pedestrian protection, covered walkways, SWPPP, erosion control (BMP), access roads and construction entrances, security system/watchman, protection, safety administration, and safety material and equipment, hoisting, rental equipment, repairs, maintenance and fuel.

13.2.7 Costs for Construction Manager's and its' consultants' services to provide Safety coordination and inspections, CPM scheduling, IMPPAC and project expediting, HUB/SB Program development and management, quality control, peer reviews, permit expediting

13.2.8 Costs for surveys, layout, field engineering, building control, and Alta surveys.

13.2.9 Costs for building permits, occupancy permits, and AHJ's inspections fees.

13.2.10 Cost for samples and mock-ups.

13.2.11 Costs for insurances, and bonds.

13.3 Construction Manager's Contingency

13.3.1 The Guaranteed Maximum Price Proposal may include a Construction Manager's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

13.3.2 Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

13.3.3 The Construction Manager's Contingency may be used for Contractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with the Project Architect or trade Subcontractors, or to correct errors or omissions in the Construction Documents.

13.3.4 As the Construction Documents are finalized and the Buyout of the Work progresses the Construction Manager's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in the Construction Manager's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

ARTICLE 14 CONSTRUCTION PHASE FEE

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

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

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

14.3 Any and all overhead, labor or general expenses of any kind unless included in General Conditions or General Requirements.

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

14.5 Any legal, accounting, professional or other similar costs incurred by the Construction Manager unrelated to the Project.

14.6 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions or other levies

assessed by any governmental body against Construction Manager unrelated to the Project.

14.7 Any cost arising out of a breach of this Contract or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; and liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time.

14.8 The costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

14.9 Any and all costs that would cause the Guaranteed Maximum Price, minus the amounts allocated in the GMP for Owner's Contingency and Owner's Special Cash Allowance, to be exceeded.

ARTICLE 15 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

15.1 If the allowable, final, verified, audited amount of the total cost of the project is less than the amount established as the Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. When the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

15.2 Items to be provided for through Owner's Special Cash Allowances shall be clearly identified in the Construction Documents and the Guaranteed Maximum Price proposal. The Cost of the Work included in the Allowances shall be determined in accordance with the Uniform General and Supplementary Conditions. Any claim by the Construction Manager for an adjustment to an Allowance amount included in the

Guaranteed Maximum Price based on the cost of Allowance work shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance items. The Construction Manager shall not be entitled to any increase in its Construction Phase Fee for increases to Allowance amounts that were initially based on estimates provided by the Construction Manager. Owner shall be entitled to retain 100% of the balance of any unused Allowance amount.

15.3 The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the Construction Manager:

15.3.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, Construction Manager shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the Construction Manager or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the Owner's account.

15.3.2 Discounts earned by the Construction Manager through advance or prompt payments funded by the Owner. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. The Construction Manager shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

15.3.3 Rebates, discounts, or commissions obtained by the Construction Manager from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

15.3.4 Deposits made by Owner and forfeited due to the fault of the Construction Manager.

15.3.5 Balances remaining on any Allowances, the Construction Manager's Contingency, or any other identified contract savings.

15.4 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the final price is at least 85% complete for subcontracting work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

15.5 Owner shall be entitled to recognize and recover 100% of any savings identified and agreed to by Construction Manager, after the project is 85% complete, by cost review or audit at any time before or after Final Payment.

ARTICLE 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

16.1 The Construction Manager acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Construction Manager's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's investigation.

16.2 The Construction Manager acknowledges that as part of its Pre-Construction Phase Services it shall participate in the development and review of the Construction Documents. Construction Manager's participation in the design development process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or

the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Project Architect in a timely manner.

ARTICLE 17 BONDS AND INSURANCE

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

17.2 In the event that the Owner implements an Owner Controlled Insurance Program (OCIP), the Construction Manager will be required to provide the following insurance coverages:

17.2.1 Pre-Construction Phase: Provide those coverages specified above for the Pre-Construction Phase. OCIP does not provide coverages during the Pre-Construction Phase.

17.2.2 Construction Phase: Provide Automobile Liability, Owner's Protective Liability and Builder's Risk, as set forth in the Uniform General and Supplementary Conditions.

17.2.3 Refer to the Owner's Project Insurance (ROCIP) specification for a complete listing of coverages provided by OCIP.

17.3 The Construction Manager shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner.

Owner's review of the insurance shall not relieve nor decrease the liability of the Construction Manager. Prior to commencing any work under this Agreement, Construction Manager shall provide evidence of the following insurance coverages:

17.3.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Uniform General and Supplementary Conditions.

17.3.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the Uniform General and Supplementary Conditions.

17.3.3 Prior to commencing any construction work, Construction Manager shall provide evidence of Builder's Risk coverage as set forth in the Uniform General and Supplementary Conditions, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

17.3.4 Construction Manager shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals.

17.4 The Construction Manager shall not cause or allow any of its required insurance to be canceled or permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Construction Manager fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Construction Manager.

17.5 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes

in statutory law, court decisions, or the claims history of the industry as well as the Construction Manager.

17.6 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. The cost of builder's risk deductibles shall be paid by the owner. Damages caused by the Construction Manager's negligence and not covered by insurance shall be paid by the Construction Manager.

17.7 The cost of premiums for any additional insurance coverage desired by the Construction Manager in excess of that required by this Agreement, the Uniform General and Supplementary Conditions, or the Contract Documents shall be included as cost of the work in the GMP Proposal as a Direct Construction Cost, and not borne by the Construction Manager out of fees, provided the insurance coverage is normal and customary in the industry and the Construction Manager's operations directly attributable to the project.

17.8 OCIP Insured Projects.

17.8.1 In the event that the Owner implements an Owner Controlled Insurance Program (OCIP) for the Project, Construction Manager will provide the required Pre-Construction Phase insurance for the Project and additional Construction Phase insurance coverages as required by the OCIP plan.

17.8.2 Construction Manager's GMP Proposal shall not include the cost of premiums for insurance coverage provided through the OCIP. The GMP Proposal shall only include the cost of premiums of all other insurance required by the Contract Documents.

17.8.3 The cost of premiums for any additional insurance coverage desired by the Construction Manager in excess of that required by this Agreement, the Uniform General and Supplementary Conditions,

or the Contract Documents shall be borne solely by the Construction Manager out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.8.4 Construction Manager shall include required OCIP insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to and are not to include in their base proposals.

17.8.5 During construction, Owner may audit the Subcontractors' labor hours to determine actual insurance costs.

ARTICLE 18 DISPUTE RESOLUTION

All disputes against the Owner that arise from this Agreement or the Project shall be resolved in accordance with the procedures and limitations of *Texas Government Code* Chapter 2260 and the Uniform General and Supplementary Conditions. The Owner designates the Chief Administration Officer as its officer for examining, negotiating and resolving claims and counterclaims under Chapter 2260.

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

19.2 This Agreement may be terminated by the Owner during the Pre-Construction Phase upon at least three (3) days written notice to the Construction Manager in the event that the Project is to be temporarily or permanently abandoned.

19.3 This Agreement may be terminated by the Owner at the GMP Proposal stage upon at least three (3) days written notice to the Construction Manager in the event that the parties are unable or unwilling to agree on a GMP Proposal.

19.4 In the event of termination that is not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

19.5 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement.

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

19.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 20 INDEMNITY

20.1 SEE THE UNIFORM GENERAL AND SUPPLEMENTAL CONDITIONS FOR CONSTRUCTION MANAGER'S GENERAL INDEMNIFICATION OBLIGATIONS.

20.2 CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSSES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR

COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY THE CONSTRUCTION MANAGER OR THE USE BY CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR PROJECT ARCHITECT'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

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

ARTICLE 21 SPECIAL WARRANTIES

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

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

21.3 The Construction Manager's duties shall not be diminished by any approval by Owner nor shall the Construction Manager be released from any

liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

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

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

21.6 The Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

21.7 Construction Manager represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

21.8 Construction Manager represents and agrees that the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and to bind Construction Manager to its terms.

21.9 Except for the obligation of Owner to pay Construction Manager certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, Houston Community College System, or of the components comprising Houston Community College System, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

ARTICLE 22 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

22.1 The Construction Manager shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

22.2 The Construction Manager shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

22.3 The Construction Manager shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

22.4 The Construction Manager shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

22.5 All materials used on this Project shall be certified as non Asbestos Containing Building Materials (ACBM). The Construction Manager shall insure compliance with the following acts from all of his subcontractors and assigns:

22.5.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

22.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

22.5.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

22.6 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

22.7 The Construction Manager shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

22.8 At Final Completion the Construction Manager shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 23 MISCELLANEOUS PROVISIONS

23.1 Assignment. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

23.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

23.3 *Texas Family Code* Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Construction Manager certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

23.4 Eligibility Certification. Pursuant to Section 2155.004, *Texas Government Code*, Construction Manager certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

23.5 Franchise Tax Certification. A corporate or limited liability company Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

23.6 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Construction Manager agrees that any payments owing to Construction Manager under this Agreement may be applied directly toward any debt or delinquency that Construction Manager owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

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

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

23.10 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of

any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

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

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

23.13 Records. Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

23.14 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Construction Manager or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

23.15 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

23.16 Illegal Dumping. The Construction Manager shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

ARTICLE 24 COMPENSATION

24.1 Construction Cost Limitation

The anticipated Construction Cost Limitation for the Project at the time this Agreement was executed is:

_____ (\$ _____)

24.2 Pre-Construction Phase Fee

24.2.1 For Pre-Construction Phase Services, Owner shall pay Construction Manager a Pre-Construction Phase Fee in the total stipulated amount of

Zero Dollars and no cents (\$ 0.00);

24.3 Construction Phase Fee

24.3.1 For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to two and one-quarter percent (2.25%) of the Construction Cost Limitation for the Project.

24.3.2 Based on the anticipated CCL established at the time of this Agreement, the Construction Phase Fee would be the total stipulated amount of:

_____ (\$ _____)

24.3.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 24.3.1 to the amount of the increase in the GMP.

24.3.4 The percentage rate established in paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Chief Administrative Officer, Office of Administrative Services.

24.3.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the GMP (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the Construction Manager's fee for these increases shall be calculated accordance with the provisions of the Uniform General and Supplementary Conditions for Change Orders.

24.4 Limitation on General Condition Costs

24.4.1 The maximum allowable amount of General Conditions Costs payable to the Construction Manager during the Construction Phase of the Project shall not exceed three and two-tenths percent (3.20%) of the Construction Cost Limitation for the Project.

24.4.2 Based on the anticipated CCL established at the time of this Agreement, the maximum allowable amount of General Conditions Costs would be the total amount of:

_____ (\$ _____)

24.4.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase the maximum allowable amount of General Conditions Costs shall be equitably adjusted by applying the percentage established in paragraph 24.4.1 to the amount of the increase in the GMP.

24.4.4 The percentage rate established in paragraph 24.4.1 of this Agreement for calculation of the maximum allowable amount of General Conditions Costs cannot be increased except with the express written approval of the Chief Administration Officer, Office of Administrative Services.

24.4.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the GMP (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the allowable General Conditions Costs for these increases shall be calculated accordance with the provisions of the Uniform General and Supplementary Conditions for Change Orders.

ARTICLE 25 OTHER TERMS AND CONDITIONS

25.1 Time of Completion

25.1.1 The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is:

[INSERT DATE HERE]

25.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal.

25.1.3 The Construction Manager shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the Guaranteed Maximum Price Proposal, subject to time extensions granted by Change Order.

25.1.4 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GUARANTEED MAXIMUM PRICE PROPOSAL ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT. The Owner may elect, at its option, to stage or "fast-track" portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate substantial completion date and a separate liquidated damages amount.

25.2 Liquidated Damages

25.2.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of:

(\$ _____)

from any money due or that becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion.

25.2.2 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable and as stipulated in Article 25.2.1.

25.3 Estimated Construction Cost Reports

Construction Manager shall prepare and update an Estimated Construction Cost report as required by paragraph 4.2 at the

One Hundred percent (100%) completion stage during design development and Fifty percent (50%) and the seventy-five percent (75%) completion stages during the construction documents phases of the Pre-Construction Services.

25.4 Notices

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner: Renee Byas
 Office of General Counsel
 3100 Main Street
 Houston, TX 77002
 Fax No. (713) 718-7585

With Copies to: Reynaldo Pradia
Houston Community College System
3100 Main Street
Houston, TX 77002

If to Construction Manager: **[INSERT NAME HERE]**
Project Director
[INSERT COMPANY NAME HERE]
[INSERT ADDRESS HERE]
Houston, Texas
Phone: [_____]]
Fax: [_____]]

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

25.5 Party Representatives

25.5.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Reynaldo Pradia
Executive Director of Construction
3100 Main Street
Houston, TX 77002
Fax No. (713) 718-51689

25.5.2 The Construction Manager's designated representative authorized to act on the Construction Manager's behalf and bind the Construction Manager with respect to the Project is:

[INSERT NAME HERE]
Project Director
[INSERT COMPANY NAME HERE]
[INSERT ADDRESS HERE]
Houston, Texas
Phone: [_____]]
Fax: [_____]]

25.5.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 4.8.

25.6 Construction Document Sets

The Project Architect shall coordinate the printing, binding and distribution of the initial issuance of all construction documents to all Subcontractor proposers requesting documents in order to provide proposals to the Construction Manager. A minimum of twenty-five (25) sets will be furnished at the expense of the Owner. The Construction Manager shall utilize all construction documents returned to the Project Architect from the Subcontractor proposers.

25.7 OCIP Insured Project

The Owner has/has not elected to implement an Owner Controlled Insurance Program (OCIP) for this Project. Refer to Article 18.8 for specific coverage's required.

25.8 List of Exhibits

The following exhibits are fully incorporated into this Agreement by reference:

Exhibit A	Uniform General & Supplementary Conditions
Exhibit B	Owner's Specifications
Exhibit C	General Conditions, General Requirements, Insurances, Taxes and Bonds Line Items
Exhibit D	Guaranteed Maximum Price Proposal Form
Exhibit E	CM@Risk Personnel & Monthly Salary Rate
Exhibit F	Constructability Implementation Program
Exhibit G	Policy on Utilization of SB Program
Exhibit H	Additional Services Proposal
Exhibit I	Payroll for Contractor's Optional Use (U.S. Dept. of Labor)

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

ATTEST:
(Seal)

[INSERT COMPANY NAME HERE]

By: _____
(original signature)

(name and title typed)

By: _____

[INSERT NAME], President

Date: _____

CONTENT APPROVED:

Office of Administrative Services
Houston Community College System

HOUSTON COMMUNITY COLLEGE
SYSTEM
(Owner)

By: _____
(original signature)
Winston Dahse
Chief Administrative Officer
Office of Administrative
Services

By: _____
(original signature)
Mary Spangler
Chancellor

Date: _____

**CONTRACT BETWEEN HOUSTON COMMUNITY COLLEGE AND CONSTRUCTION
MANAGER**

This CM At Risk Contract, dated this **[INSERT DATE HERE]**, between Houston Community College (collectively, the "HCC"), and **[INSERT NAME HERE]** (the "Construction Manager At Risk" or "CM At Risk") is binding among and between these parties as of the date of the Houston Community College's signature.

RECITALS

1. The legal address for the Houston Community College and for the Construction Manager At Risk and the addresses for delivery of Notices and other project documents are as follows:

Houston Community College
3100 Main
Houston, TX 77002
(713) 718-7564
(713) 718-5976 (fax)

Construction Manager At Risk:
[INSERT NAME HERE]

Address: **[INSERT ADDRESS HERE]**
City, State, Zip: **[INSERT ADDRESS HERE]**
Telephone: **[INSERT HERE]**
Texas License # _____

FAX: **[INSERT HERE]**
F.E.I.N.: _____

2. The Project is identified as:

Project Title: **[INSERT PROJECT NAME HERE]**

Project Code: _____; **PO #** _____;

GENERAL PROJECT DESCRIPTION: Provide construction management for the Document Review and Construction Services Phase(s) of the _____ Project for the purpose and to the extent set forth in the CM At Risk Contract (the "Project").

Houston Community College will finalize the subsequent CM At Risk Construction Phase(s) Fixed Price with a separate Contract(s) after future receipt of Subcontractor bids/proposals as described in the CM At Risk's attached Price Proposal Form.

Houston Community College will finalize the subsequent phases of Construction with separate contracts, in accordance with the CM At Risk's attached Price Proposal Form.

The Project Title, Project Code, PO #, indicated above are required to be shown for identification purposes on all project related material and documents including, but not limited to, Notices, Change Orders, Submittals, Requests For Information, Requests For Quotes, Field Orders, minutes of meetings, correspondence, Schedule of Values and Certificate For Payment, test reports, and related materials.

3. After competitive sealed proposal pursuant to HCC Policy Governing the Procurement of Goods and Services, adopted by the Board of Trustees of the Houston Community College attached as Exhibit 1, CM At Risk is awarded this Contract to perform the Work described by the Contract Documents for the above-described project (“the Project”).

THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the parties agree as follows:

1. STATEMENT OF WORK: The CM At Risk shall furnish all labor, equipment, and materials and perform all Work for the Project in strict accordance with the Contract Documents as specified below.

2. CONTRACT DOCUMENTS: This Contract shall consist of the following (the “Contract Documents”) which, in the event of conflicts among them, shall take precedence in the following order:

- Contract between Houston Community College and Construction Manager)
- Supplemental General Conditions for Builders Risk Insurance
- General Conditions of the Construction Contract,
- Request for Proposals (RFP) # 10-03 dated September 14, 2009
- Project Manual
- Initial Design Development Estimate dated [INSERT DATE HERE] and Cover letter dated [INSERT DATE HERE]

All of these documents are incorporated herein by reference.

3. TIME FOR COMPLETION: The Work shall be commenced on a date to be specified in a Notice to Proceed from the Houston Community College. The CM At Risk understands that time is of the essence and agrees that Substantial Completion of the entire project shall be no later than ____ calendar days from the receipt of the Notice to Proceed) or [INSERT DATE HERE] based on an anticipated Notice to Proceed no later than the ____ date of _____. Final Completion of the Work shall be achieved within 30 calendar days after the date of Substantial Completion of the Work.

4. TERMINATION:

(A) Houston Community College may terminate this Contract on fourteen (14) days’ notice in writing. Upon such termination, the CM At Risk shall immediately cease Work and take such steps as Houston Community College may require to assign to Houston Community College the CM At Risk’s interest in all Subcontracts and purchase orders, which Houston Community College designates. After all such steps have been taken to Houston Community College’s satisfaction, the CM At Risk shall receive as full compensation for its work under this CM At Risk Contract all amounts otherwise due for Work successfully completed during the applicable phase under the terms of this CM At Risk’s Contract through the date of termination.

(B) Payment for any Additional Services shall be made in an amount equal to the proportion of that work successfully performed/provided up through the date of the notice of termination, as compared to the total change order price.

(C) The CM At Risk shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided in this contract. Upon payment of the foregoing, Houston Community College shall have no further obligations to the CM At Risk of any nature.

5. COMPENSATION TO BE PAID TO THE CM At Risk:

(A) The CM At Risk agrees to manage the Project, administer all Construction and At-Risk Subcontracts and otherwise comply with all of the terms and conditions of the CM At Risk Contract and applicable law, for the project Phase(s) as described herein including the CM At Risk Contingency for an incremental GMP amount of **[INSERT WRITTEN AMOUNT HERE]** (\$_____). Proportioning of this fee for payment for the Work performed by the CM At Risk in accordance with the CM At Risk Contract shall be as described in RFP # _____ Method of Payment and as indicated on the Price Proposal dated **[INSERT DATE HERE]**. The Houston Community College shall base monthly payments due for each phase on the progress of the Project approved by the Houston Community College based on the Schedule of Values.

6. PAYMENTS: The CM At Risk shall be registered at HCC. Please refer to http://HCC.aecglobal.com/Supplier_Registration_Form.asp. The procedures for establishing a Schedule of Values for the Work, for requesting monthly progress payments for Work in place, and for requesting payments for properly stored materials are stated in the General Conditions. Notwithstanding anything contained herein, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

7. CONTRACTUAL CLAIMS: Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in of the General Conditions.

8. NON-DISCRIMINATION: CM At Risk shall not discriminate on the basis of race, ethnicity, disability, natural origin, age, or sex in the awarding of any contracts or any work performed. See the General Conditions.

IN WITNESS WHEREOF, the parties hereto on the day and year written below have executed this agreement in three (3) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

**CONSTRUCTION MANAGER AT RISK:
[INSERT COMPANY NAME HERE]**

By: [INSERT NAME HERE]

Title: [INSERT TITLE HERE]

Date: _____

HOUSTON COMMUNITY COLLEGE:

By: Art Tyler

Title: Deputy Chancellor/COO

Date: _____