

PROFESSIONAL SERVICES AGREEMENT
FOR PROGRAM MANAGER

AGREEMENT NO.:PS-574

This Agreement, dated as of the 14 day of May, 2002, but actually executed on the date witnessed hereinbelow, by and between the **Public Building Commission of Chicago**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 66 West Washington Street, Chicago, Illinois 60602, referred to in this Agreement as the "**Commission**", and, **Gilbane, Riteway Construction Services, Inc., Brown and Momen, Inc., and Lou Jones Enterprises, Inc.**, a Joint Venture, with offices at 8550 W. Bryn Mawr Ave., Suite 500, Chicago, Illinois 60631, referred to in this Agreement as the "**Program Manager**",

W I T N E S S E T H:

WHEREAS, the Commission, on behalf of the **City Colleges of Chicago** (referred to in this Agreement as the "**User Agency**"), intends to undertake the construction and/or improvement of the facility or facilities in Chicago, Illinois, described in Schedule A to this Agreement:

**New Kennedy King College Campus
located at 63rd and Halsted**

hereinafter called the "**Project**"; and

WHEREAS, the Commission requires certain professional services (the "**Services**"), described on Schedule A to this Agreement, in connection with the Project and desires to employ Program Manager, on the terms and conditions set forth in this Agreement, to perform such Services; and

WHEREAS, the Program Manager desires so to be retained by the Commission and has represented to the Commission that the Program Manager has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

WHEREAS, the Program Manager has consulted with the Commission, reviewed the Project Documents (defined below) and taken such other actions as the Program Manager has deemed necessary or advisable to familiarize itself with the scope and requirements of the Project and the Services;

NOW, THEREFORE, for valuable consideration, the Commission and the Program Manager agree as follows:

1. **Incorporation of Recitals.** The matters recited above are hereby incorporated in and made a part of this Agreement.

2. Definitions.

- a. **Agreement** means this professional services Agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.
- b. **Commission** as herein referred to, shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Director of Construction, Managing Architect or Project Manager, acting on behalf thereof, as designated by the Commission in writing for the purpose of giving authorizations, instructions, and/or approvals pursuant to this Agreement.
- c. **Construction Budget** means the total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Program which shall be shown or described in the Contract Documents to be prepared by the Architect in accordance with the Architect's agreement with the Commission, but does not include any payments made to the Architect, the Program Manager or sub-consultants or reimbursable expenses pursuant to Schedule C, paragraph C.3.
- d. **Contract Documents** consists of all of the component parts of the Contract between the Commission and the General Contractor for the construction and improvement of the Project including, without limitation, the general and special conditions, technical specifications, drawings, addenda, bulletins and modifications thereto.
- e. **Program Manager** means the entity identified in the preamble of this Agreement which has agreed to be employed by the Commission, on the terms and conditions of this Agreement, and to perform the Services set forth herein.
- f. **Project** means the construction and/or improvement of the facility or facilities specified on page 1 of this Agreement.
- g. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in Schedule C, paragraph C.3.1, made by the Program Manager.
- h. **Services** means collectively, the services duties and responsibilities that are necessary to allow the Program Manager to provide the Services required by the Commission under this Agreement. The required Services are described in Schedule A of this Agreement.
- i. **Sub-consultant** means a firm hired by the Program Manager to perform professional services related to the construction and/or improvement of the Project.
- j. **Technical Personnel** as herein referred to includes partners, officers and all other personnel of the Program Manager, including technical typists assigned to the Project, exclusive of general office employees.
- k. **User Agency** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

3. Incorporation of Documents. The documents identified below in this paragraph are hereby incorporated in and made a part of this Agreement. By executing this Agreement, Program Manager acknowledges and agrees that Program Manager is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.
- a. Project Documents. The plans and specifications for the Project (to the extent that plans and specifications for the Project have been prepared) as set forth and described on Schedule B to this Agreement (the "Project Documents").
 - b. Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be revised from time to time.
4. Engagement and Standards for Performing Services.
- a. Engagement. The Commission hereby engages the Program Manager, and the Program Manager hereby accepts such engagement, to provide the Services described in Schedule A to this Agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Program Manager.
 - b. Nondiscrimination. The Program Manager agrees that in performing this Agreement the Program Manager will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. The Program Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 *et seq.* (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 *et seq.*; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code (1990), as amended. The Program Manager further agrees to furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement or administration of, or compliance with, the above mentioned laws and regulations.
 - c. Employment Procedures; Preferences and Compliances. Salaries of employees of Program Manager performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account

except only such payroll deductions as are mandatory or permitted by the applicable law or regulations. The Program Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Program Manager shall also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this Agreement, there is any direct or indirect "kick-back", as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Program Manager, out of payments due to the Program Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Program Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

- d. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 2 above, the Program Manager agrees to use best efforts to utilize minority business enterprises for not less than twenty five percent (25%) for MBE and five percent (5%) for WBE of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on February 11, 1992, concerning participation of minority business enterprises and women business enterprises on contracts awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.
- e. No Damage for Delays. The Program Manager agrees that no charges for damages or claims for damages due to delays shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated for by an extension of time to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Program Manager to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.
- f. Records. The Program Manager shall maintain accurate and complete records of expenditures, costs and time incurred by the Program Manager and by consultants engaged by the Program Manager in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at Program Manager's offices upon reasonable notice during normal business hours. Program Manager shall retain all such records for a period of not less than five calendar years after the termination of this Agreement.

- g. Time of Essence. Program Manager acknowledges and agrees that time is of the essence in the performance of this Agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. Program Manager agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of Program Manager under this Agreement and any other agreements entered into by the Commission which are managed or administered by Program Manager as a result of Program Manager's engagement hereunder.
- h. Compliance with Laws. In performing its engagement under this Agreement, Program Manager shall comply with all applicable federal, state and local laws, including but not limited to, those referenced in subparagraphs (b) and (c) above and in the documents referred to in paragraph 2 of this Agreement.
- i. Progress Meetings. Meetings to discuss the progress of the Project and/or to review the performance of Program Manager may be scheduled upon the Commission's request, at mutually agreeable times and locations, and the Program Manager agrees to cause such meetings to be attended by appropriate personnel of Program Manager engaged in performing or knowledgeable of the Services.
- j. Defects in Project. The Program Manager shall notify the Commission immediately regarding any significant problems in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.
- k. Performance Standard. Program Manager represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards of skill and diligence in the field. Program Manager further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for Program Manager to perform the Services in the manner required hereunder.
- l. Changes (Amendments). The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Program Manager to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Program Manager, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.
- m. Key Personnel. The Program Manager shall, prior to commencement of the work, assign and maintain a staff of competent personnel which is fully equipped, available as needed, and qualified to perform the Services required by this agreement. The Program Manager shall include such key persons and positions as indicated below. The Program Manager shall not reassign or replace Key Personnel as listed below without the prior written consent of the Executive Director, which consent shall not be unreasonably withheld.

Rick Wise, Project Executive
Mark M. Karaskiewkz, Senior Project Manager
Monica Perry, Assistant Project Manager

The Commission reserves the right to direct the Program Manager to remove any personnel from the performance of Services from any Project position upon written notification, and to review and approve the replacement of Key Personnel. If removal is for cause, any cost of such removal shall be borne by the Program Manager.

Prior to commencement of the work, the Program Manager shall identify the personnel to fill positions listed as T.B.D. in section C.2.2. and submit their resume to the Commission for approval.

5. Term.

- a. Duration. The term of this Agreement shall begin on the Commencement Date of Services specified in Schedule A to this Agreement and, subject to the provisions of subparagraph (b) below, shall expire upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an ongoing nature, on the Completion Date specified in such Schedule A. The Commission and the Program Manager may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A hereto.
- b. Termination or Suspension by the Commission. The Commission shall have the right, at any time, to terminate the term of this Agreement, with or without cause, by written notice given to Program Manager at least thirty (30) days prior to the effective date of termination. In addition, the Commission shall have the right, at any time and from time to time, with or without cause, to suspend the performance of Program Manager hereunder with respect to all or any part of the Services, by written notice given to Program Manager at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Program Manager from liability for the performance of any obligation of Program Manager under this Agreement performed or to have been performed by Program Manager on or before the effective date of termination or suspension. Provided Program Manager is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to Program Manager, in accordance with the terms of this Agreement, all compensation and reimbursements due to Program Manager for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to Program Manager for any loss, cost or damage which Program Manager or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse Program Manager for actual expenses approved by the Commission.
- c. Termination by the Program Manager. If the Project, in whole or substantial part, is stopped for a period longer than thirty (30) days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials unavailable,

through no act or fault of the Program Manager, or if the Commission fails to make any payment or perform any other obligation hereunder, the Program Manager shall have the right to terminate this Agreement, by written notice given to the Commission at least seven (7) days prior to the effective date of termination, and shall have the right to recover from the Commission all compensation and reimbursements due to Program Manager for periods up to the effective date of termination.

- d. Force Majeure. Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to a force majeure event. If a force majeure event occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Program Manager under this Agreement for the duration of the force majeure event. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by the force majeure event, but, provided the Program Manager is not in default of any obligation of the Program Manager hereunder, the Commission shall pay to Program Manager, according to the terms hereof, all compensation and reimbursements due to Program Manager for periods up to the effective date of suspension.
6. Compensation of Program Manager and Reimbursement for Expenses. The Commission shall compensate the Program Manager in the amount and the manner set forth in Schedule C to this Agreement.
7. Rights and Obligations of Commission. In connection with the administration of the Project by the Commission and the performance of this Agreement by Program Manager, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:
 - a. Information. The Commission shall provide Program Manager all reasonably requested information concerning the Commission's and the User Agency's requirements for the Project and the Services.
 - b. Review of Documents. Subject to the provisions of subparagraph 3 (e) above, the Commission agrees to make a reasonable effort to examine documents submitted by the Program Manager and render decisions pertaining thereto with reasonable promptness.
 - c. Site Data. To the extent the Commission determines to be necessary for Program Manager to perform the Services, the Commission may furnish, or may authorize Program Manager to obtain from a consultant or consultants approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to existing buildings and other improvements; (iii) title information; and (iv) information concerning available service and utility lines. The Program Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Program Manager and approved by the Commission, provided that the Program Manager has exercised reasonable diligence in the selection of the consultant.

- d. Tests and Reports. To the extent required for Program Manager to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil and/or other tests and reports; however, the Commission may authorize Program Manager to procure such tests and reports from a company or companies approved by the Commission as Reimbursable Expenses. The Program Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Program Manager and approved by the Commission, provided that the Program Manager has exercised reasonable diligence in the selection of the consultant and provided that the Program Manager has caused the consultant to purchase and maintain professional liability insurance in accordance with the provisions Schedule D protecting the Commission, the User Agency, and the Program Manager from any loss or claim arising out of the consultant's performance.
 - e. Legal, Auditing and other Services. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of Program Manager.
 - f. Designated Representatives. The Commission may designate, at its sole discretion, one or more representatives authorized to act in its behalf.
 - g. Indemnities. The Commission shall require, by appropriate provision in each contract let by the Commission after the date of this Agreement with respect to the Project that the contractor or consultant thereunder shall indemnify, save and hold harmless the Commission, the User Agency and the Program Manager, and their respective commissioners, board members, officers, agents and employees, from all claims, demands, actions and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise from the work performed pursuant to such contract, and that the contractor or consultant thereunder shall purchase and maintain during the life of such contract such insurance as the Commission may require. Further, the commission will cause the contractor to name the Program Manager as an additional invoice for Commercial General Liability and Automobile Liability.
 - h. Ownership of Documents. All documents, data, studies and reports prepared by Program Manager or any party engaged by Program Manager, pertaining to the Project and/or the Services shall be the property of the Commission.
 - i. Audits. The Commission shall have the right to audit the books of Program Manager and its sub-consultants on all subjects relating to the Project and/or the Services.
8. Indemnification of Commission. Program Manager hereby agrees to indemnify, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees (collectively, the "Indemnitees"), from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys (collectively, the "Losses"), that may arise out of or be based on any injury to persons or property that is or is claimed to be the result of an error, omission or negligent or willfully wrongful act of the Program Manager or any person employed by the

Program Manager to the maximum extent permitted by applicable law provided, however, that such indemnity specifically excludes all Losses resulting from the errors and omissions of any sub-consultant employed by the Program Manager to implement the Project except to the extent of the Program Manager's negligence in the administration and management of the work of such sub-consultants or specialty work that is self-performed by the Program Manager.

9. Insurance to be Maintained by Program Manager. The Program Manager shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Program Manager, insurance coverage which will adequately insure the Commission, the User Agency and the Program Manager against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in Schedule D to this Agreement.
10. Default.
 - a. Events of Default. Any one or more of the following occurrences shall constitute an Event of Default under this Agreement:
 - i. Failure or refusal on the part of the Program Manager duly to observe or perform any obligation or agreement on the part of the Program Manager contained in this Agreement, which failure or refusal continues for a period of ten (10) days, or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such ten (10) day period, after the date on which written notice thereof shall have been give to the Program Manager by the Commission;
 - ii. Any representation or warranty of the Program Manager set forth herein or otherwise delivered pursuant to this Agreement shall have been false in any material respect when so made or furnished;
 - iii. Program Manager becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals shall take any action in furtherance of any of the foregoing; or
 - iv. There shall be commenced any proceeding against Program Manager seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within sixty (60) days thereof, or there shall be appointed, without Program Manager's consent or

acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of Program Manager's assets and properties, and such appointment shall not have been vacated, stayed, discharged, bonded or otherwise dismissed within sixty (60) days thereof.

- b. Remedies. If an Event of Default shall occur and be continuing, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and shall have, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to Program Manager, in which event the Commission shall have no further obligations hereunder or liability to Program Manager except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.
- c. Remedies not Exclusive. No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

11. Disputes.

- a. General. All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including without limitation questions concerning allowability of compensation, and all claims for alleged breach of contract, shall be presented in writing to the Executive Director for final determination.
- b. Procedure. Requests for determination of disputes will be made by the Program Manager in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Program Manager and the Project Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identify any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. Program Manager will promptly provide the Executive Director with a copy of the request for determination of the dispute. The Project Manager will have thirty (30) business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Project Manager to respond will not be deemed to be an admission of any allegations made in the request for dispute resolution, but will be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as she or he may deem reasonable, necessary or desirable.
- c. Effect. The Executive Director's final decision will be rendered in writing no more than forty-five (45) business days after receipt of the response by the Project Manager

was filed or was due unless the Executive Director notifies the Program Manager that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Program Manager must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County or any other court.

The Program Manager will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period. The Executive Director's written determination will be complied with pending final resolution of the dispute.

12. Confidentiality. All of the reports, information, or data prepared or assembled by the Program Manager under this Agreement are confidential, and the Program Manager agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, Program Manager shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. If the Program Manager is served with a subpoena requiring the production of documents or information which is deemed confidential, the Program Manager shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.
13. Assignment. Program Manager acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of Program Manager and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by Program Manager, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Program Manager undergoes a change in control, the change in control shall be deemed an assignment of the Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Program Manager during any twelve (12) month period. In the event of an assignment by the Program Manager without the prior written approval of the Commission, the Commission shall have the right to immediately terminate the Agreement without fault or responsibility. Program Manager further acknowledges that Program Manager has represented to the Commission the availability of certain members of Program Manager's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due, the Program Manager shall so notify the Commission in writing, and shall assign other qualified members of Program Manager's staff, as approved by the Commission, to the Project. The Commission expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of the Program Manager.
14. Relationship of Parties. The relationship of Program Manager to the Commission hereunder is that of an independent contractor, and Program Manager, except to the extent expressly provided to the contrary on Schedule A hereto, shall have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement shall not be construed as an agreement of partnership, joint venture, or agency.

15. General

- a. Counterparts. This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.
- b. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.
- c. Governing Law. This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.
- d. No Waiver. The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.
- e. Non-liability of Public Officials. No Commission trustee, employee, agent, officer, or official is personally liable to Program Manager or its sub-consultants, and Program Manager and its sub-consultants are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Program Manager or its sub-consultants under this Agreement.
- f. Notices. All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to Commission and to Program Manager at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Program Manager may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.
- g. Program Manager. Execution of this Agreement by the Program Manager is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Program Manager have been made with complete and full authority to commit the Program Manager to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.
- h. Severability. In the event that any provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

- i. Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 25th day of March, 2003.

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

ATTEST:

By: Elgrick C. Johnson
Title: Secretary

By: Ruff M. Daley
Title: Chairman

GILBANE

By: Thomas F. Gilbane, Jr.
Title: President

BROWN AND MOMEN, INC.

By: [Signature]
Title: PRESIDENT

LOU JONES ENTERPRISES, INC.

By: [Signature]
Title: President

RITEWAY CONSTRUCTION SERVICES, INC.

By: [Signature]
Title: Pres.

Subscribed and sworn to before me
this 10th day of March, 2003.
by Thomas F. Gilbane, Jr.

Joan P. Hannahan
Notary Public
State of Rhode Island
County of Providence

(seal)

My Commission Expires: 1/6/2006
ID# 6406

Schedule A

New Kennedy-King College Campus Project located at 63rd and Halsted

Scope of Services

The Program Manager will perform all Services required to manage and administer the design and construction of the project as determined by the Commission. Such Services shall include, but not be limited to, pre-construction activities, construction activities, and project close-out. The term of this Agreement shall be defined by the following:

Commencement Date of Services **May 14, 2002**

Completion Date of Services **July 31, 2006**

Services shall be performed in accordance with the time frames in the schedule attached as part of Schedule B – Staffing Chart.

The Program Manager shall perform the following Services:

A.1 Pre-Construction Phase (Design Development and Construction Documents)

- A.1.1. Secure the services of the any necessary Specialty Consultants with the approval of the Commission.
- A.1.2 Consult with the Commission and the User Agency regarding the goals and requirements of the project.
- A.1.3 Prepare a cash flow analysis of the project including services performed by the Design Team.
- A.1.4 Assemble and review all proposal documents required for each proposal package. Review and amend the Commission's standard proposal documents prepared by the design team and the Commission's milestone dates. Issue Notice of Proposal Opportunity letters to all general and trade contractors currently pre-qualified by the Commission, as well as all prime contractors. Attend all pre-proposal meetings.
- A.1.5 Provide potential value engineering opinions.
- A.1.6 Review the progress of preparation of the drawings and advise the Design Team with respect to availability and price of material, avoidance of jurisdictional disputes and feasibility of details.
- A.1.7 In conjunction with the Architect, or "Design Team" develop an overall pre-development and design schedule, which includes milestone dates for owner, required approvals and coordinates with the Commission's desired project completion date.

- A.1.8 Prepare one detailed cost estimate at the conclusion of Design Development based on information developed by the Design Team during the Design Phase. The estimate shall contain the following:
- A.1.8.1 An overview of the current budget compared to Commission's project estimate.
 - A.1.8.2 A Budget Summary and Division Breakdown (Use CSI or Unifomat) as directed by the Commission.
 - A.1.8.3 A detailed comparison and reconciliation of the current budget to the previous budget, with an explanation of any variance by component.
 - A.1.8.4 A summary of all approved budget revisions.
 - A.1.8.5 A cash flow analysis of the project based on the latest budget information.
- A.1.9 Prepare a Computerized CPM summary schedule using a program compatible with the Commission's scheduling system. The schedule shall clearly identify each phase of the project and indicate early and late start and finish dates, float times and percent completion of each task. Recommend a method for the delivery of the project based on the Commission's goals and requirements. This would include potential packaging of buildings. Update at least monthly through out the course of the project.
- A.1.10 Participate in value engineering and evaluate proposed foundation, structural, electrical, and mechanical systems as to quality, first cost and life cycle cost, constructibility, union jurisdiction, availability and effects on funding flexibility. Value engineering shall be provided in conjunction with the required cost estimate.
- A.1.11 Prepare a monthly report which will include a summary of the project current and upcoming months projected status, current and upcoming months projected schedule and budget and a pending issues log as determined by the Commission.
- A.1.12 Consult with the Commission and User Agency regarding issues which impact the constructibility and feasibility of the project.
- A.1.13 Identify long lead time items and recommend to the Commission methods of procurement to achieve the project schedule.
- A.1.14 Prepare a proposal package schedule as directed by the Commission.
- A.1.15 Conduct periodic progress meeting (at least once per month) with the Commission, User Agency and the appropriate Design Team members and contractors. Prepare meeting minutes and distribute to all parties in attendance within five (5) business days.

A.2 Bidding Phase Services

- A.2.1 Assemble and review all bid documents required for each bid package. Review and amend the Commission's bid documents and contract documents so that they are coordinated with the construction documents prepared by the Design Team and the Commission's Master CPM milestone dates. Upon completion of this review inform the Commission in writing that the documents are complete and ready for bid.
- A.2.2 Issue Notice of Bid Opportunity letters to all contractors on the applicable Commission pre-qualified list of qualified contractors eligible to bid on the work.
- A.2.3 Coordinate and issue required addenda to interested contractors.
- A.2.4 Attend pre-bid meeting(s) for all bid package(s).
- A.2.5 Evaluate bids and make recommendations of award to Commission.

A.3 Construction Phase

- A.3.1 Prepare a monthly report containing the following:
 - A.3.1.1 Executive Summary - include a summary of financial status, highlights of major events and a schedule summary.
 - A.3.1.2 Status of Construction - summarize project construction activities, including current anticipated start and completion dates by project elements.
 - A.3.1.3 Outstanding Items - include items to be completed by the Program Manager, the design team members, the Commission, User Agency, and general, prime, and/or trade contractors.
 - A.3.1.4 Purchasing Activity - detail current status of materials procurement based upon information received from the general contractor and any prime contractor.
 - A.3.1.5 Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated.
 - A.3.1.6 Schedules - include summary construction schedule indicating current project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.
 - A.3.1.7 Progress Photographs - arrange for production and distribution of progress photographs as required by the Commission.
 - A.3.1.8 Anticipated Project Activity - indicate, in narrative form, the activities of

the project in the upcoming month, actions to be taken during that period, and any scheduled governing agency reviews/ approvals, etc.

- A.3.1.9 Other - include such additional or revised information as shall be required by the Commission.
- A.3.2 Review and monitor, on a monthly basis, the general contractor's baseline and updated schedules for compliance with the individual general contract milestone dates and the Commission's project milestone dates using scheduling software compatible with that of the general contractor. Insure appropriate coordination of general contractor's schedule with the schedules of any prime contractors. In instances where schedule slippage and/or schedule conflicts are forecast to occur, make recommendations to the Commission as to how to remedy the schedule slippage and/or schedule conflicts.
- A.3.3 Conduct weekly meetings with the Commission, User Agency, Design Team, specialty consultants, prime contractors and general contractor. Review the project schedule, submittals, scope change, requests for information, pending issues and field problems. Prepare meeting minutes and distribute to all parties in attendance within five (5) business days.
- A.3.4 Review and approve all payment applications and submit payment requests for approval and payment by the Commission.
- A.3.5 Maintain a full-time project manager as the primary point of contact with the Commission, User Agency, Design Team members, prime contractors and general contractor.
- A.3.6 Establish an on site organization line of authority to implement all construction phases of the project in a coordinated and efficient manner.
- A.3.7 Establish and implement procedures for, and maintain coordination among, the Commission, the User, Design Team, general contractor, prime contractors and other agencies having jurisdiction of the project with respect to all construction aspects of the project.
- A.3.8 Coordinate the procurement and assembly of all required permits, licenses, and certificates from the general contractor and prime contractors, and arrange delivery of same to the Commission.
- A.3.9 Coordinate all aspects of the work with any quasi-public agencies or utility companies involved in the project.
- A.3.10 Conduct site observations of the general contractor to ensure that work on the project is progressing on schedule and in accordance with the requirements of the Commission and the contract documents.
- A.3.11 In the event that the interpretation of the meaning and intent of the contract documents

becomes necessary during construction, ascertain the architect's interpretation and transmit such information to the general contractor, prime contractors, and to the Commission.

- A.3.12 Review the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
- A.3.13 Develop and establish a quality inspection control system so that the required standards of construction are achieved.
- A.3.14 Review all testing required by the technical sections of the specifications for compliance with the contract documents, in conjunction with the Architect of Record.
- A.3.15 Receive copies of all contractor shop drawings, shop drawing logs, samples and all other required submittals for review of compliance with project schedule. Comments on contractor submittal schedules (ie: approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like) will be submitted to the Commission for their information.
- A.3.16 Monitor and implement the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- A.3.17 Establish and maintain on the site a complete library of all contract documents, addenda, bulletins, scope changes, approved shop drawings and material samples.
- A.3.18 Receive and review all change order requests from the general contractor and prime contractors. Review unit prices, time and material changes and similar items. Submit recommendations to the Commission for approval.
- A.3.19 Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion schedule and risk to the project.
- A.3.20 Monitor requests for change orders required by field conditions and other unforeseen conditions and submit such requests to the Commission for approval prior to instituting any changes to the requirements of the contract documents.
- A.3.21 Monitor all scope changes during construction to ensure compliance with approved revisions.
- A.3.22 Implement the specifications and the Commission's procedures for processing scope changes, including applications for extensions of time.
- A.3.23 Maintain cost accounting records of the work performed in accordance with the specifications and the Commission's procedures.

A.4 Project Close Out

- A.4.1 Coordinate a comprehensive final inspection of the project by the architect to verify that the materials furnished and work performed are in accordance with the contract documents.
- A.4.2 Coordinate the preparation of punchlists by the architect indicating the items of work remaining to be accomplished. Coordinate the completion of such items in an expeditious manner. Prepare certificates of preliminary and final completion in consultation with the Commission and the User.
- A.4.3 Assemble and coordinate the delivery to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents of the general or prime contractors. Coordinate equipment and systems training sessions, provided by the general contractor or trade contractors, for User Agency personnel. Make recommendations as to the withholding of payments to the general contractor. Determine the value of any uncorrected and/or deficient work.
- A.4.4 Coordinate the submission of "as-built" drawings and operations and maintenance manuals of the project in accordance with the specifications by the general contractors. The "as-built" documents will be subject to the approval of the Architect.

A.5 Community Inclusion

- A.5.1 Submit a plan for the performance of Community inclusion activities for review and approval. Such plan must, at a minimum, include a timeline, resume(s) of personnel assigned, and description of the tasks as requested by the Commission.
- A.5.2 Develop strategy for the training of personnel for possible employment on the project via general contractors or subcontractors. Existing programs such as Skill Builders and City Colleges of Chicago training programs should be included in the strategy.
- A.5.3 Implement mechanism to facilitate employment of graduates of the Skill Builders, City Colleges of Chicago programs, and community residents by general contractors and subcontractors.
 - A.5.3.1 Develop and maintain list of trades and areas for community involvement.
 - A.5.3.2 Through the technical analysis of the project, determine the type and probable quantity of the jobs generated by the construction process.
 - A.5.3.3 Working with the Public Building Commission, City Colleges of Chicago, and Englewood community the Program Manager shall establish a database of Englewood residents who have the potential to be hired to work

on the project. The database should be a computerized listing that includes individual vital statistics and any experience or training already available from each respective job applicant. The database will be structured by occupation, both skilled and non-skilled.

- A.5.3.4 Program Manager shall review the applications and direct to the 14-week Skill Builders Training Program or the City Colleges of Chicago training programs; and if applicants meet trade requirements Program Manager will direct to Contractors.
 - A.5.3.5 Distribute and/or provide easy access to the Englewood Community Hire Database to all contractors so as to avail it as the first resource for new hires to work on the project.
 - A.5.3.6 Coordinate with the trade, union, apprentice coordinators and the Building Trades Council to identify any available openings within the various unions for Englewood residents at the Project.
 - A.5.3.7 Applicants coming out of training programs (already experienced, skilled, and available) and from the Englewood community shall be actively marketed to contractors and subcontractors working on the Project.
- A.5.4 Working with the Public Building Commission, City Colleges of Chicago, and Englewood community the Program Manager shall establish a directory and/or database of Englewood businesses and make available to potential general contractors. Program Manager shall follow up with contractors on use of directory.
- A.5.5 Prepare a monthly report on the effort and expected results. Prepare a project newsletter to disseminate information regarding future employment contractor opportunities on the project.

Schedule B

Project Documents

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Schedule C

Compensation of Program Manager

C.1. Program Manager's Fee:

C.1.1. The Commission, in full payment to the Program Manager shall pay the Program Manager the Lump Sum Fee ("Fee") of \$2,149,000.00 for the Services described in Schedule A to this Agreement. The Fee shall be structured as follows:

Design Development Documents	\$150,000.00
Construction Documents Phase	\$331,075.00
Bidding Phase	\$331,075.00
Construction Phase	\$975,775.00
Project Close Out Phase	\$361,075.00

C.1.2. Progress payments for the above described basic services shall be made on a monthly basis for each phase, as appropriate. The amount paid shall not exceed that indicated above. Furthermore, full payment of any or all phases shall not be made until the phase is completed.

C.1.3. Program Manager's fee shall include consultant's profit, overhead, and general conditions, and all items not specifically identified as Reimbursable Expenses. Basic services shall be compensated based on the hourly rates in Section C.2.2, plus authorized reimbursables.

C.2. Changes to Work

C.2.1. The Commission shall compensate the Program Manager for Contract Modifications and/or Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Program Manager employees shall be the actual base salaries paid to the specific employee performing the services, plus a multiplier not to exceed 2.5 (not to exceed the maximum Commission hourly salary rates, identified in C.2.2). The following items are considered to be a part of the multiplier, and shall not be considered as additional reimbursable expenses:

C.2.1.1 Indirect personnel Expenses.

- C.2.1.1.1 Social Security Tax.
- C.2.1.1.2 Workmen's Compensation Insurance.
- C.2.1.1.3 Unemployment Insurance.
- C.2.1.1.4 Health insurance Benefits.

- C.1.2.1.5 Long Term Disability Insurance.
- C.1.2.1.6 Other Statutory and Non-Statutory Employee Benefits.
- C.1.2.1.7 Pensions and Similar Contributions.

- C.2.1.2 Telephone Service including Local Calls.
- C.2.1.3 General and Administrative Expense including Overhead and Profit.
- C.2.1.4 General Liability, (Excluding costs for Insurance Premiums on Special Consultants and Trade Contractors) Professional Liability, Valuable Papers, Auto and other Insurance as mandated by the Agreement.
- C.2.1.5 Computer Charges.
- C.2.1.6 Postage and Handling.
- C.2.1.7 Parking and Mileage.
- C.2.1.8 Other items not specifically identified below as "Reimbursables".

C.2.2. The maximum hourly rate, including the multiplier, the Commission shall pay the Program Manager for their employees and Sub-Consultant's employees shall be as follows:

<u>Position Title</u>	<u>Name</u>	<u>Maximum Hourly Rate with Multiplier</u>
Project Executive	Rick Wise	\$160.00
Senior Project Manager	Mark M. Karaskiewkz	\$140.00
Assistant Project Manager	Monica Perry	\$115.00
Cost Schedule Engineer	T.B.D.	\$94.00
Community Specialist	T.B.D.	\$88.00

C.3. Reimbursable Expenses

C.3.1 "Reimbursable Expenses" as herein referred to include expenditures made by the Program Manager, with the Commission's prior approval, for the following incidental expenses incurred in the interest of the Project. Program Manager shall be reimbursed for actual expenditures at cost to the Program Manager. With regard to fees of consultants only, the Program Manager may be reimbursed for actual cost of the consultant plus an additional 2% mark-up. The following shall be considered Reimbursable Expenses:

C.3.1.1 Program Manager shall be reimbursed for the cost of sub-consultant fees, when specifically requested by the Commission. Sub-consultants may include Engineering, Cost Estimating, Surveys, Geotechnical, Environmental Technical Testing and Reporting services, and other Specialty Consultants.

C.3.1.2 Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of review by the Commission, soliciting contractor bids, issuing documents for building permit and issuing the General Contractor's Contract Documents.

C.3.1.3 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses

include coach air fare, hotel and per diem costs, auto rental, fuel and insurance, and must be supported with proper documentation in the form of itemized invoices.

- C.3.1.4 Costs for rental or purchase of special items or equipment requested by the Commission.
- C.3.1.5 Copier and supplies that are project related only.
- C.3.1.6 Project sign if directed and approved by Commission.
- C.3.1.7 Small tools.
- C.3.1.8 Design-Phase expenses as directed and approved by Commission.
- C.3.1.9 Record storage.
- C.3.1.10 Field staff travel on project related business only.
- C.3.1.11 Railroad Protective Liability Insurance.
- C.3.2 Costs of the Reimbursable Expenses identified in paragraphs C.3.1.2 through C.3.1.11 are on a not to exceed basis of \$155,000.00.
- C.3.3 The following are not Reimbursable Expenses:
 - C.3.3.1 Plotting, printing, and distribution of drawings and specifications for the purposes of coordination between members of the Program Manager's project team, or otherwise incidental to the normal execution of the Program Manager's work.
 - C.3.3.2 Office and administrative expenses, including computer, telephonic or telecopier system expenses, photocopying and duplicating costs, except as defined under C.3.1., office or drafting supplies, and delivery services, except as defined under C.3.1.

INSURANCE REQUIREMENTS

The Program Manager must provide and maintain at Program Manager's own expense, until the term of the agreement and during the time period following expiration if Program Manager is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), separation of insureds, defense, and contractual liability (with no limitation endorsement). The Commission is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Program Manager must provide Automobile Liability Insurance with limits of not less than \$1,000,000.00 per occurrence for bodily injury and property damage. The Commission is to be named as an additional insured on a primary, non-contributory basis.

4) Professional Liability

When any architects, engineers, construction managers, Program Managers, or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

5) Railroad Protective Liability

When any work is to be adjacent to or on railroad or transit property, Consultant must provide, with respect to the operations that Consultant or subconsultants perform, Railroad Protective Liability Insurance in the named of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out to injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

6) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Property

Consultant must be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies) owned, rented, or used by the Consultant.

B. ADDITIONAL REQUIREMENTS

The Program Manager must furnish the Commission, 50 W. Washington, Daley Center, Room 200, Chicago, Illinois 60602, with original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Program Manager must submit evidence of insurance to the Commission upon to Agreement award. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Commission to obtain certificates or other insurance evidence from Program Manager is not a waiver by the Commission of any requirements for the Program Manager to obtain and maintain the specified coverages. The Program Manager must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Program Manager of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated. **The certificate of insurance must reference the project name and number.**

The insurance must provide for 60 days prior written notice to be given to the Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Program Manager.

The Program Manager agrees that insurers waive their rights of subrogation against the Commission, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Program Manager in no way limit the Program Manager liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the Commission do not contribute with insurance provided by the Program Manager under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

The Program Manager must require all subconsultants to provide the insurance required herein, or Program Manager may provide the coverages for subconsultants. All subconsultants are subject to the same insurance requirements of Program Manager unless otherwise specified in this Agreement.

If Program Manager or subconsultant desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The Commission maintains the right to modify, delete, alter or change these requirements.

JOINT VENTURE AGREEMENT

THIS AGREEMENT, made as of the 29th day of October, 2002 by and between Gilbane Building Company, a Rhode Island corporation (hereinafter called "Gilbane"), Riteway Construction Company (hereinafter called "Riteway"), an Illinois Corporation, Brown and Momen, Inc. (hereinafter called "Brown and Momen"), an Illinois Corporation, and Louis Jones Enterprises, Inc. (hereinafter called "Louis Jones"), an Illinois Corporation.

WITNESSETH

WHEREAS, the Public Building Commission of Chicago proposes to award a contract(s) under the terms of which certain Program Management Services are to be performed in connection with the New Kennedy King College Campus located at 63rd and Halsted (hereinafter called the "Project"); and,

WHEREAS, Gilbane, Riteway, Brown & Momen and Louis Jones, propose to enter into a Joint Venture to perform such Program Management Services required in connection with said Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein recited, the parties hereto, covenant and agree as follows:

1. DIVISION OF JOINT VENTURE INTERESTS

a. Gilbane, Riteway, Brown & Momen and Louis Jones, hereby form a Joint Venture to be known as Gilbane, Riteway, Brown & Momen and Louis Jones, a Joint Venture. The respective

interests of the parties in said Joint Venture, in and to any property and equipment acquired in connection therewith, and in any and all monies and properties which may be derived by the Joint Venture and the obligations and liabilities of each of the parties hereto as among themselves in connection with the business of the Joint Venture are as follows:

GILBANE:	56%
RITEWAY:	24%
BROWN & MOMEN:	10%
LOU JONES:	10%

b. All profits and losses of the Joint Venture shall be distributed in accordance with the respective interests of the parties.

2. PURPOSE

This Joint Venture shall be organized solely for the purpose of participating in the Program Management Contract and any other agreement contemplated therein and in connection therewith. The Joint Venture shall have the power to do all things incidental to carrying out the aforesaid agreements. A Joint Venture interest shall be personal property for all purposes. All property of the Joint Venture shall be deemed to be owned by the Joint Venture and no venturers, individually, shall have any ownership of such property.

3. CASH REQUIREMENTS

a. The parties agree that the Joint Venture shall at all times maintain on hand sufficient funds to permit the payment when due of all of its obligations. The cash requirements of the

Joint Venture shall be furnished by the parties hereto proportionately, in accordance with their respective interests in the Joint Venture as set forth in Paragraph 1 hereof.

b. Forthwith following the execution of this Joint Venture Agreement, each party hereto shall pay to the Joint Venture its proportionate share of an initial contribution in the amount of \$10,000.00 for use in the performance of the Joint Venture.

c. The Management Committee (hereinafter designated) shall determine from time to time the amount of the cash requirements of the Joint Venture, over and above the amounts previously furnished by the parties, and shall promptly, by written notice, call upon the parties for a cash contribution in the amount determined to be needed.

d. Within fifteen (15) days after written notice to the parties by the Management Committee of the determination that additional cash is required by the Joint Venture, each party shall pay into the Joint Venture its share of the additional cash requirement. If one of the parties defaults by failing within the time provided to pay its proportionate share of the cash requirements, the other party agrees to promptly pay to the Joint Venture the amount due from the defaulting party. Any party failing to pay its share of the cash requirements within said fifteen (15) days, and failing to cure same within thirty (30) days thereafter, shall neither have a right to later cure its default by providing cash to the Joint Venture nor shall such party have the right to make any additional payments toward the required cash for the Joint Venture except as may be authorized in writing by the nondefaulting party.

e. In the event that any party defaults in providing its share of the cash requirements of the Joint Venture, the profits, if any, of the Joint Venture shall be divided among the parties hereto in the proportion in which the parties, have, in fact, advanced the total amount of the

cash required by the Joint Venture for the full and complete performance of the undertakings contemplated in the Program Management Contract and the discharge of all obligations in connection therewith. Any party failing to advance its share of the cash requirements shall not be relieved of its obligations to share, in the proportion set forth in Paragraph 1 above, any loss that may accrue to the Joint Venture. Further, if the Joint Venture results in a loss, the defaulting party shall be obligated to pay interest to the nondefaulting party advancing funds on account of the default at the Prime Rate (the interest rate from time to time charged by the bank to its highest rated commercial borrowers for 90 day loans) computed on a daily basis on the amount so advanced from the date of the advance to cover the loss to the date the defaulting party discharges its obligations with respect to the loss; provided, however, the defaulting party may stop the running of interest by tendering cash to the Joint Venture in payment of its share of the loss but the acceptance by the Joint Venture of cash so tendered shall not be considered a waiver of default by the nondefaulting party, nor shall such cash be taken into account in determining the proportions into which any excess funds of the Joint Venture are divided or the order of withdrawals.

4. BANK ACCOUNTS

General bank accounts for the Joint Venture shall be opened by the Joint Venture at such bank or banks and under such description as the parties hereto shall jointly agree.

No Joint Venture funds shall be returned or distributed to any of the parties other than in accordance with the provisions of this Agreement unless such return or distribution has been mutually agreed upon in writing by the Management Committee. If any such return of cash or

distribution is agreed upon by the parties, and subsequently thereto, additional cash is required by the Joint Venture, the provisions of this Agreement with respect to the providing of cash requirements shall be fully applicable, in all respects, in the same manner as if no such return of cash or distributions had occurred.

5. MANAGEMENT OF THE JOINT VENTURE

a. Each of the parties hereto shall have a voice in the management of the affairs of this Joint Venture. The Joint Venture shall be managed by a committee of six persons. The initial Management Committee shall be composed of:

GILBANE:	Joe Clare
	Mike Bohn
	Rick Wise
RITEWAY:	Larry Huggins
BROWN & MOMEN:	Ernest Brown
LOUIS JONES:	Louis Jones

In the event of the incapacity of a member of the Management Committee for any reason, the party selecting such person shall promptly appoint a successor. Any member may appoint an alternate if unable to attend any meeting of the Management Committee. All policy decisions shall be reached by majority vote of partners Venture interest, and the committee shall meet at least once a quarter during design phase and monthly during the bidding and construction phase, upon five (5) days' written notice of either party.

b. The Management Committee shall have the general charge of and supervision of the obligations of the Joint Venture. The Management Committee shall have authority to appoint such agents and representatives, if any, as it may deem necessary or advisable for the proper conduct of the affairs and the business of the Joint Venture, fix their salaries or other remuneration, and determine tenure of appointment.

c. All such Program Management Services shall be rendered in accordance with the Contract(s) between the Joint Venture and the Public Building Commission of Chicago attached hereto as Exhibit A and made a part hereof (hereinafter called "the Contract"). Riteway, Brown & Momen and Louis Jones each hereby designate and appoint Gilbane as its agent for the purposes of executing the Contract between the Joint Venture and the Public Building Commission of Chicago and each party agree to be bound by the terms and conditions of said Contract(s), including without limiting the generality of the foregoing, all payment provisions

d. All parties shall provide all personnel and services in proportion to their interest designated by the Management Committee, to do all necessary tasks required to perform the work including, but not limited to, the provisions of (a) design and construction scheduling; (b) shop drawings which shall be prepared and submitted by the appropriate entity; (c) samples; (d) services and operating manual; (e) monthly or other interval payment requests and procurement of evidence of entitlement to payment as required; (f) coordination of utilities; (g) building and construction permits as may be required in connection with the construction of the improvements; (h) on-site construction coordination; (i) cost control program and reporting system; and (j) project insurance.

e. Gilbane shall furnish the Project Executive and the Project Manager to the Joint Venture.

f. The activities of the Joint Venture shall at all times be subject to the authority of the Management Committee.

6. WITHDRAWALS AND DISTRIBUTIONS

a. Except as provided herein, no funds shall be withdrawn from the Joint Venture except with the written consent of the parties hereto.

b. Gilbane, Riteway, Brown & Momen and Louis Jones shall be entitled to be reimbursed from Joint Venture funds for any ordinary and necessary expenditures by either of them actually incurred in the furtherance of the Joint Venture business and it is contemplated that such expenditures shall ordinarily be approved in advance by the Management Committee provided; however, such approval shall not be required for expenses or costs which are reimbursable from the Owner or for non-reimbursable costs which do not exceed \$1,000.00. Neither party hereto shall be entitled to reimbursement for legal fees incurred by it incident to the preparation and negotiation of any of the various agreements involving the contractual relationship between the parties, or any other legal fees not incurred on behalf of the Joint Venture and approved in advance by the Management Committee. Prior to any request for reimbursement, the party seeking reimbursement shall furnish to the Management Committee a reasonably detailed statement setting forth the amount and nature of such expenses.

c. After completion of the improvements contemplated for the Project and after paying or providing for the payment of all known costs and expenses of the Joint Venture, and after setting aside such reserves for unsettled claims and demands and contingencies as the parties

may deem proper and advisable, and after the repayment of all cash advanced by the parties, the profit or loss of the Joint Venture with respect to the completion of the Project shall be determined and distributed among the parties in accordance with their respective interest herein. Repayment of cash contributed to the Joint Venture shall be made to the parties contributing the same in reverse order in which the cash was contributed so that the latest contributions will be the first repaid. If and when monies set aside as reserves for the payment of unsettled claims and demands and other contingencies are no longer required for the purposes intended, then such monies shall be similarly distributed among the parties. Notwithstanding the above, the Management Committee may from time to time authorize the distribution of accumulated profits in accordance with the respective interests of the parties, taking into account the outstanding obligations of the Joint Venture.

d. If the performance of the Contract shall result in a loss, the parties shall be obligated as set forth in Paragraph 1 hereof, and the liability of the parties for bearing of losses shall continue with respect to any claims which at any time, either before or after performance, shall be made against them or any of them by reason of carrying out this Joint Venture or for any matter or thing, in connection therewith. If any party's share of the loss exceeds the amount of its cash payments to the Joint Venture, such party shall forthwith pay to the Joint Venture the amount of such excess together with interest due, if any. If any party fails to pay the amount of such excess, the other party shall bear the loss and the defaulting party shall be obligated to reimburse the other party, on demand, the amount of the loss or expense incurred by reason of such failure together with interest thereon at the Prime Rate.

7. JOINT VENTURE ACCOUNTING

a. The accounting for the services performed under the Contract shall be, for income tax purposes, on a "Percentage of Completion" basis, if allowable by the Internal Revenue Code. Separate books of account for the Joint Venture shall be kept and maintained for the entry of all accounts and shall be kept at the office of the Project unless the parties agree upon a different site, and such books of account shall be open to the examination of each party hereto at any time. A quarterly statement of operations of the Joint Venture shall be made by Gilbane, including a periodic comparison between the items of cost and the items included in the estimate of costs, which statement shall be furnished to each of the parties hereto with reasonable promptness at the end of each calendar quarter. Copies of monthly project cost reports shall also be furnished to each party. Gilbane, Riteway, Brown & Momen and Louis Jones shall submit, for monthly payment, their costs. Home or regional office personnel cost billing shall be at direct labor cost, times a multiplier of 2.2, which multiplier will compensate each party for its overhead and the associated fringe benefits of such employees. Field personnel shall be billed at direct labor cost plus fringe benefits at a maximum multiplier of 1.43 and .05 for overhead for a total maximum of 1.48. An annual financial statement of the affairs of the Joint Venture shall be made by Gilbane certified to by its Chief Financial officer and shall be subject to the review and concurrence of Riteway, Brown and Momen and Louis Jones Chief Financial Officers. In addition, either party may request that an independent firm of auditors conduct a certified audit of the affairs of the Joint Venture at the requesting party's expense. Upon completion of the Project, a true and correct accounting shall be had of all expenses and all accounts, vouchers, records, and data relating to the Joint Venture with

respect to the Project. To the extent that records must be kept subsequent to the completion of the Project pursuant to provisions of law, the same shall be kept at such place or places as the Joint Venture may from time to time determine and the cost thereof shall be borne by the parties hereto in accordance with their respective interest in the Joint Venture.

b. The parties recognize that all costs, particularly non-reimbursable costs must be carefully controlled so as to realize all anticipated profits. Towards this end, Gilbane will prepare budgets for all phases of the contract. Such budgets shall be prepared for both the design and construction phases. Thereafter each party will prepare a report on a regular basis as established by the parties to monitor actual costs against budgeted costs. If at any time it appears the budget of either party is in any danger of being exceeded, such party shall immediately notify the other party and mutual steps shall be taken to eliminate or minimize any such project overrun.

8. EQUIPMENT

All equipment or property which must be purchased will be purchased and owned by the Joint Venture, excepting, however, that equipment may be obtained on a rental basis if it appears beneficial to the Joint Venture. The Joint Venture, with prior written approval of the Management Committee, may buy, sell, or lease equipment at any time, at such prices and upon such terms as shall be agreed upon by the parties hereto.

9. CONSULTANT

It is contemplated that it may be necessary for the Joint Venture to hire consultants. No such consultants shall be hired on behalf of the Joint Venture without the prior written approval of the Management Committee.

10. CREDIT

a. Neither party shall make any loan, purchase, assignment, endorsement, guarantee or other commitment for or on behalf of the Joint Venture without prior written consent of the other party.

b. Neither party shall have the right to borrow money on behalf of the other party, nor use the credit of the other party for any purpose.

11. BANKRUPTCY OR DEFAULT OF A PARTY

a. In the event of the adjudication of bankruptcy or judicial determination of insolvency of any of the parties hereto, or in the event any petition is filed by or against any party under any state or federal law relating to bankruptcy, reorganization, composition, or arrangement, or in the event of a default under this Agreement by one of the parties hereto not cured within the time specified in this Agreement (or within a reasonable time if no time is specified herein) then such party (hereinafter referred to as the "insolvent party") from and after said date (anything in this Agreement to the contrary notwithstanding) shall cease to have any rights in the management of this Project or this Joint Venture, and whenever it is provided in this Agreement that the act, consent, or decision of the parties hereto is required, it shall be deemed to mean the act, consent, or decision of the other party hereto, excluding the insolvent party. The insolvent party shall remain liable for its share of any losses as provided herein. The insolvent party shall be entitled to its proportionate share of the profits of the Joint Venture earned to the end of the calendar month last preceding the date of the event mentioned above. Its proportionate share of the profit shall be determined in accordance with Paragraph 1 hereof, taking into consideration all cash contributions to the Joint Venture both

before and after the event mentioned above only after the Project Improvements have been completed. The profit of the Joint Venture earned as of the end of the calendar month above-specified shall be that proportion of the total net profit of the Joint Venture that the costs incurred by the Joint Venture to such date shall be to the total cost incurred by the Joint Venture, to be determined upon completion of the project.

b. Subject to the foregoing provisions herein contained, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors, assigns and legal representatives, but shall not inure to the benefit of any other person, firm or corporation.

12. INSURANCE

The Joint Venture shall obtain all insurance coverage as may be required.

13. LEGAL COUNSEL

Legal counsel that may be required to represent the Joint Venture shall be selected and employed by the Management Committee. The fees of such legal counsel shall be charged to the Joint Venture.

14. BONDS

In the event the Contract requires that the Joint Venture provide a performance and/or payment bond, each party shall share in the bonding capacity requirements and the premium for such bond in accordance with its respective interest. It is understood that the bonding arrangements will be coordinated by Gilbane.

15. DISCLAIMER OF GENERAL PARTNERSHIP

The relationship between the parties under this Agreement shall be strictly limited to the purposes set forth herein. This Agreement shall be construed and deemed to be a Joint

Venture for participating in the Project. Nothing herein contained shall constitute the parties as general partners or constitute any party as the general agent of the other

16. PROHIBITION AGAINST ASSIGNMENT

No party hereto shall sell, assign or in any manner transfer its interest, or any part thereof, in this Joint Venture without first obtaining in advance the written consent of the other party hereto. Such interest shall be non-assignable without such consent and any purported assignment thereof without such consent shall be void and of no effect.

17. WITHDRAWAL OF JOINT VENTURE

No party shall withdraw from the Joint Venture or assign its interest in the Joint Venture except upon the written approval of the other parties.

18. NOTICE

Each party hereto shall forward copies of all bids, awards, change orders and other documents that may materially affect the Joint Venture or the parties to the Joint Venture and the other party. A duplicate set of project records shall be maintained at the office of Gilbane.

19. APPLICABLE LAW

All questions raised relative to the execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Illinois.

20. REPRESENTATIONS

Each party hereto represents and warrants to the other which shall survive the conclusion of the Project that any written statement, certificate, schedule, document or information furnished in connection with the Contract or the proposals used in connection with obtaining the Contract are not false or misleading with respect to any material fact and do not

omit a material fact required to be stated therein or necessary in order to make the statements contained therein not materially false or misleading.

21. ENTIRE AGREEMENT AND COUNTERPART

a. This Agreement shall constitute the entire and whole Agreement between the parties hereto and may not be modified or amended except by a written instrument, signed by each of the parties hereto, expressing such amendment. No failure on the part of any party hereto to exercise and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof, or the exercise of any right, power or remedy.

b. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together shall but constitute a single instrument. The paragraph headings are for convenience only and are not to be construed to limit or alter the meaning of the provisions of this Agreement.

22. TERMINATION

This Agreement shall terminate on the completion of the final accounting and distribution as provided herein; provided, however, that no such termination shall affect the rights or obligations of the parties under the terms of the Contract.

23. INTERPRETATION

This Agreement shall be construed so as to carry out and effectuate the provision and intent of the Contract and the definitions contained in the Contract shall have the same meaning herein.

24. ARBITRATION

Any dispute, claim or difference arising out of or relating to this Agreement, or the alleged breach thereof, which cannot be adjusted through negotiation within twenty (20) days after being brought to the attention of the other party, shall be submitted to arbitration. Either party may then make application to the American Arbitration Association for the selection and designation by it of a three-member arbitration panel in accordance with the rules then obtaining. In any arbitration proceeding full discovery will be permitted in accordance with the Federal Rules of Civil Procedure in force at the time. The decision of the arbitrators shall be final and binding upon the parties hereto and may be entered as a final decree or judgment in any court of competent jurisdiction and enforceable at either law or equity. The costs of any arbitration shall be borne equally by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused the Joint Venture Agreement
to be duly executed.

WITNESS

Catherine A Foster

GILBANE BUILDING COMPANY

By: Joseph C. [Signature]

Title: Senior Vice President/Regional Manager

WITNESS

Viola [Signature]

RITEWAY CONSTRUCTION SERVICES

By: [Signature]

Title: President

WITNESS

[Signature]

BROWN & MOMEN, INC.

By: [Signature]

Title: President

WITNESS

[Signature]

LOUIS JONES ENTERPRISES, INC.

By: [Signature]

Title: President