

**AGREEMENT
BETWEEN OWNER AND CM-AT-RISK**

Please note that this document is a draft contract and that modifications should be expected.

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

The Owner (the “Owner”):

The Board of Regents of The Texas State University System
c/o Vice Chancellor and Chief Financial Officer
601 Colorado Street
Austin, Texas 78701

and the **Construction Manager at Risk (the “Construction Manager” or the “CM”):**

Firm Name
Address
City, State, Zip
Phone:
Fax:

Texas Tax Account No: _____

for the following **Project (the “Project”):**

Name of Project
Campus
City, State

Component: _____

Owner’s Project Number: _____

Architect/Engineer (the “A/E”):

Firm Name
Address
City, State, Zip
Phone:
Fax:

The Owner and the Construction Manager agree as follows:

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ARTICLE 1. SCOPE OF WORK

The Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase (Article 5) and Construction Phase (Article 8) Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work of the Project as it is described and depicted in the Contract Documents, providing its best efforts to complete the Project in an expeditious and economical manner consistent with the Owner's interests.

ARTICLE 2. CONTRACT DOCUMENTS

2.1 Contract Documents. The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement and expressly incorporated herein, including but not limited to any Special Conditions and Owner's Specifications;
- b. The Uniform General Conditions of The Texas State University System ("TSUS UGC" or "UGC"), as modified by this Agreement and the Special Conditions (the "Special Conditions"), if any, attached hereto as Exhibit A;
- c. The Drawings, Specifications, details and other documents developed by A/E and issued for construction with the Owner's approval;
- d. The Drawings and Specifications developed and issued for construction with the Owner's approval by Owner's other consultants, if any;
- e. All Addenda issued prior to the Effective Date of this Agreement;
- f. The Guaranteed Maximum Price ("GMP") agreement when negotiated between the Owner and the Construction Manager and incorporated in this Agreement by a Change Order signed by both parties;
- g. All other Change Orders issued after the Effective Date of this Agreement; and
- h. The CM's HUB Subcontracting plan when accepted by the Owner.

2.2 The Contract / Integration. These Contract Documents form the entire and integrated Contract between Owner and CM and supersede all prior negotiations, representations, or agreements, written or oral. Neither this Agreement nor any of its provisions can be waived, modified, amended or altered except by a written document signed by CM and Owner.

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

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

2.5 Terms Interchangeable. The term "Construction Manager" ("CM") is interchangeable with the terms "Contractor" and "General Contractor" or other similar terms used in the various parts of the Contract Documents, including the UGC.

- 2.6 Conflict Between Contract Documents.** If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written amendments to this Agreement entered into in accordance with the requirements hereof after execution of this Agreement with the amendment bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein; (3) the UGC; (4) the final Drawings and Specifications developed by the A/E and such other consultants of the Owner incorporated into the Contract Documents; (5) the Preliminary Drawings and Specifications incorporated into the Contract Documents, with those bearing the latest date taking precedence; (6) and any proposals submitted by the Construction Manager in the procurement for the Project and other documents identified in the Agreement as Contract Documents which have not been incorporated into the Agreement. To clarify the foregoing, the terms of the Agreement (and its Exhibits) shall control over the UGC and the terms of the Agreement (and its Exhibits) and the UGC shall control over any terms in the Drawings or Specifications developed by the A/E and such other consultants of the Owner inconsistent therewith.

ARTICLE 3. DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have the following meanings, as supplemented by any other definitions provided in the UGC. In the event of a conflict between a definition as set forth below and a definition in the UGC, the definition set forth below shall control.

- 3.1 “Allowable Employer Contributions”** means those taxes, unemployment insurance, and employers’ contributions to Social Security and Medicare required under Applicable Law to be paid by employers and such other benefits as required by collective bargaining agreements (in place and covering the Project) or are paid to all employees of the Construction Manager (or the employees of the partners or joint venture members of the Construction Manager for their respective employees) as part of its customary benefits (established and in place prior to and independently of the Project) such as sick leave, medical and health benefits, holidays, vacations and pensions (whether employer funding of defined benefit plans or employer contributions to 401k plans), provided such costs are based on wages or salaries to the extent reimbursable hereunder as Cost of the Work and substantiated on the basis of actual, verifiable costs incurred and paid by Construction Manager.

Allowable Employer Contributions shall also include costs for workers compensation and employer liability insurance for such employees. Allowable Employer Contributions shall not include employee bonuses and/or costs associate with Employee Stock Ownership Plans (ESOP’s) or other bonuses or profit-sharing compensation, and such costs shall not be reimbursable as Cost of the Work.

All reimbursement for Allowable Employer Contributions are subject to audit to determine the actual cost of such Contributions unless and to the extent that the parties have agreed to fixed or agreed mark-ups or rates in the Special Conditions, if any, to this Agreement.

- 3.2 “Applicable Law” or “applicable laws”** means all laws, statutes, ordinances, regulations, guidelines or requirements now in force or hereafter enacted by any applicable local, state or federal governmental authority relating to or affecting the Project or arising from this Agreement, including, if and as applicable (1) the United States Occupational Safety and Health Administration requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (2) the Americans with Disabilities Act requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (3) requirements under Title VII of the Civil Rights

Act of 1964, as amended, (4) the Age Discrimination in Employment Act requirements, (5) requirements of the Fair Labor Standards Act and applicable state wage and hour laws, (6) applicable local, state, and published Texas State University System or System Components building codes and requirements, (7) storm water, street, utility and other related infrastructure requirements, and (8) requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials.

- 3.3** “**Component**” means the higher education institution member of The Texas State University System identified on page one of this Agreement and on whose campus the Project is to be located.
- 3.4** “**Construction Cost Limitation**” or “**CCL**” means the maximum monetary amount payable to the CM for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and the CM’s Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the CM’s Pre-Construction Phase Fee, or Owner’s Construction Contingency or Owner’s Special Cash Allowance.
- 3.5** “**Construction Documents**” means, collectively, the UGCs, Owner’s Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders and other documents prepared by the A/E, its consultants and by the Owner’s other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Work that are acceptable to the Owner.
- 3.6** “**Construction Phase Services**” means the coordination, implementation and execution of the Work required by the Contract Documents and are fully described in Article 8.
- 3.7** “**Contract Sum**” means the total amount of all compensation payable to the CM for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by the CM without reimbursement by Owner.
- 3.8** “**Contract Time Requirements**” means the requirements for the achievement of any major or “Critical” Milestones and Substantial Completion and Final Completion of designated portions of the Work or the entire Work of the Project as may be expressly required in the Project Schedule or any Owner-approved CPM Schedule or as otherwise expressly required by the Contract Documents.
- 3.9** “**CPM Schedule**” means the Critical Path Method Schedule which the CM is required to prepare and update in accordance with Paragraphs 5.3 and 11.3 for Owner’s approval.
- 3.10** “**Direct Construction Cost**” means the sum of the amounts that the Construction Manager actually and necessarily incurs for General Conditions Costs, Cost of the Work and Construction Manager’s Contingency during the Construction Phase as allowed by this Agreement and is more fully described in Article 13. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.
- 3.11** “**Direct Salary Expense**” or “**DSE**” means the actual gross salary, expressed on an hourly wage basis, of Construction Manager’s salaried employees directly engaged on the Project. DSE does

not include Allowable Employer Contributions or other employers' contributions or benefits costs or expenses excluded from Allowable Employer Contributions.

- 3.12** “**Estimated Construction Cost**” (“ECC”) means the amount calculated by the CM for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the EEC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the A/E and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include CM’s Pre-Construction Phase Fee, A/E Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner. Various parts of these Contract Documents further define the required frequency, the level of detail and the format of the ECC submissions.
- 3.13** “**Final Completion**” means the actual completion of the Work (the entire Work or the designated portion thereof), including any extras or Work authorized by Change Orders reasonably required or contemplated under the Contract, other than warranty work or replacement or repair of the Work (after the initial acceptance by the Owner) performed under the Contract. References to “Final Completion of the Work” in the Contract Documents shall mean the Final Completion of the entire Work required under the Contract, except as otherwise expressly provided therein.
- 3.14** “**Guaranteed Maximum Price**” or “**GMP**” means the amount proposed by the CM and accepted by them as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager’s Construction Phase Fee, the General Conditions Costs, the Cost of the Work, the Construction Manager’s Construction Contingency amount, the Owner’s Construction Contingency amount (if any), and Owner’s Special Cash Allowance(s).
- 3.15** “**General Conditions Cost(s)**” means costs incurred and minor work performed by the CM without the use of competitive bids/proposals, as allowed under Section 51.782 (i) *Texas Education Code*. The allowable General Conditions Cost items are further described and limited by Article 13 and such other terms of the Agreement (or Exhibits incorporated herein).
- 3.16** “**Monthly Salary Rate**” means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager’s salaried personnel assigned to the Project (to the extent such costs are reimbursable under the Contract Documents). A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person (see Exhibit F). The Monthly Salary Rate is for convenience only and any payments made for Construction Manager’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.
- 3.17** “**Owner’s Designated Representative**” or “**ODR**” means the person designated by the Owner to act as the Owner’s Designated Representative pursuant to Paragraph 9.4 and identified in Paragraph 25.5.1.
- 3.18** “**Owner’s Designated Site Representative**” or “**ODSR**” means the person, if any, designated by the Owner to act as the Owner’s Designated Site Representative pursuant to Paragraph 9.5. Also see Paragraph 25.5.1 herein if the ODSR has been selected at the time the Agreement is executed.

- 3.19** “**Owner’s Specifications**” means the construction and contract administration requirements and standards detailed in the Owner’s Construction Project Division 1 Specifications attached to the Agreement as Exhibit B and incorporated fully herein.
- 3.20** “**Pre-Construction Phase Services**” means the participation, documentation and execution of the Construction Manager’s Pre-Construction Phase deliverables as required by the Contract Documents as more fully described in Article 5.
- 3.21** “**Project Schedule**” means the schedule incorporated into the Contract Documents for the design and construction of the Project initially prepared by the Owner and attached hereto as Exhibit K, reflecting various milestone and completion dates, and subsequently modified by mutual agreement between the Owner and CM to reflect any refinement in its requirements.
- 3.22** “**Project Team**” means the Owner, CM, A/E and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.23** “**Record Documents**” mean the drawing set, Specifications, and other materials maintained by the CM that documents all addenda, A/E’s Supplemental Instructions, Change Orders and postings and markings that record the “as-constructed” conditions of the Work and all changes made during construction. Record Documents is distinguishable from “Record Drawings” which, if required by the Contract Documents, are prepared by the A/E as part of its Construction Administration Services and reflect the on-site changes the CM noted in the “As-Built” drawings.
- 3.24** “**Subcontractor**” means a person or entity that has an agreement with or through the CM to perform any portion of the Work. The term Subcontractor includes what is commonly referred to as a “trade contractor” and a “supplier” (who furnishes materials or equipment only) and Sub-Subcontractors, except to the extent clearly not applicable in the context of its use in the Contract Documents. The term Subcontractor does not include the A/E or any person or entity hired directly by the Owner for design or construction services. The term “Sub-subcontractor” refers to a trade contractor, subcontractor, or supplier contracting under or directly with a Subcontractor or another Sub-subcontractor (of any tier).
- 3.25** “**Substantial Completion**” shall have the meaning as set forth in UGC, except as otherwise provided in the Special Conditions, if any. References to “Substantial Completion of the Work” in the Contract Documents shall mean the Substantial Completion of the entire Work required under the Contract, except as otherwise expressly provided therein.
- 3.26** “**The Uniform General Conditions of the Texas State University System**” or “**TSUS UGC**” or “**UGC**” shall mean the Uniform General Conditions for Construction Contracts issued by the State of Texas, published date of August 17, 2005, a copy of which is published on the Owner’s website (Capital Projects webpage), and as may be modified by this Agreement and the Special Conditions attached to this Agreement as Exhibit A.
- 3.27** “**Work**” means the provision of all services, labor, materials, supplies, and equipment that are required of the Construction Manager to complete the Project in accordance with the requirements of the Contract and the Contract Documents. The Work includes the Construction Phase Services described in Articles 4 and 8, additional work required by any Change Orders, and any other work reasonably inferable from the Contract Documents. The term “reasonably inferable” includes the understanding of the parties that some minor details of the Work may not be shown on the

Drawings or included in the Specifications, but they are included in the Work if they are usual and customary components of the Work for a project of the type depicted in the Contract Documents and they are needed to produce a complete and useable facility.

- 3.28 “Worker Wage Rate”** means the actual hourly wage of non-salaried persons performing work on the Project plus Allowable Employer Contributions as may be established by the Contract Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Worker Wage Rate is only a convenient device for monthly payments, the actual salary costs and other employer contributions are subject to audit and actual final payments on these accounts may be altered by the audit. See Paragraph 13.1.1. Minimum Worker Wage Rates are also established by a “Prevailing Wage Schedule” dictated by the legislature and published by the Owner for the Project.
- 3.29 “Electronic Copy”** means a copy of the document in the software medium in which the document was created for initial approval and subsequent required updates.
- 3.30 “Work Progress Schedule”** means the schedule prepared and maintained in accordance with the Critical Path Method and the requirements of the Special Conditions, if any, and the UGC, reflecting the CM’s actual progress of the construction of the Work and the scheduled activities and current plans for completing the Work.
- 3.31 “Work Remaining to Procure”** means a limited portion of the Work that the Contractor was unable to price through the buyout process. These items must be presented to the ODR for approval prior to bidding any Work. These limited Work items must be quantifiable into a unit cost with the necessary supporting breakdown that reveals the justification for the requested unit cost. Supporting documentation must also be provided that establishes a quantity of the unit costs. Items include but are not limited to dewatering, concrete washout haul offs, etc.

ARTICLE 4. CM’S GENERAL RESPONSIBILITIES

The CM shall perform the following tasks:

- 4.1 In General.** All services specifically allocated to the CM by the Contract Documents as well as those services reasonably inferable from the documents that are necessary for completion of the Work of the Project. The CM was selected by the Owner based on its stated qualifications and experience, and therefore, the CM agrees to perform all of its services using its best efforts, skills, judgments and abilities.
- 4.2 Cooperation.** Cooperate with all members of the Project Team and endeavor to further the interests of the Owner and the Project. The CM shall furnish Pre-Construction Phase (Article 5) and Construction Phase (Article 8) Services and provide its best efforts to complete the Project in an expeditious and economical manner consistent with the Owner’s interests.
- 4.3 Designation of Representatives.** Designate in writing to the Project Team those representatives who are authorized to act on the CM’s behalf with respect to the Project. Such written designations shall include the limitations of each representative’s authority.

- 4.4 Procedures.** Establish procedures for effective communication and coordination among the Project Team, Subcontractors, separate contractors, and others regarding the construction of the Project, and implement and continuously modify such procedures as necessary.
- 4.5 Tracking System.** Establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplemental instructions and provide updated records at each Owner's meeting and at other times when requested.
- 4.6 Multiple Completion Times.** Cooperate fully if Owner decides to "Fast Track" and establish Multiple Completion Times. If the Owner elects these approaches, CM shall organize and perform its services to be most appropriate and efficient for each stage of Project development. In these circumstances, each stage of the Project may have a unique schedule for completion and a separate specific Construction Cost Limitation as agreed to in writing by the CM and Owner.
- 4.7 Partnering.** Attend and participate in Owner's "Partnering" program, if applicable, for all phases of the Project.
- 4.8 Employees and Consultants.** Identify to the Owner all of the employees, other personnel and consultants that it will assign to the Project and provide the Monthly Salary Rate or Wage Rate, plus employer benefit contributions for each. After any negotiated agreement involving specific personnel and consultants is integrated into the Contract, CM shall not change their assignments without the Owner's written consent, which consent shall not be unreasonably withheld. CM shall promptly notify the Project Team if these assignments change for reasons beyond the control of the CM. CM shall not assign or retain on the Project any person or entity to whom Owner reasonably objects.
- 4.9 HUB Compliance.** Proactively comply with the Owner's established policies regarding the utilization of Historically Underutilized Businesses ("HUB" or "HUB's") and all applicable administrative rules and statutes relating to utilization of HUB's by Owner for the Project and adhere to the HUB Subcontracting Plan submitted by CM and approved by Owner. No changes to the HUB Subcontracting Plans can be made by the CM without the written approval of Owner.
- 4.10 Computer Project Management Software.** CM shall use the Owner's designated project management software system "e-Builder" to correspond and maintain project related correspondence and documentation throughout the life of the Project including Project close-out and final payments.

ARTICLE 5. PRE-CONSTRUCTION PHASE SERVICES

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

5.1 General Coordination

- 5.1.1 Attend and actively participate in Project Team meetings at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated

prior to the Owner's acceptance of the GMP proposal and during completion of the Construction Documents phase of the design.

- 5.1.2 As soon as possible after receiving a Notice to Proceed, provide a preliminary evaluation of the Owner's Design Criteria provided to CM, the Project Schedule developed by the Owner, and the Construction Cost Limitation, each in terms of the other.
- 5.1.3 Review and understand the standards and requirements in the Owner's Specifications and perform all services in accordance with those standards and requirements.
- 5.1.4 Visit the site and inspect the existing facilities, systems and conditions and become thoroughly familiar with the existing conditions to ensure an accurate understanding of how the Project can proceed.
- 5.1.5 Participate as a member of the Project Team in the development of the Project Facility Program if such programming has not been completed prior to issuance of the Notice to Proceed on this Agreement.
- 5.1.6 Provide information and recommendations to the Project Team on the following issues and on all other issues not listed that are in the normal and customary province of the construction contractor for a Project of similar size and scope:
 - 5.1.6.1 site usage and site improvements;
 - 5.1.6.2 building equipment, systems and construction feasibility;
 - 5.1.6.3 availability and selection of materials and labor;
 - 5.1.6.4 time requirements for construction and equipment installation;
 - 5.1.6.5 safety issues and available precautions related to work under consideration;
 - 5.1.6.6 selection and installation of temporary Project facilities, equipment, materials and services needed for common use of the CM and Owner's separate contractors (if any);
 - 5.1.6.7 cost factors, including costs of alternative materials, construction methods or designs,
 - 5.1.6.8 conceptual budgets and possible cost savings available in alternative approaches or designs;
 - 5.1.6.9 identification and resolution of conflicts in the proposed Drawings and Specifications as they evolve;
 - 5.1.6.10 methods of delivering and handling materials, systems, and equipment; and
 - 5.1.6.11 traffic, parking and materials and equipment storage in and around the site
- 5.1.7 Assist the Owner in selecting and directing the services of land surveyors, soils engineers, environmental surveyors, existing facility surveyors, and testing/balancing consultants, commissioning agents, or other special consultants hired by the Owner so as to help develop adequate and comprehensive information needed for the design and construction of the Project.
- 5.1.8 At the Owner's request, attend public meetings and hearings concerning the development and scheduling of the Project.

5.2 Constructability Program

- 5.2.1 Implement and conduct reviews (“Constructability Reviews”) to identify and document Project cost and schedule savings opportunities and to eliminate construction problems inherent in the various issues of the Construction Documents. The Constructability Reviews shall follow accepted industry practices and be in accordance with the requirements of the attached Exhibit H. Whenever the term “value engineering” is used in conjunction with this Agreement or the Project it does not typically imply the practice of professional engineering. Any value engineering activities that do constitute the professional practice of engineering shall be performed by a person appropriately licensed in Texas. Typically, the Owner will refer to the A/E any aspect of a value engineering suggestion that involves the practice of professional engineering or architecture.
- 5.2.2 Prepare a “Constructability Report” that identifies items that, in the CM’s opinion, may negatively impact construction of the Project and recommend alternatives that will mitigate the impacts. This report shall also address the overall coordination of Project Drawings, Specifications, and details and shall identify discrepancies that may generate Change Orders or claims once construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase. Provide (2) two copies of the Monthly Report to the ODR and six (6) copies to the ODSR.
- 5.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other matters relevant to the construction that arise during the development of the Construction Documents for the Project. This tracking system shall be in a format approved by the Owner and it shall be updated at least monthly during the Pre-Construction Phase.

5.3 Scheduling

- 5.3.1 In addition to the scheduling requirements and related Contract Time Requirements, the following additional requirements apply to the Pre-Construction Phase and to the overall Project life.
- 5.3.2 Develop a Critical Path Method Schedule (“CPM Schedule”) for Project Team review and Owner’s approval that coordinates and integrates activities on the Project, including the CM’s services, the A/E’s design services, the work of other consultants and suppliers and conforms to the Owner-approved Project Schedule. The CPM Schedule shall also include other detailed schedule activities such as Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.
- 5.3.3 CPM Schedule must identify all major milestones from Project inception through Project Final Completion. It shall be created and maintained in accordance with Contract Documents, including the Owner’s Specifications and Paragraph 11.4 below, using the Owner specified format and software.
- 5.3.4 Update the CPM Schedule and manage the Project throughout the Pre-Construction and Construction Phases as described in the Contract Documents, including Paragraph 11.4 below, the Owner’s Specifications, and the UGC.

5.4 Budget and Cost Consultation

- 5.4.1 Prepare and update all procurement and construction cost estimates and distribute them to the Project Team throughout the duration of the Project. Provide two (2) copies contemporaneously to the ODR and six (6) copies to the ODSR.
- 5.4.2 During the Design Stage, provide Estimated Construction Cost (ECC) reports at the completion of Schematic Design, Design Development, Fifty Percent (50%) Construction Documents, <<Seventy-Five Percent (75%) Construction Documents>> <<Ninety Percent (90%) Construction Documents>> and One Hundred Percent (100%) Construction Documents phases of the A/E design contract as required in Article 25. The ECC reports for the Design Development and Construction Documents phases of design shall be detailed estimates derived from cost/quantity surveys and based on unit prices for labor, materials, overhead and profit. Lump sum estimates will not be accepted where the existing documents allow for quantity take offs. Each ECC report must explicitly address cost escalation (inflation) in a manner approved by the ODR. The ECC shall be organized in Construction Specifications Institute (“CSI”) division format for each portion of the Work.
- 5.4.3 Reconcile each ECC with the Owner’s or A/E’s cost estimator to a mutually agreed upon amount.
- 5.4.4 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of the cost implications of decisions that affect the scope or quality of the Project. Update cost and budget impacts when changes occur. Advise the Project Team (with separate, written notice to the ODR) immediately if the CM has reason to believe that the most current ECC will exceed the Construction Cost Limitation (“CCL”) or will not meet Project Schedule requirements. In such cases, recommend reasonable strategies for bringing the Project back in line with the CCL and the Project Schedule.
- 5.4.5 Should any ECC vary significantly from the approved CCL, the Owner and CM shall negotiate changes to the Project requirements, or the CCL as required to regain the feasibility of completing the Project within target parameters. The Owner shall define a significant variance.

5.5 Coordination of Design and Construction Contract Documents

- 5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the A/E during all the different design phases of the Project.
- 5.5.2 Consult with Owner and A/E on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.
- 5.5.3 Advise A/E and Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

- 5.5.4 Advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the CCL.
- 5.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Owner and Component requirements.

5.6 Construction Planning and Bid Package Strategy

- 5.6.1 Identify equipment or materials requiring extended delivery times and advise Owner on means and methods for expedited procurement of those items. Advise Owner and A/E on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation using a process developed by the CM and approved by Owner before it is used. Bid Package Strategies shall be complementary to those identified in Tab 6 under Section 6, of the Guidelines for the Preparation of the GMP (see Exhibit E of this Agreement), which is the guide for preparing the GMP proposal.
- 5.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. These recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB subcontractor participation, and other related issues. These recommendations may include ideas for phased or staged construction or multiple separate contracts.
- 5.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- 5.6.4 Develop a bid/proposal package strategy in coordination with the A/E that addresses the entire scope of Work for each phase and stage of the Project. Identify all bid/proposal packages on which the CM intends to submit a self-performance bid/proposal. The overall bid/proposal packaging strategy shall be reviewed and approved by the ODR and the ODSR on a regular basis. It may be revised throughout the buyout of the Project to further the interests of the Owner and the Project.
- 5.6.5 Assist all members of the Project Team in obtaining all applicable risk management, building and design code, and regulatory agency reviews and approvals for the Project including: the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, the Owner's insurance provider and others as they become known.
- 5.6.6 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the Owner for the Project. Improve upon the target goals where possible.

- 5.6.7 Advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants. Develop with Owner a clear understanding of who will assume direct responsibility for the work of such laboratories and consultants and their compensation.
- 5.6.8 Review the Construction Documents to ensure that they contain adequate provisions for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work, even when these services involve third parties.
- 5.6.9 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required in critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.
- 5.6.10 Provide analysis of the different types and quantities of materials required for the Project and review and monitor the cost of such materials on an ongoing basis. Make recommendations that minimize the adverse effects of material shortages and price volatility of materials.
- 5.6.11 Consult with and make recommendations to the Owner on the acquisition and delivery schedules for fixtures, furniture and equipment. Include such activities on the project schedule to ensure that they do not delay timely completion of the Project.

5.7 Obtaining Bids/Proposals for the Work

- 5.7.1 In accordance with *Texas Education Code* Section 51.782, as amended, publicly advertise and solicit competitive lump sum bids/proposals that identify the work packages from Subcontractors for the performance of all major elements of the Work. Such bids/proposals should follow the same approved CSI division format used to develop the previous cost estimates. For proper comparative pricing evaluation, the instruction to bidders on invitation to bids shall identify the work packages/divisions in the CSI format mentioned above for which bids/proposals are being requested. They shall also clearly direct bidders/proposers who provide lump sum pricing for more than one division of work to delineate pricing for each division separately. This will allow the Owner to compare the pricing of bids/proposals on a division-by-division basis. All bids/proposals shall be submitted in a format that permits the CM to comply with Tab 6 under Section 6, of the Guidelines for the Preparation of the GMP (see Exhibit E of this Agreement). Bid documentation and recommendations shall be submitted in a format that permits the CM to comply with Tab 11 under Section 6, of the Guidelines for the Preparation of the GMP (see Exhibit E of this Agreement).
- 5.7.2 Participate with the Project Team to develop selection criteria for determining the bid/proposal that provides the best value to the Owner. Notify the Owner in writing in advance of the date bids/proposals will be received.
- 5.7.3 Schedule and conduct pre-bid conferences with interested bidders/proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences. Respond in writing, to all parties attending, to questions raised in these conferences.

- 5.7.4 In the presence of Owner, open and review all Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team. Use the Selection Criteria established by the Project Team to recommend to the Owner the bid/proposal that provides the best value for the Project. With Owner's prior approval, negotiate the terms and conditions of the subcontract with the apparent best value bidder/proposer.
- 5.7.5 Enter into all subcontracts on a lump sum basis unless other payment terms are approved in writing and in advance by the ODR. Make all bids/proposals publicly available after award of the subcontract or within seven (7) business days after the date of final selection, whichever is later.
- 5.7.6 If Owner directs CM to select a bid/proposal other than the best value one recommended by the CM based on the established selection criteria, Owner shall compensate CM through a negotiated change in price, time, CM contingency or Guaranteed Maximum Price for any additional cost and risk that the CM incurs by reason of Owner's direction.
- 5.7.7 CM may seek to self-perform portions of the Work which it identifies and documents in the bid/proposal strategy. The CM must submit for the self-performance work in the same manner as all other Subcontractors but must submit such bid/proposal directly to the Owner at least twenty-four (24) hours prior to receiving similar bids from other parties. The Owner will determine whether the CM's bid/proposal provides the best value for Owner. Owner's decision shall be final and not subject to appeal. If selected as best value, CM must perform in accordance with the same terms and conditions offered to other subcontractors. For payment purposes, the CM shall account for self-performance work in the same manner as it does all other subcontract costs. In the event an adjustment is required to the cost of any awarded, self-performed Work, the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the change order process identified in the UGC.
- 5.7.8 Identify every Subcontractor it intends to use on the Project to the Owner in writing at least ten (10) business days before entering into any subcontract, including Subcontractors used for self-performed work, CM shall not use any Subcontractor to which Owner has a reasonable objection. CM shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.
- 5.7.9 If a selected Subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the CM may, with Owner's approval, and without further advertising, fulfill the subcontract requirements itself or select a replacement Subcontractor to do so. Such decisions will be made in consideration of the exigencies of the situation and to the good of the Project cost and schedule and will be subject to Owner approval.
- 5.7.10 The CM shall utilize all construction documents from the unsuccessful proposers in the bidding processes and advise the ODSR of the excess copies before disposing of any construction documents.

5.8 Safety

- 5.8.1 Plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project prior the start of construction. The CM's safety program shall comply with all applicable requirements of the UGCs, Section 013523 of the Owner's Specifications, the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations. The CM shall be solely responsible for on-site safety. Neither Owner, nor A/E, nor any other member of the Project Team shall have responsibilities for on-site safety except for safety issues arising solely from their own negligent acts or omissions.
- 5.8.2 Provide recommendations and information to Owner and A/E regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. The CM shall verify that appropriate safety considerations and provisions are included in the Construction Documents and that the Work envisioned does not include any unnecessary safety risks.
- 5.8.3 The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Construction Manager's safety responsibilities.

ARTICLE 6. PRE-CONSTRUCTION PHASE SERVICES FEE

- 6.1 Services Covered.** The Pre-Construction Phase Fee is the total compensation payable to the CM for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services (as defined below) approved in advance and in writing by the Owner. The Pre-Construction Phase Fee shall be a lump sum amount as set out in Paragraph 24.2.
- 6.2 No Increase for Costs and Other Liabilities.** Except as specifically allowed in Paragraph 6.4, the CM shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.
- 6.3 Costs Associated with Pre-Construction Phase Fee.** Costs associated with the following items are specifically, but not exclusively, in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards. To the extent that these types of costs exist, any compensation for them shall be considered imbedded in the Pre-Construction Services Fee and they may not be compensated or reimbursed in any alternative way.
- 6.4 Equitable Adjustment.** If the scope of the Pre-Construction Phase Services is changed materially by the Owner, or by unexpected changes to the project prior to construction, the Pre-Construction Phase Fee may be equitably adjusted through negotiation with the Owner. There shall be no adjustments in the Pre-Construction Phase Fee following incorporation of the GMP into the Contract unless the GMP is subsequently changed by mutual written agreement.

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

6.5.1 A negotiated additional lump sum amount; or

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

6.5.3 Otherwise agreed to by the parties in advance of performing the Additional Pre-Construction Phase Services.

ARTICLE 7. GUARANTEED MAXIMUM PRICE PROPOSAL

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

7.2 Coordination with A/E. In developing the GMP Proposal, the CM shall coordinate efforts with the A/E to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The CM shall review development of the GMP Proposal with the Owner on an ongoing basis from the beginning of Pre-Construction Phase Services to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 Items to be Included. The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications, assumptions, exceptions and exclusions made by the CM in the GMP proposal and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of CM's estimated General Conditions Costs and estimated Costs of the Work organized by trade and CSI division format; all contingency amounts (including escalation), the Construction Phase Fee; and shall reflect and incorporate the Contract Time Requirements, including dates for Notice to Proceed, completion of the phases of design, Substantial Completion and Final Completion.

7.4 Allowance for Changes and Refinements. The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents but shall not anticipate material changes in scope.

7.5 CM Contingency. The GMP Proposal may include within the estimated Cost of the Work a CM's Contingency amount, reflective of the risk inherent in the state of completion of the Construction Documents at the time of proposal submission.

7.6 Drawings and Specifications. The CM shall include with its GMP proposal two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment

specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

- 7.7 Required Detail: Assumptions and Clarifications.** The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP proposal shall delineate each assumption, clarification or other cost item relevant to, but not fully developed by, the Construction Documents and provide a magnitude of cost for each item denoted. The GMP Proposal and the supporting documents are complementary; however, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.
- 7.8 CM's Representation.** In submitting the GMP Proposal, the CM represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment to install each of them completely and make each fully operational, unless specifically excluded by the Owner. Upon Owner's acceptance of the GMP Proposal, the CM shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.
- 7.9 GMP to Incorporate Contract Terms.** The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments shall govern.
- 7.10 Acceptance or Rejection by Owner.** Owner may accept or reject the GMP Proposal or attempt to negotiate its amount and its terms and conditions with CM. When Owner accepts in writing the GMP Proposal, or a negotiated variant of it, both parties shall execute a Change Order that incorporates the GMP and the supporting documents into this Agreement. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a negotiated variant of it, the Owner may terminate this Agreement. If this Agreement is terminated for this reason, the Owner shall pay the CM for that portion of the Pre-Construction Phase Services fee as provided in Paragraph 19.2.2 and the Owner shall then have no further duties, responsibilities or financial obligations to the CM. After such a termination of this Agreement, the Owner shall be free to abandon or pursue this Project in any manner as it sees fit without any obligation to the CM.
- 7.11 CM's Responsibilities Following Acceptance of GMP.** Following Owner acceptance of the GMP Proposal, (the accepted GMP Proposal is herein referred to as the "GMP Agreement", CM shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues embodied in the GMP Agreement. During the Construction Documents stage, the CM and the A/E shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation into the Construction Documents of all

qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the GMP Agreement.

7.12 Equitable Adjustment. The CM shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after incorporation of the GMP Agreement. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.13 Conversion to Lump Sum. The Parties may agree to convert the GMP to a lump sum contract amount at any time after the CM has received bids or proposals from Subcontractors for the performance of all major elements of the Work. In proposing a lump sum amount, the CM shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized.

7.13.1 In preparing a lump sum conversion proposal, the CM must provide the following information:

7.13.1.1 The stage of completion of the Project;

7.13.1.2 The trade packages that have been completely bought out;

7.13.1.3 The trade packages remaining that have not been bought out;

7.13.1.4 A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;

7.13.1.5 An accounting of all savings amounts that are to be returned to the Owner as part of the lump sum calculation; and

7.13.1.6 Any other Project information requested by the Owner.

7.13.2 The parties may agree to convert to a lump sum the General Conditions Costs portion of the GMP once the CM has determined a value that is appropriate to support such activities for the remaining duration of the Project. The CM shall provide detailed supporting documentation to the ODR, through the approval of the ODSR, for consideration and approval.

7.14 Documentation and Reporting Actual Cost of the Work. The CM shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price agreement and shall report this information to the Owner monthly and with each CM recommendation for selection of a bid/proposal for each subcontracting package.

7.15 Special Events as Part of the Cost of the Work. The only event that may be included as part of the Cost of the Work shall be the traditional topping out party. The cost of this event may include only items that will be consumed at the event, must be denoted and approved in the GMP Schedule of Values, and may not exceed the amount shown in the line item for the event. The cost of any other events desired by the CM that are related to the Project shall be included in the CM's Construction Phase Fee.

ARTICLE 8. CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed (“NTP”) issued by Owner after arriving at a GMP Agreement and it shall continue until Final Completion of all Work. CM shall not incur any Subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. Pre-Construction Phase Services may overlap with Construction Phase Services. In consideration Owner’s agreement to pay the Construction Phase Services Fee, Owner’s agreement to perform the undertakings in Article 9, and the Owner’s payment of the Pre-Construction Phase Fee, the CM shall perform the following Construction Phase Services.

- 8.1 In General.** CM shall construct the Work in accordance with the Contract Documents, including but not limited to the UGC, within the time required by the Project Schedule approved by Owner.
- 8.2 Safety and Quality Control.** CM shall carefully adhere to the requirements of the Contract Documents for safety and quality control, including UGC Article 7 Safety, Article 8 regarding Quality Control and Article 9 regarding Construction Schedules.
- 8.3 Staffing.** CM shall organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.
- 8.4 Designation of Representative.** CM shall designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner’s primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the CM in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and submission of Applications for Payment.
- 8.5 Regular Project Meetings.** CM shall attend Owner’s regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.
- 8.6 Interim Progress Meetings.** In addition to regularly scheduled Project progress meetings; schedule, CM shall direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. CM shall record and distribute the minutes of each such meeting to each Project Team member. The minutes shall identify critical activities that require action, the person/entity responsible to complete the action and the dates by which each action must be completed.
- 8.7 Owner-Procured Material and Equipment.** CM shall coordinate delivery and installation of Owner-procured material and equipment.
- 8.8 Performance and Payment for the Work.** CM shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in accordance with the requirements of the Contract Documents, including this Agreement and the UGC.
- 8.9 Permits and Approvals.** CM shall obtain building permits and special permits for permanent improvements as required by law, regulation or the Construction Documents. CM shall assist

Owner or A/E in obtaining all approvals required from authorities having jurisdiction over the Project.

- 8.10 Testing.** CM shall coordinate and oversee all testing operations at the site and coordinate the receipt and proper distribution of all testing results. The Owner will pay for all initial testing required by the Specifications for the purpose of determining whether the materials or systems tested meet the requirements of the Contract Documents. All testing initiated by the CM, including all corrective measures necessary for a product or system to meet the requirements of the Contract Documents and any necessary re-testing, shall be paid by the CM. To the extent that this provision conflicts with UGC Article 8.2 (Testing), this provision shall control.
- 8.11 Coordination of the Work.** CM shall coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Contract Documents.
- 8.12 CM's Means and Methods.** CM shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. CM shall keep the Owner informed of the progress and quality of the Work.
- 8.13 Warranties and Guarantees.** CM shall warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Contract Documents. CM shall be responsible for correcting Work that does not comply with the Contract Documents at its sole expense without cost to the Owner. CM shall provide warranties and guarantees to Owner that the CM is required to provide Owner under the Contract Documents.
- 8.14 Cost Variance Reporting.** CM shall promptly identify all variances between estimated costs and actual costs during the Construction Phase and report such variances to the Project Team no more than two (2) business days after acquiring such information. Concurrently, CM shall make recommendations on how to counter any adverse cost movements.
- 8.15 Record Documents.** CM shall continuously maintain and deliver the Record Documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work. CM shall revise and update such "As-Built" drawings and other Record Documents to correct such incompleteness or non-compliance as may be identified by the A/E. Two sets of the corrected and complete Record Documents shall be furnished to the Owner in Adobe Acrobat (PDF) format or such other format and medium acceptable to the Owner. See UGC for other Record Document requirements.

ARTICLE 9. OWNER'S RESPONSIBILITIES

- 9.1 Designation of A/E.** The Owner has retained and designated a A/E for the Project who will be the "Architect of Record" or "Engineer of Record" and will be primarily responsible for the design of the Project and construction administration services required of the A/E (except for such design professionals contracting directly with the Owner for specific scopes of design services). References to the Project Architect or Architect shall mean the A/E, except as otherwise specifically provided in the Contract Documents. The A/E will be required by contract to work closely with CM, which should facilitate performance of CM's duties and responsibilities under

this Agreement. Upon request, Owner will provide CM with relevant sections of the A/E's contract with Owner.

- 9.2 Preliminary Project Cost and Schedule.** At the beginning of the Project, the Owner will provide the Preliminary Project Cost ("PPC") and general schedule for the Project (including the Project Schedule). The PPC will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The PPC will be reflective of the Owner's budget limitations for the project and will be used as a target for managing the various cost elements of the project. The Construction Cost Limitation included in the original PPC will serve as the initial target for Project design and development and for the GMP. The general schedule will set forth the Owner's plans and objectives for completion of the Project and for intermediate milestone dates.
- 9.3 Designation of ODR.** The Owner will identify in writing a person as its Owner Designated Representative ("ODR") who is authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the CM and equitable back charges against the CM, if any. The ODR represents Owner in any negotiations involving project scope, cost, time, and Agreement terms and conditions where called for in the Agreement or as otherwise necessary; however, single, bilateral construction contract change orders that do not exceed Seventy-Five Thousand Dollars (\$75,000) may be authorized by the ODR. In all matters CM shall act only upon instructions from ODR unless otherwise specifically notified to the contrary in writing. Also see UGC Article 3.1.2.
- 9.4 Designation of ODSR.** The Owner will identify in writing a person as its Owner Designated Site Representative ("ODSR") who is authorized to take all actions and render all decisions necessary to facilitate a fast, efficient and safe project development on the construction site. The ODSR will serve as the single point of contact for the CM on matters concerning the site, use of the site, and integration of the construction activities into the Campus policies, procedures, rules and regulations. The ODSR will make materials and color selections on behalf of the Owner. The ODSR will also be authorized to inspect the Work for quality considerations and accept the Work from the CM, determining Substantial Completion and Final Completion. The ODSR will have the authority to reject defective or improper work and to direct its correction. The ODSR will have authority to approve all Applications for Payment except the first, second and the final. The ODSR will not have authority to negotiate project scope, cost, time or Contract terms and conditions issues with the CM but will be authorized to direct the start of CM work needed in response to emergency situations or critical conditions on the site. Notwithstanding the foregoing, the ODSR shall have authority to approve any single construction change order that does not exceed Seventy-Five Thousand Dollars (\$75,000); except for self-performed work which requires ODR approval for any amount.
- 9.5 Surveys.** The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, environmental surveys or other special studies to develop such additional information as may be necessary for completion of the design and the coordination of future construction activities with existing facilities and operations at the site.
- 9.6 Testing.** The Owner will pay for all testing required by the Specifications, but the CM will coordinate and oversee all testing operations at the site and coordinate the receipt and proper distribution of all testing results. This specifically supersedes UGC Article 8.2 (Testing).
- 9.7 Services.** The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

- 9.8 Furnishing of Required Information and Services.** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the CM's services and of the Work.
- 9.9 Inspectors.** The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. Such inspectors, if assigned, will be designated in writing and will be under the direct supervision of the ODSR. The provision of inspection services by Owner shall not reduce or responsibility for the Work. CM is fully and solely responsible for constructing the Project in accordance with the Contract Documents.
- 9.10 Rejection of Work.** Owner shall have the right to reject any defective Work on the Project. Should CM refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected by other means and recover all expenses incurred from CM through a reduction of funds otherwise due to the CM under the Contract.

ARTICLE 10. OWNERSHIP AND USE OF DOCUMENTS

- 10.1 CM's Limited Authority to Use Documents.** Drawings, specifications and other documents prepared by each A/E, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the CM (the "Design Documents") are instruments of service and shall remain the property of their authors (or the Owner as may be provided in the respective contractual agreements between the Owner and the respective design professional) whether the Project for which they are made is executed or not. The CM shall be permitted to retain one record set of the Design Documents. All other copies of the Design Documents shall be returned to their respective authors or suitably accounted for. The CM and its Subcontractors are authorized to reproduce and use portions of the Design Documents as necessary and appropriate for the execution of the Work. The CM and its Subcontractors shall not use the Design Documents on any other projects.
- 10.2 Use of Documents to Meet Regulatory Requirements.** Submission or distribution of the Design Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the A/E's or other author's rights.

ARTICLE 11. TIME

- 11.1 Essential Element.** TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THIS CONTRACT.
- 11.2 Standard of Care.** Unless otherwise approved, the Owner and the CM shall perform their respective obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work and any applicable standard of care. Notwithstanding the foregoing, with regard to the Construction Phase Services, CM shall perform its obligations consistent with any Contract Time Requirements set forth in the Contract Documents.
- 11.3 CPM Schedule.** Prior to commencement of the Construction Phase Services and concurrently with submission of the GMP Proposal, the CM shall submit an up-to-date CPM Schedule for the performance of Construction Phase Services as specified. The CPM Schedule shall include reasonable periods of time for the Owner's and A/E's review and approval of shop drawings and

submissions and for the approval of other authorities having jurisdiction over the Project. When approved by the ODR in connection with the GMP approval process, this updated schedule will become a part of the GMP Agreement that will be incorporated into this Agreement by Change Order and shall become the baseline for evaluating performance of the Project. The CM shall monitor the progress of the Project in relation to the CPM Schedule and provide the Owner with at least monthly updates and status reports as required by the Contract Documents. The time periods established in the CPM Schedule and the overall duration of the Project and shall not be changed without the written consent from the Owner. Modifications to the CPM Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with any scheduling requirements set forth in the Contract Documents or as otherwise approved by the Owner.

ARTICLE 12. PAYMENTS

12.1 General Requirements

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

Pre-Design Phase (Program)	[10%]
Schematic Design Stage	[20%]
Design Development Stage	[20%]
GMP Development Stage	[10%]
Construction Documents Stage	[20%]
Subcontractor Bid/Proposal Stage	[20%]

12.1.2 Expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment. Allowable expenses are limited as follows:

12.1.2.1 Travel from Texas to out of state locations;

- a. Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates", Texas Comptroller of Public Accounts.

Website: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php>.

- b. Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the "Service Provider" for lodging exceed the State rate, the "Service Provider" may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
- c. The meal per diem will only be paid on trips involving overnight travel.

12.1.2.2 Travel to Texas from out of state locations;

- a. Maximum rates for lodging and meals shall be in accordance with the “In State Meals and Lodging Rates”, Texas Comptroller of Public Accounts.

Website: <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php>.

- b. Lodging: maximum reimbursement for lodging in state shall be limited to current State of Texas per diem rate plus city and state taxes. The meal per diem will only be paid on trips involving overnight travel.
- c. Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the “Service Provider” for lodging exceed the State rate, the “Service Provider” may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
- d. Meals: reimbursement limited to current State of Texas per diem rate.

12.1.2.3 Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, gratuities, laundry service, valet service, entertainment expenses and any non-Project related items. An allowance for tips is included in the per diem rates.

12.1.3 Retainage will not be withheld from Pre-Construction Services Fees due or reimbursement for General Conditions Costs but will be withheld from all other amounts approved in an Application for Payment including the Cost of the Work and the CM’s Construction Phase Fee. A five percent (5%) retainage is established through this Agreement between the CM and the Owner and a subsequent maximum five percent (5%) retainage shall be established between the CM and any Subcontractor(s) who performs work or provides materials for this Project.

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

12.1.5 This Agreement is subject to the assessment of Liquidated Damages against CM. Amounts anticipated to be assessed as Liquidated Damages, and other amounts to which Owner is entitled by way of offset or recovery, may be deducted from any monies due CM pending complete resolution of the underlying issues. See Section 25.2 and the Special Conditions, if any, for Liquidated Damages amounts.

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

- 12.1.7 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make full payment to CM under circumstances listed in the UGC and any of the following additional circumstances:
- 12.1.7.1 CM persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;
 - 12.1.7.2 The payment request includes services that are not performed in accordance with the Contract Documents; provided, however, Owner shall pay for those services performed in accordance with the Contract Documents;
 - 12.1.7.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;
 - 12.1.7.4 CM is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to CM;
 - 12.1.7.5 Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Contract Documents;
 - 12.1.7.6 CM has persistently failed to complete the Work in accordance with the current, Project Schedule or Owner-approved CPM Schedule or there is reasonable evidence that the remaining Work will not be completed within the Contract Time Requirements, which would make the CM subject to Liquidated Damages. In such cases Owner may withhold payments sufficient to cover CM's expected exposure to Liquidated Damages;
 - 12.1.7.7 CM is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or
 - 12.1.7.8 CM fails to obtain, maintain or renew insurance coverage as required by this Agreement.
- 12.1.8 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of CM from any of its obligations or liabilities with respect to the Work.
- 12.1.9 Owner shall have the right to verify and audit the details of CM's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of CM during normal business hours; (2) examining

any reports with respect to this Project; (3) interviewing CM's employees; (4) visiting the Project site; and (5) any other reasonable action. CM's records shall be organized and maintained in its files by each Application for Payment period and shall be kept on the basis of generally accepted accounting principles in accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board. CM should anticipate that Owner will audit the entire Agreement record before making final payment under the Agreement. This provision shall survive any termination of the Agreement.

12.2 Pre-Construction Phase Payments

- 12.2.1 The Pre-Construction Phase Services Fee for each of the Projects will be agreed between the parties as soon as the scope can be known. Payments for Pre-Construction Phase Services shall be made monthly based on the services actually performed in the month for which an Application for Payment is being submitted, subject to the limitations of Paragraph 12.1.1.
- 12.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values form approved by the Owner and shall include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Pre-Construction Phase Services shall be separately identified from all other costs.

12.3 Construction Phase Payments

- 12.3.1 Payments for Construction Phase Services shall be made as provided for in the UGC and in the Owner's Specifications, subject to the conditions and terms of this Agreement. All payment requests shall be submitted on an Application for Payment with a Schedule of Values approved by the Owner and shall include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of the CM's Application for Payment. Change Orders shall be listed separately on the Application for Payment form. Failure to submit "HUB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment Application will cause rejection of the pay application by the Owner and its return to the CM.
- 12.3.1.1 The CM shall submit for Owner's approval a submittal schedule that provides for the purchase of all materials necessary for the Work within the first twenty-five percent (25%) of the Construction Phase, as shown on the approved construction schedule. In the event that exigent circumstances prevent the CM from complying with this requirement, CM shall request the ODSR's written approval, prior to initial submission of the submittal schedule, for a variance from this requirement, and shall comply with the terms of any such variance.
- 12.3.2 The CM's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. CM's Construction Phase Fee shall be paid monthly in the same proportion as the approved percentage completion of the Cost of the Work of the Project.

- 12.3.3 For General Conditions Costs, CM's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount paid for General Conditions Costs in any pay period if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item is not sufficient to cover necessary General Conditions Costs for the remainder of the Project.
- 12.3.4 Payments for Subcontractor work shall not exceed the percentage of Work allocated to that Subcontractor for any particular work classification and shall not exceed the total value of the subcontract amount.
- 12.3.5 Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of Final Payment; and an affidavit stating that the release includes and covers all materials and services over which CM has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, CM may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, CM shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all court costs and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.
- 12.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by CM and has been audited and verified by Owner or Owner's representatives.
- 12.3.7 Nothing contained herein shall require the Owner to pay the CM an aggregate amount for Construction Phase Services that exceeds the GMP or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP less previous payments to CM. The total amount of all Construction Phase payments to the CM shall not exceed the actual verified Direct Construction Cost for the Project plus the CM's Construction Phase Fee.
- 12.3.8 CM's acceptance of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that CM, its Subcontractors, including suppliers and consultants, or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by CM as unsettled at the time of the Request for Final Payment.

ARTICLE 13. DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that the CM actually and necessarily incurs constructing the Work in compliance with the Contract Documents. Direct Construction Cost includes

only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

References in the UGC to adjustments in “cost” or “costs” mean the Direct Construction Cost.

13.1 General Conditions Costs

CM is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the Notice to Proceed with Construction and thirty (30) calendar days after the date of Substantial Completion. CM is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after more than thirty (30) calendar days after Substantial Completion or Final Completion (whichever is later), except with prior written approval of Owner.

Allowable General Conditions items are identified below and in the Special Conditions, if any, and in the Allowable General Conditions Line Items attached hereto as Exhibit C. These items shall be included in the General Conditions cost amount shown as a line item in the GMP Proposal and as detailed on the schedule of values. Items not specifically included below or in the Exhibit will not be allowed as a General Condition costs.

- 13.1.1 Personnel Costs. The actual Worker Wage Rate for CM’s hourly employees and the Monthly Salary Rate of CM’s salaried personnel who are identified to the Owner in advance and in writing but only for the time actually stationed at the Project site with the Owner’s prior consent. At Contract signing Exhibit F contains the wage/salary and benefits information for the specific staffing proposed by the CM during the proposal stage of the selection process. Exhibit F staffing and wage/salary and benefits information may be changed only by mutual agreement during the GMP negotiation or during the Construction phase when such changes are necessary or unavoidable. The Project Manager’s Monthly Salary Rate may be included in the General Conditions Costs only when the Project Manager is directly managing the Project. Except as may otherwise be provided in the Special Conditions, if any, all personnel costs are subject to audit to determine the actual cost of the wages, salaries and Allowable Employer Contributions incurred by the CM for services performed for the Project.
- 13.1.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of CM’s jobsite office if incurred at the Project site and directly and solely in support of the Work.
- 13.1.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by CM, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Agreement shall be based on the actual cost of the item originally incurred less its fair market salvage value.
- 13.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by CM, provided they are included in the list of allowable General Condition Line Items and

Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the CM, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by EquipmentWatch, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

- 13.1.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, CM shall purchase the equipment and turn it over to Owner upon Final Completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.
- 13.1.6 Permit and inspection fees that are not subject to exemption. Permit and inspection fees paid by CM where Owner is exempt will not be reimbursed by Owner.
- 13.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project. Notwithstanding the foregoing, premiums for subcontractor payment and performance bonds required by the CM and/or subcontractor default insurance purchased for Subcontractor work shall be reimbursable as Direct Construction Costs only to the extent expressly approved in writing by the Owner or as otherwise provided in the Special Conditions.
- 13.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

13.2 Cost of the Work

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

- 13.2.1 Costs of materials and equipment purchased directly by the CM and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the Special Conditions, if any, and the UGC (see Article 10.3).
- 13.2.2 Costs of site debris removal and disposal in accordance with all Applicable Law if not otherwise included in General Conditions.
- 13.2.3 Payments made by CM to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Contract Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

- 13.2.4 Payments earned by CM for self-performed subcontract work, other than General Conditions work, in accordance with the Contract Documents and the terms of this Agreement and approved by the Owner.
- 13.2.5 Testing fees pursuant to the UGC.
- 13.2.6 Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.

13.3 CM's Contingency

- 13.3.1 The GMP proposal may include a CM Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The CM Contingency shall be as set forth in the Special Conditions, if any, or as negotiated between the parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP proposal is submitted.
- 13.3.2 Any re-allocation of funds from the CM's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use the CM's Contingency, the CM shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use CM Contingency funds.
- 13.3.3 As the Construction Documents are finalized and the Buyout of the Work progresses the CM's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. The Buyout shall occur within the first twenty percent (20%) of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the Buyout stage, such savings, and related reductions to the CM's Contingency amount, will be handled in accordance with the provisions of Article 15.

ARTICLE 14. CONSTRUCTION PHASE SERVICES FEE

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

- 14.1 Profit.** All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the CM;
- 14.2 Salaries.** Salaries of CM's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

- 14.3 Overhead.** Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the CM's personnel; and travel, per diem and subsistence expense of CM, its officers or employees except as specifically allowed under General Conditions.
- 14.4 Subcontractor Default Insurance and Surety Bonds.** That portion of those costs of a subcontractor default insurance program (including premium costs) and cost associated with payment and performance bonds obtained from Subcontractors (including premium costs) that are not reimbursable as Direct Construction Cost under Article 13 above or the Special Conditions shall be included in the Construction Phase Fee.
- 14.5 Financial Costs.** Any financial costs incurred by the CM including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.
- 14.6 Professional Fees.** Any legal, accounting, professional or other similar costs incurred by the CM, including costs incurred in connection with the prosecution or defense of any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.
- 14.7 Taxes.** Any Federal and/or State income and franchise taxes paid by CM. Any fines, penalties, sanctions or other levies assessed by any governmental body against CM.
- 14.8 Damages and Related Costs.** Any cost arising out of a breach of this Contract or the fault, failure or negligence of CM, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from CM's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time Requirements; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.
- 14.9 Insurance Deductibles.** The cost of any and all insurance deductibles payable by the CM and costs due to the failure of CM or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- 14.10 Costs in Excess of GMP.** Any and all costs that would cause the Guaranteed Maximum Price, as adjusted in accordance with the Contract Documents, to be exceeded.
- 14.11 Other Unidentified Costs.** Any and all costs not specifically identified as an element of the Direct Construction Cost.

ARTICLE 15. CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS

- 15.1 Savings Credited to Owner.** If the allowable, final, verified, audited amount of the cost of General Conditions, Cost of the Work, Allowance items and CM's Contingency is less than the amount established for each of those categories in the originally approved GMP proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be

adjusted accordingly. When buyout of the Project is at least eighty-five percent (85%) complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

15.2 Owner's Special Cash Allowances. Items to be provided for through Owner's Special Cash Allowances shall be clearly identified in the Contract Documents and the GMP proposal. The Cost of the Work included in the Allowances shall be determined in accordance with the UGC or as otherwise agreed in writing by the parties. Any claim by the CM for an adjustment to an Allowance amount included in the GMP based on the cost of Allowance work shall be made within a reasonable time after the issuance of the Construction or Procurement Documents for the Allowance items. The CM shall not be entitled to any increase in its Construction Phase Fee for increases to Allowance amounts that were initially based on estimates provided by the CM. Owner shall be entitled to retain one hundred percent (100%) of the balance of any unused Allowance amount.

15.3 Items Permitted to be Deducted from Pay Applications

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

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

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

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

15.3.1.4 Deposits made by Owner and forfeited due to the fault of the CM.

15.3.1.5 Balances remaining on any Allowances, the CM's Contingency, or any other identified contract savings.

15.4 Use of Savings. Owner shall be entitled to recover any savings realized between the GMP and the buyout price for subcontracting work, provided however, that CM may use such savings to offset other buyout packages that exceed the amounts identified in the initial GMP, so long as the total Cost of Work proposed in the GMP does not increase.

- 15.5 Savings Identified by Audit.** Owner shall be entitled to recognize and recover one hundred percent (100%) of any savings identified by cost review or audit at any time, before or after Final Payment.

ARTICLE 16. PRE-EXISTING CONDITIONS AND DESIGN ERRORS AND OMISSIONS

- 16.1 Existing Improvements and Conditions.** The CM acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that thorough investigation of these conditions is a CM obligation under this Agreement. CM's investigation and understanding of these conditions is instrumental in preparing its GMP Proposal for the Work. CM shall not make or be entitled to any claim for any adjustment to the Contract Time Requirements or to Pre-Construction Phase Services Fees or for Construction Phase Services costs or Fees arising from Project conditions that CM discovered or, in the exercise of reasonable care, should have discovered in CM's obligatory investigations.
- 16.2 Design Errors or Omissions.** The CM acknowledges that as part of its Pre-Construction Phase Services it shall participate in the development and review of the Construction Documents. CM's participation in the design development process will be instrumental in preparing its GMP Proposal for the Work. Before submitting its GMP Proposal, the CM shall have reviewed the drawings, specifications and other Construction Documents and shall have notified the Owner and A/E of any errors, omissions or discrepancies in the documents of which it is aware. CM shall not make or be entitled to any claim for any adjustment to the Contract Time Requirements or the Contract Sum for errors or omissions in the Construction Documents that CM discovered or, in the exercise of its standard of care as a contractor and not as a design professional, should have discovered in CM's Pre-Construction Phase design review process that CM did not bring to the attention of the Owner and the A/E in a timely manner.

ARTICLE 17. BONDS AND INSURANCE

- 17.1 In General.** Refer to Exhibit A, the Special Conditions, if any, and the UGC for specific requirements for Bonds and Insurance.
- 17.2 Bonds**
- 17.2.1 **Security Bond.** Upon execution of this Agreement, Construction Manager shall provide a security bond on the form provided by the Owner in the amount of five percent (5%) of the Construction Cost Limitation. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.
- 17.2.2 **Performance and Payment Bonds.** CM shall provide Performance and Payment Bonds in accordance with the UGC, with penal sums equal to the GMP when it submits a Guaranteed Maximum Price Proposal to Owner. At all times CM's Performance and Payment Bonds will cover the total amount of construction costs incorporated in this Agreement.

17.2.3 If for any reason the CM should desire coverage for the guarantee of performance or payment of Subcontractors in addition to the bonds required by Paragraph 17.2, the expense of such additional coverage shall be included in the Direct Construction Cost.

17.3 Insurance

17.3.1 The CM shall not commence any phase of the work under this Agreement until it has obtained all insurance required for that phase and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review and approval of the insurance shall not affect the liability of either party. The following insurance coverage is required in the phases of services under this Agreement:

17.3.1.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Business Automobile Liability in the amounts as set forth in the Special Conditions, if any, and the UGC.

17.3.1.2 Construction Phase: In addition to Paragraph 17.3.1, Builder's Risk and Owner's Protective Liability in the amounts as set forth in in the Special Conditions, if any, and the UGC. Builder's risk limits shall be adjusted continuously each time the cost of construction work is changed under this Agreement so that the total amount of work under the contract is covered at all times.

17.3.1.3 CM shall include required insurance information in trade bid/proposal packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their responses.

17.4 Insurance to be Kept in Effect. The CM shall not cause or allow any of the insurance required it by this Agreement to lapse or be canceled. If the CM fails to obtain, maintain or renew any required insurance, Owner may obtain replacement insurance coverage directly and recover the cost of that insurance from the CM.

17.5 Owner's Right to Make Adjustments. The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of this Agreement and to make reasonable adjustments to the limits of coverage it deems necessary and prudent based upon changes in applicable law or the claims history of the CM or the industry. If Owner makes material changes to the insurance requirements of this Agreement, then Owner shall also allow reasonable premium adjustments to authorized General Conditions Costs.

17.6 CM to Provide Copies of Policies. Within five (5) business days CM shall provide, upon Owner request and without cost to Owner, complete copies of the CM's required insurance policies with all their endorsements.

17.7 Cost of Additional Coverage to be Borne by CM. The cost of premiums for any additional insurance coverage desired by the CM in excess of that required by this Agreement shall be borne solely by the CM out of its fees and shall not be invoiced to Owner as Direct Construction Cost or as General Conditions Costs.

17.8 Insurance Required of Consultants. CM shall require its Consultants to maintain Commercial General Liability and Business Auto Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

ARTICLE 18. DISPUTE RESOLUTION

All disputes against the Owner that arise from this Agreement or the Project shall be resolved in accordance with the procedures and limitations of *Texas Government Code* Chapter 2260, the Special Conditions, if any, and Article 15 of the UGC. The Owner designates the Vice Chancellor and Chief Financial Officer as its officer for examining, negotiating and resolving claims and counterclaims under Chapter 2260 of the *Texas Government Code*.

ARTICLE 19. PROJECT TERMINATION AND SUSPENSION

- 19.1 Termination for Cause during Pre-Construction Phase.** This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) calendar days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such fifteen (15) calendar day period.
- 19.2 Termination for Convenience by Owner.** This Agreement may be terminated by the Owner for its convenience (at its sole discretion and that is not the fault of the CM) at any time during the Pre-Construction Phase or Construction Phase upon at least five (5) business days written notice to the CM in the event that the Project is to be temporarily or permanently abandoned or that the parties are unable or unwilling to agree on a GMP Proposal.
- 19.3 Recovery upon Termination (other than for fault of the CM).** In the event of termination that is not the fault of the CM, the CM shall be entitled to compensation for all services performed to the termination date together with Reimbursable Expenses then due, provided however, that CM has delivered to Owner such statements, accounts, reports and other materials as required by below together with all reports, documents and other materials prepared by/through the CM (including but not limited to the A/E) prior to termination. Upon such payment, Owner shall have no further obligation to the CM.
- 19.4 No Release of Liability.** Termination of this Agreement shall not relieve CM or any of its employees, Subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of CM. In the event of a termination, CM hereby consents to employment by Owner of a substitute CM to complete the services under this Agreement, with the substitute CM having all rights and privileges of the original CM of the Project.
- 19.5 Rights to Use Documents, Ideas, and Designs.** As of the date of any termination of this Agreement, CM shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by CM in connection with CM's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.
- 19.6 Suspension or Abandonment.** If the Project is suspended or abandoned in whole or in part for more than three (3) months, the CM shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three (3) months,

the CM's compensation for Pre-Construction Phase Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

- 19.7 Other Grounds of Suspension or Termination.** Except as otherwise set forth herein and in any Special Conditions, the UGC governs any termination or suspension during the Construction Services Phase of the Project.

ARTICLE 20. INDEMNITY

- 20.1 In General.** CM SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS REGENTS, ITS COMPONENTS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES AS PROVIDED IN ANY SPECIAL CONDITIONS AND ARTICLE 3 OF THE UGC.
- 20.2 Patent or Copyright Infringement.** WITHOUT LIMITING THE INDEMNITY REQUIRED ABOVE, THE CM SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS REGENTS, AND COMPONENTS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM LIABILITY OF ANY NATURE OR KIND, INCLUDING COST AND EXPENSE, FOR OR ON ACCOUNT OF INFRINGEMENT OR USE OF ANY PATENTED OR OTHERWISE PROTECTED INVENTION, PROCESS, DOCUMENT, OR ARTICLE IN THE PERFORMANCE OF THIS CONTRACT, INCLUDING ITS USE BY OWNER.
- 20.3 Survival.** The indemnities contained herein shall survive any termination of this Agreement.

ARTICLE 21. SPECIAL WARRANTIES

- 21.1 Reliance of Owner.** Notwithstanding anything to the contrary contained in this Agreement, Owner and CM agree and acknowledge that Owner is entering into this Agreement in reliance on CM's represented expertise and ability to provide construction management services. Owner is paying CM a professional services fee during the Pre-Construction Services Phase attempting to achieve optimum cost and time outcomes for the Project. CM agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and using Owner's prescribed procedures.
- 21.2 Standard of Care.** CM represents and warrants that it will perform its services in conformance with the highest standards of the Construction Management profession and in compliance with all Applicable Law, including all regulations, codes, ordinances, and orders of third parties having jurisdiction over the Project. CM agrees to bear the full cost of correcting negligent or improper work or services whether performed by itself or by its Subcontractors or consultants.
- 21.3 No Diminution by Reason of Owner's Review.** CM agrees that Owner's observation, review or approval of CM's work or services will not diminish CM's duties, responsibilities or liabilities under this Agreement, it being understood that Owner is ultimately relying upon the CM's knowledge and skill in performing its required services.
- 21.4 Licensing and Registration.** The CM represents and warrants that all persons directly connected to the CM and providing CM's services under this Agreement will be duly registered and/or licensed

under the laws, rules and regulations of any authority having jurisdiction over the Project or the services to the extent such licensure or registration is required.

- 21.5 Duty to Advise Owner.** CM represents and warrants that it will advise Owner of anything of any nature discovered in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the CM (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.
- 21.6 Good Business Practices.** The CM represents and warrants that it will perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and with the interests and objectives of Owner. CM further warrants that there are no existing obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.
- 21.7 Authority to Execute Agreement.** CM represents and warrants that the individual executing this Agreement on behalf of CM has been duly authorized to act for and to bind CM to its terms.
- 21.8 Limitation of Owner's Liability.** Except for the obligation of Owner to pay CM certain fees, costs, and expenses pursuant to the terms and conditions of this Agreement, Owner shall have no liability to CM or to anyone claiming through or under CM by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to CM, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, The Texas State University System, or of the Components comprising The Texas State University System, or anyone claiming under Owner has or shall have any personal liability to CM or to anyone claiming through or under CM by reason of the execution or performance of this Agreement.
- 21.9 No Waiver.** Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by the Owner of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.
- 21.10 Survival.** The warranties contained herein shall survive any termination of this Agreement.

ARTICLE 22. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

- 22.1 In General.** CM shall comply with the requirements of the UGC (see Article 13) concerning Asbestos Certification. The following requirements set forth below shall also apply.
- 22.2 Certification Statement with Submittals.** CM shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal. All materials used shall be certified as non-Asbestos Containing Building Materials ("ACBM"). The CM shall ensure compliance with the following acts from all of its Subcontractors and assigns:
- 22.2.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

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

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

22.3 Licensing. CM shall ensure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

22.4 Affidavit Required. CM shall provide at Substantial Completion, a notarized certification statement in accordance with Texas Administrative Code, Rule §295.34(c) (1) certifying that no ACBM was used during construction of the Project. Prior to submitting this affidavit, every Subcontractor and supplier shall have provided a notarized statement to CM that no ACBM has been provided, used, or left on this Project (which shall be provided to Owner upon request). CM shall take whatever measures that may be necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns comply with this requirement.

22.5 Provision of SDS. CM shall provide, in hard copy and electronic form, all necessary Safety Data Sheets (“SDS”) of all products used in the construction of the Project to the Texas Department of State Health Services licensed inspector or to the A/E who will compile the information from the SDS and, finding no asbestos in any of the products, make a certification statement.

ARTICLE 23. MISCELLANEOUS PROVISIONS

23.1 Public Information Pertaining to the Official Business of Governmental Bodies and to Contracts by Certain State Governmental Entities that Involve the Exchange or Creation of Public Information. The Texas State University System adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to Owner, CM is required to make any information created or exchanged with Owner pursuant to this Agreement, that is not otherwise excepted from disclosure under the TPIA, available in a format reasonably requested by Owner that is accessible by the public. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.

23.2 No Assignment or Delegation by CM. This Agreement creates a personal services contract for the services of CM. Neither CM’s interest in this Agreement, nor duties, nor fees due hereunder may be assigned or delegated to a third party. Any attempted assignment or delegation by CM shall be null and void.

23.3 Records and Accounting Standards and Principles. Records of costs and expenses reimbursable to CM as actual Cost of the Work and other costs and expenses pertaining to the Project reimbursable under the Contract on the basis of actual cost incurred, including Additional Services performed on the basis of a Worker Wage Rate or a Monthly Salary Rate, shall be kept on the basis of generally accepted accounting principles, and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board, and shall be maintained and made available for audit by the Owner or the Owner’s authorized representative for

a period of four (4) years after Final Completion of the Project. Owner will give reasonable notice prior to undertaking such an audit.

- 23.4 Family Code Certification.** By signing this Agreement CM is certifying, pursuant to Section 231.006 of the *Texas Family Code*, that it is not ineligible to receive the award of or payments under this Agreement by reason of its Family Support requirements and acknowledges that this Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.
- 23.5 Eligibility Certification.** By signing this Agreement CM is certifying that, pursuant to Section 2155.004 of the *Texas Government Code*, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 23.6 Franchise Tax Certification.** By signature hereon, CM hereby certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 23.7 Debts Owed to State.** By signing this Agreement CM agrees that, pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code*, any payments owing to CM under this Agreement may be applied directly toward any debt or delinquency that CM owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 23.8 Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between CM and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by CM and Owner.
- 23.9 Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Travis County, Texas shall be the exclusive venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.
- 23.10 Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.
- 23.11 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 23.12 Appointment.** Owner hereby expressly reserves the right from time to time to designate, by written notice to CM, a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Such designations will include the limits of that representative's authority. CM shall act only upon instructions from the designated representative(s) unless otherwise specifically notified in writing to the contrary.

- 23.13 Method of Giving Notice.** All notices, consents, approvals, demands, requests or other communications permitted or required to be given under this Agreement shall be given to the party's representative designated pursuant to the Paragraph 25.5 and shall be in writing. Written notice shall be deemed to have been given when delivered in person; sent by U. S. Mail; or transmitted by fax machine. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.
- 23.14 Illegal Dumping.** The CM shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.
- 23.15 Conflict of Interest Certification.** By signing this Agreement CM is certifying that no member of the Board of Regents of The Texas State University System, or its Executive Officers (including component institutions) has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.
- 23.16 Ethics Matters, No Financial Interest.** CM and its employees, agents, representatives and Subcontractors under this agreement have read and understand The Texas State University System Conflicts of Interest Policy available at <http://www.tsus.edu/about-tsus/policies.html> and The Texas State University System Rules and Regulations, Chapter VIII. Neither CM nor its employees, agents, representatives or Subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy as stated in The Texas State University System Rules and Regulations. CM represents and warrants that no previously undisclosed member of The Texas State University System Board of Regents, The Texas State University System's Chancellor or any of its executive officers, or any president or executive officers of its respective Components has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 23.17 Disclosure of Interested Parties,** CM certifies that, if the value of this Agreement or the anticipated value of the GMP Agreement exceeds One Million Dollars (\$1,000,000), it has complied with Section 2252.908 of the *Texas Government Code* and Part 2 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission ("TEC"), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the CM.
- 23.18 State Auditor's Office.** CM understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. CM further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. CM will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of CM relating to this Agreement
- 23.19 Nondiscrimination.** In their execution of this Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Contract.

- 23.20 Non-Boycott Verification:** Pursuant to Section 2270.002 of the *Texas Government Code*, CM certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. CM shall state in this Agreement any facts that make it exempt from the boycott certification. “Boycott Israel” shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 23.21 Cybersecurity Training Program.** Pursuant to Section 2054.5192, *Texas Government Code*, CM and its consultants, officers, and employees, who are provided credentials granting access to the Owner’s computer system also known as the Owner’s information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Owner. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. CM shall verify in writing completion of the program to the Owner within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of this Agreement.
- 23.22 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Section 2252.152, *Texas Government Code*, CM certifies CM is not engaged in business with Iran, Sudan, or a foreign terrorist organization. CM acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 23.23 Domestic Iron and Steel Certification.** Pursuant to Sections 2252.201-2252.205 of the *Texas Government Code*, CM shall require that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States. CM will require that the bid documents provided to all bidders and each applicable subcontract include this same requirement.
- 23.24 179D Benefit Allocation.** Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the “Code”) through this Agreement with CM.

If the Owner and the Internal Revenue Service (IRS) determine that CM is eligible to receive the 179D deduction allocation as a “Designer” for the purposes of Section 179D of the Code or that CM could otherwise profit financially from the monetization of the benefit (separately and collectively, the “Rebate”), CM hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and CM. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted CM fees or both.

Owner reserves the right to retain a third-party consultant (the “Consultant”) to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s). CM agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner’s 179D Consultant.

- 23.25 Other Provisions Required by Applicable Law.** In accordance with Section 51.9335(h), *Texas Education Code*, the parties acknowledge and agree that any other provision required by Applicable Law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:
- 23.25.1** Whether the provision appears on the face of the Agreement or Contract; or

23.25.2 Whether the Agreement or Contract includes any provision to the contrary.

ARTICLE 24. COMPENSATION

24.1 Construction Cost Limitation: The anticipated Construction Cost Limitation (“CCL”) for the Project on the Effective Date is [REDACTED] Dollars (\$00).

24.2 Pre-Construction Phase Fee: The Pre-Construction Phase Services Fee for the Project will be [REDACTED] Dollars (\$00). Payment of this Fee shall be made in accordance with Paragraph 12.2.

24.3 Construction Phase Fee

24.3.1 For Construction Phase Services, Owner shall pay CM a stipulated Construction Phase Fee equal to [REDACTED] Percent ([REDACTED]%) of the CCL of the Project.

24.3.2 Based on the anticipated CCL in Paragraph 24.1, the Construction Phase Fee (in its entirety) would be the total stipulated amount of [REDACTED] Dollars (\$00).

24.3.3 If the Owner agrees to a change in the GMP during the Construction Phase that results from a change in the scope of the Project, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in Paragraph 24.3.1 to the amount of the change in the GMP. The Construction Phase Fee will not be adjusted for changes to the Project that do not change the GMP.

24.3.4 The percentage rate established in Paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Services Fee adjustments cannot be changed except with the express written approval of the ODR. Such approval will normally only be given if there is a substantial change in the scope of the project.

24.4 Limitation on General Condition Costs

24.4.1 For General Conditions Cost, Owner will pay CM General Conditions Costs up to a maximum of [REDACTED] Percent ([REDACTED]%) of the CCL of the Project.

24.4.2 Based on the anticipated CCL in Paragraph 24.1, the General Conditions Costs would be the maximum total stipulated amount of [REDACTED] Dollars (\$[REDACTED]).

24.4.3 If the Owner agrees to a change in the GMP during the Construction Phase that results from a change in the scope of the project, the maximum allowable amount of General Conditions Costs shall be equitably adjusted. The limit on allowable reimbursements of General Conditions Costs will not be adjusted for changes to the project that do not change the GMP.

24.4.4 The maximum allowable amount of General Conditions Costs established for the Project and incorporated by a GMP Change Order cannot be subsequently increased except with the express written approval of the ODR. Such approval will normally only be given if there is a substantial change in the scope of the project.

- 24.5 Change Order Mark-Ups.** The mark-ups on all CM Change Order work negotiated during the Construction Phase shall be the same as those used in the GMP. These mark-ups shall supplant the overhead and profit limitations imposed by Article 11.8.1 of the UGC. Except as otherwise provided in the Special Conditions, if any, the Subcontractor overhead and profit mark-up limitations imposed by 11.8.2 of the UGC are unaffected by this paragraph and are not changed.

ARTICLE 25. OTHER TERMS AND CONDITIONS

25.1 Schedule and Time of Completion

- 25.1.1 Except as may otherwise be provided in the Special Conditions, the anticipated date for achieving Substantial Completion for all Work on the Effective Date is [REDACTED].
- 25.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner after approval of the GMP Proposal.
- 25.1.3 The CM shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the GMP Proposal, subject to time extensions granted by Change Order. Based on the CM's Pricing and Delivery Proposal for the project, it is anticipated that Final Completion will occur no later than two (2) months after the Substantial Completion date identified in Article 25.1.1.
- 25.1.4 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GUARANTEED MAXIMUM PRICE PROPOSAL ARE AN ESSENTIAL ELEMENT OF THE CONTRACT. The Owner may elect, at its option, to stage or "fast-track" portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate Substantial Completion date and a separate liquidated damages amount, all as contained in the Change Order issued to incorporate the GMP for that stage.

25.2 Milestone Schedule. See Special Conditions, if any.

25.3 Liquidated Damages

- 25.3.1 Except as may otherwise be provided in the Special Conditions, for each consecutive calendar day after the Substantial Completion date that the Work is not substantially completed, the Owner may deduct the amount of:

[REDACTED] Dollars per day (\$ [REDACTED]/day) from any money due or that becomes due the CM, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the "loss of use" damages that the Owner will sustain for late completion.

- 25.3.2 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is based on a reasonable estimate of the actual "loss of use" damages as determined and agreed by the parties at the time of the negotiation of this Agreement.

25.4 Estimated Construction Cost Reports. As a part of Pre-Construction Services the CM shall prepare and update an Estimated Construction Cost report for each Project as required by Article 5.4 at the completion of Schematic Design, Design Development and at the Fifty Percent (50%), and the One Hundred Percent (100%) completion stage of the Construction Documents phase of the Design.

25.5 Notices. Notices required or permitted to be given under this Agreement shall be sent to the following persons at the indicated locations.

25.5.1 If to Owner: Daniel Harper
Vice Chancellor and Chief Financial Officer
The Texas State University System
601 Colorado Street
Austin, Texas 78701

25.5.2 With Copies to: **Name of Component Contact**
Component Name
Title
University/College
Address
City, State Zip

25.5.3 If to CM: **Name of CM Contact**
Title
Name of CM
Address
City, State Zip

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

25.6 Party Representatives.

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

Peter Maass
Director of Capital Projects Administration
The Texas State University System
601 Colorado Street
Austin, Texas 78701
Phone: (512) 463-1808
Fax No.: (512) 463-1816
Email: peter.maass@tsus.edu

25.6.2 The Owner's Designated Site Representative or ODSR authorized to act in the Owner's behalf pursuant to and subject to the limitations of Paragraph 9.4 with respect to the Project is:

Name of ODSR
Title
Name of Component
Address
City, State Zip
Phone:
Fax:
Email:

25.6.3 The CM's designated representative authorized to act on the CM's behalf and bind the CM with respect to the Project is:

Name of CM Contact
Title
Name of CM
Address
City, State Zip
Phone:
Fax:
Email:

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

25.7 Construction Document Sets. The A/E shall coordinate the printing, binding and distribution of the initial issuance of all Construction Documents to all prospective Subcontractors requesting documents in order to provide proposals to the CM. A minimum of twenty-five (25) sets will be furnished at the expense of the Owner. The CM shall utilize all construction documents returned to the A/E from the unsuccessful proposers.

25.8 Interim Record Drawings and Specifications. As a requirement for acceptance of Substantial Completion, CM shall reproduce two (2) copies of the current As-Built Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled "Interim Record Drawings and Specifications", and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final As-Built Drawings and Specifications are provided to the A/E to prepare the final "Record Drawings" and "Record Specifications".

ARTICLE 26. EXHIBITS

List of Exhibits. The following exhibits are attached to this Agreement and fully incorporated herein by reference:

- A. Special Conditions of the Contract
- B. Owner's Construction Project Division 1 Specifications
- C. Allowable General Conditions Line Items
- D. Guaranteed Maximum Price Proposal Form
- E. Guidelines for the Preparation of the GMP
- F. CM's Personnel & Monthly Salary Rate
- G. Forms for Surety Bonds
- H. Constructability Implementation Program
- I. Form for Additional Services Proposal
- J. Prevailing Wage Rates
- K. Project Schedule

* * * * * SIGNATURE PAGES TO FOLLOW * * * * *

DRAFT

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

Name of CM

By: _____
(original signature)

(name and title typed)

Date: _____

REVIEWED AND RECOMMENDED:

**BOARD OF REGENTS
THE TEXAS STATE UNIVERSITY SYSTEM
(Owner)**

By: _____
(original signature)

By: _____
(original signature)

Name: Daniel Harper
Title: Vice Chancellor and Chief Financial Officer

Name: Brian McCall, Ph.D.
Title: Chancellor

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
(original signature)

Name: Fernando C. Gomez
Title: Vice Chancellor and General Counsel

EXHIBIT “A”

SPECIAL CONDITIONS

The following terms and conditions shall supplement the terms and conditions set forth in the Agreement and the TSUS UGC, but the terms and conditions below shall control over any inconsistent terms and conditions in the TSUS UGC.

A. MODIFICATIONS AND CHANGES TO THE TSUS UGC:

1. The definition of “Owner” in Paragraph 1.16 of the UGC is replaced to as follows:

Owner means the Board of Regents of the Texas State University System acting through the responsible entity of the Texas State University System or one of its institutions (“Components”) as identified in the Contract with the Owner.

2. The definition of the term “Supplementary General Conditions” in Paragraph 1.27 of the UGC is hereby deleted; the terms “Supplementary General Conditions” and “Supplemental Conditions” as used in the TSUS UGC shall refer to and mean the Special Conditions that have been attached as an Exhibit to the Agreement.

3. Paragraph 3.3 of the UGC is revised by adding the following at the end of the first paragraph:

Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility and general character of the Site and/or building.

4. A new Subparagraph 3.3.4.1 of the UGC is added to read as follows:

3.3.4.1 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.

5. Paragraph 3.3.10 of the UGC with regard to the Indemnification of Owner is replaced to read as follows:

3.3.10 Indemnification of Owner.

3.3.10.1 To the fullest extent permitted by Applicable Law, the Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death or property damage, made upon the Owner and such other indemnified parties identified herein directly or indirectly arising out of, resulting from or related to Contractor’s activities under this Contract, including any acts or

omissions of Contractor, or any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner or such other indemnified parties identified herein or their officers or employees, separate contractors, design professionals, or consultants, to the extent such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE OR OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

3.3.10.2 Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by the Contractor or the use by Contractor, or by Owner at the direction of Contractor, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. Contractor does not warrant against infringement by reason of Owner's or A/E's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Contractor and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

3.3.10.3 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.3.10.4 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract. In the event that Contractor defends the Owner with regard to any claim subject to this indemnification, any such defense shall be coordinated with the Office of the Attorney General or its designated outside counsel and Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General.

3.3.10.5 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.

6. Paragraph 4.1 of the UGC with regard to Historically Underutilized Business is replaced to read as follows:

4.1. *General Description. The purpose of the Historically Underutilized Business (“HUB”) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov’t Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.284.*

4.1.1 *State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. §20.281-298 outlines the State’s policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender-neutral means.*

4.1.2 *A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.285 by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.*

7. Sub-Paragraphs 4.2.5 and 4.2.6 of the UGC are replaced to read as follows:

4.2.5 *Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor’s performance of the HUB subcontracting plan.*

4.2.5.1 *Progress Assessment Report (“PAR”): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).*

4.2.6 *Promptly and accurately explain and provide supplemental information to Owner to assist in Owner’s investigation of Contractor’s good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 285.*

8. Paragraph 4.3 of the UGC is replaced to read as follows:

4.3 *Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.*

9. Sub-Paragraph 5.1.1 of the UGC is replaced to read as follows:

5.1.1. *A Performance Bond is required if the Contract Price is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Attorney General of Texas. The Performance Bond shall be effective through the Contractor's the Call-Back Warranty Period established in Paragraph 13.2.*

10. Paragraph 5.2.2 of the UGC is revised to read as follows:

5.2.2. *Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- VII or better by A.M. Best Company or otherwise acceptable to Owner.*

11. Sub-Paragraph 5.2.2.1.1 of the UGC is revised to read as follows:

5.2.2.1.1 *Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:*

<i>Worker's Compensation (Coverage A):</i>	<i>Statutory limits</i>
<i>Employers Liability:</i>	
<i>Bodily Injury by Accident:</i>	<i>\$1,000,000</i>
<i>Bodily Injury by Disease (each employee):</i>	<i>\$1,000,000</i>
<i>Bodily Injury by Disease (policy limit):</i>	<i>\$1,000,000</i>

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner and the respective Component.

12. Sub-Paragraph 5.2.2.1.2 of the UGC is revised to read as follows:

5.2.2.1.2 *Commercial General Liability Insurance. Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury (including death) and property damage with a minimum limit of :*

\$1,000,000 per occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations aggregate

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent.

13. Sub-Paragraph 5.2.2.1.4 of the UGC is revised to read as follows:

5.2.2.1.4 Business Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

Contractor or any subcontractor responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

14. Sub-Paragraph 5.2.2.1.5 of the UGC is revised to read as follows:

5.2.2.1.5 All Builder's Risk Insurance (or All-Risk Installation Floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be all-risk, including, but not limited to, fire and extended coverage, vandalism, malicious mischief, theft and, if applicable, flood, earth movement, windstorm (including named storm), terrorism coverage per TRIA 2002, collapse, and damage resulting from faulty workmanship, design or materials. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. Losses or claims not paid by such insurance because such losses or claims fall within the deductible shall be borne by the Contractor.

<<VARIABLE INFORMATION>>

The policy shall have endorsements or include coverage as follows:

5.2.2.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Special Conditions for possible additional builder's risk insurance requirements.

5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

5.2.2.1.5.6 *For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.*

5.2.2.1.5.7 *For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.*

5.2.2.1.5.8 *Builder's risk insurance policy shall remain in effect until Substantial Completion.*

The party required to furnish the Builder's Risk insurance in accordance with Article 17 of the Agreement and Article 5 of the TSUS UGC is <<Name of Firm>>.

15. Sub-Paragraph 5.2.2.1.6 of the UGC is revised to read as follows:

5.2.2.1.6. *"Umbrella" or "Excess" Liability Insurance. The Contractor shall obtain, pay for and maintain umbrella or excess liability insurance during the contract term, insuring the Contractor (or Subcontractor) with limits of not less than:*

\$10,000,000 (each occurrence)

\$10,000,000 (aggregate).

Such coverage shall be in excess of Contractor's Commercial General Liability, Business Automobile Liability, and Employer's Liability and shall "follow form" with regard to the primary coverage) to the full extent such primary coverage's limits are designated to the Project and for such period that such primary coverage provides for coverage, including any extended period for Products / Completed Operations coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. Such excess minimum limits can be met with a combination of primary and excess coverage (if such primary coverage has minimum limits in excess of those required above).

If this contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required.

16. Sub-Paragraph 5.2.3.3 of the UGC is revised to read as follows:

5.2.3.3. *The Owner and the respective Component institution and their officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.*

17. A new Sub-Paragraph 6.1.6.7 of the UGC is added to read as follows:

6.1.6.7 *Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or its representatives.*

18. A new Sub-Paragraph 9.1.11 of the UGC is added to read as follows:

9.1.11 *If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.*

19. A new Sub-Paragraph 9.4.1 of the UGC is added to read as follows:

9.4.1 *Before Contractor uses any portion of the float Contractor must submit a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.*

20. Paragraph 9.7 of the UGC is replaced to read as follows:

9.7 *No Damages for Delay. An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.*

21. A new Sub-Paragraph 11.8.4 of the UGC is added to read as follows:

11.8.4 *For Contracts based on a Guaranteed Maximum Price ("GMP"), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.*

22. Paragraph 13.2 of the UGC is changed to read as follows:

13.2. *Warranty Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work (the "Call-Back Warranty Period"). If Substantial Completion occurs by phase, then the Call-Back Warranty Period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Establishment of the Call-Back Warranty Period relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with*

respect to the Contractor's obligations other than specifically to correct the nonconforming or defective Work that was discovered or reasonably discoverable during the Call-Back Warranty Period.

23. Paragraph 16.1 of the UGC is replaced to read as follows:

16.1 Owner's Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Owner's Special Conditions that relate to the Project which are attached as an Exhibit to the Agreement. In the event of a conflict between the UTUGCs and the Special Conditions, the Special Conditions will govern.

* * * * *

B. REIMBURSEMENT FOR SUBCONTRACTOR BONDS

Notwithstanding the terms of Paragraph 13.1.7 of the Agreement, CM shall be entitled to reimbursement, as Direct Construction Cost (General Conditions Costs), the actual premium costs for performance and payment bonds furnished by Subcontractors whose subcontract amounts exceed Five Hundred Dollars (\$500,000), or as otherwise approved in advance by the Owner in writing, in its sole discretion. In order to be reimbursed as Direct Construction Cost, such bonds must name the Owner, the respective Component, and the CM as obligees, and comply with the applicable provisions of the Contract Documents, including but not limited to Article 5 of the TSUS UGC.

* * * * *

C. REIMBURSEMENT FOR SUBCONTRACTOR DEFAULT INSURANCE

Notwithstanding the terms of Paragraph 13.1.7 of the Agreement, if CM elects to purchase Subcontractor Default insurance ("SDI") to cover the default of its Subcontractors in lieu of performance and payment bonds, such SDI cost shall be reimbursable as Direct Construction Cost (General Conditions Costs) at the rates set forth below:

<<VARIABLE INFORMATION>> percent (%) of the value of a) subcontracts for enrolled Subcontractors, and (b) purchase orders (i) that are greater than One Hundred Thousand Dollars (\$100,000), and (ii) for which a delay in or failure of delivery of the materials included in the purchase order would cause delay to the critical path ("Major Material Purchase Orders").

Premium rates for SDI are fixed for the duration of the Work and are not subject to change or audit. All other terms and conditions of the Agreement relating to SDI shall continue in full force and effect.

* * * * *

EXHIBIT “B”

**OWNER’S CONSTRUCTION PROJECT
DIVISION 1 SPECIFICATIONS**

010000	Miscellaneous Requirements
012000	Project Meetings
013100	Project Administration
013200	Project Planning and Scheduling
013220	Photographic Documentation
013520	LEED Requirements
013523	Project Safety Requirements
014200	Reference Standards
014300	Quality Assurance
014339	Site Mock-ups
014500	Quality Control
014518	Field Engineering
015000	Construction Facilities and Temporary Controls
015010	Project Signage
015240	Construction Waste Management
017000	Contract Close-out
019100	General Commissioning Requirements

Visit the TSUS website to download and print the entire specification section at:

<https://www.tsus.edu/offices/finance/capital-projects.html>

EXHIBIT “C”

ALLOWABLE GENERAL CONDITIONS LINE ITEMS

On-Site Project Management Staff	
Safety Coordinator/Assistant(s)	CPM Scheduler
Project Executive	Superintendent(s)
Office Engineer(s)	Project Manager(s)
Project Expeditor(s)	Project Support Staff
Assistant Superintendent(s)	Out-of-State Project Specific Travel*
Bonds and Insurance	
Builder’s Risk Insurance	
General Liability Insurance	
Payment and Performance Bonds	
Other Project Insurance as Required by Contract	
Temporary Project Utilities	
Non-LEED Recycling Dumpsters	Project Water, Ice and Supplements to prevent dehydration
Project Electricity	Temporary Toilets
Monthly Telephone / Internet Service	Temporary Fire Protection
Street Rental and Barricades	Telephone / Internet System Installation
Fencing and Covered Walkways	
Temporary Water Distribution and Meters	
Temporary Electrical Distribution and Meters	
Site Erosion Control (BMP) and Project Entrance(s)	
Field Offices & Office Supplies	
Partnering Costs	First Aid Supplies
Job Photos/Videos	Reproduction Services
Project Specific Signage	Monthly Office Supplies
Postage/Special Shipping	Remote Parking Expenses
Project/As-Built (Record) Drawings	Project Reference Manuals
Project Milestone Event(s)*	Security System/Watchman
Move-In/Out and Office Setup	Safety Material and Equipment
Employee Identification System	Drinking Water and Accessories (including Ice)
Small Tools and Storage Trailers	Office Clean-Up/Janitorial Services
Monthly Office Trailer Rental Costs	Field Engineering
Mobilization and Demobilization (Equipment Only)	

* Specific justification and all estimated costs shall be submitted and approved by the Owner prior to any travel or event.

EXHIBIT “D”

FORM FOR GUARANTEED MAXIMUM PRICE PROPOSAL

(To be submitted with the GMP Proposal for the project covered by the Contract)

The CM hereby submits to The Board of Regents of The Texas State University System for the use and benefit of The (Component Institution) _____

[Insert Component Name]

pursuant to the provisions of Article VII of the Agreement by and between The Board of Regents of The Texas State University System for the use and benefit of

_____ [-Insert Component Name]

and _____ dated _____ 20_____

CM – [Insert CM Name]

[Insert Contract Month/Day/Year]

(the Contract”), a Guaranteed Maximum Price (“GMP”) for the _____

_____ [Insert Project Name and Stage, Component Name, State, City]

project number 758-XX-XXXXX (as defined in this Agreement), based on the Contract Documents (as defined by this Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the Cost of the Work pursuant to the Contract: \$ _____
2. A not-to exceed amount for the General Conditions pursuant to the Contract: \$ _____
3. A not-to exceed amount for the CM’s Contingency pursuant to the Contract: \$ _____
4. A lump sum amount for the Construction Phase Fee pursuant to the Contract: \$ _____
5. TOTAL OF GMP LINE ITEMS 1 THROUGH 5: \$ _____

This figure shall be the Guaranteed Maximum Price (“GMP”), which we hereby guarantee to the Owner.

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE
(Continuation of Exhibit D)

Corporations/LLC's: Attest:

Corporate Secretary

[CM]

Other business forms: Witness:

By: _____

Name: _____

[Type]
Title: _____

SEAL:

Date of Signature: _____

REVIEWED AND RECOMMENDED:

ACCEPTED AND AGREED:

By: _____
(Original Signature)

The Board of Regents of
The Texas State University System
for the use and benefit of
<Name of Component>

Name: Daniel Harper
Title: Vice Chancellor and Chief Financial
Officer

By: _____
(Original Signature)

Name: Brian McCall, Ph.D.
Title: Chancellor

Date: _____

EXHIBIT E

**GUIDELINES FOR THE PREPARATION OF THE
GUARANTEED MAXIMUM PRICE PROPOSAL**

1. CONTRACT REQUIREMENTS:

Refer to Article 7 of the Contract. The provisions of the GMP are defined here and other related requirements are included throughout the Contract. In the event of irreconcilable conflict between the GMP Proposal and the Contract, the interpretation that provides for the higher quality of material and/or workmanship shall prevail.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Contract. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner. In general, proposed revisions or modifications to the language, terms or conditions of the Agreement will not be accepted.

2. PRE-SUBMITTAL REQUIREMENTS:

- A. Scope Definition: Prior to GMP submittal, the Construction Manager shall thoroughly review the GMP Construction Document package with the Owner and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted. Refer to the section “PDRI For Buildings” which is an attachment to the Agreement for additional guidelines. The PDRI checklist must be completed at this time.
- B. Schedule: The anticipated Notice to Proceed and Substantial Completion dates for Construction shall be coordinated and approved by the User (Component Institution) and ODR.
- C. Value Engineering: Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the “final acceptance” of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by the Owner prior to GMP submittal.
- D. Pre-submittal Conference: The Contractor shall schedule a conference with the Owner’s Designated Representative (“ODR”) no later than six (6) weeks prior to submitting the initial draft of the GMP to the Owner. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. The Contractor shall obtain a copy of the “Standard Schedule of Values Format” from the ODSR. Additionally, a review of acceptable “General Condition” items, as defined in the Contract, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The Campus, the Owner's Engineers, the ODSR, and the ODR shall provide review comments. The Contractor shall consolidate all responses to those groups into TAB 10 of the document. Each owner comment shall have a corresponding answer directly below the original comment. A reply to each owner comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS:

The GMP Proposal shall be submitted at the phase specified by the Owner. The GMP Proposal shall be submitted in the format described below. Proposals substantially deviating from the prescribed format will be returned to the Contractor for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the CM and may not extend the required Substantial Completion date.

5. MULTIPLE GMP'S:

In order to expedite the Project Schedule, the Owner and CM may execute multiple GMP Proposals (stages), which shall be incorporated into the Contract through a change order to the previous approved GMP Proposal(s), identified in Article 7. The requirements for this method shall be identical to the requirements for the first GMP submittal/approval process.

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be bound in 3-ring notebook or spiral notebook (**8 1/2" x 11" paper only**) and entitled "Guaranteed Maximum Price Proposal". Below it the following items shall be shown:

- Submittal number (i.e. Submittal #1)
- Date of Submittal
- Project Name
- Campus/Institution Name
- Project Number

Since several submittal revisions may be submitted, always state which submittal number is currently being submitted.

All pages within each tab shall be numbered.

Submit an electronic version of the GMP in PDF format.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

- List all the following items. Provide a brief summary of the major components within each Tab.

TAB 1 – Guaranteed Maximum Price Proposal (Exhibit D)

- Refer to the GMP Proposal document attached to this Exhibit. Type in the cost amounts and sign, attest, date and seal the form.
- In addition to the bound notebooks, provide two (2) loose original executed copies. (Do not bind into spiral notebooks.)
- Do not alter any language from the original document without prior approval from the ODR.
- Do not electronically alter the document.
- Each line item cost must exactly match the corresponding cost summary shown on the TAB 6 GMP Proposal Cost Breakdown.
- Provide a Corporate Resolution or Articles of Organization, stating individual's authorization to execute contracts on behalf of the corporation, for any individual signing the GMP, who is not the President or CEO of the CM.

TAB 2 - Executive Project Summary

- State any amended services or scope changes included in the Proposal.
- Provide a brief project summary defining the scope of work associated with the construction phase of work included in this GMP Proposal.
- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
- State the anticipated Notice to Proceed date and Substantial Completion date.

TAB 3 - Project Team

- List the various teams and the team members, in graphic and written form, for including names, titles, job responsibilities, and contact information.
- Identify all consultants.

TAB 4 - List of Documents

- Drawings Index – Drawings shall be organized by listing each sheet number, sheet title and current revision date.
- Specification Index:
 - Provide a detailed listing of each specification section required by the Owner as identified in the Contract (see the Exhibit for “Owner’s Specifications”).
 - Provide a detailed listing of all other spec sections describing the project.
 - Specifications shall be organized by CSI Division format listing each specification section number, title and current revision date.

TAB 5 - Qualifications and Value Engineering

- Qualifications – A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB 4.
- Exclusions – A summary of exclusions organized by drawing sheet number or by specification section. Substitutions – A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB 4. Organize by specification section.

- Value Engineering Recommendations - List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition, identify those VE items not currently accepted. State the price and whether the price is good for a limited time period.

TAB 6 - GMP Proposal Cost Breakdown

- Provide an Estimated Construction Cost breakdown on the standard Schedule of Values Format for Cost of the Work based on anticipated subcontracts organized by the same approved CSI division format that was used to develop the previous cost estimates, General Conditions per exhibit, CM's Contingency, Construction Phase Fee, any Owner's Special Cash Allowance and/or Owner's Construction Contingency as identified by the Owner.

The screenshot shows an Excel spreadsheet titled "Texas State University System - Contractor's Estimate Continuation Sheet (8 1/2\" x 11\" Sheet ONLY)". The spreadsheet is organized into columns for various cost categories and application periods. The columns are labeled A through M. The rows list various construction items, such as "Temporary Toilets", "Monthly Telephone / Internet Service", "Temporary Fire Protection", "Street Rental and Barricades", "Telephone / Internet System Installation", "Fencing and Covered Walkways", "Temporary Water Distribution and Meters", "Temporary Electrical Distribution and Meters", "Site Erosion Control (BMP) and Project Entrance(s)", "Field Offices & Office Supplies", "Partnering Costs", "First Aid Supplies", "Job Photos/Videos", "Reproduction Services", "Project Specific Signage", "Monthly Office Supplies", "Postage/Special Shipping", "Remote Parking Expenses", "Project/As-Built Drawings", "Project Reference Manuals", "Project Milestone Event(s)", "Security System/Watchman", "Move-In/Out and Office Setup", "Safety Material and Equipment", "Employee Identification System", "Drinking Water and Accessories", "Small Tools and Storage Trailers", "Office Clean-Up/Janitorial Services", "Monthly Office Trailer Rental Costs", and "Mobilization and Demobilization (Equipment Only)". Each row includes columns for "Initial Proposed Line Item Values", "Additional Services / GMP Change Order Values", "Actual Subcontract Amount at Buyout", "Delta (Proposed to Actual)", "Assembly Category", "Detailed Breakdown of Contract Line Items", "Total Amount Previously Requested & Percent", and "Current Application" (Total Amount This Period & Percent, Total Amount Completed To Date & Percent).

(An electronic copy is available upon request)

- The CM shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration.
- The CM shall include an updated Exhibit F, "CM's Personnel and Monthly Salary Rates" identifying any new staff or rate modifications. **Enter any revisions using bold type.**

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically **on a flash drive or CD** and as a Gantt Chart Report within the GMP Proposal showing the Activity ID, Activity Description, Original Duration, Early Start, Early Finish, Total Float, Late Start and Late Finish column titles.
- Summary Schedule Requirements
 - The schedule shall form the basis for the “Detail” schedule, which shall be submitted within sixty (60) calendar days following Notice to Proceed for Construction Services.
 - The schedule shall be a computer-generated CPM schedule.
 - The schedule shall be presented in “bar chart” form and contain detailed activities for all events and milestones included in Pre-construction Services
 - The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) calendar days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first ninety (90) calendar days) may be summarized by trades and may have longer durations than the “detailed” activities mentioned above.
 - The total float indicated on the Master Project Schedule shall be no less than ten percent (10%) of the total Construction Phase duration (NTP to Substantial Completion). i.e. - All paths in the schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately ninety percent (90%) of the time allowed by contract for the Owner established Substantial Completion Date.

TAB 8 - Bid/Proposal Package Strategy

- The Contractor shall provide a written Bid/Proposal Package Strategy for procuring subcontracts including self-performance work (other than General Conditions).

TAB 9 - Historically Underutilized Business Plan

- Complete the attachments required by exhibit of the Contract.
- For all first and second tier subcontractors currently under contract or anticipated to be contracted with, provide completed Attachments C, D, and E.
- A completed HUB Subcontracting Plan shall be delivered to Owner at the time of final subcontracting buyout.

TAB 10 - Responses to Review Comments

- For resubmitted GMP Proposals, include all review comments provided by the Owner regarding the GMP or GMP re-submittal.
- For each submittal the Contractor shall provide a written response below each original comment, stating the appropriate response to the issue and include that documentation in this section. **A re-submittal may not be forwarded to Owner without responses to the previous review comments and included under this TAB 10.**

- **Any proposed deviations from the provisions or processes described in the Contract, contained in this Proposal, shall be approved in writing by the ODR and included herein.**

TAB 11 - Bid Documentation and Recommendations

- CM will provide the bid documentation and recommendations in a 3-ring binder. This binder will have dividers separating the following contents:
 - A Table of Contents
 - A summary spreadsheet that compares the bid amounts of each recommended subcontractor to the last reconciled cost estimate prepared by the CM prior to bidding. This spreadsheet will be designed to show all divisions of work being competed with their individual and their aggregate comparison to the latest reconciled CM estimate. (See Example Below)
 - A divided section dedicated to each division of work. (See Example Below)
 - In each of these sections provide a spreadsheet showing:
 - The latest reconciled CM estimate for that division of work.
 - The bid amounts of each competing subcontractor linked to their name. The recommended subcontractor's information should be highlighted.
 - The evaluation grade of each subcontractor when a best value process is used.
 - A notation stating whether each subcontractor acknowledged addenda, excluded items, or qualified their bid.
 - After this spreadsheet in each divided section, place a copy of the "Invitation to Bid" that was used in the solicitation and a copy of all parts of subcontractor bids received in response to the solicitation.
 - If the CM recommends award to a subcontractor other than the low bid or the best evaluation score, a written justification must be included in the divided section.
 - If a bidding subcontractor is disqualified for any reason, a written justification must be included in the divided section.

TEXAS STATE UNIVERSITY SYSTEM										
GMP Bid Summary Tabulation Sheet										
Project Name										
Component Name										
HUB Percent on Recommend Bids				#DIV/0!	Date:					
				1st Tier HUB Participation	HUB Vendor		2nd Tier HUB Participation			
Line #	Schedule of Value Line Item	Description	Program Budget	100% SD Budget	GMP Budget	Recommended Bid Amount	Buyout Savings (overage)	HUB Vendor Bid	HUB Vendor	HUB Vendor Bid
1		Divisi								
2		1.01	\$0	\$0	\$0	\$0	\$0			
3		2.01	\$0	\$0	\$0	\$0	\$0			
4		3.01	\$0	\$0	\$0	\$0	\$0			
5		Subtotal of Div. 01	\$0	\$0	\$0	\$0	\$0			
6		Division 02 Existing Conditions								
7		1.02	\$0	\$0	\$0	\$0	\$0			
8		2.02								
9		3.02								
10		Subtotal of Div. 02	\$0	\$0	\$0	\$0	\$0	\$0		
11		Division 03 Concrete								
12		1.03	\$0	\$0	\$0	\$0	\$0			
13		2.03								
14		3.03								
15		Subtotal of Div. 03	\$0	\$0	\$0	\$0	\$0	\$0		
16		Division 04 Masonry								
17		1.04	\$0	\$0	\$0	\$0	\$0			
18		2.04								
19		3.04								
20		Subtotal of Div. 04	\$0	\$0	\$0	\$0	\$0	\$0		
21		Division 05 Metals								
22		1.05	\$0	\$0	\$0	\$0	\$0			
23		2.05								
24		3.05								
25		Subtotal of Div. 05	\$0	\$0	\$0	\$0	\$0	\$0		
26		Division 06 Wood, Plastics, and Comp								
27		1.06	\$0	\$0	\$0	\$0	\$0			
28		2.06								
29		3.06								
30		Subtotal of Div. 06	\$0	\$0	\$0	\$0	\$0	\$0		
31		Division 07 Thermal								
32		1.07	\$0	\$0	\$0	\$0	\$0			

(SUMMARY SHEET- An electronic copy is available upon request)

TEXAS STATE UNIVERSITY SYSTEM									
GMP Bid Package Tabulation Sheet									
PROJECT NAME HERE									
Bid Package : name of bid package				Bid Date and Time:		4/1/2010			
Date: 4/1/2010						2:00pm			
Ranking	1	2	3	4	5	6	7		
Description	GMP Budget	Named Selected Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent	Next Highest Rated Respondent
name of bid package	\$1,000,000.00								
Addendum #1 Acknowledged									
Addendum #2 Acknowledged									
Addendum #3 Acknowledged									
Addendum #4 Acknowledged									
Addendum #5 Acknowledged									
Base Bid Subtotal	\$1,000,000.00	\$1,000,001.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Pay/Perf. Bond									
Total Price with Bond	\$1,000,000.00	\$1,000,001.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
over/(under) GMP Budget		\$1.00	-\$1,000,000.00	-\$1,000,000.00	-\$1,000,000.00	-\$1,000,000.00	-\$1,000,000.00	-\$1,000,000.00	-\$1,000,000.00
Qualifications Criterion									
EMR (5%)									
Safety (10%)									
D & B (5%)									
Past Performance (15%)									
Price (65%)									
Total Composite Score	0.00%								
Remarks/Justification on Selected Respondent:									

(BID DIVISIONAL/PACKAGE SHEET- An electronic copy is available upon request)

EXHIBIT F
CM'S PERSONNEL AND MONTHLY SALARY RATES

Project No. & Name: _____ - _____
[CM - Insert Project No.] [CM - Insert Project Name]

The following Monthly Salary Rate ("MSR") shall identify the estimated billable rate prior to execution of the Contract, and shall be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Standard Schedule of Values Format for all salaried General Conditions type personnel pursuant to the Contract. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. CM shall define the monthly salary rate by dividing the fifty-two (52) weeks of a year into the twelve (12) months of a year. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Article 15 of the Contract.

Employee		Estimated Employer's Monthly Contributions						Monthly Salary Rate
Name and Title	Estimated Monthly Direct Salary Expense	Federal & State Unemployment <i>(Less than 1%)</i>	Social Security & Medicare <i>(Less than 7.65%)</i>	Workers' Compensation	Health & Insurance	Retirement	Vacation / Holiday	
1.	\$	\$	\$	\$	\$	\$	\$	\$
2.	\$	\$	\$	\$	\$	\$	\$	\$
3.	\$	\$	\$	\$	\$	\$	\$	\$
4.	\$	\$	\$	\$	\$	\$	\$	\$
5.	\$	\$	\$	\$	\$	\$	\$	\$
6.	\$	\$	\$	\$	\$	\$	\$	\$
7.	\$	\$	\$	\$	\$	\$	\$	\$
8.	\$	\$	\$	\$	\$	\$	\$	\$
9.	\$	\$	\$	\$	\$	\$	\$	\$
10.	\$	\$	\$	\$	\$	\$	\$	\$
11.	\$	\$	\$	\$	\$	\$	\$	\$
12.	\$	\$	\$	\$	\$	\$	\$	\$

CM shall certify, to the best of his knowledge, that the above referenced salary information is accurate.

CM signature: _____ **Date:** _____
(same individual who signs contract)

EXHIBIT G

FORMS FOR SURETY BONDS

Payment and performance bonds required under Article 17 of the Agreement shall be drafted on forms provided by the Owner based on the forms posted on The Texas State University System (“TSUS”) website or as otherwise approved in advance by the Owner and the Attorney General of the State of Texas. Such bonds shall be furnished within ten (10) calendar days after the CM executes this Agreement unless the CM has furnished a security bond as provided in Paragraph 17.2.1 of the Agreement acceptable to Owner.

If the CM has furnished the security bond as provided in Paragraph 17.2.1, the payment and performance bonds required under Paragraph 17.2.2 shall be furnished to the Owner prior to commencement of the Work covered by the bonds.

The Obligee for the bonds shall be the “Board of Regents of The Texas State University System”. The Obligee’s address is as follows:

The Texas State University System
Board of Regents
Attn: Vice Chancellor and Chief Financial Officer
601 Colorado Street
Austin, Texas 78701

Visit the TSUS website to download and print the current forms at:

<https://www.tsus.edu/offices/finance/capital-projects.html>

EXHIBIT H

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- Implement a rigorous constructability program
- Identify and document project cost and schedule savings (targeted cost savings: five percent (5%) of construction costs)
- Publish a monthly report that intuitively communicates the challenges and solutions experienced in the development of the construction documents

Proposed Steps:

- **Constructability Implementation Meeting**
 - identification of all project team personnel and all project stakeholders
 - clarification of project goals, objectives, and progress to date
 - team briefing on objectives, methods, and concepts of constructability
 - familiarization with implementation program
 - preliminary identification of constructability priorities and special challenges or concerns
- **Constructability Review of Schematic Design (“SD”) Documents; Comments Submitted to CM Team**
 - establishment of project constructability procedures, including procedures for documenting savings
- **Meeting to Review Schematic Design Constructability Comments**
 - assessment of applicability of 17 Construction Industry Institute Best Practices constructability concepts
 - prioritization and time-phasing of constructability concepts
 - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Design Development Constructability Review Comments to CM Team**
 - follow-up discussions on front-end, high-priority concepts
 - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Constructability Review Meeting**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements; consider life-cycle cost effects

- **Thirty Percent (30%) CD Constructability Review Comments to CM Team**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements

- **Fifty Percent (50%) CD Constructability Review Comments to CM Team**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements

- **Ninety-Five Percent (95%) CD Constructability Review Comments to CM Team**
- **Constructability Discussions with CM Team**
- **Document On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**

EXHIBIT I

**ADDITIONAL SERVICES PROPOSAL for
PRE-CONSTRUCTION PHASE SERVICES**

ASP No.: _____
Project No.: _____
Project Name: _____
Institution/Campus: _____
Date: _____

To: Owner' Designated Representative: _____
 Street Address: _____
 City, State, Zip: _____

From: Construction Manager: _____
 Street Address: _____
 City, State, Zip: _____

CONSTRUCTION MANAGER

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

1. Owner has requested the performance of the services described below which CM deems to be Additional Services.

[INSERT DESCRIPTION OF ADDITIONAL SERVICES]

2. CM agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Contract for a fee which will be determined in accordance with the Contract but which will not exceed _____ Dollars (\$_____).
3. CM will perform the services no later than _____, 20__ (_____) days after CM is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter in the space below and insert the date.

Construction Manager

By: _____
Name: _____
Title: _____
Date: _____

Current Pre-Construction Phase Fee Summary

ORIGINAL Pre-Construction Phase Fee: (\$ _____)
Previous Additions: (\$ _____)
Previous Deductions: (\$ _____)
NET BALANCE of Pre-Construction Phase Fee: (\$ _____)
THIS Addition / Deduction: (\$ _____)
Adjusted Pre-Construction Phase Fee: (\$ _____)

DIRECTOR OF CAPITAL PROJECTS ADMINISTRATION

The Texas State University System

Accepted this _____ day of _____, 20____. CM Contractor is authorized to commence performance of the Additional Services on _____ day of _____, 20____.

Owner's Designated Representative

By: _____
Name: Peter Maass
Title: Director of Capital Projects Administration

EXHIBIT K

PROJECT SCHEDULE

(see attached)

DRAFT