Document 00910

ADDENDUM NO. 2

Date of Addendum: _____

PROJECT NAME: Right of Way and Fleet Maintenance Facilities Expansion

PROJECT NO: WBS No. N00653C-0001-4

SUBMITTAL DATE: July 3, 2008 (There is no change to the Submittal Date.)

FROM: City of Houston, General Services Department
900 Bagby, 2nd Floor, City Hall Annex
Houston, Texas 77002
Attn: Charlie Lee, AIA, LEED AP, Sr. Project Manager

TO: Prospective Respondents

This Addendum forms a part of the Request For Qualifications (RFQ) and will be incorporated into the Contract, as applicable. Insofar as the original RFQ is inconsistent, this Addendum governs.

*Change bars ( | ) are provided in the outside margins of pages from the RFQ to indicate where changes have been made.*

1. Replace RFQ with attached revised RFQ.

END OF ADDENDUM NO. 2

(CRC: DC)_____ DATED: _____
Phil Golembiewski, P.E.
City Engineer
General Services Department

# Request for Qualifications (RFQ)
# For
# Construction Manager at Risk
# Right Of Way & Fleet Maintenance
# Facilities Expansion

## Submittal Date
## Thursday, July 3, 2008

**City of Houston**
**General Services Department**
**Design & Construction Division**

**REQUEST FOR QUALIFICATIONS (RFQ)**
**FOR**
**Construction Manager At Risk**
**Right Of Way & Fleet Maintenance Facilities Expansion**
**801 Gillette - Replacement/Vacate**
**100 Japhet - Expansion**
**5500 McCarty- Expansion**
**1700 E. Crosstimbers-Expansion**

## I. PURPOSE

The City of Houston, General Services Department (GSD), on behalf of the Public Works and Engineering Department (PWE), invites the submittal of Statements of Qualification (SOQs) from highly qualified Construction Manager at Risk (CMAR) firms interested in providing pre-construction and construction services for vacating the Right of Way & Fleet Maintenance facility at 801 Gillette, and expansion of the fleet maintenance facilities at 100 Japhet, 5500 McCarty, and 1700 E. Crosstimbers.

CMAR will:

- Provide design phase consultation in evaluating costs, schedule, site usage and improvements, alternative design and materials, constructability and value engineering items.
- Attend regular meetings with members of the project team.
- Coordinate and develop bid packages for each category or trade.
- Advertise and solicit from trade subcontractors competitive bids or sealed Proposals.
- Submit fee Proposal for general conditions and self-performing work.
- Submit Guaranteed Maximum Price (GMP) Proposal(s).
- Perform construction services.

## II. PRE-SUBMITTAL MEETING

A pre-submittal meeting will be held at 2:00 PM on Tuesday, June 24, 2008, at City Hall Annex 900 Bagby, Second Floor Conference Room 246, to discuss this solicitation. Attendance at the meeting is not mandatory.

Before the pre-submittal meeting date, the City will welcome any written questions submitted, faxed or emailed to:

Phil Golembiewski, P.E.
City Engineer
General Services Department
900 Bagby, Second Floor
Houston, Texas 77002
Fax: 832-393-8040
Philip.Golembiewski@cityofhouston.net

- The City will not be bound by any information conveyed verbally. The City will provide, in writing, any clarifications, changes and/or other information, deemed to be necessary, as addenda to this RFQ.
- Addenda will only be provided to pre-submittal meeting attendees and known RFQ holders registered with GSD.
- No addendum will be issued later than 5:00 p.m. on Friday before the Submittal Date, except Addenda with minor clarifications, withdrawing RFQ, or postponing the Submittal Date.

## III. SCOPE OF WORK

| | |
|---|---|
| Project Name: | Right Of Way Fleet & Maintenance Facilities Expansion |
| C.I.P. No. | N-0653C |
| WBS No. | N-0653C-0001-4 |
| Existing Locations: | 801 Gillette, 100 Japhet, 5500 McCarty, and 1700 E. Crosstimbers |
| New Locations: | 100 Japhet, 5500 McCarty, and 1700 E. Crosstimbers |
| Schedule: | Design in FY09-10; Construction in FY10-12 |
| Project Budget | Construction: $28.5 Million |

After over 60 years of operations, the City has decided, after preliminary programming analysis, to vacate Gillette and expand existing fleet operations at 100 Japhet, 5500 McCarty, and 1700 E. Crosstimbers.

Background information of 801 Gillette: City designed and built 801 Gillette fleet maintenance facility in the 1940's. It serves as the central maintenance facility for City's Public Works and Engineering fleet operation for over 5000 vehicles. It contains various heavy and light duty maintenance shop bays, as well as various support functions including: fueling, administration, welding, car wash, and emergency response during natural disasters.

The CMAR shall provide pre-construction and construction services, as set out in the attached contract, for the three fleet maintenance facilities.

This project will be designed and constructed with sustainable principles, using the USGBC LEED standards, to the extent practical and reasonable for the facilities with a target of Silver level certification.

## IV. SELECTION PROCESS AND SELECTION CRITERIA

The CMAR will be selected in a two-step process. In step one the Respondents SOQs will be ranked based on the criteria set out below. The City may elect to interview some or all of the Respondents. After the interview, if any, the City will finalize the rankings. The City will short-list the Respondents that will participate in step two. The City will notify the short-listed Respondents and require that they submit a Proposal in accordance with the attached RFP.

In step one, a Selection Committee composed of representatives from GSD and PWE will rank the Respondents. In order to short-list the CMAR Firms, the City will evaluate the Respondents using the following weighted criteria:

| DESCRIPTION | MAXIMUM POINTS |
|---|---|
| 1. COMPLETENESS OF SUBMITTAL RESPONSE | **5** |
| A. SOQ follows the prescribed format and contains all Information requested in RFQ. | |
| 2. EXPERIENCE | **45** |
| A. Respondent's experience in similar or relevant projects Experience in CMAR process and similar projects as described in Section 1 Project Briefs. | 20 |
| B. Project Manager and Superintendent's experience in similar or relevant projects using CMAR process as described in Section 2 Resumes. | 20 |
| C. Project experience with the City or other governmental agencies or institutions as described in Section 2 Project Briefs. | 5 |
| 3. DEADLINES AND BUDGET | **30** |
| A. Track record of meeting deadlines and working within a budget, as described in Section 3 Narrative and as shown on Project Briefs. | 10 |

B. Cost estimating approach as described in Section 3 Narrative. 10

C. Understanding of City's needs (budget versus architectural program) and appropriateness of Respondent's approach to this project, as described in Section 3 Narrative. 10

4. QUALITY OF SERVICE **20**

A. Testimonials as described in Section 4 Testimonials 10

B. Track Record of quality control as described in Section 3 Narrative 10

5. MAXIMUM TOTAL SCORE POSSIBLE FOR STEP ONE **100**

In step two, the Respondent will be evaluated on Total Proposal Price (70 points). (Lowest Total Proposal Price will receive the maximum 70 points, with each successively higher Total Proposal Price, after that, receiving fewer points, accordingly). Total Proposal Price will be weighted as follows:

| | | WEIGHT |
|---|---|---|
| 1. | Preconstruction Phase services: | 15% |
| 2. | Construction Phase Fee: | 85% |
| 3. | Total Proposal Price | 100% |

EXAMPLE (Based on a construction budget of $28,500,000 with various fee proposals):

| | | | | |
|---|---|---|---|---|
| $28,500,000 | | 0.15 | $ 4,275,000 | Preconstruction Phase Fee |
| 28,500,000 | 4.00% | 0.85 | $ 969,000 | Construction Phase Fee |
| | | | $ 5,244,000 | Total Proposal Price |

The Successful Respondent will receive the most combined points from step one and step two. The total possible points that a Respondent may receive is 170 points.

## V. SUBMITTALS

**Six** copies of sealed submittals are required. **Submittals shall be delivered to City Secretary** of the City of Houston, in the Margaret Westerman Building (a.k.a. City Hall Annex), **Public Level**, 900 Bagby Street, Houston, TX 77002, at or before 2:00 p.m., local time, **Thursday**, **July 3, 2008**. Late submittals will not be accepted for any reason. All submittals must be provided in a sealed box clearly labeled on the outside with the Respondent's name, name of the Project, and General Services Department.

To enable the City to efficiently evaluate the SOQs, Respondents are urged to strictly follow the required format in preparing their SOQ.

Each copy of the SOQ shall be bound using GBC or other semi-permanent binding method, to ensure that pages are not lost. Each copy shall be no more than one-half inch thick. Pages shall be no larger than letter-size 8 ½" x 11" or, if folded to that dimension, twice letter size 11" x 17". Each section (defined below) shall be separated by a tabbed divider. Elaborate covers, binding, dividers, and the like are not required nor wanted.
**NOTE:** One of the copies submitted shall be labeled "ORIGINAL" on the outside cover and shall contain original documents where specified below.

Each SOQ shall be organized in the following order:

**Outside Cover and/or first page:** Shall contain the name of the SOQ ("Statement of Qualifications for Construction Manager at Risk for **Right Of Way & Fleet Maintenance Facilities Expansion**"), the name of the Respondent, and the submittal date. Remember to label the one copy, with original documents in it, "ORIGINAL" on the cover.

A. **Table of Contents:** The next page shall be a table of contents.

B. **Section 1 Divider (Letters)**

1. T*ransmittal Letter:* The first page following the divider shall be a one-page letter transmitting the SOQ to Phil Golembiewski, P.E., City Engineer, General Services Department. The transmittal letter shall say that the signer of the document is authorized by the Respondent to sign the document. At least one copy of the transmittal letter shall contain the original signature of a partner, principal or officer of Respondent.

C. **Section 2 Divider (Experience)**

1. *List of Firm's CMAR projects*, along with construction cost and clients of each.

2. *Resumes* of the Project Manager and Superintendent.

3. *Project Brief*:

   A. The Respondent shall select three projects to highlight, as best representing the firm's project experience, and provide a briefing sheet for each. Each briefing sheet shall be one-page and should contain information, which shows the capability of the firm to provide the range of services that are required by this project. The work described must have been performed within the past eight years. At least one of the projects shall be for $30 million, or more, in construction cost and for a governmental entity. Minimally, each brief shall contain:

      1. Project Name and Location

      2. Year Project Completed and brief explanation regarding steps Respondent took to maintain project schedule

      3. Short Description of Services Provided

      4. Name of Client and/or Owner/Operator and current telephone number and/or email address

      5. Construction Cost and brief explanation regarding steps Respondent took to adhere to Owner's budget.

   B. *Graphic Information:* If the Respondent includes photographs, drawings or other graphical information about any of the three projects, the back of the project brief, the facing page or a separate page may be utilized for this purpose. Photographs or other graphical information used to illustrate these projects may also be incorporated into the one-page brief sheet itself.

D. **Section 3 Divider (Narrative)**

1. *Narrative:* The Respondent shall provide no more than three pages of narrative that describes:

- Respondent's track record of meeting deadlines and working within a budget.

- Respondent's systems and processes for insuring quality and timely performance on projects;

- Respondent's understanding of the City's needs and firm's approach to this project;

E. **Section 4 Divider (Quality of Service)**

1. *Testimonials:* Respondents may include no more than three one-page letters from clients and/or architects that they have worked with on previous projects. Letters should comment on budget and/or scheduling experiences and qualitative matters related to services received from the Respondent. Letters shall also include contact name and telephone number.

## VI. ADDITIONAL INSTRUCTIONS, NOTIFICATIONS AND INFORMATION

A. Respondents shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City for the purposes of influencing this selection. Any attempt by the Respondent to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

B. Respondents who provide false or misleading information, whether intentional or not, in any documents presented to the City for consideration in the selection process shall be excluded. Any false or misleading information in these documents would, in effect, render the entire document suspect and therefore useless.

C. INTERVIEWS – After the screening of SOQs, Respondents will be notified, in writing, of their status in the selection process. If interviews are needed, short-listed Respondents may be given additional information for interviews. These interviews will relate less to the past experience and qualifications already detailed in the submittal than to identification of the Respondent's program approach and to an appraisal of the people who would be directly involved in the project.

D. INQUIRIES – Please do not contact the City during the selection process to make inquiries about the progress of this selection process. Respondents will be contacted when it is appropriate to do so.

E. COST OF SOQS – The City will not be responsible for costs incurred by anyone in the submittal of qualifications or for any costs incurred prior to the execution of a formal contract.

F. CONTRACT NEGOTIATIONS – This RFQ is not to be construed as a contract or as a commitment of any kind. If this RFQ results in a contract offer by the

City; a specific scope of work, fees, insurance coverages, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the project the City may make the inclusion of a "key persons clause" a part of the contract negotiations.

G. CONFIDENTIAL INFORMATION – All responses shall be held confidential from other parties by the City to the extent allowable by law until after the selection process is completed. Respondents should be aware that at the completion of the selection process the contents of their SOQs are subject to the provisions of the Texas Public Information Act and may be made public. CONFIDENTIAL or SENSITIVE information should not be included in the SOQ.

H. CITY POLICIES & ORDINANCES – Respondents should be aware of and therefore, familiar with all pertinent City of Houston Ordinances and policies which will relate to contracting with the City. The following is a partial list of relevant subjects:

1. Equal Employment Opportunity
2. MWBE Goal: No goal is required during the pre-construction phase. During the construction phase, the goals are: 15% MBE, 7% WBE, and 5% SBE
3. City of Houston Fair Campaign Ordinance
4. Mayor's Drug Detection and Deterrence Policy and Procedures
5. City Contracts and Indebtedness to Taxing Authorities
6. Insurance requirements
7. Conflict of Interest Questionnaire
8. Pay or Play (POP) Program

I. The City of Houston reserves the right to (1) evaluate the qualifications submitted; (2) waive any irregularities therein; (3) select Respondents for the submittal of more detailed information; (4) accept any submittal or portion of a submittal; and/or (5) reject any or all Respondents submitting qualifications, should it be deemed in the City's best interest.

## REQUEST FOR PROPOSALS

**Request for Proposals for**
**Construction Manager at Risk**
**Right Of Way & Fleet Maintenance Facilities Expansion**
**Project Number: N-00653C-0001-4**

## I. INTRODUCTION

You have been short-listed based on your qualifications for the Right of Way & Fleet Maintenance Facilities Expansion, Project Number N-00653C-0001-4. We are requesting that you submit a Proposal in accordance with this RFP.

## II. PREPROPOSAL MEETING

A pre-Proposal meeting will be held at TBD, at City Hall Annex, 900 Bagby, Second Floor Conference Room, to discuss this solicitation. Attendance at the meeting is not mandatory.

Before the pre-Proposal meeting date, the City will welcome any written questions submitted, faxed or emailed to:

Phil Golembiewski, P.E.
City Engineer
General Services Department
900 Bagby, Second Floor
Houston, Texas 77002
Fax: 832-393-8040
Philip.Golembiewski@cityofhouston.net

- The City will not be bound by any information conveyed verbally. The City will provide, in writing, any clarifications, changes and/or other information, deemed to be necessary, as addenda to this RFP.

- Addenda will only be provided to pre-Proposal meeting attendees and known RFP holders registered with GSD.

- No Addendum will be issued later than noon on Tuesday before the Proposal Date, except Addenda with minor clarifications, withdrawing RFP, or postponing the Proposal Date.

## III SUBMITTALS

**One** copy of sealed submittal is required. The **submittal shall be delivered to City Secretary** of the City of Houston, in the Margaret Westerman Building (a.k.a. City Hall Annex), **Public Level**, 900 Bagby Street, Houston, TX 77002, at or before **TBD**, local time, **TBD**. Late submittal will not be accepted for any reason. The submittal must be provided in a sealed envelope clearly labeled on the outside with the Proposer's name, name of the Project, and General Services Department.

Proposer shall submit the Proposals in the following format.

| Fees | |
|---|---|
| A: Preconstruction Phase Services (See: Section 3.3 and 4.2.1 of Contract). | $ _____ Lump Sum<br>*Maximum amount Proposer may submit is $427,500 |
| B: Construction Phase Fee (See Section 3.4 and 4.2.2 of Contract). | _____% of Cost of the work, $28.5 Million. |
| C: Lump Sum (C=A+B) | |

*1 Assume a 0% Termination fee (See Section 3.3.5.4 of the contract) and assume a 1% Construction Manager's Contingency (See Section 2.3 of contract).

COST OF PROPOSAL – The City will not be responsible for costs incurred by anyone in the submittal of qualifications or for any costs incurred prior to the execution of a formal contract.

The City of Houston reserves the right to (1) evaluate the Proposals submitted; (2) waive any irregularities therein; (3) select Proposers for the submittal of more detailed information; (4) reject any Proposal that unbalances the Proposal amounts between pre-construction and construction phase fees; (5) accept any Proposal or portion of a Proposal; and/or (6) reject any or all Proposals, should it be deemed in the City's best interest.

Phil Golembiewski, P.E.
City Engineer
General Services Department
Date: _____

**THE STATE OF TEXAS** §
§
**COUNTY OF HARRIS** §

# I. PARTIES

## 1.1. ADDRESS

**THIS CONSTRUCTION MANAGEMENT-AT-RISK AGREEMENT** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **ABC CONSTRUCTION COMPANY** ("Construction Manager"), a corporation authorized to do business in the State of Texas, (also referred to as "Party" individually or "Parties" collectively).

The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

**City**

Director, General Services Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

**Construction Manager**

ABC Construction Company
1335 ABC Road
Houston, TX 77043-4003

The Parties agree as follows:

## 1.2. TABLE OF CONTENTS

This Agreement consists of the following sections:


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**EXHIBITS**


A Document 00700-General Conditions
B Personnel, Staff, Subconsultants and Duties
C Guaranteed Maximum Price Proposal
D Form of Bonds
E Additional Services Requisition
F City's Wage Rates
G Master Project Schedule

## 1.3. PARTS INCORPORATED

The above-described sections and exhibits are incorporated into this Agreement.

## 1.4. CONTROLLING PARTS

If a conflict between the sections and exhibits arises, the sections control over the exhibits.

## 1.5. SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original.

**CONSTRUCTION MANAGER:**
**ABC CONSTRUCTION COMPANY**

By:_____
Name: _____
Title: _____

ATTEST:

By:_____
Corporate Secretary

Tax Identification No. _____

**CITY:**
**THE CITY OF HOUSTON, TEXAS**

By:_____
Mayor

ATTEST:

By: _____
City Secretary

APPROVED:

_____
Director, General Services Department

APPROVED AS TO FORM:

_____
Assistant City Attorney
L.D. File No. 0590700004001

COUNTERSIGNED:

_____
City Controller

DATE COUNTERSIGNED:

_____

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below. Terms not defined in this Article shall have the meaning given to them in the attached Document 00700-General Conditions.

2.1. **Additional Preconstruction Phase Services** means those services described in Section 3.3.6.

2.2. **Construction Phase** means the phase of the Project during which the Construction Manager implements and executes the construction work required by the Contract Documents.

2.3. **Construction Manager's Contingency** means the dollar amount set out in the Guaranteed Maximum Price Proposal that includes (but is not limited to) costs that Construction Manager incurs as a result of: (1) its Subcontractors' failure to perform or insolvency; (2) fines or penalties imposed by any governmental body for its negligent acts; (3) its or its Subcontractors' failure to coordinate their work with that of the City or its contractors after agreeing to a schedule; and (4) its or its Subcontractors' acts of negligence for costs related to defective, rejected, or nonconforming Work, materials, or equipments. The Construction Manager's Contingency shall not exceed 1.0% of the proposed Cost of the Work.

2.4. **Construction Phase Fee** means the fee for Construction Manager's profit and general overhead, calculated as _____% of Cost of the Work (except pass-through Allowances) determined by the City at the time of acceptance of Guaranteed Maximum Price.

2.5. **Cost of the Work** means reasonable costs that the Construction Manager necessarily incurs to perform the Work in strict compliance with the Contract Documents, as described in Section 4.2.2.4.

2.6. **Day** means a calendar day.

2.7. **Effective Date** means the date the City Controller countersigns the Signature Page of this Agreement.

2.8. **General Conditions Work** means Construction Manager's on-site management, administrative personnel, insurance, bonds, equipment, utilities, temporary facilities, and incidental work, including field labor and materials.

2.9. **Phase** means either the Project's Preconstruction Phase or the Project's Construction Phase, as those terms are defined in this Article.

2.10. **Preconstruction Phase** means the phase of the Project during which the Construction Manager performs the services generally described in Section 3.3.

2.11. **Project** means the facility or facilities the City intends to construct, specifically:
Project 1: ___(WBS No.);
Project 2: ___(WBS No.);
Project 3: ___(WBS No.).

2.12. **Project Team** means the City, Construction Manager, Design Consultant(s), any separate contractors employed by the City, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different phases of the Project. The City will designate the Project Team and may modify it from time to time.

## III. DUTIES OF CONSTRUCTION MANAGER

### 3.1. GENERALLY

3.1.1 Construction Manager shall perform the Work in accordance with the Contract Documents.

3.1.2. The City is entering into this Agreement in reliance on Construction Manager's special abilities in construction management and in performing its obligations under this Agreement. Construction Manager accepts the relationship of trust and confidence established between it and the City by this Agreement. Construction Manager shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of City in accordance with City's requirements and procedures. Construction Manager represents that it has no obligations or impediments of any kind that will limit or prevent performance of the services required under this Agreement.

3.1.3. Construction Manager shall use best efforts to coordinate with other contractors on or around the Project site.

3.1.4. Construction Manager shall establish, implement, and follow a quality assurance and quality control program for the Work during all Phases. Construction Manager shall provide the City with a copy of the written quality assurance and quality control program.

3.1.5. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of Construction Manager in connection with the execution, delivery and performance of the Contract Documents, except those that have already been obtained or which Construction Manager anticipates will be timely obtained in the ordinary course of performance of the Contract Documents.

3.1.6. Construction Manager has no actual knowledge of any strikes, lockouts or other labor disputes pending, or threatened or scheduled to occur, with respect to any of the factories, offices or other facilities of any of Construction Manager's suppliers,

sub-vendors, or proposed subcontractors.

3.1.7. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order No. 1-7, are incorporated into this Agreement for all purposes. Construction Manager has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

3.1.8. Construction Manager shall perform Preconstruction Phase services and Construction Phase services for each Project if authorized by the City Engineer.

## 3.2. CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

3.2.1. Construction Manager, its employees, and all and its subcontractors are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction.

3.2.2. Construction Manager's personnel to be employed in the Project are identified in **Exhibit "B"** to the extent known at the time of signing this Agreement. Construction Manager shall not change the personnel identified in **Exhibit "B"** except with the City Engineer's prior written consent, which shall not be unreasonably withheld. If any of Construction Manager's key personnel is not identified in Exhibit "B", Construction Manager shall identify in writing such persons to the City Engineer. If City Engineer does not approve of an individual, Construction Manager shall propose an alternate individual reasonably acceptable to City Engineer.

3.2.3. Construction Manager shall not award subcontracts or other agreements based on cost plus a fee without the prior consent of City Engineer.

3.2.4. Construction Manager shall require its subcontractors who have not competitively bid to disclose to City their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in sub-subcontracts and the Work performed, including any Change Order Work.

## 3.3. PRECONSTRUCTION PHASE SERVICES

Construction Manager shall perform and complete the following Preconstruction Phase Services:

### 3.3.1. Budget and Cost Consultation

Provide, throughout the duration of the Preconstruction Phase, updates of ongoing cost and budget impacts as well as cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other

members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established cost or schedule goals will not be met, and make recommendations to the Project Team for corrective action.

### 3.3.2. Coordination of Design and Construction Contract Documents

3.3.2.1. Review all drawings and specifications at the completion of each of the following four design submittal milestones: (1) Design Development, (2) 50% Construction Documents, and (3) 95% Construction Documents.

3.3.2.2. Advise Project Team of inconsistencies, defects, or omissions in the drawings and specifications, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules.

3.3.2.3. Recommend reasonable adjustments in the scope of the Project, including but not limited to: construction feasibility; quality; availability of materials and labor; cost factors, including costs of alternative materials or designs, costs of operation and maintenance, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed drawings and specifications; and any other matters necessary to accomplish the Project in accordance with the Master Project Schedule and Project construction budget established by City Engineer.

### 3.3.3. Existing Site Conditions

City has given the Construction Manager unrestricted access to the existing improvements and conditions on the Project site and has given the Construction Manager the opportunity to visually investigate the existing conditions. Construction Manager will perform a thorough visual, non-destructive, and concise review of the site to become familiar with the existing conditions of the facility building systems and components. Construction Manager shall perform the review prior to submitting any Guaranteed Maximum Price Proposal. Construction Manager's submission of a Guaranteed Maximum Price Proposal shall be a representation that it has completed a review of existing site conditions and considered them in establishing the Guaranteed Maximum Price. Construction Manager shall not be entitled to a claim for an adjustment in time or price under the Document 00700-General Conditions for conditions that it discovered or ought to have reasonably discovered using best practices during its visual and non-destructive review, but any costs incurred shall be a legitimate use of the Construction Manager's Contingency.

### 3.3.4. Construction Planning

3.3.4.1. Schedule, conduct, and record the minutes of one pre-bid conference with interested bidders, subcontractors, material suppliers, and equipment suppliers.

3.3.4.2. Coordinate and develop with Design Consultant one bid package and work scope description that represents the entirety of the Project.

3.3.4.3. In accordance with *Texas Local Government Code* Section 271.118(h), as amended from time to time, publicly advertise and solicit either competitive bids or competitive sealed Proposals from potential Subcontractors for the performance of all major elements of the Work. Construction Manager may seek to perform portions of the Work itself if Construction Manager submits its bid or Proposal for those portions of the Work in the same manner as all other subcontractors and if City Engineer determines, in his sole discretion, that Construction Manager's bid or Proposal provides the best value for City. City Engineer's determination in such matters is final. If Construction Manager intends to submit a bid or Proposal for such Work, it shall notify City Engineer in writing prior to soliciting such bids or Proposals. Construction Manager shall receive and open all Subcontractor bids or Proposals. Construction Manager and City Engineer shall review all Subcontractors' bids or Proposals in a manner that does not disclose the contents of the bid or Proposal during the selection process to individuals other than those employed by the Construction Manager, City, or Design Consultant. All bids and Proposals shall be made public after the award of the subcontract or not later than the seventh day after the date of final selection of bids or Proposals, whichever is later. If Construction Manager reviews, evaluates, and recommends to City a bid or Proposal from a Subcontractor, but City requires a bid or Proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Contract, City shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk which Construction Manager may incur because of City's requirement that another subcontractor's bid or Proposal be accepted.

3.3.5. **Guaranteed Maximum Price Proposal**

3.3.5.1. When the Cost of the Work has been bid and costs agreed upon, Construction Manager shall submit a Guaranteed Maximum Price Proposal ("Proposal") for each Project or portion thereof listed in Section 2.11 to City Engineer in the form attached to this Agreement as **Exhibit "C"**. Based on particular Project requirements and the development of the Project design, City Engineer, at his sole option and discretion, may reasonably specify a different format than that contained in **Exhibit "C"**. The Proposal shall include the following:

1. a Schedule of Values showing a breakdown of the Guaranteed Maximum Price of the Project, including the Cost of the Work, Construction Manager's Contingency, and the Construction Phase Fee;

2. a list of drawings and specifications, including all addenda, used in preparation of the Proposal;

3. a list of Allowances and the basis for each Allowance;

4. a list of the clarifications and assumptions made by Construction Manager in the Proposal as well as monetary amounts attributable to them;

5. a breakdown of Construction Manager's costs organized by trade;

6. a list of the unit prices, if any;

7. a list of the Alternates used in calculating the Guaranteed Maximum Price;

8. the proposed Contract Time, including dates for Notice to Proceed, Date of Commencement of the Work, Date of Substantial Completion (which may be expressed in terms of amount of time after a Notice to Proceed is issued), Date of Final Completion, and any other milestone dates upon which the Proposal is based;

9. General Conditions Work costs;

10. Construction Manager's Contingency;

11. Construction Phase Fee; and

12. any other items required by City Engineer.

3.3.5.2. The Proposal shall separately set forth the portion of the proposed Guaranteed Maximum Price that is allocated to Construction Manager's Contingency. Construction Manager may not use the Construction Manager's Contingency without the prior written consent of the City Engineer. Construction Manager shall not include contingency amounts in other portions of the proposed Guaranteed Maximum Price, and the other portions of the proposed Guaranteed Maximum Price shall be based on the cost of actual bids, Proposals, and subcontracts for the Work where they exist, or if they do not exist, then on the Construction Manager's best good faith estimate of what the costs for those portions of the Work will be.

3.3.5.3. Construction Manager is not bound to a Guaranteed Maximum Price unless the City allocates sufficient funds and the City Engineer accepts the Proposal. Construction Manager shall not withdraw the Proposal for 90 days. If City Engineer accepts the Proposal, an amendment or Change Order to this Agreement shall be prepared incorporating the agreed upon Guaranteed Maximum Price, Contract Time(s) and date(s) of Substantial Completion.

3.3.5.4. City Engineer, at his sole discretion, may reject the Proposal (with no liability to City except for accrued but unpaid invoices and the termination fee as described in this Section, if any), or attempt to renegotiate the Proposal with Construction Manager (with the right to cease negotiations at any time and reject the Proposal). If the City Engineer ultimately rejects all Proposals for the Projects listed in Section 2.11, this Agreement shall terminate upon five days' advance written notice from the City Engineer to Construction Manager. City shall have no liability to any of Construction Manager's subcontractors in the event of such termination. Construction Manager shall include a provision in each subcontract that is legally sufficient to eliminate any legal or equitable liability the City may have for such termination as to the subcontractors. If the City terminates the Contract in its entirety without proceeding with any Construction Phase services for one or more Projects listed in Section 2.11, then the City will pay Construction Manager a termination fee of $ _____.

3.3.5.5. Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price for Work that is not detailed in the Contract Documents but is reasonably inferable, in the City Engineer's sole discretion, from the Contract Documents. If an item or system is either shown or specified, Construction Manager shall provide, at no extra cost to the City, all labor, material and equipment required for the proper installation of such item or system and needed to make a complete operating installation, whether or not detailed or specified, omitting only such parts as are specifically excepted by the City. Any costs incurred by the Construction Manager under this section shall be legitimate use of the Construction Manager's Contingency.

3.3.6. **Additional Preconstruction Phase Services**

3.3.6.1. City Engineer may request Construction Manager to perform Preconstruction Phase Services in addition to those required under this Agreement ("Additional Preconstruction Phase Services"). Each time City Engineer requests Construction Manager to perform services that Construction Manager believes to be Additional Preconstruction Phase Services, and prior to performing such services, Construction Manager

shall complete and forward to City Engineer for approval an Additional Services Requisition in substantially the form attached as **Exhibit "E"**. The Requisition shall describe in detail the nature of the Additional Preconstruction Phase Services, the basis upon which Construction Manager has determined that the requested services are Additional Preconstruction Phase Services, and the maximum amount of fees and reimbursable expenses for which Construction Manager shall perform the Additional Preconstruction Phase Services, and a proposed schedule for the completion of the services. Construction Manager shall proceed only after written acceptance by City Engineer of the Additional Services Requisition and written approval from City Engineer to proceed. If Construction Manager fails to provide the Additional Services Requisition or if Construction Manager begins performing Additional Preconstruction Phase Services prior to written approval from City Engineer, Construction Manager waives any claim for additional compensation based on its performance of the Additional Preconstruction Phase Services.

3.3.6.2. If City Engineer concludes that Construction Manager must already perform all or part of the services described in the Additional Services Requisition pursuant to this Agreement (or reasonably inferable from it), then City Engineer shall notify Construction Manager of his determination and Construction Manager shall perform the services requested by City Engineer.

3.3.6.3. Upon acceptance by City Engineer, each Additional Services Requisition and the services performed by Construction Manager pursuant to it shall become part of this Agreement as if they had been included in this Agreement as required obligations at the original execution of this Agreement.

## 3.4. CONSTRUCTION PHASE SERVICES

Construction Manager shall perform the following Construction Phase Services:

### 3.4.1 Project Control

3.4.1.1. Supervise and pay for the Work in strict accordance with the Contract Documents. Construction Manager shall award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work. Construction Manager shall self-perform only General Conditions Work and other Work that the City awards to Construction Manager in accordance with the requirements of *Texas Local Government Code* Section 271.118(h) and this Agreement. City reserves the right to perform work related to the Project and to

award separate contracts for work related to the Project.

3.4.1.2. Review drawings and specifications, including any geotechnical data/reports that are available, and notify the Design Consultant and City Engineer of any defects or omissions in the drawings and specifications it discovers with respect to the existing conditions. Upon discovering a defect or omission in the drawings or specifications or other Contract Documents, Construction Manager shall submit a written request within ten days from discovery for an explanation or decision to the Design Consultant and the City Engineer. Construction Manager shall cooperate with the City Engineer and Design Consultant to resolve the discovered defects or omissions so as not to unnecessarily impede the progress of the Work. Should the defect be determined as Work that is reasonably inferable from the Contract Documents or should have been reasonably discovered during the Preconstruction Phase using best practices, Construction Manager shall proceed with the Work and the Construction Manager shall be responsible for all resulting costs, including the cost of redoing or remedying the Work and resulting time delays; such costs shall be a legitimate use of the Construction Manager's Contingency. Any claims for concealed or unknown conditions must comply with the requirements of Section 4.3.5 of Document 00700-General Conditions.

3.4.1.3. Monitor the Work of the subcontractors and coordinate with the Project Team to complete the Work for a cost not to exceed the Guaranteed Maximum Price and attain Substantial Completion by the date(s) required by the Contract Documents.

3.4.1.4. Attend City's Project progress meetings (separate from the meetings described in subsection 3.4.1.5 below) scheduled by City Engineer (which will occur no less often than once per month), and fully advise the Project Team, to the City Engineer's satisfaction, at such meetings as to Project status.

3.4.1.5. Schedule, direct, and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems, and scheduling. Prior to each meeting, prepare and distribute to the other Project Team members a written agenda for the meeting and a memorandum setting forth the list of critical activities that require immediate action and the dates by when the activities must be completed. Record and distribute the minutes of each meeting within seven days of the meeting.

3.4.1.6. Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the subcontractors on the Project.

3.4.1.7. Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team.

3.4.1.8. Establish and implement procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project.

3.4.1.9. Expedite and coordinate delivery and installation of City-procured material and equipment, if any.

3.4.2. **Scheduling**

Perform Project scheduling in compliance with the Document 00700-General Conditions, or otherwise provide regular monitoring, updating, and reissuing of the all Project schedules as construction progresses, including, without limitation, Master Project Schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules. Identify potential and actual variances between scheduled and probable completion dates. Review the schedules for Work not started or incomplete and recommend to the City Engineer adjustments in the schedules to conform with the probable completion dates Provide summary reports to the City Engineer of each schedule update and document all changes in construction schedules. Incorporate activities subcontractors and other parties affecting the progress of the Work into scheduling. Include City's occupancy requirements and occupancy priorities in scheduling. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each subcontractor's ability to meet schedules. Recommend action to City Engineer when any subcontract requirements are not met or appear unlikely to be met.

3.4.3. **Cost Control**

3.4.3.1. Maintain cost accounting records in good form and in accordance with generally accepted accounting practices on all Project expenditures. Allow the City unrestricted access to such records and preserve them for a period of three years after the City makes final payment to Construction Manager for the Project.

3.4.3.2. Prepare and administer, and provide to City Engineer the subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as reasonably required by City Engineer.

3.4.3.3. Promptly identify all variances between estimated costs and actual costs, and promptly report such variances to the City Engineer along with recommendations for action within 14 days after acquiring such

information or having actual knowledge of such information.

3.4.4. **Documents, Shop Drawings, and Submissions**

3.4.4.1. Request interpretations from the Design Consultant, with the City Engineer's consent, regarding the design intent of the Contract Documents in order to perform Construction Manager's obligations under this Agreement.

3.4.4.2. In collaboration with the other members of the Project Team, establish and implement procedures for expediting the processing of Design Consultants' approval of shop drawings and other submissions. Receive and review all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

3.4.4.3. Record in writing the progress of the Project. Submit written progress reports to the other members of the Project Team on a monthly basis (or on a more frequent basis as the City Engineer may reasonably require), including information on subcontractor Work and the percentage of completion. Keep a daily log of Project construction activities available to the other members of the Project Team in accordance with the Document 00700-General Conditions. Submit daily logs to the City Engineer once per week for the immediately preceding week..

3.4.4.4. Maintain at the Project site and make available to City Engineer a current set of record drawings, the Contract Documents, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, and instructions from City.

3.4.4.5. Provide City Engineer, at his request, with complete and unaltered copies of all subcontracts, including any amendments.

## 3.5. LIQUIDATED DAMAGES

3.5.1. Failure to achieve Substantial Completion of the Project by the date set forth in the agreed upon Guaranteed Maximum Price Proposal will cause damages to City and actual damages from such harm are difficult to estimate accurately. Therefore, Construction Manager and Surety are liable for and shall pay to City the amount of $1,200.00 as liquidated damages. Construction Manager and Surety are liable for

and shall pay to City, as liquidated damages and not as a penalty, the amounts set forth above, on a cumulative basis, for each and every day of delay beyond the date of Substantial Completion established in the approved Guaranteed Maximum Price Proposal. The amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to City resulting from Construction Manager's failure to achieve Substantial Completion of the Project by the date set forth in this Section. These liquidated damages shall be City's sole remedy for damages from delay by Construction Manager in achieving Substantial Completion to which such liquidated damages apply.

## IV. DUTIES OF CITY

### 4.1. GENERALLY

4.1.1. The City hereby designates and appoints the Construction Manager to be the Construction Manager-at-Risk under this Agreement and authorizes the Construction Manager to so act in connection with the scope of Work set forth in the Contract Documents.

4.1.2. City Engineer will be reasonably acquainted with the Project. Upon Construction Manager's request, City Engineer shall furnish the written authorization of each City employee authorized to represent him in connection with the Project.

4.1.3. City shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.

4.1.4. If City has actual knowledge of any fault or defect in the Project or non-conformance with the drawings and specifications, City shall give prompt written notice thereof to Construction Manager.

### 4.2. PAYMENT TERMS

4.2.1 **Preconstruction Phase Services**

4.2.1.1. The City shall pay a lump sum fee of $____ ($____ for each Project) for Preconstruction Phase Services that Construction Manager renders under this Agreement.

4.2.1.2. The City shall pay Construction Manager based on invoices showing the percentage of total services performed during the preceding month. Payments per Project shall not exceed the following amounts at the following milestones:

1. Design Development: $_____
2. 50% Construction Documents: $_____

3. 95% Construction Documents: $_____

4.2.1.3. Construction Manager shall not be entitled to any increase in the Preconstruction Phase costs because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material, as determined by City Engineer in his sole discretion.

4.2.1.4. Payment Terms for Additional Preconstruction Phase Services

The City shall pay Construction Manager based on invoices showing the percentage of services completed as set out in an approved Additional Services Requisition. Payments shall not exceed the amount set out in the approved Requisition.

4.2.2. **Construction Phase Services**

4.2.2.1. City shall pay Construction Manager for the Work based on the sum of the Cost of the Work plus the Construction Phase Fee. The sum of the Cost of the Work and Construction Phase Fee shall not exceed the Guaranteed Maximum Price, subject to changes authorized by the Contract Documents. Construction Manager shall pay, without reimbursement from City, any cost not authorized by the Contract Documents and Guaranteed Maximum Price, except as per agreed upon Modifications.

4.2.2.2. If the sum of the Cost of the Work and the Construction Phase Fee is less than the Guaranteed Maximum Price, then City shall retain all savings. For items in the Contract Documents and on **Exhibit "C"** noted as "Allowances", City shall retain 100% of any savings. The Cost of the Work included in the Allowances shall be determined in accordance with Document 00700-General Conditions. Construction Manager shall make all claims for adjustments to the Guaranteed Maximum Price based on the cost for Allowance Work within a reasonable time after the City's issuance of the drawings and specifications for the Allowance items. Any increase to Allowance amounts based upon estimates by the Construction Manager shall not result in any increase to the Construction Phase Fee.

4.2.2.3. City shall be entitled to 100 percent of any unexpended contingencies and allowances and of the savings resulting from any design or construction changes reducing the scope of the Project.

4.2.2.4. The Cost of the Work includes only the following:

4.2.2.4.1. Labor:

1. Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Work. If requested by City Engineer, Construction Manager shall provide certified payrolls and any other documentation to verify wages and hours for non-salaried employees.

2. Reasonable and customary wages or salaries of Construction Manager's supervisory and administrative personnel but only for documented time when directly involved in performance of the Work.

3. Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or Construction Manager's standard fringe benefits, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

4. Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project, but only to the extent permitted by City's policies on reimbursement for travel.

5. Costs of long-distance telephone calls, postage, package delivery and courier service, telephone service, internet connection service and reasonable and customary petty cash expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

4.2.2.4.2. Materials, Equipment, Tools, Rentals:

1. Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work. This requirement only applies to materials that the City

reimbursed the Construction Manager as a Cost of the Work. Payment for stored materials is subject to City's Document 00700-General Conditions.

2. Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the 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 costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

3. Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal.

4. Site debris removal and disposal costs in accordance with all applicable laws and regulations.

4.2.2.4.3. Subcontracts

Payments made or owed to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the Subcontracts with such Subcontractors, but only for Subcontracts consented to by City in accordance with the requirements of the Contract Documents.

4.2.2.4.4. Other costs:

1. Governmental sales and use taxes directly attributable to the Work. City is a home-rule municipal corporation and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on City's status.

2. Permit and inspection fees.

3. Premiums for insurance and bonds to the extent

directly attributable to this Agreement.

4. Testing fees pursuant to the terms and conditions of City's Document 00700-General Conditions and Contract Documents.

5. Intellectual property royalties and licenses for items specifically required by the Contract Documents that are, or will be, incorporated into the Work.

6. Utility charges.

7. Other costs approved in advance in writing by City Engineer at City Engineer's sole option and discretion.

8. Construction Manager's General Conditions Work expenses.

4.2.2.4.5. Cost of the Work does not include:

1. Construction Manager's Contingency costs.

2. Construction Phase Fee.

3. Legal and administrative costs to review and negotiate the Contract Documents.

4. Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

5. Liquidated or actual, direct or consequential damages imposed by City for failure of Construction Manager to complete the Work within the Contract Time.

6. Costs not specifically authorized, including any cost that would cause the Guaranteed Maximum Price for any portion of the Work to be exceeded.

7. Blueprinting and reproduction costs.

4.2.2.4.6. Construction Manager shall credit the following discounts, rebates, and refunds to the Cost of the Work paid by City:

1. If City makes funds available to Construction

Manager, discounts earned by the Construction Manager through advance or prompt payments. Construction Manager shall provide sufficient advance notice of available discounts and the need for funds to be available to City Engineer for City to obtain the benefit of the discounts. The Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the City.

2. Reasonable market value as approved by the City Engineer at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by the Construction Manager upon completion of the Work.

3. Rebates, discounts, or commissions allowed to and collected by the Construction Manager from Suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, and sales taxes.

4. Deposits made by City and not returned to City due to the negligent or intentional acts of the Construction Manager. Should Construction Manager not promptly so reimburse City upon demand, City shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

4.2.3 **Miscellaneous Payment Terms**

In addition to the payment procedures described in Document 00700-General Conditions, the following payment terms shall apply:

4.2.3.1. In the Document 00700-General Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined in this Agreement. References to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.

4.2.3.2. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Phase Fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). If City Engineer determines that the amount remaining under the Guaranteed Maximum Price will not

be sufficient to pay Construction Manager for services in accordance with this Agreement, the City may withhold payments until Construction Manager, at its sole cost, performs a sufficient portion of the remaining services so that the portion of the amount remaining under the Guaranteed Maximum Price is determined by City to be sufficient to so complete the then remaining Work.

4.2.3.3. Any partial payments made by the City shall not be construed as the City's final acceptance or approval of that part of the Work to which the partial payment relates or as a release of Construction Manager of any of its obligations or liabilities with respect to the Work.

4.2.3.4. The schedule of values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the City Engineer, which shall not be unreasonably withheld. Under no circumstances shall the schedule of values for all or any portion of the Work exceed the Guaranteed Maximum Price. The Construction Phase Fee, the General Conditions Work, and the Construction Manager's Contingency shall be shown as separate line items on the schedule of values.

4.2.3.5. Each schedule of values submitted shall maintain the originally established value for each work classification line item, and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original schedule of values and of all updates to it shall be subject to the approval of City Engineer.

4.2.3.6. Payment for Construction Phase Fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price.

4.2.3.7. Construction Manager shall submit a monthly cost breakdown, including cost elements, for General Conditions Work over the duration of the construction period to City Engineer for approval. City shall pay for General Conditions Work on a monthly basis per the approved breakdown.

4.2.3.8. Payment for the Cost of the Work shall be made based on percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment, in accordance with City's Document 00700-General Conditions.

4.2.3.9. Retainage as specified in City's Document 00700-General Conditions will be applied to the entire amount requested including the Cost of the

Work and the Construction Manager's Construction Phase Fee. Retainage will not be held on City's standard "pass-through" items, such as Cash Allowances. Construction Manager shall make payments to subcontractors based on the same percentage of Work completed that is allocable to that subcontractor for each respective schedule of values classification, including applicable retainage.

## 4.3. LIMIT OF APPROPRIATION

4.3.1. The City's duty to pay money to Construction Manager for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

4.3.2. The fees specified in Section 4.2 above are Construction Manager's total compensation for its services under this Agreement. Construction Manager recognizes that, under its Charter, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates, and further recognizes that the City Council has appropriated and allocated only $____to pay for services under this Agreement. Unless the City Council makes further appropriations for this Agreement, the City's obligation to Construction Manager under this Agreement must not exceed $____.

4.3.3. If the appropriated funds are exhausted and the City would otherwise owe Construction Manager additional payments for continuing Work, Construction Manager has the right to suspend performance of the Work by seven days' advance written notice to City Engineer describing the cause and Construction Manager's planned suspension. After the City makes further appropriations, Construction Manager shall resume Work and may be entitled to equitable adjustment in accordance with Section 14.3.3 of Document 00700-General Conditions. If, after more than 180 days after receiving notice of Construction Manager's planned suspension the City has not made further appropriations, Construction Manager shall have the right to terminate its performance under Section 14.4 of the Document 00700-General Conditions.

# V. TERM AND TERMINATION

5.1. The City Engineer shall issue a Preconstruction Phase Notice to Proceed to authorize the start of Preconstruction Phase services. Construction Manager shall complete Preconstruction Phase Services in accordance with the Master Project Schedule in **Exhibit "G"**, subject to any time extensions granted under Section 8.2 of Document 00700-General Conditions. After establishment of the Guaranteed Maximum Price, the City Engineer will issue a Construction Phase Notice to Proceed to authorize the start of Construction Phase Services. Construction Manager shall complete Construction Phase Services within the Contract Time in the agreed upon Guaranteed Maximum Price Proposal in **Exhibit "C"**, subject to any time extensions granted under Section 8.2 of Document 00700-General Conditions.

5.2. Termination rights shall be as provided in Document 00700-General Conditions.

5.3. A termination under this Agreement above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, or for any act, omission, or negligence of Construction Manager.

5.4. As of the date of termination of this Agreement, Construction Manager shall furnish to City Engineer all statements, accounts, reports and other materials that Construction Manager has prepared in connection with its responsibilities under this Agreement. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of City or Design Consultant, as set forth in the terms and conditions of the agreement between City and the Design Consultant. They are not to be used by any person or entity other than City on other projects unless expressly authorized by City.

## VI. MISCELLANEOUS

6.1. Each subcontract agreement is assigned by Construction Manager to City effective only after termination by default of this Agreement by City and effective only for those subcontract agreements that City accepts by notifying the Subcontractor in writing. Construction Manager agrees to execute such additional documents as City may request to confirm such assignments. Construction Manager shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City of any such assignment, City shall not be liable for anything under such subcontract prior to the acceptance by City of the assignment or for any liability of Construction Manager to the Subcontractor. Acceptance of any such assignment shall not relieve Construction Manager or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City's acceptance of such assignment.

6.2. Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. Except as may be required by law, City shall have no liability or responsibility for the performance or nonperformance of any Subcontractor, Supplier, or consultant, even if City designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.

6.3. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.4. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the others' breach of a term, that waiver does not waive a later breach of this

Agreement. An approval by the City Engineer or Director, or by any other employee or agent of the City, of any part of Construction Manager's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Engineer is not authorized to vary from the terms of this Agreement.

6.5. City hereby expressly reserves the right from time to time to designate by written notice to Construction Manager one or more representatives to act partially or wholly for City in connection with the performance of City's obligations hereunder. Construction Manager shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

6.6. Construction Manager is an independent contractor and not an agent of City. Construction Manager shall be liable to City for acts and omissions of Construction Manager and Construction Manager's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with Construction Manager, including any design professionals and their consultants and sub-consultants of any tier.

6.7. IF CONSTRUCTION MANAGER, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSTRUCTION MANAGER HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONSTRUCTION MANAGER IN WRITING. IF CONSTRUCTION MANAGER DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONSTRUCTION MANAGER UNDER THIS AGREEMENT, AND CONSTRUCTION MANAGER WAIVES ANY RECOURSE THEREFOR. CONSTRUCTION MANAGER SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

**EXHIBIT "B"**
**PERSONNEL AND DUTIES**

| Staff | Role |
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**EXHIBIT "C"**
**GUARANTEED MAXIMUM PRICE PROPOSAL**

_____ ("Construction Manager") hereby submits to the City of Houston, Texas ("City") pursuant to the provisions of the Construction Management At-Risk Agreement by and between City and Construction Manager dated _____ , 20_____, a Guaranteed Maximum Price for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement), as follows:

1. The Guaranteed Maximum Price for the Project is $_____. This Guaranteed Maximum Price includes all Claims, Work, and Change Orders in existence before the date of signing this Guaranteed Maximum Price Proposal.

2. The portion of the Guaranteed Maximum Price that is allocated to Construction Manager's Contingency, if any, is $_____.

3. The drawings and specifications upon which the Guaranteed Maximum Price is based are set forth in Exhibit 1 attached hereto.

4. The following are the Allowances: _____.

5. Alternates included in the Guaranteed Maximum Price are as follows: _____.

6. The clarifications and assumptions made by Construction Manager, as well as monetary amounts attributable to them, are as follows: _____.

7. The Construction Manager's Cost of the Work is (except General Conditions Work costs, which are to be set forth below) is $_____.

8. Unit Prices, if any, are as follows: _____.

9. The Construction Manager shall provide complete performance of the Work for the Guaranteed Maximum Price. In the event of a conflict among the Contract Documents, the Construction Manager shall fulfill the greater of the requirements set forth in the Agreement, the Document 00700-General Conditions, the Specifications, the Drawings, the Project criteria, and needs of the City.

10. Except as set forth above, all other provisions in the Agreement remain unchanged, including the required time for performance, except as provided below:

a. The Schedule of Values for the Project shall be as follows: _____.

b. Construction Manager shall achieve Substantial Completion of the Project by _____ in accordance with the attached Schedule.

The Construction Manager waives all rights to an extension of time or delay damages for any events or circumstances prior to the date of signing this Guaranteed Maximum Price Proposal.

As part of the Guaranteed Maximum Price, the General Conditions Work costs for the Project are $_____.

**CITY ENGINEER:**

_____

By_____
Its_____

Date of Signing: _____

**CONSTRUCTION MANAGER:**

_____

By_____
Its_____

Date of Signing: _____

**EXHIBIT "D"**
**FORM OF BONDS**

**EXHIBIT "E"**
**ADDITIONAL SERVICES REQUISITION**

Date _____, 20__
Requisition Number _____

Contractor: _____
_____
_____

Project Name: _____
Project Number _____

Gentlemen:

Please refer to the Agreement dated _____, 20__ between the City of Houston ("City") and the undersigned ("Construction Manager") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Construction Manager is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter.

1. City has requested the performance of the services described below which Construction Manager deems to be Additional Preconstruction Services.

(Insert Description of Services)

2. Construction Manager agrees to perform the Additional Preconstruction Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars ($_____) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Preconstruction Services, but which reimbursement for expenses will not exceed _____ Dollars ($_____).

3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after Construction Manager is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Construction Manager is authorized to commence performance of the Additional Preconstruction Services described in Paragraph 1 above.

Sincerely yours,

Construction Manager
By:_____
Name:_____
Title:_____

Accepted this _____ day of _____, 20 __. Construction Manager is authorized to commence performance of the Additional Preconstruction Services on _____, 20 _

CITY
By:_____
Name:_____
Title:_____

**PART I: PRECONSTRUCTION PHASE SERVICES**

| | |
|---|---|
| ORIGINAL CONTRACT AMOUNT | ($_____) |
| PREVIOUS ADDITIONS | ($_____) |
| PREVIOUS DEDUCTIONS | ($_____) |
| NET BALANCE CONTRACT AMOUNT | ($_____) |
| THIS (Addition) (Deduction): | ($_____) |
| ADJUSTED CONTRACT AMOUNT | ($_____) |

xc:

**EXHIBIT "F"**
**CITY'S WAGE RATES**

**EXHIBIT "G"**
**MASTER PROJECT SCHEDULE**