

**Notice of Request for Qualifications (RFQ)**  
**RFQ No. P22/10048L**  
**Construction Services – Construction Manager at Risk (CMAR)**  
**Project: Downtown Campus Hotel Properties Development**

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Pima County Community College District (“College” or “District”) is seeking Statements of Qualifications (SOQ) to select a qualified construction manager/general contractor to provide Construction Manager at Risk Services to include design phase assistance and complete construction services for the Project: Downtown Campus Hotel Properties Development.

A CMAR Service Agreement will be awarded to a single firm.

**DUE IN:** The deadline for receipt of sealed Statements is: **March 28, 2022 at 3:00 PM (MST)**. Statement Packets must be electronically submitted by this deadline to the following location: EMAIL: [do-bids-proposals@pima.edu](mailto:do-bids-proposals@pima.edu) **\*\*ELECTRONIC SUBMITTALS REQUIRED\*\***

Any packet received after the DUE IN and OPENS date and time listed above will be returned and not considered.

**PRE-SUBMITTAL CONFERENCE** is OPTIONAL but highly recommended and will be held virtually online. The purpose of this conference is to discuss requirements and review solicitation documents.

**Date:** March 11, 2022 at 10:00 A.M. (Tucson Time) at the following link:

**Pre-Bid Meeting Link:** <https://meet.google.com/qxq-pxje-iqd?authuser=0>

**Call In Phone #:** (US) +1 443-671-8612 **Conference ID:** 841 607 760#

**QUESTIONS** pertaining to this Request for Qualification (RFQ) must be communicated in writing and be received via email by **March 17, 2022 at 3:00 PM (MST)**. Questions must be sent to the email address below and should include the specified Procurement Analyst’s name and SOQ number. Question(s) should include a reference to the appropriate page and section number of the RFQ. Questions and answers will be posted on the Pima Community College webpage listed below by **March 22, 2022 at 5:00 PM (MST)**:

**Jennifer Moore, Senior Procurement Analyst, [do-bids-proposals@pima.edu](mailto:do-bids-proposals@pima.edu)**

Copies of the Request for Qualification (RFQ), possible future addenda, questions and answers, and any related documents are available on the Pima Community College Website: <http://www.pima.edu/administrative-services/purchasing/current-requests-for-proposals-bids-quotes.html>. It is the responsibility of all respondents to check the Website periodically for addenda and/or updates to the solicitation and to obtain this information in a timely manner. Failure to include acknowledgement of all addenda may be cause for rejection of the SOQ.

**Accommodations for People with Disabilities.** If the vendor or any of the vendor's employees participating in this RFP need, or have questions about the College's accommodations for people with disabilities, please make arrangements with the specified College buyer, via email provided. Such requests should be made as early as possible to allow time to arrange the accommodation(s).

Terry Robinson, CPPO, CPPB, MBA  
Director of Procurement and Payment Services  
Pima County Community College District  
District Finance Office-Purchasing  
4905 East Broadway, Room D-232  
Tucson, Arizona 85709-1420

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## Section 1: Introduction

Pima County Community College District (“College”) is seeking Statements of Qualifications from firms for Architectural and Engineering Design Services in accordance with the Scope of Work described herein.

**Entity Submitting RFQ.** The terms “vendor,” “offeror,” “firm,” “consultant,” “company,” or “contractor” used in this RFQ or any subsequent documents or communications related to this RFQ are interchangeable and mean the entity submitting a statement of qualifications and seeking to enter into a contract for the goods and/or services requested in this RFQ.

## Section 2: Scope of the Project

General outline of Project provides an understanding of the professional services required and the basic design criteria.

### **1. Location:**

Downtown Hotel Properties located in Tucson, AZ in the Miracle Mile Historic District:  
Tucson Inn 127 W. Drachman St.  
Copper Cactus Inn, 225 W. Drachman St.  
Frontier Motel, 227 W. Drachman St.

### **2. Description:**

Adaptive repurposing and development of the Downtown Campus Hotel properties (Tucson Inn, Copper Cactus, and Frontier Motel). Additional information provided in attached Executive Project Summary.

The College is planning for the adaptive reuse of these three historic hotel properties. These properties are listed as contributing structures to the Miracle Mile Historic District. In 2017 the Miracle Mile District was formally listed in the National Register of Historic Places. The District stretches from N. Fairview, east along Miracle Mile to Oracle, south to Drachman St., east to Stone to the Stone underpass.

Additional services to support the project include feasibility study to assess the practicality of (1) Tucson Inn demolition of back portion or restore for adaptive reuse/hotel use; (2) Frontier Inn additional development options – parking lot or new building construction.

### **3. Budget:**

The Project Budget allocation range is \$8.3 to \$14.5 million. This range represents the total amount available for project development including: new construction, site work, utilities, furniture and equipment and fees. The Construction Budget range the architect shall use for planning the facilities is \$6.5 to \$10.5 million. This final budget shall not be changed, except by a written notice from the Assistant Vice Chancellor of Facilities to the architect.

### **4. Delivery Method**

The College is planning to use the Construction Manager at Risk (CM@R) method of delivery, with a GMP (Guaranteed Maximum Price) for the construction work. The A&E Design Consultant will be selected prior to the selection of the Construction Manager in anticipation of collaboration during the design phase.

### **5. Services: Construction Manager at Risk:**

The General Contractor/CM@R will provide pre-construction management services during the design phase of the project and may serve as the General Contractor for the construction of the project. At some point prior to construction, the CM@Risk will assume the risk of delivering the project through a Guaranteed Maximum Price (GMP) contract.

GMP means the sum of the maximum cost of the Work; the CM@Risk’s construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved. The approved GMP will be made part of the Construction Services Agreement by executing an amendment or additional amendments for phased construction. The CM@Risk will be responsible for construction

means and methods, and may be required to solicit bids from pre-qualified subcontractors to perform the work. The CM@Risk may also decide for the firm to perform specific work packages.

- A. Pre-construction Phase Services by the CM@Risk may include the following:
  - Team building/partnering
  - Analyze construction market and promote project
  - Management plans
  - Value analysis/engineering
  - Constructability reviews including identification of plan/specification conflicts, errors and omissions
  - Cost Model/Budget
  - Phasing Analysis/Sequencing/Construction Schedules
  - Estimating/Price/GMP • Building code/permitting analyses
    - Utility coordination with providers and existing infrastructure
  - Identification of specialized materials and ordering of long lead-time materials
  - Integration of means, methods and materials in relation to general, sustainable development
- B. Construction Phase Services by the CM@Risk may include the following:
  - Team management/coordination
  - Underground utility location
  - Critical Path Scheduling
  - Provide Construction Management Software
  - Submittal processes/coordination/management
  - Cost controls/change order management
  - Subcontract QC
  - Field management

6. **Client:** Pima County Community College District Facilities Operations & Construction will be the Architect’s client and will coordinate the professional services required of the Construction Manager and Architect.

7. **Schedule Summary**

<i>Board of Governors – Architects Approval</i>	<i>April 2022</i>
<i>Board of Governors – CM@R Contractor Approval</i>	<i>May 2022</i>
<i>Design Development Complete</i>	<i>September 2022</i>
<i>Construction Documents Complete</i>	<i>December 2022</i>
<i>Bidding – CM@R</i>	<i>February 2022</i>
<i>Construction Completion</i>	<i>November 2023</i>
<i>Project Completion</i>	<i>December 2023</i>
<i>Occupancy</i>	<i>January 2024</i>

### Section 3: Solicitation Terms and Conditions

1. **Statement of Qualifications Opening.** SOQs are opened publicly by the office of Procurement and Payment Services. The College is not responsible for the pre-opening of, late opening of, or the failure to open, an offer not properly addressed or identified. No other information will be released until time of award. Proposal (SOQ) results will not be given in response to telephone inquiries.
2. **Effective period of proposals/SOQ.** In order to allow for an adequate time for evaluation, approval, and award of a contract, the College requires a proposal in response to this RFQ to be valid and irrevocable for ninety (90) days after the Opening Due Date and Time. Any firm who does not agree to this condition must specifically communicate such disagreement in its response to the College, along with any proposed

alternatives as an exception. The College may accept or reject such proposed alternatives without further notification or explanation.

3. **Withdrawal.** Statements of Qualifications may be withdrawn until the date and time of the Opening. SOQs may not be withdrawn for ninety (90) days after the Opening.
4. **Deviation/Exceptions/Alternate Requests.** Offerors that propose modifications or request exceptions to the contract provisions must clearly identify the proposed deviations and any proposed substitute language on the appropriate Required Submittal Form. These should be identified and submitted with the RFQ response. Exceptions will be addressed during contract negotiations. Deviations must reference the specific paragraph number(s) and adequately defining the alternate or exception submitted. If no exceptions are taken, the College will expect and require complete compliance with the specifications and all conditions of the contract.
5. **Inquiries/Questions.** Only questions answered by a formal written amendment to the solicitation will be binding. Firms may only submit written questions via e-mail as noted on the Cover page. Oral interpretations or clarifications will be without legal effect.
6. **Addenda.** Any change to the solicitation SOQ will be in the form of a numbered addendum issued by the Procurement and Payment Services Department. Any addendum will be posted on the College's webpage listed on the Cover page of this SOQ. Other than official numbered addenda issued by the office of Procurement and Payment Services, oral or written advice or instructions made by any employees, officers, contracted consultants or agents of the College in regard to this solicitation are not binding on the College. The College will not be responsible for firms adjusting their offer based on oral or written instructions.
7. **Cancellation.** The College may cancel a solicitation in whole or in part if it is determined to be in the best interest of the College.
8. **Acceptance or Rejection of Statements.** The College reserves the right to waive any formalities and to reject any or all SOQs or any part(s) thereof, and/or to accept any SOQs or any part thereof and/or to cancel the request for SOQs. The College also reserves the right to reject the SOQs of any firm who has previously failed to perform adequately in furnishing materials, services or equipment to the College. The College reserves the right to negotiate any and all provisions presented in the SOQs.
9. **Waiver of Minor Imperfections.** The College reserves the right to waive minor imperfections, irregularities, technicalities, informalities, or apparent clerical mistakes in a SOQs.
10. **Public Information.** The College is obligated to abide by all public information laws. All vendor information regarding the proposal may become public information. All copies and contents of any proposal, attachment, and explanation submitted in response to this RFQ will become the property of the College, except any materials that both the vendor and College agree to classify as confidential, proprietary or trade secrets. These materials must be clearly marked by the vendor.
11. **Confidential Proprietary Information.** If the vendor includes in the proposal any information deemed confidential, proprietary, or protected, such information must be clearly marked as to any confidential/proprietary claim.

The College discourages the submission of such information considered to be protected and undertakes to provide no more than reasonable efforts to protect the confidential/proprietary nature of such information. The College, as a public entity, cannot and does not warrant that confidential/proprietary information will not be disclosed. The College will have the right to use any and all information included in the proposals submitted unless the firm expressly restricts the information. The College, as a public entity subject to Arizona public records law.

12. **Right to Use College Name Denied.** The firm is specifically denied the right of using in any form or media the name of the College for public advertising unless express permission is granted in writing by the College.
13. **Pre-Submittal Conference.** If scheduled, the date and time of a Pre-Submittal Conference is indicated on Cover Page of this document. Attendance at this conference, is optional unless mandatory, is so noted on the Cover page of this solicitation. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstandings. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the College at this conference. The College will then determine the appropriate action necessary, if any, and may issue a written amendment to the solicitation. Oral statements or instructions will not constitute an amendment to this solicitation. Written minutes and/or notes will not be available. If a firm is unable to attend a non-mandatory pre-proposal Conference, questions may be submitted in writing via e-mail as noted on the Cover page.
14. **Proposal, General Provisions.**
  - a. **Offer and Acceptance.** A response to the solicitation is an offer to contract with the College based on the provisions contained in the solicitation. An authorized signature on the cover letter accompanying the RFQ submittal and required documents will constitute an irrevocable offer to sell the goods or services specified and accept the terms of the subsequent contract, which will incorporate this solicitation.
  - b. **Cost of Preparation of SOQ.** Any and all costs associated with the preparation, presentation, demonstration, or submission of responses to this Request for Proposal will be entirely the responsibility of the contractor and does not commit Pima County Community College District to pay or reimburse any costs in any manner. These costs may include but are not limited to: time for interviewing or selecting any contractor(s) who responds, site visits, presentations, return of proposal, proposal materials, reproductions, copyright infringements, and any other costs.
  - c. **Accuracy.** It is the responsibility of all firms to examine the entire RFQ solicitation documents and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an Offer in the form of Statement of Qualifications. Negligence in preparing an Offer confers no right of withdrawal after due date and time. Firms are responsible for errors and omissions in their proposals/offers. Failure to include all requested information will have a negative impact on the evaluation of the firm's proposal/offer and may result in rejection.
15. **Waiver of Damage Claim.** Each firm, in submitting a proposal/offer, is deemed to have waived any claims for damages by reason of the selection of another proposal/offer I and/or the rejection of his/her proposal/offer.
16. **Protests** are filed with the Procurement Director, Pima County Community College District (College), within 10 calendar days of the date that the Protester knows or should have known the basis of the protest or the award date, whichever is earlier. Failure to protest within the period shall be deemed a waiver of all rights to protest.
17. Attachment A: General Terms and Conditions, Attachment B: Federal Acquisition Regulations

## Section 4 Instructions

**STATEMENT OF QUALIFICATIONS (SOQ) PREPARATION** Before submitting a SOQ, each firm shall familiarize itself with the entire RFQ, including the Scope of Work, sample Agreement for Services, College's insurance requirements, and all laws, regulations and other factors affecting the firm's performance.

The firm is responsible for fully understanding the requirements of a subsequent contract, and shall otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a SOQ will constitute a representation of compliance by the firm. There will be no subsequent financial adjustment for lack of such familiarization.

SOQs must conform to all requirements stated below. **Disregarding these requirements will result in disqualification of the SOQ.**

The College is currently **NOT** accepting “hardcopy” solicitation responses via mail or drop-off at District Office. District Office has been temporarily closed to the public. The College will only accept solicitation responses electronically via submission to the following email address and must be received at [do-bids-proposals@pima.edu](mailto:do-bids-proposals@pima.edu) by the original date and time identified on the Cover page or as changed by the issuance of an Addendum.

All SOQ materials must be sent electronically and clearly marked in the subject line with the Company Name, solicitation title, solicitation number, and calling for the attention of the assigned Procurement Analyst.

It is the responsibility of the firm to ensure that SOQ(s) is received electronically by the Due Date and Time stated on the Cover Page of this solicitation or as amended by a solicitation Addendum.

- A. The proposal packet must consist of one (1) original copy of the proposal in **PDF** format, clearly marked “Original”. The firm’s SOQ packet must be one combined PDF document with all required documentation. Do not submit your response as separate files.
- B. SOQ must be typewritten on standard paper size (8½ x 11 inches), and include page numbers.
- C. The SOQ will incorporate the **Forms** provided in this RFQ solicitation. It is permissible to copy these forms as required. The authorized person signing the SOQ will initial erasures, interlineations or other modifications on the SOQ forms.
- D. Responses are to be provided on the **Forms included in this solicitation**. Responses must be clear and thorough, but concise, and written in plain, easy to understand language. Responses must follow the numbering format used in this RFQ. Supporting documents must be clearly titled and reference the applicable form.
- E. The SOQ should be organized in sections with Tabs as outlined below.

### Tab 1: Cover Letter

All SOQ responses must include the following:

- a. Cover letter submitted under the firm’s name on the firm’s letterhead containing the signature and title of a person or an official of the firm who is authorized to commit the firm to a potential contract with the College ( include email address and phone number);
- b. The cover letter must also identify the primary contact for this SOQ with current contact information: email address, phone number and office address;
- c. The cover letter should express the firm’s interest and serve as an executive summary of the Statement of Qualifications;
- d. Cover letter should reference the College’s RFQ number found within this solicitation.

The cover letter should be addressed to the assigned Procurement Analyst; The SOQ Table of Contents should be a maximum of two (2) pages (this item is not scored).

### Tab 2: Required Submittal Forms

SOQ must include all Required Submittal Forms, which are provided in this solicitation. Required submittal forms should be completed and signed by a person or an official authorized to commit the firm to a contract with the College.

The Offer will complete each of the below six (6) **Required Submittal Forms**, and organize the forms in the following order:

1. SOQ Certification Form
2. Exceptions to College’s Consultant Service Agreement
3. Offeror’s Proprietary/Confidential Information Form

4. Mandatory Certifications Form
  - a. Relatives Substantial Interest
  - b. Boycott of Israel
  - c. Legal Worker Verification Requirement
  - d. Status With Regard To Debarment, Or Suspension By Any Governmental Entity
  - e. anti-lobbying certification and disclosure
5. Appendix Form
  - a. Litigation
  - b. Cancelled, Debarred or Suspended
  - c. Prior Use
  - d. Cooperative Agreement
  - e. Subcontract, Third Party
6. Non-Collusion Affidavit Form

### Tab 3: Statement of Qualifications (SOQ) Forms

The content of the Statement of Qualifications (response to the evaluation criteria) must describe the firm's qualifications to provide the technical registrant and professional consulting services using the SOQ Forms contained herein.

This solicitation includes five (5) forms that will comprise the SOQ to be prepared by the Offeror. The Offeror will complete the forms as per the guidance and questions contained therein. Each form included in this RFQ solicitation, along with any supporting documentation, the Offeror will submit such detailed responses together with its original SOQ packet.

1. Firm's Qualifications and Experience Form
2. Project Team's Qualifications and Experience Form
3. Past Representative Projects Form
4. Understanding of the Scope of Work Form
5. Management of the Scope of Work & Project Schedule

**STATEMENT OF QUALIFICATION (SOQ) SUBMITTAL:** SOQ must conform to all requirements stated below. *Disregarding these requirements may have a negative impact on the evaluated score or result in the Offer (SOQ) being determined non-responsive and therefore not eligible for award of contract.*

1. All SOQ materials must be clearly marked with the Request for Qualification (RFQ) title, solicitation number, and the firm's name.
2. It is the responsibility of the firm to ensure that complete SOQ submittals are received at [do-bids-proposals@pima.edu](mailto:do-bids-proposals@pima.edu) by the Due Date and Time (deadline) stated on Cover Page of this RFQ solicitation or as changed by a solicitation addendum.
3. The firm is responsible for delivery of their SOQ packet by the Due Date and Time (deadline) notwithstanding any claims of error or failure to perform by email transmission.
4. No Statement of Qualifications or SOQ modifications may be submitted orally, or via telephone, facsimile, or telegraph.
5. OFFER AND ACCEPTANCE PERIOD: In order to allow for an adequate evaluation, the College requires an offer submitted in the form of a SOQ in response to this solicitation to be valid and irrevocable for ninety (90) days after the solicitation Due Date and Time.
6. SOQ Packet must be compiled in the following order:

**Tab 1: Cover Letter**

**Tab 2: Required Submittal Forms**

**Tab 3: Statement of Qualifications (SOQ) Forms**



## Section 5 RFQ Selection Process, Evaluation Criteria, Interviews, Negotiations

### **Types of Selection Processes**

The selection process may entail a two-step process.

TWO-STEP -) selection process will entail the evaluation of SOQ packet and a Presentation and/or Interviews. Under a Two-Step process, a qualified selection committee will short-list the Offerors based on the evaluation scores of the SOQs. The short-listed Offerors will be invited to participate in. Presentations/Interviews with the intent of selecting the most qualified firm to enter into negotiations for a contract.

### **Overview of the Selection Process**

1. A qualified selection committee will evaluate and score responses based on the selection criteria and relative weight of the selection criteria stated in this Request for Qualifications.
2. The selection committee will determine the persons or firms to be on the short list and/or to be interviewed by evaluating the Statements of Qualifications that are submitted in response to this request for qualifications based only on the evaluation criteria and relative weight of the evaluation criteria stated in this Request for Qualifications.
3. Following the evaluation and ranking of SOQs, the College may, at its discretion, interview the top ranking firms.
4. The College reserves the right to conduct interviews with some or all of the Offerors at any point during the evaluation process. However, the College may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process will be taken into consideration when evaluating the stated criteria.
5. The College will award contracts to consultants, based only on the scores resulting from the evaluation of the SOQs, and interviews (as deemed necessary); followed by the successful negotiation of fair and reasonable fees schedules with the highest ranked and most qualified consultants.
6. Additional Investigations: The College reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Offeror submitting a Statement of Qualifications.

Statements of Qualifications will be evaluated and rank ordered, by an evaluation committee. It is the responsibility of the responding firm to provide CLEAR AND CONCISE information specifically addressing all of the Evaluation Criteria.

A Selection Committee (SC) will evaluate statements of qualifications and score based on the following evaluation criteria, which are listed in descending order of importance:

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
<b>A. Firm's Qualifications and Experience</b>	20
<b>B. Project Team's Qualifications and Experience</b>	20
<b>C. Past Representative Projects</b>	20
<b>D. Understanding of the Scope of Work</b>	20
<b>E. Management of the Scope of Work &amp; Project Schedule</b>	15
<b>Total Possible Points</b>	<b>100</b>
<b>F. Interview Total Possible Points 100</b>	
<b>G. Negotiations of Fee Schedule and Terms</b>	

**Interviews:** Following the evaluation, scoring and ranking of the Statements of Qualifications, the College may, at its discretion, interview the top ranking firms.

Selected Offeror(s) may be required to make virtual oral and visual presentations or demonstrations at the request of the College. The College will schedule the time and location for any presentation (which may be virtually). Costs and equipment for such presentations are the responsibility of the Offeror.

**Negotiations of Contract Terms and Compensation Fee Schedule:** The College will enter into negotiations with the highest ranked Statement of Qualifications on the final list. The negotiations will include a request for compensation fee schedules to determine fair and reasonable compensation; and consideration of any requested exceptions taken by the Offeror to the Consultant Service Agreement terms. Negotiated fee schedules will be compliant with federal standards by providing a Fee Schedule or Fee Estimate Summary, presenting both prime and subcontractor disciplines, direct labor rates, overhead, profit, billing rates; and the firm's most current Generally Accepted Accounting Principles (GAAP) Audit Statement with FAR Adjusted Overhead presented.

If the College is not able to negotiate satisfactory contract terms or a fair and reasonable Compensation Fee Schedule with the Offeror on the final list, the College will formally terminate negotiations. The College will then undertake negotiations with highest ranked and qualified Offeror on the final list until an agreement is reached or until procurement action is terminated.

## Section 6 Contract Award and Execution

### A. GENERAL

1. Upon execution of the contract, a copy of this RFQ will be attached to the contract and all conditions of this RFQ will become conditions of the contract unless specific conditions of the RFQ are deleted by other terms of the contract.
2. The Construction Manager and College will be negotiate per Arizona State Procurement Rules, pre-construction fee. The fee will be based on the services requested in this RFQ. Upon acceptance of the fee by the College, the College will issue a purchase order.
3. The College recognizes that over the term of the contract, members of the project team listed in the SOQ may change. The Construction Manager will provide information similar to the original information in the RFQ substantiating a similar level of knowledge and ability for replacement team members.
4. Once a fee per #2 above has been negotiated and accepted, members of the project team for that project may not be removed from the project team without the written consent of the College.

### B. FINANCIAL STABILITY

If requested, prior to contract negotiation and award, furnish appropriate documentation to substantiate the financial stability of the firm to undertake this project.

## Required RFQ Submittal Forms

### Certification Form

In response to RFQ No. P22/10048L Title: Downtown Campus Hotel Properties Development is submitted by: \_\_\_\_\_,

(Company Name)

a corporation organized and existing under the laws of the State of \_\_\_\_\_;

a partnership, registered in the State of \_\_\_\_\_, and consisting of \_\_\_\_\_;

an individual trading as \_\_\_\_\_,

located at \_\_\_\_\_

Federal Tax Id No. \_\_\_\_\_

The undersigned, as a duly authorized officer, hereby agrees to be bound by the content of this Proposal and agrees to comply with the terms, conditions and provisions of the referenced RFQ and any addenda thereto in the event of an award. Exceptions are to be noted as stated in the RFQ. The proposal will remain in effect for a period of ninety (90) calendar days as of the Due Date for SOQs to the RFQ.

The undersigned understands that the College reserves the right to reject any or all Proposals or to waive any formality or technicality, as determined by the College in its sole discretion, in any Proposal in the interest of the College.

The undersigned hereby acknowledges receipt of the following Addenda, if any:

Addendum No.	Date:	Addendum No.	Date:

The undersigned hereby certifies that this Statement of Qualifications is genuine and not a sham or collusive, nor made in the interest or behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other Offeror to put in a sham proposal, or any other person or entity to refrain from submitting proposals, and that the Offeror has not in any manner sought by collusion to secure for itself an advantage over any other Offeror.

The undersigned further certifies that your firm (check the appropriate areas):

- women-owned business;  minority-owned business;  labor surplus area firm  
 does **or**  does not meet the Federal (S.B.A.) Small Business definition (FAR 19.001) and size standards (FAR 19.102). If it does, please "CHECK" one of the following:  
 small business;  veteran-owned small business;  service-disabled veteran-owned small business;  
 HUB Zone small business;  small disadvantaged business; or  women-owned small business.

The undersigned further certifies that as a duly authorized officer, he or she is authorized to negotiate in good faith on behalf of this firm for purposes of this RFQ.

**Authorized Signature/Date** \_\_\_\_\_

**Print Name**

**Title**

**Email Address** \_\_\_\_\_

**Phone #** \_\_\_\_\_

## Exceptions Requested Form

**Company Name** \_\_\_\_\_

Any exceptions to the requirements of this RFQ, including the Contract and Scope of Work, that the Offer requests the College to consider must be addressed on this form.

Each Exception or Alternate should be addressed separately with specific reference to the requirement, specification including the page number, paragraph, and sentence and section number. For each exception, the Offeror will provide all of the following information: (i) Name of the Document/Attachment; (ii) Agreement Page Number and Section Number; (iii) Exception; (iv) Justification for Exception. Blank, unjustified, or unsupported requests will be disregarded.

Any exceptions requested from the College' Sample Agreement must be provided, using this Exception Form.

If there are **NO** proposed alternates or exceptions, a statement to that effect must be provided.

\_\_\_\_\_(initial) Contractor certifies this proposal has taken **NO** exceptions and does not propose alternates.

**Exceptions/Alternates** are noted in the space below or are included as an Attachment to this section.

**Authorized Signature/Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_ **Title** \_\_\_\_\_

## Confidential and/or Proprietary Declaration Form

Company Name \_\_\_\_\_

In the event the Offeror elects to include in its SOQ any information deemed "proprietary" or "protected," it will clearly mark the information as to any proprietary/confidential claim. Indicate in the space below specific reference to the requirement, specification including the page number, paragraph, and sentence and section number that which is deemed confidential or proprietary by the Respondent.

The College discourages the submission of such information and undertakes to provide no more than reasonable efforts to protect the proprietary nature of such information. The College, as a public entity subject to Arizona public records law, cannot and does not warrant that proprietary information will not be disclosed.

The College will have the right to use any and all information included in the SOQs submitted unless the information is expressly restricted by the Offeror.

If the SOQ contains **NO** confidential/proprietary information, a statement to that effect must be provided.

\_\_\_\_\_(initial) Contractor certifies this SOQ contains **NO** confidential and/or proprietary information.

**Confidential/Proprietary Information.** Contractor as indicated in the space below certifies the following pages, sections, paragraphs contain confidential and/or proprietary information. **If additional space is required, provide information on a separate page and submit as an attachment to this form.**

Authorized Signature/Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

## Mandatory Certifications Form

**Company Name** \_\_\_\_\_

### A. Conflict of Interest Certification

\_\_\_\_\_ **(initial)** The Offeror certifies that to the best of his/her knowledge there is **NO** officer or employee of College who has, or whose relative has, a substantial interest in any contract resulting from this Statement of Qualifications.

\_\_\_\_\_ **(initial)** The names of all public officers or employees of College who have, or whose relative has, a substantial interest in any contract resulting from this Statement of Qualifications, and the nature of the substantial interest, are included below or as an attachment to this certification form.

First, Last Names	Title

### B. Boycott of Israel Certification

As required by the Arizona Revised Statutes § 35-393.01, College is prohibited from awarding a contract to any Contractor for delivery of services, supplies, information technology or construction unless the contract includes a written certification that the Contractor is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

A breach of the forgoing warranty certification will be deemed a material breach of the resulting contract. In addition to the legal rights and remedies available to College under the law. In the event of such breach, College will have the right to terminate the resulting agreement with the Offeror.

\_\_\_\_\_ **(initial)** Accordingly, the Offeror by initialing certifies Offeror is not currently engaged in boycott of Israel, and will not for the duration of the resulting contract with College under this RFP engage in a boycott of Israel.

### C. Worker Eligibility Verification

As required by the Arizona Revised Statutes § 41-4401, College is prohibited from awarding a contract to any Contractor who fails, or whose subcontracts/subrecipients fail, to comply with A.R.S § 23-214 governing the employee verification requirements through the federal e-Verify program.

\_\_\_\_\_ **(initial)** Accordingly, by initialing certifies that Offeror (1) complies fully with all applicable federal immigration laws and regulations that relate to its employees; that it will, as applicable or required under A.R.S § 23-214, verify, through the e-Verify program as jointly administered by the U.S. Department of Homeland Security and Social Security Administration or any of its successor programs, the employment eligibility of each employee hired to work on the resulting agreement with College; and (2) that it will, as applicable or required under A.R.S § 23-214, require its subcontractor and subrecipients to provide the same warranties to the Offeror.

A breach of the forgoing warranty certification will be deemed a material breach of the resulting contract. In addition to the legal rights and remedies available to College under the law. In the event of such breach, College will have the right to terminate the resulting agreement with the Offeror.

Upon request, the College will have the right to inspect the papers of each Contractor, subcontractor or any employee of either who performs work hereunder for the purposes of ensuring that the Contractor or subcontractor is in compliance with the warranty certification set forth herein.

### Authorized Signature/Date

<b>Print Name</b>	<b>Title</b>
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## Appendix Form

Company Name \_\_\_\_\_

In each space provided below, provide a detailed answer or indicate Not Applicable (N/A). If additional space is needed, answers may be provided on a separate document and be attached to this form.

- a. **Litigation:** Details of any litigation your company or any of its subsidiaries or affiliates has had in the past five (5) years related to the performance of services provided by your firm.

- b. **Canceled, debarred, suspended:** If a firm has had any previous contracts canceled or is currently debarred, suspended, or proposed for debarment by any government entity, the current status must be documented in this section.

- c. **Prior Use:** If any customer has stopped using the product(s) or service(s) you are proposing, provide details including customer name, date when product was installed, date when product was discontinued (usage) and reason for discontinuation, including contact details of the customer.

- d. **Cooperative:** If the firm intends to use any cooperative, for the purposes of this SOQ, the firm must submit a copy of the Cooperative Contract.

- e. **Subcontract, third party agreement,** or the like to perform under their SOQ:, the firm must supply the name, address, qualifications and criteria used by the firm for selection of any third party, and the intended services to be performed. **The services provided under the Scope of Work proposed, in part or in whole, shall not be subcontracted without prior written permission of the College.**

Authorized Signature/Date \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

**Non-Collusion Affidavit**  
**(must be completed by contractor)**

STATE OF: \_\_\_\_\_ )  
 )  
COUNTY OF: \_\_\_\_\_ )ss  
 )

\_\_\_\_\_  
(Name of Individual)

being first duly sworn upon oath deposes and says:

That he/she is

\_\_\_\_\_  
(Title)

of \_\_\_\_\_  
(Name of Company, Firm, or Corporation)

that, pursuant to Subsection 112(c) of Title 23, United States Code and Title 44, Chapter 10, Article 1, and Title 34, Chapter 2, Article 4 of the Arizona Revised Statutes, he certifies that neither he nor anyone associated with the company, firm, or corporation mentioned above has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of full competitive bidding in connection with the associated project:

Subscribed and sworn to before me \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 2022. (Signature)

If by a Corporation (Seal)

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## Statement of Qualifications (SOQ) Forms

### Instructions:

Each firm will be limited in the total number of pages submitted as part of their Statement of Qualifications (SOQ) packet.

Due to the offeror's time and cost in preparing this document, along with the challenge of thoroughly reading and evaluating these documents, the College will limit the total number of content pages to (single sided using minimum 11 point font). **A "page" is limited to one side of an 8-1/2 by 11 inch sheet of paper:**

Documents that will not be considered in this total number of content pages will be financial statements, letters from financial/insurance institutions, cover page, index, offer acceptance form, insurance certificates, non-collusion affidavit, and tab pages.

The tab pages will be used to reference each section and can be used for pictures or art work. Appendices may be attached as back up information; 254 & 255 forms are **not** required.

The College has attempted to streamline the amount of required information as noted on each Form. Firms are strongly encouraged to present their offers in strict accordance with the noted outline.

**The SOQ must adhere to the order and response length indicated per each Criteria Response.**

Note: When a response to a question is provided as an attachment, clearly identify each question number (1,2,3) or letter (A,B,C) to your response and ensure the form's title is referenced – for example:

***Firm's Qualifications & Experience Form – response to A: Firm's Size and Work Load***

## (1) Firm's Qualifications and Experience Form

This evaluation criteria is twenty (20) points maximum.

**Company Name** \_\_\_\_\_

- A.** How many years has this business been in existence under its present ownership? \_\_\_\_\_
- B.** What was the total amount of Construction Manager at Risk (CMAR) Project-related/Prime General Contractor work your firm has completed in the following calendar years?
- |                                 |                                |
|---------------------------------|--------------------------------|
| 2021: Number of contracts _____ | Total contract values\$: _____ |
| 2020: Number of contracts _____ | Total contract values\$: _____ |
| 2019: Number of contracts _____ | Total contract values\$: _____ |
| 2018: Number of contracts _____ | Total contract values\$: _____ |
| 2017: Number of contracts _____ | Total contract values\$: _____ |
- C.** By dollar value, approximately what percentage of work is:  
Educational \_\_\_\_ %, Commercial \_\_\_\_ % Government \_\_\_\_ %
- D.** List the licenses held by the firm issued by the Arizona Registrar of Contractors:
- |                      |                              |                        |
|----------------------|------------------------------|------------------------|
| License Number _____ | License Classification _____ | Expiration date: _____ |
| License Number _____ | License Classification _____ | Expiration date: _____ |
| License Number _____ | License Classification _____ | Expiration date: _____ |
| License Number _____ | License Classification _____ | Expiration date: _____ |
| License Number _____ | License Classification _____ | Expiration date: _____ |
- E. Historical Preservation:** Describe the firm's qualifications and experience constructing and renovating historical preservation sites. (Response should not exceed one (1) page. Attach response to this form, title response: E. Historical Preservation)
- F. Estimating Complex Projects:** Describe the firm's qualification and experience with estimating large-scale, complex projects. (Response should not exceed one (1) page. Attach response to this form, title response F. Estimating, Complex Projects.)
- G. Unique Attributes:** Describe why the firm is especially qualified to perform the requested services. Include any unique qualifications, experience, equipment and/or resources of the firm that would be highly beneficial to this project. (Response should not exceed two (2) pages. Attach response to this form, title response H. Unique Attributes).

## (2) Project Team’s Qualifications and Experience Form

This evaluation criteria is twenty (20) points maximum. This form should not exceed three (3) pages.

**Company Name** \_\_\_\_\_

**Instructions:** This form should be completed for each key personnel involved in the performance of this contract. Answer all questions in the space provided. .

**A.** Provide an organizational chart including key members assigned to this Project Team. Attach the organizational chart to this form and title response A: Organizational Chart.

**B.** Provide a listing of the proposed Project Team that will be directly involved in this contract.

Employee Name	Employee Working Title	Licenses/Certifications	Project Title/Role

**C. Team Assignments:** In the order listed above, describe the proposed Project Teams assignments and lines of authority and communication for this Project. (Attach response to this form. Response should not exceed three (3) pages.) Title response C. Team Assignments

**D. Resumes:** Attach to this form, a resume for each Project Team Member. A separate resume {maximum two (2) pages) per team member} may be included and attached as additional pages to this form. The resume is to be used to supply relevant information pertaining to the performance of this contract and is to be supplemental to the information above and is not to be used to replace this form.

### (3) Past Representative Projects Form

This evaluation criteria is twenty (20) points maximum. This form should not exceed five (5) pages.

**Company Name** \_\_\_\_\_

**Instructions:** Establish the experience and record of the project team. Provide at least four Owner/User references on projects listed in Form 1 and/or significant projects listed in Form 2. **Only** provide references for projects listed in Forms 1 and/or 2. References will be checked for short-listed firms. Provide **all** of the following information for **each** reference:

Project Name/Description	
Delivery Method (JOC, CMAR, DBB)	
Agency/Owner	
Agency/Owner Contact Information: Name, Phone, Email	
Start Date - Completion Date	
Original Contract Cost:	\$
Final Construction Cost:	\$
Design/Engineering Firm(s)	
Construction Manager Name, Contact Information	
CM Project Manager	
Names of Project Team Members identified in Form 2.	

#### (4) Understanding of the Scope of Work Form

This evaluation criteria is twenty (20) points maximum. This form should not exceed five (5) pages.

**Company Name** \_\_\_\_\_

**A.** What benefits will the team bring to the project during the Pre-Construction Phase? Describe the benefits for an adaptive reuse/historic preservation project.

**B.** What benefits will the team bring to the project during the Construction Phase? Describe the benefits for an adaptive reuse/historic preservation project.

**C.** Identify the person/group that will be responsible for cost estimating, creating and maintaining the Cost Estimate/Model throughout the Project? What methods and resources are used to develop the Cost Estimate/Model and how do you propose to reconcile the costs when there are discrepancies with the design professional's cost estimate?

## (5) Management of the Scope of Work and Project Schedule Form

This evaluation criteria is twenty (20) points maximum. Using this form, provide responses in the space provided. This form should not exceed five (5) pages.

**Company Name** \_\_\_\_\_

- A. Process:** Describe on-going processes, such as TQM, used by the firm to improve its level of service. Describe your Quality Control and Quality Management. Summarize your approach to quality control and quality assurance during construction administration.

Response to A:

- B. Schedule:** Provide your schedule control and compliance process. Summarize your firm's schedule control process to be used in order to meet the identified schedule during design and during construction administration. Provide information on your data management, including RFI, ASI and submittal reviews.

Response to B:

- C. Budget:** Budget method and cost control. Define how change orders and other potential additional cost during the construction phase will be avoided and controlled.

Response to C:

- D. Documents:** Describe the methods used by the firm to check the quality and completeness of the firm's construction documents, such as coordination checklists and coordination review meetings.

Response to D:

End of Form 5

## RFQ Completion Checklist

This checklist is a summary of some of the required components of the RFQ. It is provided as a convenience to vendors, but is not intended to be all-inclusive or to imply acceptance or evidence of compliance by its use. It is the responsibility of the vendor to submit complete and compliant Statements of Qualifications.

**Cover Letter**

**Required Submittal Forms**

- Certification Form
- Exceptions Requested Form
- Confidential and/or Proprietary Declaration Form
- Mandatory Certifications Form
  - a) Conflict of Interest
  - b) Boycott of Israel
  - c) Worker Eligibility Verification
- Appendix Form
  - a) Litigation
  - b) Debarment and Suspension
  - c) Canceled/Terminated Contracts
  - d) Product/Service Discontinued Use
  - e) Cooperative, Subcontract, Third Party Agreement
- Non- Collusion Affidavit

**Statement of Qualifications (SOQ) Forms**

- A. Firm's Qualification and Experience form
- B. Project Team's Qualifications and Experience Form
- C. Past Representative Projects Form
- D. Understanding of the Scope of Work Form
- E. Management of the Scope of Work & Project Schedule Form

## ATTACHEMENT A to SOLICITATION

### GENERAL TERMS AND CONDITIONS

1. **Contractor's Performance of Services.** Contractor shall provide all tools, equipment, and supplies Contractor determines to be necessary to perform the Services.
2. **Supervision.** Contractor is using its own knowledge, skill, and technical know-how in the performance of the Services and is not being supervised by College.
3. **Government Fees; Licenses.** Contractor shall be solely responsible for complying with all laws and regulations regarding taxes, permits, and fees as they may apply to any matter under this Agreement. Contractor shall, at its own cost, obtain and maintain in full force and effect during the entire Term all business registrations or licenses required to perform the Services. Upon request by College, Contractor shall demonstrate that it is duly licensed by whatever regulatory body may so require during the performance of the Agreement.
4. **Work to Be Performed by Others.** College reserves the right to perform any and all services in-house or to utilize the services of other firms on unrelated projects.
5. **Warranties.**
  - 5.1. Contractor warrants that the Services will be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform.
  - 5.2. Contractor further warrants that (i) it owns or has sufficient rights in all Deliverables, and no Deliverables will infringe on or violate any intellectual property rights of any third parties; (ii) no code or software developed or delivered by Contractor under this Agreement will contain any viruses, worms, or other disabling devices or code; and (iii) in addition to any implied warranties, all Deliverables will conform to the specifications and descriptions created therefor.
  - 5.3. To the extent applicable to the subject matter of this Agreement, Contractor warrants that the Services, Deliverables, all electronic and information technology to be provided under this Agreement comply with the accessibility requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §12101 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794d), and maintain Web Content Accessibility Standards 2.0 at Level AA.
6. **Scope of Relationship.** Contractor is an independent contractor. Neither Contractor nor any of Contractor's employees, agents, or subcontractors, or their employees or subcontractors (collectively, with Contractor, "**Contractor Parties**"), shall be deemed employees, agents, partners, or joint venturers of College, and nothing in this Agreement will be construed to authorize either party to act as agent for the other.
7. **Intellectual Property.**
  - 7.1. **College's Intellectual Property** All intellectual property that Contractor may make, conceive, discover, develop, or create, either solely or jointly with any other person or persons including College, pursuant to or in connection with the Services, including all intermediate and partial versions ("**Contract IP**"), will be owned by College, and where applicable, all copyrightable Contract IP will be considered "Work Made for Hire" under the U.S. Copyright Act, 17 U.S.C. §101 et seq. To the extent that any Contract IP is not, by operation of law, agreement or otherwise considered work made for hire for College (or if ownership of all rights therein do not otherwise vest exclusively in College), Contractor hereby irrevocably assigns, without further consideration, to College, all rights, title, and interest to all Contract IP. For purposes of this Agreement, "**Intellectual Property**" or "**IP**" means all forms of legally protectable intellectual property, including copyrights, trademarks, inventions, patent applications, patents and mask works, drawings and/or blueprints.
  - 7.2. **Contractor's Intellectual Property.** Contractor will retain ownership of its pre-existing Intellectual Property, including any of its pre-existing Intellectual Property that may be incorporated into the Contract IP, provided that Contractor informs College in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Contractor hereby grants to College a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense), to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to College in the performance of the Services.



- 7.3. College Data** As between the parties, College will own, or retain all of its rights in, all data and information that College provides to Contractor, as well as all data managed by Contractor on behalf of College, including all output, reports, analyses, and other materials relating to or generated by the Services, even if generated by Contractor, as well as all data obtained or extracted through College's or Contractor's use of the Services (collectively, "**College Data**"). The College Data also includes all data and information provided directly to Contractor by College students and employees, and includes personal data, metadata, and user content. The College Data will be College's Intellectual Property and Contractor shall treat it as College's confidential and proprietary information. Contractor will not use, access, disclose, or license or provide to third parties any College Data, or any materials derived therefrom, except: (i) to the extent necessary to fulfill Contractor's obligations to College under this Agreement; or (ii) as authorized in writing by College. Contractor may not use any College Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without College's prior written consent. Upon request by College, Contractor shall deliver, destroy, and/or make available to College any or all of College Data.
- 8. Confidentiality**
- 8.1.** If, during the Term, either party is provided with access to or otherwise is exposed to confidential and proprietary information relating to the other party's business practices, strategies, and technologies, as well as the other party's confidential information, including personnel records, health and safety reports, or any other documentation of a private or confidential nature, including educational records covered by Section 9, and College Data, covered by Section 7.3 of this Agreement (collectively, "**Confidential Information**"), the party shall handle and store such Confidential Information in a secure manner so as to prevent that information from being intercepted by unauthorized persons, lost, published or otherwise disseminated. Neither party shall reproduce or otherwise use any Confidential Information except in the performance of the Services, and will not disclose any Confidential Information in any form to any third party, either during or after the Term, except with the other party's prior written consent.
- 8.2.** Notwithstanding the preceding paragraph, neither party will have obligation to maintain as confidential the other party's Confidential Information that the party can show: (i) was already lawfully in the possession of or known by the party before receipt; (ii) is or becomes generally known in the industry through no violation of this Agreement or any other agreement; (iii) is lawfully received by the party from a third party without restriction on disclosure or use; (iv) is required to be disclosed by court order following notice to the other party sufficient to allow that party to contest such order; or (v) is approved in writing by the party for release or other use.
- 8.3.** Upon expiration or termination of this Agreement, the parties shall cease using all originals and all copies of Confidential Information, in all forms and media, in the party's possession or under the party's control, and shall either (i) promptly return such Confidential Information to the other party; or (ii) where required and/or authorized by law, maintain in a confidential and secure manner until the information is properly destroyed at the end of any applicable retention period.
- 9. Educational Records; FERPA.** College is subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and any educational records that may be provided to Contractor pursuant to this Agreement shall be used solely for the purposes of performing Services under the Agreement and shall not be disclosed except as provided by law.
- 10. Public Records.** The parties acknowledge that College is a public entity subject to the provisions of the Arizona Public Records Laws, A.R.S. §§ 39-121 et. seq. In the event that a public records request is received by College requesting records described as confidential, which College determines must be disclosed, College shall notify Contractor party prior to disclosure.
- 11. Privacy and Security.**
- 11.1.** If Contractor, or its agents, or any tier of Contractor's subcontractors in the performance of this Agreement hosts or maintains College's Confidential Information on its technology, Contractor warrants that the hosting or maintenance of that information meets applicable legal and industry security standards, including qualifying for "safe harbor" rules under applicable data breach laws.
- 11.2.** At all times during the Term, Contractor shall maintain appropriate administrative, technical and physical safeguards to protect the security and privacy of the Confidential Information in use, in motion, and at rest. These safeguards include, but are not limited to, implementation of adequate privacy and security policies and data breach response plans that comply with industry standards and the requirements of applicable laws and regulations, as

- long as they meet or exceed College's information security and privacy policies and procedures. Upon request, Contractor shall provide College with copies of those policies and plans.
- 11.3.** Contractor shall maintain and enforce personnel policies that appropriately check the backgrounds of its employees who will be providing services to College. Upon request, Contractor shall provide College with copies of those policies.
- 11.4.** In the event Contractor has reason to believe that an actual or suspected security incident or any other circumstance has occurred in which College may be required to perform a risk assessment and/or provide a notification under applicable law, Contractor shall immediately, and in no event later than twenty four (24) hours, notify the College's Chief Privacy Officer and the Office of General Counsel. Any such notice shall provide a description about the Confidential Information that was accessed as Contractor has available at the time of the notice. Contractor shall keep the Office of General Counsel updated promptly as additional details about the nature of the Confidential Information become available.
- 11.5.** In the event of a breach, Contractor shall mitigate, to extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Confidential Information in violation of this Agreement by Contractor or its subcontractor. Furthermore, in an event of a breach involving College's Confidential Information, Contractor shall obtain a mutually agreed upon vendor to provide at no cost to College forensic services, including, but not limited to, the collection of information in connection with a forensic and risk analysis.
- 12. Use of Names; Trademarks.** Neither party shall use the other party's trade name, trademark, service mark, logo, domain name, or any other distinctive brand feature ("**Marks**"), or the names of the party's employees in any publicity or advertising material without prior written approval by the other party. Contractor's use of any College's Marks, if and when authorized, shall comply with the College's design and drawing specifications.
- 13. Use of College Property.** While on College property, Contractor shall comply, and shall ensure that its employees, agents, and subcontractors comply, with College policies and procedures governing security and privacy, the Drug-Free Environment, Smoking, Weapons, and Anti-Harassment (including Sexual Harassment), all of which can be found [here](#). Contractor's personnel, agents, and subcontractors shall comply with all reasonable requests of College communicated to Contractor regarding personal and professional conduct, and shall otherwise conduct themselves in a businesslike manner.
- 14. Compliance Generally.** The parties shall comply with the requirements of all applicable state and federal rules, regulations, and executive orders, including the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, Immigration and Nationality Act (INA), 8 U.S.C. § 1324a, and A.R.S. § 41-4401.
- 15. Equal Opportunity; Non-Discrimination.** The parties shall comply with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), prohibiting discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.
- 16. Misuse of Public Funds.** Contractor warrants that, with respect to any Federal, State, or local government funds: (i) Contractor has not been terminated under section 432 of the Higher Education Act for a reason involving the acquisition, use, or expenditure of such funds; (ii) has not been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds; and (iii) Contractor or its officers or employees have not been convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of such funds, or administratively or judicially determined to have committed fraud or any other material violation of law involving such funds. A breach of the foregoing warranty shall be deemed a material breach of this Agreement. In addition to the legal rights and remedies available to College under the Agreement and law, in the event of such a breach, College shall have the right to terminate this Agreement.
- 17. Federally-Funded Agreement.** If this Agreement is funded through federal contract or grant, directly or indirectly, Contractor shall comply with all applicable provisions of Attachment E.
- 18. Non-Assignment.** This Agreement is personal to Contractor. Contractor shall not assign any of the Contractor's rights or delegate any of the Contractor's obligations under this Agreement to any other person or entity without the written permission of College. Any attempted assignment or delegation by Contractor shall be void and ineffective.

- 19. Referencing of Orders.** For each order issued against this Agreement, College intends in good faith to reference the RFP used in procuring the Contractor's services for pricing, terms and conditions, delivery location, and other particulars. However, in the event College fails to do so, College's right to such terms, conditions, and particulars shall not be affected, and no liability of any kind or amount shall accrue to College.
- 20. Price Adjustment for Multi-Year Contracts.** Price changes will normally only be considered at the end of one Agreement Term and the beginning of another. Price change requests shall be in writing, submitted at least sixty (60) days prior to the end of the current Term, and shall be supported by written evidence of increased costs to Contractor. College will not approve unsupported price increases that will merely increase the gross profitability of Contractor at the expense of College. Price change requests shall be a factor in the Agreement extension review process. College shall, in its sole opinion, determine whether the requested price increase or an alternate option is in the best interest of College.
- 21. Right to Offset.** College shall have the right to offset against any sums due to Contractor, any expenses or costs incurred by College, or damages assessed by College concerning the Contractor's non-conforming performance or failure to perform the Services under this Agreement, or any other debt owing College.
- 22. Stop Work Order.** College may at any time, by written order to Contractor, require Contractor to stop all or any part of the work called for by the Agreement ("**Stop Work Order**") for a period of up to ninety (90) days after the order is delivered to Contractor, and for any further period to which the parties may agree. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incidence of costs allocable to the work covered by the order during the period of work stoppage. If a Stop Work Order issued under this provision is canceled or the period of the order or any extension expires, Contractor shall resume work. College shall make an equitable adjustment in the delivery schedules, pricing, or both, and the Agreement shall be amended in writing accordingly.
- 23. Gratuities.** College may, by written notice to Contractor, cancel this Agreement if it is discovered by College that gratuities, in the form of entertainment, gifts or other were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of College with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by College pursuant to this provision, College shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.
- 24. Insolvency.** College shall have the right to terminate the Agreement at any time in the event Contractor files a petition in bankruptcy; or is adjudicated bankrupt; or if a petition in bankruptcy is filed against Contractor and not discharged within thirty (30) days; or if Contractor becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for Contractor or its business.
- 25. Cancellation for Conflict of Interest.** Pursuant to the provisions of A.R.S. § 38-511, College may, within three (3) years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of College becomes an employee or agent in any capacity of any other party or a Contractor to any other party with reference to the subject matter of the Agreement while the Agreement or any extension thereof is in effect.
- 26. Non-Appropriation.** Contractor acknowledges that College is a public institution and that the continuation of this Agreement from each fiscal year to the next during the Term shall be contingent upon the obligation of sufficient funding by the governing body for College. College shall notify Contractor party in writing as soon as reasonably possible after the unavailability of funding comes to its attention, but no later than sixty (60) days prior to the end of then fiscal year. This provision shall not be construed so as to permit College to terminate the Agreement in order to acquire similar goods or services from another party.
- 27. Force Majeure.** Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, that party is unable to prevent.

- 28. No Waiver of Right by College.** No waiver by College of any breach of the provisions of this Agreement by Contractor shall in any way be construed to be a waiver of any future breach or bar the College's right to insist on strict performance of the provisions of this Agreement.
- 29. Dispute Resolution; Arbitration.** In the event of a dispute arising under this Agreement, the parties shall exhaust all applicable administrative remedies provided for under the College Administrative Provisions. Additionally, this Agreement is subject to arbitration to the extent required by A.R.S. §§ 12-133 and 12-1518, and Rule 3.9 of Pima County Superior Court Local Rules.
- 30. Severability.** If any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded. If an unenforceable provision is modified or disregarded, then the rest of the Agreement will remain in effect as written.
- 31. Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona, without regard to its conflicts of law principles. Jurisdiction and venue for any dispute arising out of this Agreement shall exclusively rest in the Pima County, Arizona.

**ATTACHMENT B to Solicitation:  
FEDERAL ACQUISITION REGULATIONS**

**As prescribed in Federal Acquisition Regulation 22.407, the following clauses are required for contracts in excess of \$2,000 for construction within the United States: Federal Acquisition regulation 52.222-6 – Davis-Bacon Act (Jul 2005)**

(a) *Definition.*—“Site of the work”—

(1) Means--

- (i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
  - (ii) The *secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—
    - (A) Located in the United States; and
    - (B) Established specifically for the performance of the contract or project;
- (2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
- (i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
  - (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;
- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

- (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.

- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (c)
- (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:
- Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210
- The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

[Federal Acquisition regulation 52.222-7 – Withholding of Funds \(Feb 1988\)](#)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages

required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as maybe necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

[Federal Acquisition regulation 52.222-8 – Payrolls and Basic Records \(Feb 1988\)](#)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the

-- Superintendent of Documents

U.S. Government Printing Office

Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

[Federal Acquisition regulation 52.222-9 – Apprentices and Trainees \(Jul 2005\)](#)

(a) *Apprentices.*

- (1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—
    - (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
    - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
  - (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
  - (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
  - (4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
  - (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
  - (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) *Trainees.*
- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
  - (2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.
  - (3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.



**Federal Acquisition regulation 52.222-10 – Compliance with Copeland Act Requirements (Feb 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

**Federal Acquisition regulation 52.222-11 – Subcontracts (Labor Standards) (Jul 2005)**

- (a) *Definition.* “Construction, alteration or repair,” as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  - (2) Painting and decorating;
  - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and
  - (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
- (b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
- (1) Davis-Bacon Act;
  - (2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the clause is included in this contract);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination – Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Davis-Bacon and Related Act Regulations; and
  - (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)
- (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
  - (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

**Federal Acquisition regulation 52.222-12 – Contract Termination -- Debarment (Feb 1988)**

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act -- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

**Federal Acquisition regulation 52.222-13 – Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

**Federal Acquisition regulation 52.222-14 – Disputes Concerning Labor Standards (Feb 1988)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**Federal Acquisition regulation 52.222-15 – Certification of Eligibility (Feb 1988)**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**Federally-Funded Agreement.** If this Agreement is funded through federal contract or grant, directly or indirectly, Contractor shall comply with all applicable provisions.

**SUPPLEMENTAL CONDITIONS FOR SERVICES UNDER FEDERAL CONTRACT**

College has entered into an agreement with either the U.S. Government, or another entity which has itself entered into an agreement with the U.S. Government ("Federal Contract"). That Federal Contract requires that certain federal contract provisions be made a part of any subsequent contract awarded by College related to furthering the performance or deliverables required under that Federal Contract. Accordingly, the following additional Federal Acquisition Regulations ("FAR") terms apply to any Contractor providing services to College under this Agreement. Any references below to "Subcontracts" refer to this Agreement.

**1. These clauses apply regardless of amount of the Agreement:**

52.222-26, Equal Opportunity (Apr 2015)

52.222-21, Prohibition of Segregated Facilities (Apr 2015)

52.222-4, Contract Work Hours and Safety Standards -Overtime Compensation (May 2014) (for subcontracts that involve the employment of laborers and mechanics)

52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008)

52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (for subcontracts funded under the Recovery Act only)

52.227-9, Refund of Royalties (Apr 1984) (for subcontracts in which the amount of royalties reported during negotiation of the subcontract exceeds \$250).

**2. These clauses apply to Agreements in amount of \$3,500 or more:**

52.222-54 Employment Eligibility Verification (Oct 2015)

**3. These clauses apply to Agreements in amount of \$10,000 or more:**

52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

**4. These clauses apply to Agreements in amount of \$15,000 or more:**

52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014)

**5. These clauses apply to Agreements in amount of \$35,000 or more:**

52.209-.6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

**6. These clauses apply to Agreements in amount of \$150,000 or more:**

52.203-12, Limitation on Payments to Influence Certain Federal Transactions (Oct.2010)

52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a))

52.222-37, Employment Reports on Veterans (Oct 2015) (38 U.S.C. 4212)

52.222-17, Nondisplacement of Qualified Workers (May 2014)

52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement

### **SUPPLEMENTAL CONDITIONS FOR SERVICES UNDER FEDERAL GRANT**

College is either a recipient of a federal grant pursuant to an agreement with the U.S. Government, or has entered in an agreement with another entity that has itself entered into a grant agreement with the U.S. Government (“Grant”). That Grant requires that certain federal provisions be made a part of any subsequent contracts awarded by College related to furthering the performance or deliverables required under that Grant. Accordingly, the following terms provided in the Federal Regulation (2CFR, Part 200, which superseded and replaced the OMB Circulars, effective July 1, 2015) apply to any Contractor providing services to College under this Agreement.

1. Applies to all Agreements regardless of amount and services provided:
  - 1.1. **Record Keeping** – Contractor shall maintain all records related to the services performed under this Agreement for three (3) years after the completion of the performance or after the termination or expiration of the Agreement, whichever is later.
2. Applies to Agreements for amounts in excess of \$2,000 AND involving building repairs:
  - 2.1. **Copeland “Anti-Kickback” Act (40 U.S.C. 3145; 29 CFR, Part 3)** – Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. College is required to report all suspected or reported violations to the Federal awarding agency.
3. Applies to Agreements for amounts of \$25,000 or more:
  - 3.1. **Federal Debarment and Suspension (OMB at 2 C.F.R. 180)** – Contractor’s Certification (see Form attached to College RFP) is a mandatory condition to an award of this Agreement.
4. Applies to Agreements for amounts of \$100,000 or more:
  - 4.1. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – Contractor’s Certification (see Form attached to College RFP) is a mandatory condition to an award of this Agreement.
  - 4.2. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)** – Where employment of mechanics and laborers involved, Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours; For hours in excess of 40, the worker shall be compensated at a rate of not less than one and a half times the basic rate of pay.
5. Applies to Agreements for amounts of \$150,000 or more:
  - 5.1. **Clean Air Act (42 U.S.C. 7401-7671q)** and
  - 5.2. **Federal Water Pollution Control Act (33 U.S.C. 1251-1387)** – College will report the Contractor’s violations with these requirements to the Federal awarding agency.

# CMAR CONSTRUCTION CONTRACT

## GENERAL CONDITIONS

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## **SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS**

1.1. General Application. These General Conditions encompass provisions that apply, and are incorporated into all construction contracts entered into by the Pima County Community College (College), unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CMAR), Guaranteed Maximum Price (GMP) Cost-Based, and Job Order Contracts (JOC). Section 15 applies to contracts for or including Design Services.

1.2. Application to Specific Contracts.

1.2.1. For CMAR contracts, see additional provisions in Sections 15 and 17;

1.2.2. For JOC contracts, see additional provisions in Section 16;

1.2.3. For Design Professional contracts see Section 18;

1.2.4. For Cost-Based contracts and/or change orders, see additional section in Section 15.

1.3. Amendments by Special Provisions. These General Conditions may be amended as applicable to a specific project, contract, or work/project/JOC order as set forth in the contract and/or the Special Provisions. Such amendments will only apply to that specific Project, contract or order, and in the event of a specific conflict with these General Conditions, the amendment will take precedence.

## **SECTION 2 — GENERAL DEFINITIONS**

**Note: Additional definitions of terms that only have application to contracts involving Guaranteed Maximum Price (GMP) and Cost-Based Contracts, Change Orders and Job Orders are found in Section 15.1; additionally 16.1 below are definitions of terms that only have application to contracts involving Pre-Construction Services.**

2.1. Air Quality Control Plan - All fully approved air quality control plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project in compliance with Appendix E hereto.

2.2. Allowance - A specific amount for a specific item of Work, if any, that College agrees has not been sufficiently designed, detailed, or selected at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.4 of these General Conditions.

2.3. Change Order – A written instrument issued after execution of the Contract Documents signed by College and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

2.4. College (PCC or Owner) –Pima County Community College, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

2.5. College Standard Specifications – The standard College specifications, details and requirements applicable to the specific project, contract or order including, without limitation those set forth in Section 3 below.

**2.6.** Contract – The written agreement executed between College and Contractor, including all of the Contract Documents.

**2.7.** Contract Documents – The documents which together form the Contract between College and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, the Project Manual, any Notice to Proceed, the IFB, RFQ, or RFP, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, and any other documents so designated in the Contract. The Contract documents include the Construction Documents as set forth in Section 2.12 below.

**2.8.** Contract Price – The agreed-upon price (fixed price or GMP) to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

**2.9.** Contract Time(s) – The number of calendar days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract, and is based upon the Project Schedule agreed to by College in writing.

**2.10.** Contractor – The person or business entity with whom College has entered into an agreement for construction work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes and applies to CMAR and JOC under contract with College to provide pre-construction and/or construction services. Contractor does not include a Design Professional except as set forth in Section 18 below.

**2.11.** Contractor Payment Request – The form that is accepted by College and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or College, including without limitation, the documentation included in Appendix C

**2.12.** Construction Documents – The plans, specifications, and drawings prepared and issued by the Design Professional and approved by College for construction, meaning the documents are sealed by the Design Professional (as required), acceptable for permitting and incorporated into the Contract Documents by reference. Also included are any submittals or other design-related documents accepted in writing by the College to be incorporated and/or revise the Construction Documents. All amendments and modifications to the Construction Documents must be approved in writing by College prior to incorporation into the Contract.

**2.13.** Construction Manager at Risk (CMAR) – The person or business entity with whom College has entered into an agreement for construction management to provide pre-construction and/or construction services and/or work in relation to the Project at issue. As used in these General Conditions, the term Contractor includes and applies to CMAR.

**2.14.** Contingency – An agreed to amount in the Contract Price that may only be used in accordance with the terms set forth in Section 15.5 of these General Conditions.

**2.15.** Critical Path – The sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of College.

**2.16.** Critical Path Method (CPM) - A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

**2.17.** Day - Calendar day(s) unless otherwise specifically stated in the Contract Documents.

**2.18.** Design Professional – The qualified, licensed person, firm or corporation who furnished design services required under the Contract Documents to include, but not limited to: development of the

Construction Documents, review of Contractor Submittal(s), response to Request for Information, approval and certification of progress payment applications, construction administration, Substantial Completion, and Final Acceptance, if so designated.

**2.19. Field Directive** – A directive issued by College to Contractor to clarify drawings, specifications or procedures, request a proposal, transmit drawings or documents related to the Work, or otherwise perform specified work or activities either within the existing scope of the Work or as additional Work. See Section 9.2.1 below.

**2.20. Final Acceptance** – The written acceptance by College of the Project as being fully and finally complete and the Contractor has achieved full and final completion of the Project as defined in the Contract Documents and College has delivered to Contractor the formal signed written Final Acceptance of the Project. See Section 6.4 below.

**2.21. Fixed Price** – A single, all-inclusive for the full and final completion of Work, specific portion or item encompassed in the Work, including, without limitation, all general conditions, fees, profit, overhead, taxes or cost of any kind attributable to the Work, specific portion or item of the Work for which the Fixed Price is agreed to.

**2.22. Float** – The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to College.

**2.23. Invitation for Bids (IFB)** – An invitation issued by College for Contractors to submit Fixed Price proposals to perform Work, including all Addenda.

**2.24. Laws, Regulations, or Legal Requirements** - Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of a Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project, dust control, hazardous materials, historical and environmental preservation, demolition, excavation, safety, employment, discrimination, ADA, building codes, zoning, and notice. Also included are College's rules, regulations and policies related to access to College facilities, security, and the safety and protection of students, staff and visitors to the College and/or any College Facilities or services.

**2.25. Notice of Final Completion** – Formal notice issued by College that Substantial Completion of the Project has been achieved by the Contractor. See Section 6.4 below

**2.26. Notice to Proceed (NTP)** – A written notice given by College to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract. The Notice to Proceed shall not be issued until the Contract Price is approved and accepted by College, although College may issue an authorization to begin limited work prior to that time.

**2.27. Notice of Substantial Completion** – Formal notice issued by College that Substantial Completion of the Project has been achieved by the Contractor. See Section 6.3 below.

**2.28. Owner's Representative (OR)** - The Owner's Representative throughout the Project including through the warranty period designated in Article 1 of the Contract, or any successor thereto designated by College. The OR will have authority to act on behalf of the Owner, and will be the only individual who can bind College. However, the OR has no authority to bind College or the College Board in contravention of any College policies, rules or regulation, State or Federal statute or regulation, or these General Conditions. See Section 5.1.1 below.

**2.29. Project** – The Project specified in the Contract (including a Job Order).

**2.30. Project Manual** – The College's then current Project Manual for the Project.

- 2.31.** Project Manager (PM) – The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by College. The Project Manager has the authority to act on behalf of College, as delineated and limited by the Contract Documents and applicable law. College shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind College or the College Board in contravention of any College policies, rules or regulation, State or Federal statute or regulation, or these General Conditions. See Section 5.1.3 below.
- 2.32.** Project Schedule – The schedule for the completion of the Project agreed to and/or required by College and incorporated into the Contract.
- 2.33.** Project Specific Conditions – Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in applicable Exhibits referenced in the Contract, including Special Provisions as defined below.
- 2.34.** Proposal – A Proposal submitted to the College by a Contractor, CMAR, Design Professional or Design-BUILDER in response to an Invitation for Bids (IFB), a Request for Qualifications (RFQ), a Request for Proposals (RFP) or other solicitation or request by the College. Proposals may be Fixed Price, Guaranteed Maximum Price (GMP), Unit Price, or other form as required or requested by the College.
- 2.35.** Requests for Information (RFIs) – Formal written request from Contractor to College and/or Design Professional for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. College may require RFI's to be submitted on a specific form or in a specified format.
- 2.36.** Request for Proposals (RFP) – A request issued by College for Proposals to be submitted by potential Contractors to perform Work including all Addenda.
- 2.37.** Request for Qualifications (RFQ) - A request issued by College for Statements of Qualifications (SOQ) to be submitted by potential Contractors to perform Work, including all Addenda.
- 2.38.** Safety Program – All fully approved Safety Programs submitted by Contractor and otherwise applicable to the Work under Section 4 below.
- 2.39.** Schedule of Values (SOV) – The specified document prepared by Contractor, and approved and accepted by College, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The Schedule of Values shall be all-inclusive.
- 2.40.** Scope of Work – The scope of work agreed to and/or required by College and incorporated into the Contract Documents.
- 2.41.** Site – The physical location of the Project and any ancillary or adjacent areas to be utilized by Contractor and/or College in relation to the Project, including storage and/or staging areas, and construction easements.
- 2.42.** Special Provisions – Additional Provisions, including specifications and details, which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D to the Contract.
- 2.43.** Storm Water Pollution Prevention Plan – (If applicable) All fully approved storm water pollution prevention plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project under Section 4 below.
- 2.44.** Subcontractor – An individual or firm having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes



to perform a part of the pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any. See Section 4.5 below.

- 2.45.** Sub-subcontractor - A person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.
- 2.46.** Substantial Completion -The date when College determines that the Work (or separable units of Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for use by College for its intended purpose, is ready to be opened to the general public, and fully occupied or used by College. See Section 6.3 below.
- 2.47.** Traffic Control Plan – All fully approved traffic control plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project under section 4 below.
- 2.48.** Total Float – Number of Days by which the pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.
- 2.49.** Unit Price – The amount attributable to each unit of materials, labor or Work item for the actual quantity of each line item performed and/or installed as measured in the field during construction and accepted and certified by the College. Each unit price includes all labor, material, equipment, overhead, and profit attributable to that unit, scope, element, or item of Work.
- 2.50.** Work – The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

### **SECTION 3 — CONTRACT DOCUMENTS**

**3.1** Precedence. In the event of any inconsistency between any of the terms of the Contract Documents enumerated in the Contract, such inconsistencies shall be resolved by giving precedence to the terms of the lowest numbered of the numbered documents. Anything in the Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents. Thee General Conditions are considered to be part of the Contract and have the same precedence as the Contract.

**3.2** Changes to the Contract: Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, only by Change Order under Section 9 below.

**3.3** The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words and abbreviations which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

**3.4** The organization of the Contract Documents into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the Contract or having any legal or contractual significance.

**3.5** Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, may be issued by College.

**3.6** All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of College. They are not to be used on any other project, and, with the exception of one set for each party to the Contract, are to be returned to College upon request at the completion of the Work.

**3.7** It shall be the responsibility of the Contractor to ensure that each Subcontractor, Sub-subcontractor and supplier has a current set of those portions of the Construction Documents that may be required for proper execution of their respective portions of the Work.

**SECTION 4 — CONTRACTOR'S RESPONSIBILITIES  
FOR CONSTRUCTION SERVICES**

**4.1 General**

4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in applicable Exhibits referenced in the Contract to the satisfaction of College, exercising the degree of professional care, skill, diligence, quality and judgment that a professional Contractor engaged, experienced and specializing in the construction of projects and/or facilities of similar scope, function, size, quality, complexity and detail in areas throughout the United States comparable to Tucson, Arizona would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license Laws, Regulations, or Legal Requirements including all requirements with respect to being duly registered and licensed.

4.1.3 Contractor shall manage the Work as required under the College Project Management Manual (Appendix A) except as may be expressly modified in the Contract Documents.

4.1.4 Contractor will have duly authorized and prepared representatives attend and actively participate in all meetings and presentation as required by the College. Contractor shall also fully and timely communicate with College as required under the Contract Documents and by the College Project Manager concerning all issues related to the applicable Project and/or Contract, and Contractor's performance. Failure to comply with this requirement shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

**4.2 Contractor's Pre-Contract and Pre-Work Deliverables**

4.2.1 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to College the items listed in the Contract Documents including without limitation all pre-Work deliverable required under this Section 4.2, and the Contract must be executed by College. Failure to do so will be a material breach of the Contract could result in College: (i) declaring Contractor in default and collecting on Contractor's bid bond, or performance bonds as appropriate; (ii) suspending and/or debaring Contractor; and/or (iii) terminating the Contract for Cause and recovering damages from Contractor therefore.

4.2.2 Signed Contract. When Contractor delivers a signed Contract to College, Contractor shall also deliver to College such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by College) required under Section 11 of these General Conditions, and as the Contract requires.

4.2.3 Government Approvals and Permits. Except as otherwise required under the Contract Documents, Contractor shall obtain all necessary permits for the Work and pay all applicable fees. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits and the associated notices must be provided to College prior to starting the permitted activity.

4.2.4 Required Compliance Plans. Prior to commencing the Work, Contractor shall deliver to College in such forms as College may require, and obtain College's written approval thereof, all required plans to support construction activities related to the Work, including without limitation as applicable:

- (a) Safety Program under Section 4.7 below;
- (b) Traffic Control Plan under Section 4.11 below;
- (c) Air Quality Control Plan under Section 4.12 below;
- (d) Storm Water Pollution Prevention Plan under Section 4.13; and
- (e) Any other such plans required under the Contract Documents or otherwise by College.

4.2.5 Access to Adjacent Property. To the extent required to perform the Work and not provided by the College, temporary access agreements or other agreements to be enable Contractor and College (if applicable) to access property adjacent to the Site.

#### **4.3 Pre-Construction Meeting**

4.3.1 Prior to the commencement of any Work, College will schedule and hold with Contractor and others as determined necessary by College, a Pre-Construction Meeting. The minutes of the Pre-Construction meetings approved by College shall become Contract Documents.

4.3.2 Prior to the Pre-construction Meeting, Contractor shall provide the Project Manager and any other designated by the Project Manager with a Schedule of Values in a form specified by College describing and providing specific individual values for all subcontracts, Work items, contingencies allowances, general conditions, taxes, bonds and insurance, and other categories of the Work and Contract Price that will be used to submit Pay Applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from College. Once accepted by College in writing, the Schedule of Values for the Project will not be changed without the prior written approval of College.

#### **4.4 Performance of the Work (Including Field Measurements)**

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of College or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor's designated representative, approved in writing by the College, shall be present at the Site at all times that material Work under this Contract is taking place, who shall have the authority to take actions required to properly carry out the Work being performed.

4.4.3 Before ordering materials or doing Work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.4 If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to College, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk. If Contractor observes error, discrepancies or omissions in the Construction Documents, it shall promptly notify the Contractor and College and request clarification. Contractor shall be liable to College for damages resulting from error, inconsistencies or omissions in the Construction Documents or for differences between field measurements or conditions in the Construction Documents.

4.4.5 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to College.

4.4.6 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between College and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.7 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of College. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by College, Contractor will follow that plan unless otherwise approved by College in writing.

4.4.8 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to College, and receiving prior written approval of the change from College, which approval will not be unreasonably withheld.

4.4.9 Unless otherwise agreed to by College in writing, Contractor will hold frequent project meetings as specified in the Contract Documents or agreed to by College which will be attended and participated in by duly authorized and knowledgeable representative(s) of Contractor, and others as requested by College, as provided under Section 4.1.3.

#### **4.5 Subcontractors and Suppliers**

4.5.1 The Contractor shall not contract with any Subcontractor proposed to perform portions of the Work designated in the Construction Documents, or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by College. The Contractor will not be required to contract with any Subcontractor to which Contractor has a reasonable objection.

4.5.2 Notwithstanding any provisions to the contrary in the Contract Documents, if any Subcontractor listed is found by College not to be qualified to perform public work as a matter of law, qualifications, or otherwise, upon written notice from College, the Contractor shall submit a qualified Subcontractor for College's approval and shall substitute such qualified and approved Subcontractor at no additional cost to College.

4.5.3 Subject to Section 4.5.2 above, if College otherwise requires a change of any proposed Subcontractor previously accepted by it, the Contract Price may be increased or decreased by the difference in cost occasioned by such change as agreed to by the Parties in a Change Order.

4.5.4 The Contractor shall not make any substitution for any Subcontractor or Supplier who has been accepted by College unless the substitution is approved in writing by College.

4.5.5 Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise

approved in writing by College.

4.5.6 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between College, and any Subcontractor, Sub-subcontractor, or Supplier.

4.5.7 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement in a form approved by College between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

.1 preserve and protect the rights of College under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;

.2 require that such work be performed in accordance with the requirements of the Contract Documents;

.3 require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;

.4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon College;

.5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by College as trustee under Article 14; and

.6 obligate such Subcontractor specifically to consent to the provisions of this subsection.

4.5.8 College may, on Subcontractor's request, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractor.

4.5.9 The Owner shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

#### **4.6 Control of the Project Site**

4.6.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit College to occupy the Project or a portion of the Project for its intended use.

4.6.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of College and in accordance with all applicable Laws, Regulations, or Legal Requirements, including those adopted and/or enforced by Pima County, as applicable, and the Air Quality Control Plan submitted under Section 4.2.4 above.

4.6.3 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.6.4 Contractor will be responsible for strictly complying with the plans submitted under Section 4.2.4 above and all conditions for accessing property adjacent to the Site under Section 4.2.5.

4.6.5 Failure to comply with the requirements of this Section 4.6 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

#### **4.7 Project Safety/Program**

4.7.1 Contractor is solely responsible for safety of the Site and the Project for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at or near the Site, or be impacted by the Work.

4.7.2 Contractor shall create, provide to College for its written approval, and strictly enforce a detailed written Safety Plan in the form required by College. College's approval of any plan will not relieve Contractor from any obligations or liability for maintaining Project safety.

4.7.3 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.7.4 Contractor shall provide a "competent person" as required by O.S.H.A regulations. The "competent person" shall be identified at the Pre-Construction Conference with College advised in writing of any changes.

4.7.5 Contractor and Subcontractors shall comply with all Laws, Regulations, or Legal Requirements relating to safety, as well as any College specific safety requirements set forth in the Contract Documents, including College's rules, regulations and policies related to access to College facilities, security, and the safety and protection of students, staff and visitors to the College and/or any College Facilities or services..

4.7.6 As between College and Contractor, Contractor is responsible to College for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the Safety Program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.7.7 Contractor shall maintain and have sole responsibility for safety on the job site throughout the Project.

4.7.8 Failure to comply with the requirements of this Section 4.7 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

#### **4.8 Shop Drawings, Submittals, Substitutions and Reuse.**

##### **4.8.1 Shop Drawings and Other Submittals**

4.8.1.1 Contractor shall prepare and submit shop drawings and other submittals showing details of all work to insure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.8.1.2 A schedule of shop drawing and other expected submittals shall be submitted with the Project Schedule for College approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, shop drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of shop drawing and other submittals shall include all of the items for which shop drawings and/or submittals are required by the Contract Documents, including the Specifications.

4.8.1.3 Shop drawings and submittals shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- (a) All working and erection dimensions.
- (b) Arrangements and sectional views.
- (c) Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- (d) Kinds of materials and finishes.
- (e) Parts list and description thereof.

4.8.1.4 Contractor shall schedule, prepare and submit all shop drawings and other submittals in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.8.1.5 The review of shop drawings and/or submittals will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings or submittals, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by shop drawings or submittals shall be initiated until such have been reviewed and approved by College.

4.8.2 Substitutions or Reuse. Any requests or proposals for substitutions and/or reuse of materials shall be submitted and processed as provided in Section 4.8.2 above.

4.8.3 Long Lead Time Items. Contractor shall submit shop drawings and/or other submittals on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved shop drawings and/or submittals. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

## **4.9 Testing**

4.9.1 Inspection, Quality Control and Quality Assurance Testing. All equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended, all as set forth more particularly in the Specifications. Any material rejected by College shall be removed immediately and replaced in an acceptable manner to College at no additional cost to College. When QC/QA tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

4.9.2 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the OR timely notice of its readiness and of the date arranged so the OR may observe such inspection, testing or approval. College shall pay the cost of all such tests, except where otherwise provided herein, and except for retest or re-inspection of Work which fails to comply with the Contract Documents.

4.9.3 If after the commencement of the Work the OR determines that any of the Work requires special inspection, testing or approval which Subparagraph 4.9.2 does not include, Contractor will, upon written authorization from the PM, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 4.9.2. If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work,

the Contractor shall bear all costs thereof, including the cost of College's additional services made necessary by such failure, and the costs of such inspection or testing and other expenses related thereto, including without limitation College's legal fees, if any, incurred in connection with advising Owner of such failure of compliance; otherwise, the Owner shall bear such costs.

4.9.4 Required certificates of re-inspections or testing to secure compliance with this Section 4.9 shall be paid for by the Contractor.

#### **4.10 Project Record Documents**

4.10.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.

4.10.2 Contractor shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- (a) Dimensional changes to the Drawings.
- (b) Revisions to details shown on Drawings.
- (c) Locations and depths of underground utilities.
- (d) Revisions to routing of piping and conduits.
- (e) Actual equipment locations.
- (f) Changes made by Change Order or Addendum.
- (g) Details not on original Contract Drawings.

4.10.3 Contractor shall submit Project Record Drawing sets and Shop Drawings to College or its representative for review and comment.

4.10.4 Upon receipt of the reviewed Project Record Drawings from College, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to College prior to Final Acceptance and as a condition of Final Acceptance.

4.10.5 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

**4.11 Project Schedule.** Contractor is responsible for preparing, monitoring, providing to College, and complying with and constructing the Project in conformance with the Project Schedule as set forth in Section 6 below.

**4.12 Cutting and Patching of Work.** Any cutting and patching required shall be performed in accordance with instructions contained in the technical specifications of the Project.

**4.13 Cleaning Up.** Contractor at all times during the progress of the Work shall keep the buildings, Work, and site free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, Contractor shall remove all his waste materials and rubbish from and about the



Project, as well as all his tools, construction equipment, machinery and surplus materials not specified to be left at the site, and shall clean all glass surfaces and other areas or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

**4.14 Separate Contractors.** The Owner reserves the right to award other contracts in connection with other portions of, or services related to the Project

4.14.1 Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate his Work with theirs.

4.14.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

4.14.3 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly attempt to settle such other contractor's claim. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall promptly notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises therefrom, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

**4.15 Traffic Control.** Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Traffic Control Plans and then fully and strictly complying with the Traffic Control Plan at all times in relation to the Work and the Project.

4.15.1 Once fully approved, a Traffic Control Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.15.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Traffic Control Plan.

4.15.3 Compliance with a Traffic Control Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from damages or injury which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.15.4 Failure to comply with the requirements of this Section 4.15 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

**4.16 Air Quality Control.** Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Air Quality Control Plans and then fully and strictly complying with the Air Quality Plan at all times in relation to the Work and the Project.

4.16.1 Once fully approved, an Air Quality Control Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.16.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Air Quality Control Plan.

4.16.3 Compliance with an Air Quality Control Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from damages or injury which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.16.4 Failure to comply with the requirements of this Section 4.16 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

**4.17 Storm Water Pollution Prevention.** Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Storm Water Pollution Prevention Plans under Appendix E and then fully and strictly complying with the Air Quality Plan at all times in relation to the Work and the Project.

4.17.1 Once fully approved, a Storm Water Pollution Prevention Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.17.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Storm Water Pollution Prevention Plan.

4.17.3 Compliance with a Storm Water Pollution Prevention Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from damages or injury which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.17.4 Failure to comply with the requirements of this Section 4.17 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

**4.18 Drawings and Specifications.**

4.18.1 At Site. Contractor shall maintain at the site for College one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully, legibly and accurately to record on a daily basis all changes made during construction, all of which shall be available to College at all times. These Drawings shall be delivered to the OR upon completion of the Work. The Drawings indicating the changes shall be maintained throughout the duration of the Project

4.18.2 Electronic Transmission. The Record Drawings and (unless otherwise specified) all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Specifications are a part thereof. which shall be transferred to electronic media, in the form and at such times as required by College.

#### **4.19 Warranty and Correction of Defective Work**

4.19.1 Contractor warrants to College that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable Laws, Regulations, or Legal Requirements and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.19.2 Unless expressly otherwise provided in the Contract, the date of Final Acceptance of the Project by College shall be the beginning of the Warranty period, except for landscaping, which will commence as set forth in the Landscaping Warranty Requirements (Appendix I) by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Final Acceptance and that expire no earlier than one year beyond Final Acceptance, except as otherwise required in the Contract Documents.

4.19.3 Contractor's warranty obligation shall be in accordance with the College Standard Specifications or elsewhere in the Contract Documents. In the event of a conflict, the more stringent and longer warranty provisions will apply, unless specifically excluded in the Contract Documents.

4.19.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to College all of the written warranties that apply to the Work, in a form acceptable to College, as required under the College Standard Specifications and the Landscape Warranty Requirements (Appendix I).

4.19.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides College with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide College with all manufacturers' warranties prior to Final Acceptance.

4.19.6. A progress payment, or partial or entire use or occupancy of the Project by College, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.19.7 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to College all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. College and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.19.7.

### **SECTION 5 — COLLEGE'S RESPONSIBILITIES**

#### **5.1 College Project Representatives**

5.1.1 Owner Representative (OR). Unless otherwise specified in the Contract, the College Facilities Manager shall be the Owner's Representative for the Project. College may change the OR by written notice to Contractor.

5.1.2 Unless otherwise specified Only the OR has authority on behalf of College to:

- (a) Approve any changes in the Work, the Contract Documents or the Construction Documents, and only through the Change Order Process under Section 9 below;

- (b) Approve Contractor payment applications;
- (c) Approve any substitutions;
- (d) Approve or agree to any other matter requiring College's approval or agreement.

5.1.3 Project Manager (PM). College may also utilize a PM to communicate with Contractor and be responsible for providing College-supplied information and direction (subject to approval or agreement by the OR) to assist Contractor to fulfill its obligations under the Contract Documents.

5.1.4 Inspectors. College may also utilize inspectors whose role is solely to inspect the Work as required. Inspectors have no authority to direct or order, different, changed or additional work, nor to approve any changes in the Contract Documents, Construction Documents or the Work. Inspectors may advise Contractor as to corrections which may be necessary to comply with the Construction Documents and may archive acceptance of portions of the Work under the Inspector's jurisdiction, subject to approval by the OR.

5.1.5 Nothing contained in the Contract Documents shall create any contractual relationship between the Contractor and any of representative of the College.

5.1.6 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the College, and this provision shall take precedence over any other term of the Contract Documents.

**5.2 Separate Contractor Services**. College may contract separately with one or more third-parties to provide construction services, construction administration and/or inspection of the Project. The third-party's Contract, as well as other firms hired by College in relation to the Work may be furnished to Contractor to facilitate their performance in relation to the Project.

## **SECTION 6 — CONTRACT TIME**

### **6.1 Contract Time**

6.1.1 The Contract Time shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth in Section 6.4 below.

6.1.2 The NTP will be issued by the OR in the form and upon such conditions as College determined appropriate for the Project.

6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Acceptance within the Contract Time.

6.1.4 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

### **6.2 Project Schedule**

6.2.1 The Project Schedule shall be prepared, updated, revised and maintained by Contractor and timely communicated to College, throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by College.

6.2.3 An updated Project Schedule shall be submitted by Contractor at least monthly to College as part of the Payment Request, and such shorter interval as may be required by College or under the Contract Documents.

6.2.4 Contractor shall provide College with a status report as requested by College detailing the progress of the Work, including at a minimum: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 Acceptance of a submitted schedule by College should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. College's review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

#### 6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.6.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

#### 6.2.7 Float Time

6.2.7.1 The Total Float time within the overall schedule is for the exclusive use of College, but College may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.7.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.8 Weather Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any weather-related delays or impacts on the Work or the Project Schedule. The burden of documenting weather impact on the Critical Path (in the case of rain normal rainfall, the excessive rainfall) and the impact on Critical Path activities is on Contractor.

6.2.9 College and Contractor shall negotiate for the potential recovery of damages related to expenses incurred by the Contractor for a delay that meets all three of the following criteria: (i) for which College is responsible; and (ii) is unreasonable under the circumstances; and (iii) was not within the contemplation of the Parties. No damages for any other delays will be recoverable by Contractor.

### 6.3 Substantial Completion

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which College agrees to accept separately, is substantially complete, Contractor shall submit a notice that the Work is ready for a Substantial Completion walk through and/or testing, as College requires to establish Substantial Completion.

6.3.2 Upon receipt Contractor's notice, Project Manager and Contractor will conduct a walk through and/or operation testing to determine whether the Work or designated portion thereof is substantially complete. If the walk through and/or testing, as determined by the Project Manager, discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that College can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, compete or correct such item upon notification by Project Manager.

6.3.3 Notice of Substantial Completion. The Project Manager shall not issue a Notice of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by College for its intended purpose, opening to the general public, full occupancy or use by College (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable); and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by College, subject only to the Punch List Items.

#### **6.4 Final Acceptance**

6.4.1 Unless otherwise expressly agreed to in writing by College or set forth in the Contract, Final Acceptance must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Acceptance will be a material breach of the Contract.

6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, College and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued and final completion shall not occur until all items of work, including Punch List Items, have been completed to College's satisfaction as reflected in the written Final Acceptance.

6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by College until Final Acceptance is actually obtained and issued.

### **SECTION 7 — CONTRACT PRICE**

7.1 Fixed Price Contracts. The Contract Price for all Fixed Price Contracts or components of Contracts shall be the amount set forth in the Contract.

7.2 Unit Price Contracts. The Contract Price for all Unit Price Contracts or components of Contracts is the applicable Unit Price(s) multiplied by the actual quantity of each line item performed and/or installed as measured in the field during construction and accepted and certified by the College.

7.3 Guaranteed Maximum Price Contracts. Section 15.2 controls the Contracts Price for Guaranteed Maximum Price Contracts.

7.4 CMAR Contracts Sections 16.7 (Construction Services) and 16.8 (Preconstruction Services) controls the Contract Price for CMAR Contracts.

**7.5 Taxes.** The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law in connection with the performance of the Contract, whether in force as of the date of this Contract or later imposed. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-5007 and furnish evidence of such bond to Owner prior to submitting any application for payment hereunder.

## **SECTION 8 — PAYMENT**

### **8.1 Progress Payments**

8.1.1 Unless otherwise agreed to in writing by College, all Payment Applications shall be submitted on the College approved form, and at a minimum shall include and/or approval thereof conditioned upon:

- (a) An accurate and current estimate of the work performed during the preceding calendar month certified by Contractor to the Project Manager;
- (b) All required testing and reports up to date and submitted;
- (c) All Field Orders and Change Orders started that month are executed and submitted;
- (d) Progress photos submitted;
- (e) Survey documentation (if applicable) submitted;
- (f) Updated and complete logs of contingency and allowance utilization, in the form required by College, submitted;
- (g) Updated schedule submitted (acceptance by the College does not mean acceptance as schedule can only be changed pursuant to Section 6.2 above); and
- (h) All prior payment applications have been signed and submitted.

8.1.2 Unless otherwise agreed to in writing by College, the payment process functions as follows:

- (a) Prior to the end of each month, Contractor shall send a "pencil draft" Payment Application to Project Manager.
- (b) The Project Manager and Contractor shall review the "pencil draft" Payment Application and Contractor and Project Managers shall attempt to agree in writing upon any necessary adjustments.
- (c) Within seven (7) days, Contractor shall then submit a final Payment Application. When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) days (except final payments).

8.1.3 **Retention.** Payments shall be made pursuant to A.R.S. § 41-2577 and the percent (10%) retention shall be withheld pursuant to A.R.S. § 41-2576.

8.1.3.1 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 41-2576(B), subject to all of College's rights to withhold or offset payments, and/or other rights of College, under the Contract. In order to be eligible for the potential reduction in retention, Contractor must provide such documentation, and in such form, as the College may require, including without limitation

unconditional lien releases in statutory form for all payments made by the College to the date of Contractor's request, executed by Contractor and all subcontractors and suppliers for the Project.

8.1.3.2 College reserves the right under A.R.S. § 41-2576 to reinstate the ten percent (10%) retention requirement if College determines that satisfactory progress is not being made.

8.1.4 Allowances. If the Contract includes any Allowance items (as defined in Section 15.1.1 below) payments for the Allowance items shall be included in progress payments and accounted for as set forth in Section 15.4 below.

8.1.5 Value Engineering. Any changes in the Contract Price through value engineering or otherwise shall be accomplished through a written Change Order under Section 9 below.

8.1.6 Schedule of Values. All pay items relating to the Work indicated in the project plans and/or specifications are listed in the Schedule of Values. The Contractor shall include all necessary costs to complete this Project within these items in the Schedule of Values. Any work necessary to complete the Project as represented in the plans and/or specifications that is not specifically separately listed as a pay item on the Schedule of Values shall be considered incidental to the Work and included in the items listed in the Schedule of Values and no separate payment shall be made.

**8.2 Final Payment.** Subject to all of College's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after, in addition to the requirements for progress payments under Section 8.1 above :

- (a) The Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by College;
- (b) All Necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" record drawings (including the CAD or Building Information Model (BIM), if required by the Contract Documents), plans and specifications have been delivered to and accepted by College (as specified in this Section 8.3);
- (c) All full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor have been submitted to College;
- (d) All required warranty bonds have been submitted and approved by College;
- (e) The required pre-warranty inspections have been scheduled and approved by College;
- (f) All conditions and requirements imposed by College or any financing entity for the corresponding disbursement have been met; and
- (g) Contractor delivers to College a fully completed Contractor Final Payment Application requesting Final Payment in the form required by the College.

**8.3 College's Right to Withhold Certification or Payment.** College may withhold a certification of payment estimate, and also because of subsequently discovered evidence may nullify the whole or a part of a certification for payment previously issued, and/or payment, for failure to provide the documentation and/or certifications required by the College to support the payment estimate, and also to such extent as may be necessary to protect the College from loss for which the Contractor is responsible, including without limitation:



- (a) Defective Work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of claims;
- (c) Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to College, the Work, the Project, the Project Site, or a separate contractor;
- (f) Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) Material failure to carry out the Work in accordance with the Contract Documents;
- (h) Discovery that prior certification of payment and/or payment was improper or not correct for any reason; or
- (i) Any other reason permitted under applicable law.

**8.4 Liens and Bond Claims.** Contractor shall make all payments, in the time required, for all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as College may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of College, or against payments due from College to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of College, against payment due from College to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless College from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

**8.5 Financial Record Keeping and College's Audit Right**

8.5.1 Records for all Contracts between College and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. College or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.5.2 College, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at College's discretion, within three (3) years of Final Acceptance of the Work.

**SECTION 9 — CHANGES TO THE CONTRACT**

**9.1 Changes in the Work**

9.1.1 College reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 Contractor shall not be entitled to payment for additional work unless a written Change Order, in form and content prescribed by College, has been executed by College prior to starting the additional Work.

9.1.3 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the OR, subject to additional approvals as required by College Code and/or College Procurement Policy. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

## **9.2 Change Order Procedure**

9.2.1 Field Directives. The College may issue to Contractor Field Directives (see Definition in Section 2 above) related to the Work. Issuance of a Field Directive by College does not, mean that the Field Directive is or relates to a change in the Work, unless expressly stated in the Field Directive.

9.2.2 Change Order Request. If Contractor believes that a Field Directive constitutes a change in the Work, Contractor shall submit a Change Order Request to College, which will then be reviewed, negotiated, and approved or rejected by the College. If the College and Contractor cannot agree, the College may, in its sole discretion, order Contractor to perform the work required under the field directive, and Contractor shall be required to perform the work under the Field Directive and the issues in dispute shall be resolved as a Claim by Contractor. Under no circumstances shall Contractor be entitled to compensation beyond what would be recoverable under the terms of the Contract.

9.2.3 Change Order. Contractor shall then submit a fully completed Change Order in the form required by the College (see Appendix I) for approval and execution by the College. No Change Order will be effective to change the Contract unless and until a Change Order has been approved and signed by appropriate representatives of Contractor and College.

9.2.4 Contractor shall be responsible to maintain and update contingency and allowance logs in relation to the Work, including Field Directives and Changes, in the form required by the College.

**9.3 Accuracy of Change Order Pricing Information**. Signature by the contracting parties shall constitute full accord and satisfaction between College and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

**9.4 Limit On Change Order Pricing Overhead and Profit**. Unless otherwise agreed to by College in writing the overhead and profit on all Change Orders will be limited to a total of no more than 15% comprised of no more than 5% for Contractor and no more than 10% for the subcontractor.

**9.5 Emergencies**. In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work shall be determined as provided in this Section.

**9.6 Differing Site Conditions**. If Differing Site Conditions are encountered at the Project Site, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. College will promptly investigate such conditions and, if College determines that Differing Site Conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Construction Schedule (and other time requirements), or both. If it is determined by College that the conditions at the Project Site are not Differing Site Conditions and no change is justified, then College shall so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within

fourteen (14) days after College has given notice of its decision. If College and Contractor cannot agree on an adjustment in the Contract Price or Project Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided these General Conditions.

**9.7 Changes In Laws, Regulations, Or Legal Requirements Or Taxes.** In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Contract by the parties, Contractor may be entitled to a Change Order, in College's discretion, to the extent Contractor can document to the satisfaction of College that such change significantly increases Contractor's actual cost of performance of the Work.

## **SECTION 10 — SUSPENSION AND TERMINATION**

**10.1 Suspension.** College may suspend the Contract and/or Contractor's performance wholly or in part due to the failure of the Contractor; to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods as College may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work, or for any other condition or reason deemed to be in the public interest.

### **10.2 Termination by the College for Cause**

10.2.1 College may terminate the contract or a portion thereof if conditions encountered during the progress of the work make it impossible or impracticable to proceed with the work or a local or national emergency exists. When contracts, or any portion thereof, are terminated before completion of all work in the contract, adjustments in the amount bid for the pay items will be made on the actual quantity of work performed and accepted, or as mutually agreed for pay items of work partially completed or not started. No claim for loss of anticipated profits will be considered. Termination of the Contract or any portion thereof shall not relieve the Contractor of its responsibilities for the completed Work nor the surety of its obligation for and concerning any claims arising out of the Work performed.

10.2.2 College may also terminate the Contract if College determines, in its sole discretion that Contractor has:

- (a) Refused or failed to supply enough properly skilled workers or proper materials;
- (b) Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
- (c) Disregards Laws, Regulations, or Legal Requirements or orders of a public authority having jurisdiction;
- (d) Or is endangering public health and/or safety; and/or
- (e) Otherwise breached a provision of the Contract Documents or any other contract between College and Contractor.

10.2.3 When any of the above reasons exist, College may terminate the Contract, without prejudice to any other rights or remedies of College, after giving Contractor and Contractors' surety, if any, seven (7) days' prior written notice of College's intent to terminate the Contract and Contractor's failure to cure any such reasons. Upon such termination, College may: (1) take possession of the Site and of all materials thereon owned by Contractor; and/or (2) finish the Work by whatever reasonable method College may deem expedient. When College terminates the Contract for one of the reasons state above, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price, excluding any remaining Contingency existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by College, such excess shall be paid to Contractor. If such costs, expenses and damages exceed such unpaid balance, Contractor shall pay the difference to College. This obligation for payment shall survive termination of the Contract.

**10.3 Termination by College for Convenience.** College may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, College shall pay to Contractor only such compensation, including reimbursable expenses, undisputedly due under the terms of the Contract Documents for Work properly and timely performed and accepted by College on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from College to Contractor.

**10.4 A.R.S. § 38-511.** The Contract is subject to, and may be terminated by College in accordance with, the provisions of A.R.S. § 38-511.

**10.5 Non-Appropriation.** College is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If College determines that it does not have funds to meet its obligations under the Contract, College shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project.

**10.6** Under no circumstances shall College have any liability for any costs, expenses, overhead, or profits in relation to any Work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

## **SECTION 11 — INSURANCE AND BONDS**

### **11.1 Insurance Requirements**

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in the Contract.

11.1.2 College may, in the Contract Documents, designate additional insured(s) along with College (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to College under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.

11.2.3 Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.1.4 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to College separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

### **11.2 Bonds and Other Performance Security**

11.2.1 When and as set forth in the Contract, Contractor shall provide a performance bond and a payment bond in full compliance with the applicable stator and Contract requirements. If no time is specified in the Contract, the bonds shall be delivered to the College with the signed Contract.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds.

11.2.3 The bonds shall be made payable and be acceptable to College. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 41-2574.

11.2.4 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.

11.2.5 Personal or individual bonds are not acceptable.

## **SECTION 12 - INDEMNIFICATION**

**12.1** To the fullest extent permitted by law, Contractor, its successors and assigns shall indemnify and hold harmless the College and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any Laws, Regulations, or Legal Requirements. Contractors' duty to indemnify and hold harmless College and its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, only to the extent caused by negligence, recklessness or intentional wrongful conduct of, of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

**12.2** The indemnified party shall have the right to approve the legal counsel selected by Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

**12.3** The indemnification, hold harmless provisions and Contractor's Liability Insurance set forth herein shall survive any termination of the Contract.

## **SECTION 13 — DISPUTE RESOLUTION**

**13.1 Informal Dispute Resolution.** The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

### **13.2 Dispute Resolution Representative ("DRR") Process**

13.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project ("Claim" or "Claims") shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the "DRR Process").

13.2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) for claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the College setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

(b) For claims by the College, the DRR process will be initiated by the College providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

(c) The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice (“DRR Response”) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed (with read receipt) to the other parties’ Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager and the representatives of the Contractor and of the Design Professional shall act as the parties’ designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties’ designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or other document, the Parties shall execute an appropriate written Change Order or other document pursuant to the terms of the Contract Documents.

### **13.3 Litigation**

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under Section 13.2.4 above, or after the DRR is terminated pursuant to Section 13.2.5 above, whichever is earlier, shall be resolved through litigation brought in the Superior Court of Arizona in Pima County.

13.3.2 No party in any dispute resolution or court proceeding under this Agreement shall be entitled to an award of its attorneys’ fees, costs, and expenses (including expert witness fees) incurred, except as required by law.

## **SECTION 14 — MISCELLANEOUS PROVISIONS**

**14.1 Assignment.** Neither Contractor nor College shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

**14.2 Governing Law and Venue.** In the performance of the Contract, Contractor shall abide by and conform to any and all Laws, Regulations, or Legal Requirements of the United States, State of Arizona, Pima County, and the College including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Pima County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.

**14.3 Survival.** All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

**14.4 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**14.5 Project Communications**

14.5.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.5.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications are not binding upon College and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only.

**SECTION 15 - PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED CONTRACTS, CHANGE ORDERS, AND JOB ORDERS**

**Note: The provisions in this Section 15 only apply to Contracts or Change Orders involving Guaranteed Maximum Price (GMP) or cost-based pricing.**

**15.1 Additional Definitions.**

The definitions set forth in Sections 1 apply to GMP and Cost-Based Contracts, Change Orders, and Job Orders, together with the additional definitions set forth below.

15.1.1 Allowance - A specific amount for a specific item of Work, if any, that College agrees has not been sufficiently designed, detailed, or selected at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.4 of these General Conditions.

15.1.2 Baseline Cost Model – A breakdown and estimate of the scope of the Project developed by CMAR pursuant to Section 17.5.1 of these General Conditions.

15.1.3 CMAR or Construction Manager at Risk - The person or firm selected by College to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with College. In these General Conditions, the term "Contractor" includes CMAR under both pre-construction and construction services contracts.

15.1.4 CMAR Fee or Contractor's Fee – An agreed to percentage in an accepted GMP that represents the Contractor's fee for performance of the Work.

15.1.5 Contingency – An agreed to amount in the GMP that may only be used in accordance with the terms set forth in Section 15.5 of these General Conditions.

15.1.6 Contract Documents - Where compensation under the Contract is based upon a GMP accepted by College, the term "Contract Documents" also include the accepted Proposal.

15.1.7 Contract Price - Where compensation under the Contract is based upon a GMP accepted by College, the term "Contract Price" refers to the GMP.

15.1.8 Cost-Based Contract, Change Order, or Job Order – A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents, including this Section 15. These would include those generally referred to

as “Cost of the Work plus a Fee with a GMP”, “Time and Materials”, or “ Cost Plus a Fee”.

15.1.9 Cost of the Work - The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance of the Work. The Cost of the Work shall include only those costs set forth in Sections 15.2 and 15.3 of these General Conditions.

15.1.10 Deliverables – The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during the pre-construction may include but are not limited to: the Baseline Cost Model and Schedule that validate College’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

15.1.11 Detailed Project Schedule – The Detailed Project Schedule developed by the CMAR for the review and approval of the Project Manager in accordance with Section 17.3 of these General Conditions, if applicable.

15.1.12 General Conditions Costs – Those costs set forth in Section 15.3.4 of these General Conditions.

15.1.13 GMP Plans and Specifications – The plans and specifications upon which the Guaranteed Maximum Price Proposal is based.

15.1.14 GMP Proposal - The proposal of Contractor based upon a GMP submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portions (phases) of the Work.

15.1.15 Guaranteed Maximum Price or GMP – The Guaranteed Maximum Price set forth in the Contract, Change Order, or Job Order if applicable.

15.1.16 Open Book – On any GMP-based or Cost-Based Contract, Job Order, or Change Order, College may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

15.1.17 Preconstruction Services – The services to be provided under the Pre-Construction Services Contract, including Section 3 of the Contract, including without limitation those set forth in Section 17 below of these General Conditions.

## **15.2 Contract Price.**

15.2.1 The Contract Price for all Contracts, Change Orders, and Job Orders based upon payment of the Cost of the Work plus a Fee with a GMP, time and materials, or cost-plus a fee shall be the Cost of the Work incurred plus the Fee agreed to in writing by College, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Contract, Change Order, or Job Order, all Cost Based pricing shall be subject to and limited to a GMP.

15.2.2 The Contract Price may only be changed as set forth in Section 9 above.

15.2.3 Only costs specifically designated as reimbursable costs are eligible for payment by College or may be charged against the Contract Price. All other costs will not be paid by College and shall not be chargeable against the Contract Price.

15.2.4 Cost-Based Contracts of \$250,000 or Less. For Contracts or Change Orders where the Contract Price is \$250,000 or less, reimbursable costs shall be determined pursuant to PAG Specifications §



109.5, and not Section 15.3 below.

15.2.5 Cost-Based Contracts Over \$250,000. For Contracts, Change Orders, or Job Orders where the Contract Price is over \$250,000, reimbursable costs shall be determined pursuant to the following Section 15.3, Cost of the Work, and not by PAG Specifications 109.5.

### **15.3 Cost of the Work.**

#### 15.3.1 Costs to be Reimbursed.

15.3.1.1 Generally. The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the College. The Cost of the Work shall include only the items set forth in this Section 15.3.1.

#### 15.3.1.2 Labor Costs.

15.3.1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the College's approval, at off-site workshops. Cost to be reimbursed will be the actual wages paid to the individuals performing the work. Wages or salaries of Construction Manager's supervisory and administrative personnel at the fully burdened billable rates set for in Exhibit A.3. If it is intended that the wages are salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the cost of the work, the personnel to be included, whether for all or only part of their time, and rates at which their time will be charged to the work; and shall be subject to required review, acceptance and approval by the College.

15.3.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the College's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to Project matters is considered to be covered by the Contractor's Fee.

15.3.1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

15.3.1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 1.2.1 through 1.2.3.

15.3.1.2.4.1 Cost of the Work shall include the actual net cost to the Contractor for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. The Contractor may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.

15.3.1.2.4.2 Overtime wages paid to salaried personnel (if approved in advance in writing by the College) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime

worked.

15.3.1.2.4.3 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require College's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

15.3.1.2.4.4 Reimbursable labor burden costs will be limited to payroll taxes, worker's compensation insurance, the employer's portion of union benefit costs for union employees working on the Project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the Project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the Project:

- Medical Insurance, Dental, Life & AD&D Insurance: 12.00%
- Holiday, vacation and other paid time not worked: 10.00%
- Pension Plan Contributions to Vested Employee Account, Simplified Employee Pension Plans, or 401K matching plans (Note: ESOP related costs are covered by the Contractor Fee) 10.00%

For non-union personnel, no other fringe benefit costs (other than the 3 specific categories listed immediately above, shall be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by the Contractor Fee.

### 15.3.1.3 Subcontract Costs

15.3.1.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

15.3.1.3.2 For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon Guaranteed Maximum Price for the "self-performed work". The Contractor may bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not to exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

15.3.1.3.3 Contractor (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide College advance written notice and shall obtain College's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

#### 15.3.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

15.3.1.4.2 Costs of materials described in the preceding Subparagraph 15.3.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become the College's property at the completion of the Work or, at the College's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the College as a deduction from the Cost of the Work.

15.3.1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

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

15.3.1.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

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

15.3.1.5.2.1 The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the Project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the College, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by College and Contractor.

15.3.1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Contractor.

#### 15.3.1.5.2.3 Equipment Rental Rates.

15.3.1.5.2.3.1 Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan, or actual documented costs, whichever is less.

15.3.1.5.2.3.2 All equipment rental rates and costs are subject to the College's right to audit when submitted as part of the Equipment Plan and/or at any time during the Project.

15.3.1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later

replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

15.3.1.5.2.5 Fair market value for used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.

15.3.1.5.2.6 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the College, and the cost of such losses shall not be reimbursable under the Contract.

15.3.1.5.2.7 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to College each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.

15.3.1.5.2.8 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

15.3.1.5.3 Costs of removal of debris From the Site.

15.3.1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

15.3.1.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work. No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 100 miles from the Project location. Any travel involving airfare will require advance written approval by an authorized College's representative.

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

15.3.1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

#### 15.3.1.6 Miscellaneous Costs.

15.3.1.6.1 That portion of insurance and bond premiums that can be directly attributed to the Contract:

15.3.1.6.1.1 The Contractor's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions Costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

15.3.1.6.1.2 The amount to be reimbursed to the contractor for all contractually

required liability insurance will be actual costs not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee). If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Contractor's Fee.

15.3.1.6. 2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

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

15.3.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of subsection 15.3.1.7.3 below.

15.3.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with the College's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

15.3.1.6.6 Data processing costs related to the Work. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the FMV of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware shall be turned over to the College whenever it is no longer needed for the Project. If the Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

15.3.1.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the College as set forth in the Contract Documents.

15.3.1.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the College and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the College's prior written approval; which approval shall not be unreasonably withheld.

15.3.1.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by the College in writing. If College authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by College will be considered to be covered by the Contractor's Fee.

#### 15.3.1.7 Other Costs and Emergencies.

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

15.3.1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

5.3.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the

Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

#### 15.3.1.8 Related Party Transactions.

15.3.1.8.1 The term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

15.3.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the College in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the College, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If the College fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.

#### 15.3.2 Costs Not to be Reimbursed.

15.3.2.1 The Cost of the Work shall not include:

15.3.2.1.2 Overhead and general expenses, except as expressly included in Section 1.

15.3.2.1.3 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work.

15.3.2.1.4 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 15.3.1.5.2.

15.3.2.1.5 Except as provided in Subparagraph 1.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

15.3.2.1.6 Any cost not specifically and expressly described in Section 1.

15.3.2.1.7 Costs, other than costs included in Change Orders approved by the College, that would cause the GMP to be exceeded.

#### 15.3.3 Discounts, Rebates, Refunds and Savings.

15.3.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the College if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the College, or (2) the College has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to the College, and the Contractor shall make provisions so that they can be secured.

15.3.3.1.1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

15.3.3.1.2 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to College if the Contractor is eligible to take advantage of the discounts.

15.3.3.2 Amounts that accrue to the College in accordance with the provisions of Paragraph 3.1 shall be credited to the College as a deduction from the Cost of the Work.

#### **15.3.4 General Conditions Costs.**

15.3.4.1 General Conditions Costs may include, but are not limited to the following types of costs incurred by the Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses.

15.3.4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by the College.

15.3.4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by the College.

15.3.4.4 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to the College, subject to any express right in the Contract for the Contractor to share in savings. Savings are subject to the College's right to audit, and may be audited separately.

#### **15.4 Allowances.**

15.4.1 Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by College. Items covered by these Allowances shall be supplied for such amounts and by such persons as College may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by College in accordance with a schedule to be mutually agreed upon by College, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

15.4.2 Unless otherwise provided in the Contract Documents:

15.4.2.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowance, delivered at the Site, and all applicable taxes;

15.4.2.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and

15.4.2.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on

the Site, labor, installation costs, overhead, profit and other expenses.

### **15.5 Contingency.**

15.5.1 The GMP includes a Contingency. The Contingency (but not the GMP) as set forth in the Schedule of Values shall be adjusted, as may be required, to reflect net savings or net losses resulting from the award of Subcontracts. The amount of the adjustment to the Contingency shall be determined by subtracting the face amount of each Subcontract at the time the Subcontract is entered into from the amount allocated in the initial Schedule of Values applicable to the Work to be performed under such Subcontract. Contractor may only permit funds to be expended from the Contingency for Cost of the Work incurred for completion of the Work after notifying College in writing of such expenditure and obtaining written approval from College of such expenditure.

15.5.2 After award of all major Subcontracts (representing at least 80% of the GMP), the Contingency may be used by College for College initiated Change Orders, provided that there remains in the Contingency an amount equal to the original percentage of the Cost of the Work as represented by the Contingency set forth in the GMP. At mutually agreed upon milestones, College and Contractor shall meet and confer to analyze the Contingency and determine methods of reducing such Contingency for the benefit of College for use on the Project to implement scope changes to the Work or otherwise to make the Contingency available for College's use. To support such analysis, Contractor shall identify any actual or known potential claims against it or actual or reasonably anticipated events that would constitute permissible uses of the Contingency. After good faith negotiations, and upon the written request of College, Contractor shall release to College the requested amount of the Contingency. After Contractor releases any portion of the Contingency, any such release shall be evidenced by a Change Order.

### **15.6 Reduction In Retention.**

If the Contract Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.2.2.3 above, Contractor must also submit to the Project Manager a complete accounting of the actual reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as College may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by College, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to College. The Project Managers determinations as to actual reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract. There is no retention for Job Order Contracting construction services contracts.

### **15.7 Final Payment.**

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by College, Contractor must submit to the Project Manager a complete final accounting of the actual reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as College may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by College, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to College. Disputes relating to the final Cost of the Work shall be subject to College's audit rights under Sections 8.9 above and 15.7 below, and the dispute resolution process under Section 13 above.

### **15.8 Open Book.**

In addition to the foregoing, all Cost-Based Contracts, Job Orders, or Change Orders, shall be Open Book.

### **15.9 Differing Site Conditions and/or Change In Laws.**



A Change Order for increased costs under Section 9.4 or 9.5 above will only be considered or granted by College to the extent such actual, documented costs exceed the remaining amount of the Contractor's Contingency.

## **SECTION 16 – PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES**

**Note:** Unless otherwise specified in the Contract, the provisions in this Section 17 only apply to Contracts involving Pre-Construction services being performed by a CMAR (i.e., the Construction Manager at Risk Pre-Construction Services Contract). That is why in this Section 3, the term “CMAR” is utilized instead of the term “Contractor”, which is utilized throughout the remainder of these General Conditions. See the definitions of “Contractor” in Section 1 above and “CMAR” in Section 15.1 above.

### **16.1 Additional Definitions**

The definitions set forth in Sections 1 and 15.1 above shall apply to all Pre-Construction Services Contracts.

### **16.2 General**

16.2.1 CMAR shall perform the Services required by, and in accordance with the Contract Documents and as outlined in the applicable Exhibits referenced in the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.

16.2.2 As a participating member of the Project Team, CMAR shall provide to College and Design Professional a written evaluation of College’s Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR shall prepare a Baseline Cost Model that validates College’s budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost Model for variances. College and Design Professional will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.

16.2.3 CMAR shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of CMAR Contract for default.

16.2.4 CMAR shall provide Pre-Construction Services, described herein, in a timely manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify College in writing whenever CMAR determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

16.2.5 CMAR when requested by College, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR shall provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

16.2.6 Ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of College. For purposes of this provision, “Work Product” shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or

printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to College. The rights in this Section are exclusive to College in perpetuity.

16.2.7 CMAR represents to College in completing the Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR does not assume any design responsibilities unless specifically called for in the scope of work, but CMAR shall be responsible for his errors, omissions or inconsistencies included in the Work.

### **16.3 Detailed Project Schedule**

16.3.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CMAR shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path Method ("CPM") technique, unless required otherwise, in writing by College. CMAR shall use scheduling software acceptable to College to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate milestone dates for the phases once determined. As part of construction phase, College may require CMAR to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/ anticipated number of personnel per day for each task. CMAR shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.

16.3.2 CMAR shall include and integrate in the Detailed Project Schedule the services and activities required of College, Design Professional and CMAR including all construction phase activities based on the input received from College and the Design Professional. The Detailed Project Schedule shall define activities as determined by College to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by College. The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by College, relationships between the activities, College's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Completion.

16.3.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR shall update and maintain a Detailed Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

16.3.3 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and College and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased

issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

16.3.4 Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR shall identify all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule.

16.3.5 Equipment Plan. Contractor shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to College and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment, but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

#### **16.4 Design Document Reviews**

16.4.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.

16.4.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by College and copies of the reports will be provided to CMAR.

16.4.3 CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through the various pre-construction phases. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall use established value analysis principles in recommending cost effective alternatives.

16.4.4 CMAR shall routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.

16.4.4.1 CMAR shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing College systems and maintains traffic on adjacent roadways. CMAR shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed, and shall promptly inform the Project Team of any issues.

16.4.4.2 CMAR shall check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.

16.4.4.3 The results of the reviews shall be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. CMAR shall meet with Project Team to discuss any findings and review reports.

16.4.4.4 CMAR's reviews shall be from a contractor's perspective, and though it shall serve to eliminate/reduce the number of RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.

16.4.5 It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable Laws, Regulations, or Legal Requirements, sound engineering principle's rules and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those Laws, Regulations, or Legal Requirements.

16.4.6 The Project Team shall routinely identify and evaluate using value analysis principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. College, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CMAR suggested alternatives into the Drawings and Specifications. CMAR shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and College's approval prior to the establishment of the GMP.

## **16.5 Baseline Cost Model, Detailed Cost Estimates, And Schedule Of Values**

16.5.1 At the conclusion of the Master Planning and Programming, if required, CMAR will review all available information regarding the design and scope of the Project, using CMAR's experience in performing similar work, knowledge of similar projects and current and projected construction costs, and based upon that review shall develop a Baseline Cost Model for review by the Project Team and approval by College. Once approved by College, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout the pre-construction until a final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by College prior to the start of construction. It is the responsibility of CMAR to ensure College has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CMAR of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CMAR shall communicate to the Project Team any assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by College. The Baseline Cost Model shall also include contingencies as agreed to by College, which may include, but are not limited to: (a) a design contingency that takes into consideration the advancement of the then current design documents, (b) an escalation contingency from the time of the estimate through the scheduled buy out of the Project, (c) a construction contingency in the same percentage as the Contingency to be included in the GMP.

16.5.2 After receipt of the Design Professional's most current documents from certain specified pre-construction milestones, CMAR shall provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction milestone. The pre-construction milestones applicable to this paragraph are: Master Planning and Programming, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Drawings. If no consensus is reached, College will make the final determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CMAR shall provide the requested information in a timely manner.

16.5.3 If at any point the Detailed Cost Estimate submitted to College exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 16.5.2 above, CMAR shall make appropriate recommendations to Project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.

16.5.4 Near completion of the 50% Construction Drawings and included with the associated report, CMAR shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be based on College standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents

16.5.5 CMAR is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: College generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then between the Detailed Cost Estimates for each of the pre-construction milestones thereafter, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Documents, and the bid packages for all Phases.

16.5.6 Upon request by College, CMAR shall submit to College a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by College and based on information provided by College, CMAR shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist College in the financing process.

16.5.7 Construction Water. CMAR shall estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided to College.

## **16.6 Subcontractor And Major Supplier Selections**

16.6.1 There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CMAR. In any case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of the Subcontractors/Suppliers, to the extent applicable. CMAR shall comply with its subcontractor selection plan submitted with its Statement of Qualifications.

16.6.2 College may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed after such a qualifications-based selection for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by College.

16.6.2.1 Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.

16.6.2.2 If a Subcontractor/Supplier selection plan was submitted and agreed to by College, CMAR shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide College with its review and recommendation.

16.6.2.3 CMAR must receive written College approval for each selected Subcontractor(s) and Supplier(s).

16.6.2.4 CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

16.6.3 All Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to paragraph 16.5.2 above.

16.6.3.1 CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by College and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by College to submit less than three names. Without prior written notice to College, no change in the recommended Subcontractors/Suppliers shall be allowed.

16.6.3.2 If College objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to College.

16.6.3.3 CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

16.6.3.4 If CMAR desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and College concurs that it is necessary in order to insure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or re-bidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by College.

16.6.3.5 CMAR shall receive, open, record and evaluate the bids; provided, however, that if CMAR or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids shall be received, opened, recorded and evaluated by Project Manager instead of CMAR. Bids for each category of Work shall be opened and recorded at a pre-determined time. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids shall be done with Project Manager in attendance to observe and witness the process. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

16.6.4 CMAR shall be required to prepare two different reports on the subcontracting process.

16.6.4.1 Within fifteen days after each major Subcontractor/Supplier bid opening process; CMAR shall prepare a report for College's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work

and its cost that CMAR intends to self-perform, if any.

16.6.4.2 Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to College of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

16.6.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.

16.6.6 If after receipt of sub-bids or after award of Subcontractors and Suppliers, College objects to any nominated Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by College, CMAR's proposed GMP/Price for the Work or portion thereof may be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

## **16.7 Fixed Price/GMP Proposal**

16.7.1 The College may require and/or accept a either a Fixed Price Proposal or a GMP Proposal, as set forth in the solicitation and/or as agreed to by the College.

16.7.1.1 Fixed Price Proposal. When the Proposal submitted by the CMAR is a Fixed Price, that Fixed Price will be the Contract Price.

16.7.1.2 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work (as set forth in Sections 15.2 and 15.3 above) in each phase of the Work that is being proposed plus the current estimate for all other Work. College will not approve the GMP for the phase of work without a total estimate for the complete Project. College may request a GMP Proposal for all or any portion of the Project and at any time during the pre-construction. Any GMP Proposals submitted by CMAR shall be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

16.7.2 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CMAR Fee, General Conditions Cost and Contingency. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CMAR shall be responsible for any costs or expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.

16.7.3 CMAR shall prepare its Proposal in accordance with College's RFQ requirements based on the most current completed Drawings and Specifications at that time, which unless otherwise directed by College in writing, shall be at 100% construction drawings. CMAR shall mark the face of each document of each set upon which its Proposal is based. These documents shall be identified as the Proposal Plans and Specifications. CMAR shall send one set of those documents to the Project Manager, keep one set and return a third set to the Design Professional.

16.7.4 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any Proposal(s), all of which shall reflect the Proposal Plans and Specifications the Detailed Project Schedule shall be shown in relationship to the total Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Sections 16.3.1 through 16.3.5.

### **16.7.5 Proposal(s) Review and Approval.**

16.7.5.1 CMAR shall meet with the Project Team to review the Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the



information presented, CMAR shall make adjustments as necessary to the GMP Proposal.

16.7.5.2 If during the review and negotiation of Proposals design changes are required, College may authorize and cause the Design Professional to revise the Proposal Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Proposal Plans and Specifications will be furnished to CMAR. CMAR shall promptly notify the Project Team in writing if any such revised Proposal Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

16.7.6 All portions of or items comprising the Proposal are subject to audit by College, as deemed appropriate by College, including, without limitation, any based upon unit prices or Work to be self-performed by CMAR, or its affiliates.

16.7.7 GMP Proposals shall be Open Book.

## **16.8 Payment Procedure For Pre-Construction Services**

16.8.1 Requests for monthly payments by CMAR for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

16.8.2 In no event will College pay more than seventy-five percent (75%) of the Contract Price until final acceptance of the all Pre-Construction Services, and award of the final approved Construction Services Contract for the entire Project by College Council. If CMAR does not prepare a GMP Proposal that is acceptable to College, or the GMP Proposal exceeds the College's Construction Budget, then CMAR understands and acknowledges that it will forfeit any right to receive the 25% of the Contract Price being retained by College.

16.8.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of College during the progress of any portion of the Pre-Construction Services specified in this Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of College of any of their respective legal rights herein.

16.8.4 No compensation to CMAR shall be allowed contrary to Article 5, Chapter 23, Title 41 of the Arizona Revised Statutes.

16.8.5 If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

## **16.9 Additional Pre-Construction Services**

16.9.1 Additional services which are outside the scope of the services required under the Contract Documents applicable to a particular project shall not be performed by CMAR without prior written authorization from College. Additional services, when authorized by an executed written Change Order under Section 9 of these General Conditions, shall be compensated by a fee mutually agreed upon in such written Change Order between College and CMAR.

16.9.2 No claim for additional services, extra work done or materials furnished by CMAR shall be allowed by College except as provided herein, nor shall CMAR provide any additional services, do any work, or furnish any material(s) not covered by the contract governing a particular project unless such

work or material is first authorized in writing by the Project Manager. Work or material(s) furnished by CMAR without such prior written authorization shall be at CMAR's sole jeopardy, cost, and expense, and CMAR hereby agrees that without prior written authorization no claim for compensation for such services, work or materials furnished shall be made, and College shall not be responsible for such costs.

16.9.3 No Work (as defined by Section 1 of these General Conditions) may be performed under any contract, without prior written approval by the College. As an example, all procurement of long lead time items that must be procured to support the construction schedule or site investigative Work necessary to complete Pre-Construction Services, if done by the CMAR, will be performed only after a Proposal for the Work has been approved and accepted in writing by College and all such Work shall be done only under an executed Contract for Construction Services, or pursuant to a prior written direction from College to engage in such procurement.

CMAR General Conditions: Final

# Pima County Community College District

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**CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES CONTRACT  
P22/10048L – Downtown Campus Hotel Properties Development**

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**EXHIBIT**

- A.1 - PRECONSTRUCTION SERVICES SCOPE OF WORK AND SCHEDULE
- A.2 - ACCEPTED PRECONSTRUCTION SERVICE FEE PROPOSAL
- A.3 - ACCEPTED LABOR RATES
- B - INSURANCE REQUIREMENTS
- C - PROJECT SPECIFIC CONDITIONS
- D - FINAL PLANS AND SPECIFICATIONS
- E - ACCEPTED GMP/PRICE PROPOSAL (or PROPOSALS FOR EACH PHASE OF THE PROJECT); To be added via Contract Amendment.

**THIS CONTRACT** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Pima County Community College ("College"), hereinafter called "College" and the "Construction Manager At Risk" or "CMAR" designated below:

College and CMAR agree as follows:

**ARTICLE 1 – PARTICIPANTS AND PROJECT**

**College:** Pima County Community College District  
Owner’s Representative (OR): XXXXXXXXXXXXXXX and EVC  
Project Manager (PM): XXXXXXXX Telephone: 520-206-xxxx  
E-mail: xxxxxxxx@pima.edu

**CMAR:** [XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]  
[XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]  
Arizona ROC No.: ROC xxxxxxxx Federal Tax ID No: xx-xxxxxx  
CMAR Representative: [first,last name] - Telephone: [000-000-0000]  
E-mail: xxxxxxx@xxxxxxxxxxx

**DESIGN PROFESSIONAL:** [XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]  
[XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]  
Design Professional Representative: [XXXXXXXXXXXXXXXXXXXX]  
Telephone: [000-000-0000]  
E-mail: xxxxxxx@xxxxxxxxxxx

**PROJECT DESCRIPTION:** Design phase assistance for complete construction services as the Construction Manager at Risk for the **Downtown Campus Hotel Properties Development** located at;

**PROJECT LOCATION:** Tucson Inn 127 W. Drachman St.  
Copper Cactus Inn, 225 W. Drachman St.  
Frontier Motel, 227 W. Drachman St.

**ARTICLE 2 – CONTRACT DOCUMENTS**

**2.1 CONTRACT DOCUMENTS**

The Contract between College and CMAR shall consist of the following Contract Documents (Contract Documents):

1. This Contract;
2. College CMAR General Conditions;
3. Exhibit A.1 - Preconstruction Services Scope of Work and Schedule;
4. Exhibit A.2 - Accepted Preconstruction Services Fee Proposal
5. Exhibit A.3 - Accepted Labor Rates
6. Exhibit B - Insurance Requirements;
7. Exhibit C - Project Specific Conditions (if any - Article 2.3 below);
8. Exhibit D - Final Plans and Specifications (Article 2.4 below);
9. Exhibit E - Accepted GMP/Price Proposal (or Proposals for each Phase of the Project); "To Be Determined" and added via Contract Amendment.
10. Request for Qualifications RFQ No. P22/10048L; and
11. The Statement of Qualifications (SOQ) submitted by CMAR – Construction Manager (XXXXXXXXXXXXXXXXXXXX).

## **2.2 DEFINITIONS**

The definitions in Sections 2 and 15.1 of the General Conditions apply to all the Contract Documents, including this Contract. Additional definitions or defined terms applicable to all the Contract Documents for this Project, if any, include the following:

## **2.3 PROJECT SPECIFIC CONDITIONS**

If there are any additional conditions that apply to this Project, they are set forth in the attached Exhibit C, and are incorporated herein.

## **2.4 PROJECT PLANS AND SPECIFICATIONS**

A detailed list of the plans and specifications for this Project are set forth in the attached Exhibit D.

## **2.5 TEAM APPROACH**

As set forth in the definition of “Team Approach” set forth in Section 2 of the General Conditions, College desires to implement a comprehensive team approach to the design, construction, and documentation of all College Projects. The Provisions of the General Conditions apply to CMAR’s participation as a Project Team member throughout CMAR’s involvement with the Project, both while providing the Pre-Construction Services and throughout the performance of the Work performed by CMAR.

## **ARTICLE 3 - PRE-CONSTRUCTION SERVICES**

### **3.1 SERVICES**

CMAR shall provide all of the Preconstruction Services and perform in accordance with Section 67 of the General Conditions. The major components of the Preconstruction Services and the corresponding subsections of Section 3 of the General Conditions are set forth below.

### **3.2 GENERAL REQUIREMENTS**

3.2.1 CMAR shall perform the Preconstruction Services required by, and in accordance with this Contract and as outlined in the attached Exhibit A.1, the RFQ, and the SOQ to the satisfaction of College, in full compliance with Section 16.2 of the General Conditions, and any written clarification or modifications to the scope of the Preconstruction Services agreed to in writing by CMAR and College.

3.2.2 In performance of the Services under this Contract, the CMAR shall fully comply with all applicable Laws, Regulations, or Legal Requirements applicable to College, the Project and the Contract, including, without limitations those set forth on the attached Exhibit C.

3.2.3 CMAR shall perform the Services under this Contract using only those firms, team members and individuals designated by CMAR consistent with the SOQ, or as otherwise approved by College in accordance with the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.

3.2.4 CMAR will comply with all terms and conditions of the General Conditions.

3.2.5 In the event of a conflict between this Contract and the General Conditions or any exhibit hereto or appendix thereto, the terms of this Contract shall control. Order of precedence of the Contract documents is set forth in Section 3.1 of the General Conditions.

3.2.6 Ownership of Work Product. Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract,

including the Work, are to be and remain the property of College, as set forth in Section 16.2.6 of the General Conditions.

### **3.3 DETAILED PROJECT SCHEDULE**

CMAR shall prepare and present to College a Detailed Project Schedule that is acceptable to the College and in accordance with Section 16.3 of the General Conditions.

### **3.4 DESIGN DOCUMENT REVIEWS**

CMAR shall conduct the evaluations, perform the design document reviews, make the recommendations and provide the other Services referenced in Exhibits A and E, the RFQ, and the SOQ, and provide all such services in accordance with Section 16.4 of the General Conditions.

### **3.5 BASELINE COST MODEL, DETAILED COST ESTIMATES AND SCHEDULE OF VALUES**

3.5.1. CMAR shall prepare and submit the Baseline Cost Model, Detailed Cost Estimates and Schedule of Values in accordance with Section 16.5 of the General Conditions.

3.5.2. The submitted Baseline Cost Model, Detailed Cost Estimates and Schedule of Values shall not exceed the College' budget for the construction of the Project ("Construction Budget") which is **\$12,5000,000 (twelve and half million)**, and if CMAR submits a Baseline Cost Model, Detailed Cost Estimates and Schedule of Values that exceeds the Construction Budget, the College shall have the right to terminate or suspend the Contract and no further payments shall be due from or made by College to CMAR.

### **3.6 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

CMAR shall select and obtain approval of Subcontractors and Suppliers in accordance with Section 16.6 of the General Conditions.

### **3.7 PROPOSAL FIXED PRICE\GUARANTEED MAXIMUM PRICE (GMP)**

3.7.1 CMAR shall submit a Proposal, either Fixed Price or Guaranteed Maximum Price (GMP) for the entire Work, and for each phase (if required) of the Work, in conformance with the requirements of the RFQ. The Proposal shall be presented in a format acceptable to College based upon the Contract Documents. College may change the schedule, format, and/or requirements for the Proposal as it deems necessary during Pre-Construction, and may request resubmittal of the Proposal to reflect such changes.

3.7.2 Preparation, submittal, review, and approval (or disapproval, if applicable) of the Proposal shall be done in accordance with Section 16.7 of the General Conditions.

3.7.3 For the purpose of a GMP Proposal, the parties agree that:

1. The CMAR Fee shall be equal to **(TBD)** percent of the Direct Costs or a fixed amount of \$ **(TBD)**;
2. The CMAR Contingency based upon **(TBD)** percent complete Construction Drawings shall be equal to **(TBD)**% of the Cost of the Work plus CMAR Fee; and
3. General Conditions Costs shall be a fixed amount or percentage agreed to in writing as part of the Baseline Cost Model.

3.7.4 The Proposal shall not exceed the College's Construction Budget.

3.7.5 The provisions of Section 15 of the General Conditions applicable to GMP contracts shall apply to this Contract if a GMP Proposal is requested and accepted by the College.

- 3.7.6 The entire Project may be divided into Phases by the College and separate GMP Proposals may be requested and/or accepted by the College, as determined appropriate by College for the Project. See, e.g., Section 16.3 of the General Conditions.

### **3.8 ADDITIONAL PRE-CONSTRUCTION SERVICES**

Additional Pre-Construction Services that are outside the scope of the services required under the Contract Documents, if any, shall be subject to, governed by, and performed and compensated in accordance with Section 16.9 of the General Conditions.

## **ARTICLE 4 – CONSTRUCTION SERVICES**

### **4.1 GENERAL**

- 4.1.1 CMAR agrees at its own cost and expense, to perform all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, stated in attached Exhibit A.2.
- 4.1.2 CMAR shall provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some but not all of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.
- 4.1.3 At all times relevant to this Contract and performance of the Work, the CM@ Risk shall fully comply with all Laws, Regulations, or Legal Requirements applicable to College, the Project and the Contract, including, without limitation, those set forth on attached Exhibit C.
- 4.1.4 CMAR shall perform the Work under this Contract using only those firms, team members and individuals designated by CMAR consistent with the SOQ, the GMP Proposal, or otherwise approved by College pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.
- 4.1.5 CMAR will comply with all terms and conditions of the General Conditions.
- 4.1.6 In the event of a conflict between this Contract and the General Conditions or any exhibit hereto or appendix thereto, the terms of this Contract shall control.
- 4.1.7 **Ownership of Work Product.** Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of College. For purposes of this provision, “Work Product” shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, CMAR hereby transfers and assigns ownership of the copyright in such Work to College. The rights in this Section are exclusive to College in perpetuity.

### **4.2 CMAR’S PRE-CONTRACT AND PRE-WORK DELIVERABLES**

- 4.2.1 The CMAR will provide the Deliverables in accordance with Section 4.2 of the General Conditions.
- 4.2.2 Any additional items which CMAR must deliver to College prior to commencing the Work on this Project, if any, include those set forth in Exhibit A and the following:

*{If any, to be added by PM}*

#### **4.3 PRE-CONSTRUCTION CONFERENCE**

CMAR shall attend the Pre-Construction Conference in accordance with Section 4.3 of the General Conditions.

#### **4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS)**

CMAR shall perform the Work in accordance with Section 4.4 of the General Conditions.

#### **4.5 SUBCONTRACTORS, AND SUPPLIERS**

CMAR shall engage and administer Subcontractors and Suppliers as set forth in Section 4.5 of the General Conditions.

#### **4.6 CONTROL OF THE PROJECT SITE**

CMAR shall control and maintain the Project Site in accordance with Section 4.6 of the General Conditions.

#### **4.7 PROJECT SAFETY**

CMAR shall implement and enforce Project safety in accordance with Section 4.7 of the General Conditions.

#### **4.8 SHOP DRAWINGS, SUBMITTALS, SUBSTITUTIONS AND REUSE**

CMAR shall submit shop drawings, other submittals, substitute materials, and shop drawings in accordance with Section 4.8 of the General Conditions.

#### **4.9 TESTING**

CMAR shall provide testing in accordance with Section 4.9 of the General Conditions.

#### **4.10 PROJECT RECORD DOCUMENTS**

CMAR shall maintain, update and make available the Project Record Documents in accordance with Section 4.10 of the General Conditions.

#### **4.11 PROJECT SCHEDULE**

CMAR is responsible for preparing, monitoring, providing to College, and complying with and constructing the Project in conformance with the Project Schedule as set forth in Sections 4.11 and 6 of the General Conditions.

#### **4.12 CUTTING AND PATCHING OF WORK**

CMAR shall provide cutting and patching in accordance with Section 4.12 of the General Conditions.

#### **4.13 CLEANING UP**

CMAR shall be responsible for cleaning up in accordance with Section 4.13 of the General Conditions.

#### **4.14 SEPARATE CONTRACTORS**

CMAR shall be responsible for cooperating and dealing with separate contractors in accordance with Section 14.14 of the General Conditions.

#### **4.15 TRAFFIC CONTROL**

CMAR shall provide traffic control in accordance with Sections 4.15 of the General Conditions.

#### **4.16 AIR QUALITY CONTROL**

CMAR shall provide air quality control in accordance with Sections 4.16 of the General Conditions.

#### **4.17 STORM WATER POLLUTION PREVENTION**



CMAR shall provide storm water prevention in accordance with Sections 4.17 of the General Conditions.

#### **4.18 DRAWINGS AND SPECIFICATIONS**

CMAR shall maintain and provide project drawing and specifications in accordance with Sections 4.18 of the General Conditions.

#### **4.19 WARRANTY AND CORRECTION OF DEFECTIVE WORK**

CMAR shall provide warranties and correct defective Work in accordance with Sections 4.19 of the General Conditions.

### **ARTICLE 5 – COLLEGE RESPONSIBILITIES**

**5.1** In connection with Pre-Construction Services, College, at no cost to CMAR, will furnish the following information to CMAR:

*{If any, to be added by PM}*

**5.1.1** One copy of data in College' possession or control which College determines in its discretion to be pertinent to the Work. However, CMAR shall be responsible for searching the records and requesting information it deems reasonably required for the Project.

**5.1.2** Electronic copies of programs, reports, drawings, and specifications reasonably required by CMAR, to the extent in the possession of College.

**5.2** College shall also have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

**5.3** Additional services to be provided or responsibilities assumed, by College, if any, are listed below:

*{If any, to be added by PM}*

**5.4** Additional Information to be provided by College, if any, is listed below:

*{If any, to be added by PM}*

### **ARTICLE 6 - CONTRACT TIME**

#### **6.1 CONTRACT TIME**

**6.1.1** The Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued prior to the approval and acceptance by College of the GMP or Fixed Price Proposal.

**6.1.2** The Contract Time shall be as set forth in attached Exhibit A. CMAR agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.

**6.1.3** Time is of the essence of this Contract, for the Project, and for each phase and/or designated Milestone thereof.

#### **6.2 PROJECT SCHEDULE**

The Project Schedule approved as part of the Proposal and incorporated herein as part of the attached Exhibit A.2 shall be updated and maintained throughout CMAR's performance under this Contract in accordance with Section 6.2 of the General Conditions.

**6.2.1** Failure on the part of CMAR to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for College' termination of this Contract for cause.

### 6.3 SUBSTANTIAL COMPLETION

Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule, which is **(TBD)**. Substantial Completion shall be determined in accordance with Section 6.3 of the General Conditions.

### 6.4 FINAL COMPLETION AND FINAL ACCEPTANCE

6.4.1 Final Completion shall be achieved within the time period set forth in the Project Schedule, the latest date for completion of which is: **(TBD)**.

6.4.2 Final Completion will be determined, and Final Acceptance will be issued, pursuant to Section 6.4 of the General Conditions.

### 6.5 CONTINUATION OF WORK

College shall have the right to permit CMAR to continue and finish the Work or any part of it after the time fixed for its completion without waiving any of College' rights in accordance with Section 6.5 of the General Conditions.

### 6.6 LIQUIDATED DAMAGES

6.6.1 **Substantial Completion Liquidated Damages.** CMAR acknowledges and agrees that if CMAR fails to achieve Substantial Completion of the Work within the Contract Time, College will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, College and CMAR agree that if CMAR fails to achieve Substantial Completion of the Work within the time set forth in Article 6.3 above, College shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amount commencing from the Substantial Completion Date required under the Contract until the actual date of Substantial Completion:

**\$(to be added by PM if applicable) per calendar day.**

6.6.2 **Final Completion Liquidated Damages.** For the same reasons set forth in Article 6.5.1 above, College and CMAR further agree that if CMAR fails to achieve Final Completion of the Work within the time set forth in Article 6.4.1 above, College shall be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the following per diem amount commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion:

**\$(to be added by PM, if applicable) per calendar day.**

6.6.3 **PAG Liquidated Damages.** If no liquidated damages are specified in Articles 6.5.1 and/or 6.5.2 above, then the liquidated damages provisions in the most current Pima Association of Governments Standard Specifications (PAG) § 108.9 shall apply.

6.6.4 College may deduct liquidated damages described in this Article 6.5 above from any unpaid amounts then or thereafter due CMAR under this Contract. Any liquidated damages not so deducted from any unpaid amounts due CMAR shall be payable to College at the demand of College, together with interest from the date of the demand at the highest lawful rate of interest payable by CMAR.

### 6.7 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY

6.7.1 CMAR and College waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 Damages incurred by College for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- .2 Damages incurred by CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

- 6.7.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Contract. Nothing contained in this Article 6.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 6.5 above.
- 6.7.3 Nothing herein shall be deemed to constitute a waiver of any other remedy available to College in the event of CMAR's default under this Contract prior to full performance of the Work including, without limitation as applicable, specific performance or completion of the Work on behalf of CMAR, the cost and expense of which shall be offset against any monies then or thereafter due to CMAR (if any) and otherwise immediately reimbursed to College by CMAR, and/or Liquidated Damages.
- 6.7.4 Notwithstanding the mutual waiver of consequential damages set forth in this Article 6.7, in the event that all or part of the Liquidated Damages set forth in Article 6.6 above are found to be unenforceable as a matter of law (and not based on a factual conclusion that a delay did not occur or was excused under the terms of the Contract) by a court of competent jurisdiction or arbitrator in a final, non-appealable award, order or judgment, then this Article 6.7 and the waiver of consequential damages contained herein shall be deemed void and of no effect and the parties shall have be under no limitation on the amount or types of damages which either may amended so as to allow Owner to recover consequential damages for a breach of this Agreement.

**ARTICLE 7 - CONTRACT PRICE**

**7.1 CONTRACT PRICE**

- 7.1.1 **Preconstruction Services:** In exchange for the CMAR's full, timely and acceptable performance of the Pre-Construction Services under this Contract, and subject to all terms of this Contract applicable to Pre-Construction Services, College will pay CMAR the "Pre-Construction Services Price," which is **\$xxx,xxx.00 (xxxxxxxxxxxxxxxxxxxxxxxxxxxx dollars)**, in accordance with Section 16.8 of the General Conditions.
- 7.1.2 **Construction Services:** In exchange for CMAR's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, College will pay CMAR the "Contract Price" agreed to by the College as set forth in the accepted GMP Proposal.
- 7.1.3 The Contract Price for the Services and each portion of Work is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes of any type necessary to fully, properly and timely perform and construct the Preconstruction Services and Work encompassed in attached Exhibits A.1 and A.2, respectively.

**7.2 COSTS**

For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials, basis, the costs which may be reimbursed to CMAR and/or chargeable against the Contract Price shall be determined as set forth in Section 15 of the General Conditions.

**ARTICLE 8 – PAYMENT**

Payments shall be made to CMAR in accordance with Section 16.8 of the General Conditions for Pre-Construction Services, and Sections 8 and 15 (if the Contract Price is a GMP) of the General Conditions for Construction Services.

## **ARTICLE 9 – CHANGES TO THE CONTRACT**

Changes to the Contract may be made in strict accordance with Section 9 of the General Conditions.

## **ARTICLE 10 – SUSPENSION AND TERMINATION**

This Contract may be suspended and/or terminated in accordance with Section 10 of the General Conditions.

## **ARTICLE 11 – INSURANCE AND BONDS**

- 11.1** CMAR shall provide Insurance as provided on the attached Exhibit B, and in accordance with Section 11.1 of the General Conditions. CMAR shall provide proof of such insurance and all required endorsements in forms acceptable to College prior to commencing any Work under this Contract.
- 11.2** CMAR shall provide performance and payment bonds to College in accordance with Section 11.2 of the General Conditions and A.R.S. § 41-2574.
- 11.3** Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to College will be a material breach and sufficient grounds for College' termination of this Contract for cause.

## **ARTICLE 12 – INDEMNIFICATION**

CMAR shall have and assume the indemnity obligations set forth in Section 12 of the General Conditions.

## **ARTICLE 13- DISPUTE RESOLUTION**

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in Section 13 of the General Conditions.

## **ARTICLE 14 – MISCELLANEOUS PROVISIONS**

The miscellaneous provisions set forth in Section 14 of the General Conditions shall apply to this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

**“College”**  
**Pima County Community College**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“CMAR”**  
**[Name]**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A.1 – PRECONSTRUCTION SERVICES SCOPE OF WORK AND SCHEDULE**

*{To be completed by PM}*

**EXHIBIT A.2 – ACCEPTED PRECONSTRUCTION SERVICES FEE**

**EXHIBIT A.3 – ACCEPTED LABOR RATES**

## EXHIBIT B - INSURANCE REQUIREMENTS

**A.** These Insurance Requirements apply to the party contracting with College (Contractor, CMAR, and/or Design Professional) working or providing services in relation to the Project pursuant to the Contract, Job Order, Project Order, or other agreement with College to which this Exhibit B is attached as an Exhibit.

**B.** Contractor/CMAR/Design Professional, as applicable, shall obtain and submit to College before any Work is performed, certificates of insurance from the Contractor/CMAR/Design Professional's insurance brokers, agents, or carriers indicating the presence of coverages and limits of liability as set forth in the Contract Documents, but in no event shall the coverages and limits be less than those specified as follows:

**1. Workers' Compensation:**

(a) Coverage A: Statutory Benefits.

(b) Coverage B: Employer's Liability.

Bodily Injury by accident \$1,000,000 each accident

Bodily Injury by disease \$1,000,000 policy limit

Bodily Injury by disease \$1,000,000 each employee

(c) Coverage must include a Waiver of Subrogation endorsement.

(d) Where applicable, the U.S. Longshore and Harbor Workers Compensation Act Endorsement shall be attached to the policy.

**2. Commercial Auto Coverage:**

(a) Auto Liability at least as broad as the standard ISO CA 00 01 form with limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned."

(b) If the Contract Documents require Contractor/CMAR/Design Professional to remove and haul hazardous waste from the Project site, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

**3. Commercial General Liability:**

Commercial General Liability insurance at least as broad as an ISO standard form CG 00 01 with not less than the following limits:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

(a) Coverage must include a Waiver of Subrogation endorsement.

(b) Policy forms must include:

- 1) Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions.
- 2) Products and Completed Operations coverage. Contractor/CMAR agrees to maintain this coverage for a minimum of 10 years following completion of the Contractor/CMAR's Work and to continue to name College as an Additional Insured for the entire 10-year period.
- 3) Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Contract. Any Employee Exclusion must be deleted.
- 4) Broad Form Property Damage coverage, including completed operations or its equivalent.
- 5) An endorsement naming College, any other party required to be named as an additional insured under the Contract Documents as Additional Insured(s) under the coverage specified under Commercial General Liability. Acceptable endorsements shall be at least as broad as the current versions of the following ISO forms except where noted:
  - (i) CG 20 10 11 85 or CG 20 26 11 85, or
  - (ii) CG 20 10 and CG 20 37, or
  - (iii) Automatic additional insured endorsements CG 20 33 and CG 20 39. These forms are not acceptable for subcontractors. Acceptable automatic additional insured endorsements for subcontractors include CG 20 38 and CG 20 40.

Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages IS NOT ACCEPTABLE.

- 6) Coverage on an "Occurrence" form. "**Claims Made**" and "**Modified Occurrence**" forms are not acceptable.
- 7) Coverage to include general aggregate limits on a "per project" or "per location" basis.

**4. Errors & Omissions Liability**

(Applicable to any Design Services and/or any design/engineering/pre-construction services are part of Work)

Each Claim	\$1,000,000
Aggregate	\$3,000,000

(a) Coverage provided must have no exclusion for design-build projects.



(b) Evidence of coverage for ten (10) years beyond completion of the Project must be provided.

**5. Excess Liability:**

Umbrella or excess liability to extend the above liability coverages and limits to reach a minimum total combined limit of at least the following:

(a) For Contractor/CMAR:	
Each Occurrence/Claim	\$4,000,000
Aggregate	\$10,000,000
(b) For Design Professional:	
Each Occurrence/Claim	\$2,000,000
Aggregate	\$5,000,000

**6. Pollution Legal Liability** \$1,000,000

(Applicable as to any pollutants or hazardous waste exposures as part of the Work). Contractor/CMAR/Design Professional shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

**7. Privacy, Security and Data Breach:**

Each Claim/Occurrence	\$3,000,000
Aggregate	\$3,000,000

Privacy, security or data breach coverage, which such coverage may be provided via a separate policy or as an endorsement to any other policy the Contractor/CMAR/Design Professional maintains.

**8. Contractor/CMAR “All Risk”:**

Contractor/CMAR shall maintain “all risk” insurance on a replacement cost basis covering:

- (a) Loss or damage to personal property (for which it has title and/or risk of loss) which is to become a final part of the Project, during any time such personal property is in transit and while stored or worked upon away from the Project Site.
- (b) Materials or any other type of personal property (“personal property”) acquired for the Project or delivered to the Project site. Contractor/CMAR/Design Professional agrees that it shall be solely responsible for such property unless and until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

**9. Other Requirements**

- (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage.
- (b) All policies must be written by insurance companies whose rating, in the most recent Best’s Rating Guide, is not less than A- VII. All coverage forms must be acceptable to College.

(c) Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to the College prior to commencement of any Work. Updated certificates of insurance shall be sent to the College as required policies are renewed, changed, or replaced. Failure of College to demand such certificate or other evidence of full compliance with these insurance requirements or failure of College to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor/CMAR/Design Professional's obligation to maintain such insurance. College shall have the right, but not the obligation, to prohibit Contractor/CMAR/Design Professional or any of its subcontractors or subconsultants from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by College.

**C. Additional Insureds.** The insurance coverage, except Workers' Compensation and Errors and Omissions, required by this Exhibit B, shall name College, its agents, representatives, officers, directors, officials and employees as Additional Insureds. The endorsement shall include the following language or equivalent: "Coverage afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy." Regarding Commercial Auto Liability insurance, coverage provided under the policy's omnibus insured definition meets the requirement.

**D. Waiver (Subrogation).** The policies, except Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against College, its agents, representatives, directors, officers, and employees for any claims arising out of the Design Professional's work or service.

**E. Waiver (Property Insurance).** College and Contractor/CMAR/Design Professional waive all rights against each other and against College, Architect/Engineer, and separate contractors for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Such insurance may be subject to an amount deductible from the sums otherwise payable thereunder and the burden of such deduction shall be borne by the party receiving the direct benefit of such insurance.

**F. Deductibles and Self-Insured Retention.** Contractor/CMAR/Design Professional shall be responsible to satisfy any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents.

**G. College All Risk Policy.** Unless otherwise provided, the College shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the College, Contractor/CMAR/Design Professional and its subcontractors in the Project, and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. Contractor/CMAR/Design Professional shall bear the responsibility for the deductible for

such coverage when a loss affects the Work. Such property insurance maintained by College does not cover any tools or equipment owned or rented by Contractor/CMAR/Design Professional including trailers, excavators, scaffoldings, or forms. Contractor/CMAR/Design Professional is responsible for providing insurance coverage for such items.

**H. Rental Equipment.** In the event that rental of equipment is undertaken to complete and/or perform the Work, Contractor/CMAR/Design Professional agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

**I. CCIP/OCIP.** If the Contract Documents provide for a Contractor/CMAR or Owner Controlled Insurance Program (“CCIP” or “OCIP”) which provides coverage for the Work, the Contractor/CMAR/Design Professional shall comply with all provisions of any such CCIP or OCIP, as applicable.

**J. Additional Provisions.** Any additional provisions specific to the Project are attached hereto or to the applicable Contract Documents or Project Order. In the event of any conflict between the attached terms and the terms of this Exhibit, the Contractor/CMAR/Design Professional shall comply with the more stringent provisions.

**K. Right to Increase Limits.** College reserves the right, in its sole discretion, to require higher limits of liability coverage if, in College’ opinion, operations by or on behalf of Contractor/CMAR/Design Professional create higher than normal hazards.

**EXHIBIT C - PROJECT SPECIFIC CONDITIONS**

**Section C.1 - Conditions and Specifications Specific to this Project:**

*Project Executive Summary: Downtown Hotel Properties Development*

**Section C.2 – College’ Additional Conditions Applicable to the Work included in this Project:**

*Facilities Guidelines and Specification Standards*

*Standard Practice Guide: SPG 2301/AC Capital Project Development*

**EXHIBIT D - FINAL PLANS AND SPECIFICATIONS**

*{To be completed by PM }*

**EXHIBIT E - ACCEPTED GMP/PRICE PROPOSAL (or PROPOSAL FOR EACH PROJECT PHASE)**



# Downtown Campus Hotel Properties Executive Project Summary



# Project Summary Content

- Downtown Campus Overview
- Programmatic Summary
- Hotel Properties - Site and Square Feet Summary
- PCC Development

# Downtown Campus Overview



## Diversity, Equity and Inclusion (IRSRC)

- Establish a Diversity, Equity and Inclusion, Immigrant and Refugee Student Resource Center (IRSRC) with space for the Ethnic, Gender, and Transborder Studies program



## Dual Enrollment

- Include space for an early college high school for up to 250 students, with a CTE focus



## Consolidated Student Enrollment Center

- Include Pima County One-Stop



## District Office

- Explore the relocation of District Office's administrative offices
- Best if located adjacent to the campus



## Teaching and Learning Center

- Expand the Teaching and Learning Center / Faculty Resource Center satellite location
- Maintain program home on West Campus

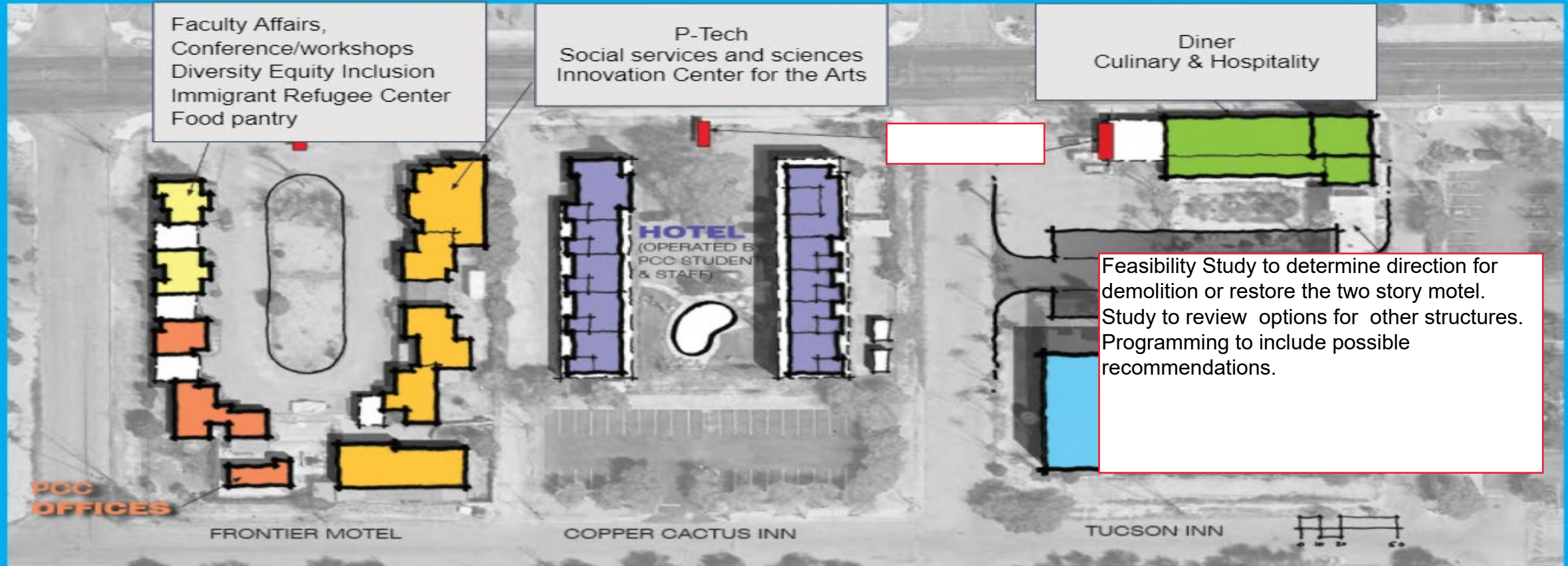


## Social Services

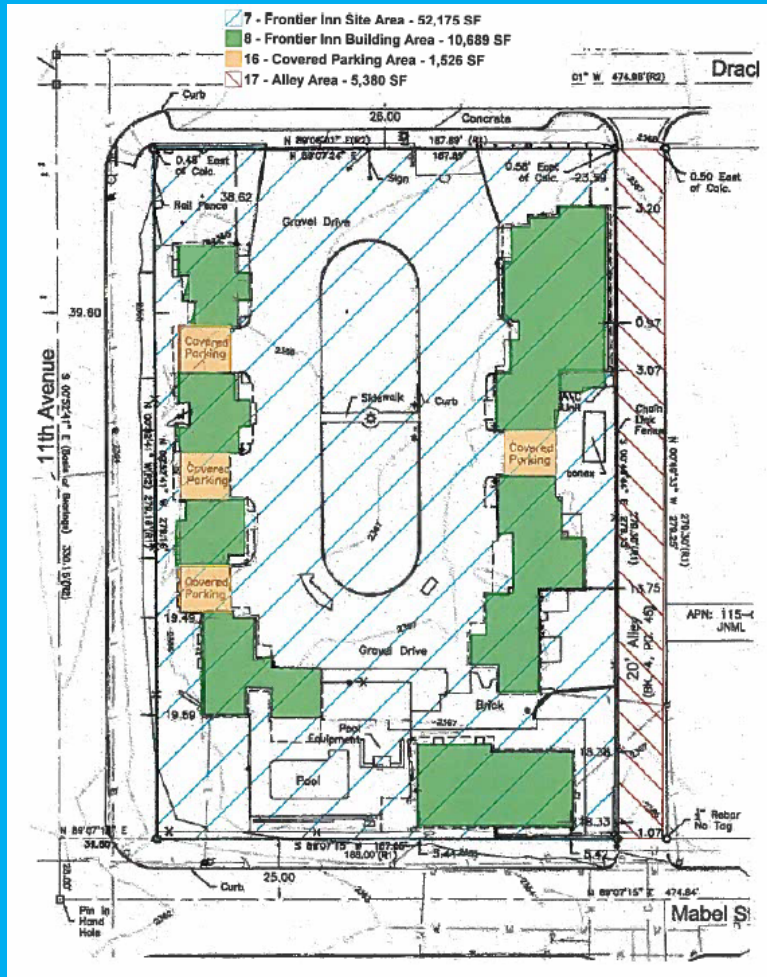
- Expand Social Services programs (food pantry and clothes closet) with wraparound services
- Consider experiential learning for students



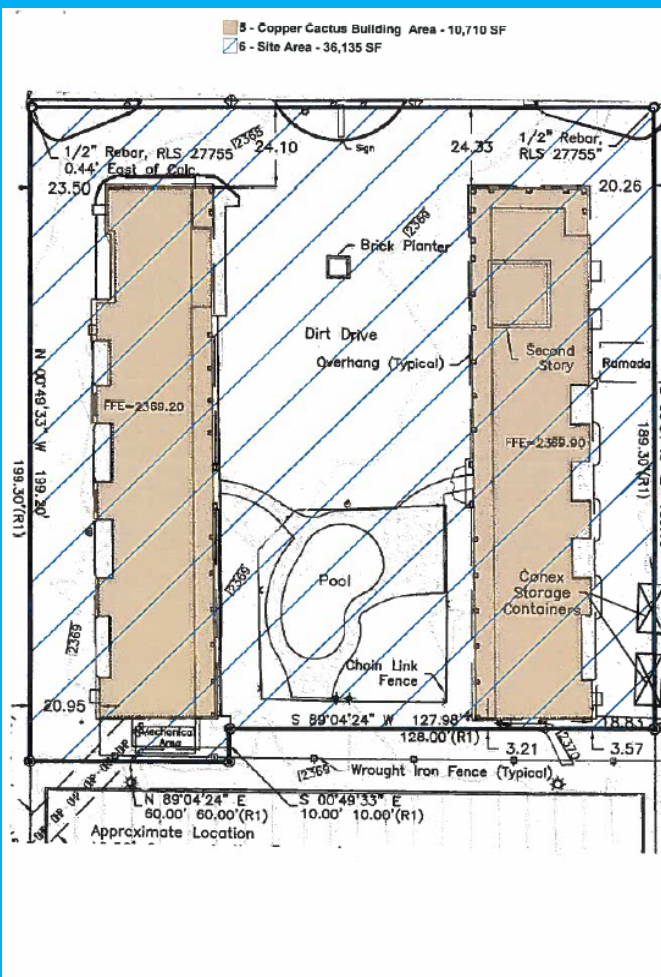
# Programmatic Recommendations



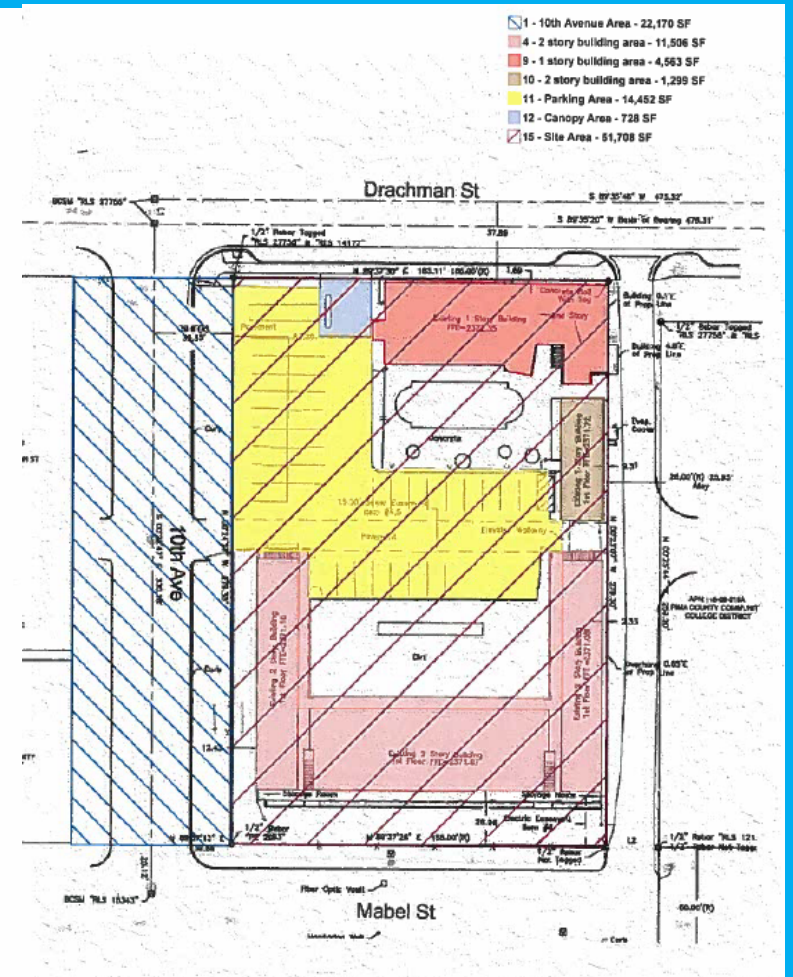
# Hotel Properties Site and S.F. Summary



Frontier IMotel



Copper Cactus Inn



Tucson II Inn

# PCC Project Summary



## Project Summary

Restore Tucson Inn Cafe - Front Portion

Feasibility Study to either:

1. Demolish two story motel- back portion.
2. Restore for adaptive reuse/hotel use

Restore Copper Cactus Inn

Restore Frontier Motel

Additional development options to be considered - for parking or new building construction.

**Project Budget Range :**  
**\$8,300,000 to \$14,583,865**