

**THE TEXAS STATE UNIVERSITY SYSTEM  
OWNER /ARCHITECT-ENGINEER AGREEMENT**

**(Competitive Sealed Proposals)**

THIS AGREEMENT between the State of Texas, acting through the Board of Regents of the Texas State University System (“Owner”), and [A/E Name] (“A/E”) is effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WHEREAS, the Owner intends to construct the [Project Name] (the “Project”) at the campus of [Component Name] (“Component”), [City], Texas and

WHEREAS, the Construction Cost Limitation (“CCL”) for the Project is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), and is defined as the estimated cost of construction, which may include an Owner’s contingency allowance. This will be the Owner’s target amount for the contract price under a Competitive Sealed Proposal (“CSP”) construction contract.

NOW THEREFORE, the Owner and A/E, for considerations as set forth, agree as follows:

**ARTICLE 1 SCOPE OF SERVICES**

- 1.1 The A/E agrees to perform Basic Services and certain Additional Services for the Project, both as specified more particularly in Article 3 in accordance with its applicable Standard of Care (see Paragraph 1.2 below). The term “Basic Services” includes all architectural services including <<civil, structural, mechanical, plumbing, fire protection, acoustics, telecommunications, electrical, and landscaping architectural and engineering services, as well as, fixed furniture, public art, equipment layout, and consultation with Owner about their selection>>. Basic Services also include cost estimating, per Paragraph 6.2, for the results of everything that is designed into the Project by the A/E whether from Basic or Additional Services. In addition to the Basic Services, Owner may include certain Additional Services identified in Exhibit A attached hereto in this original agreement and at the fee set forth in Exhibit A. The A/E may be requested to perform further Additional Services as set forth in Article 4 upon negotiation of additional fees and execution of additional amendments. The A/E agrees to comply with the Owner’s latest version of the Design Guidelines and Construction Standards applicable to the campus and/or location of the Project (“Campus Standards”) when providing the services included in this Agreement in a manner consistent with its applicable Standard of Care. For the avoidance of doubt, A/E is not authorized to perform any of the Basic Services or Additional Services without the express written consent of the Owner, whether by the Amendment or otherwise.
- 1.2 To the fullest extent as may be required pursuant to Section 271.904 of the Texas Local Government Code (pursuant to Section 2254.0031 of the Texas Government Code) and Chapter 130, Texas Civil Practice and Remedies Code, or as otherwise permitted by applicable law, the A/E shall perform its services consistent with the professional skill and care ordinarily provided by competent design professionals practicing under the same or similar circumstances and professional licenses and as expeditiously as is prudent considering the ordinary professional skill and care of such competent architect or engineer (the “Standard of Care”). Subject to its Standard of Care, the A/E shall perform

such services consistent with the orderly progress of the Project and within the time parameters as may be required by this Agreement.

- 1.3 A/E shall not replace the in-house personnel named in its submitted Qualifications to lead the Project or its phases identified in the scope of work without prior written approval from the Owner.
- 1.4 Maximum beneficial use of Building Information Modeling (“BIM”) through close coordination with the Owner, the Contractor and their subcontractors and consultants. A/E will make the BIM products of its work fully available to the Owner and Contractor for their use in constructing and operating/maintaining the Project, subject only to receiving adequate liability protection against unauthorized modification or reuse of the design. The BIM deliverable is expected to be utilized as a Facility Management tool for post construction use.
- 1.5 Definitions:
  - 1.5.1 Work: See as defined in Article 1 of the Uniform General Conditions of the Texas State University System published date of December 1, 2021, a copy of which is published on the Owner’s website (Capital Projects webpage) (referred to herein as the “UGC”).
  - 1.5.2 Campus Standards: Documents prepared by the Component to be used by A/E for their use related to Building Codes, Construction Building Systems and Specifications to ensure the Project is designed to a certain level of finish and quality found throughout the Component’s campus.
  - 1.5.3 Contractor: See as defined in Article 1 of the UGC.

## ARTICLE 2 PROVISIONS RELATED TO FEE AND REQUIRED INSURANCE

- 2.1 The Owner agrees to pay the A/E a lump sum fee (“Fee”) for Basic Services of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Fee will not change unless the Owner directs significant changes to the quantity, quality standards or types of construction included in the Project. Without limiting the generality of the foregoing statement, the Fee will not change due to increases or decreases in the CCL (Paragraph 8.2).
  - 2.1.1 << The Fee is inclusive of all reimbursable expenses of the A/E.>> or <<Any expenses that are reimbursable to the A/E under this Agreement shall be billed to the Owner monthly as a direct expense, without any markup for overhead or profit. [If a specific limitation on reimbursable expenses is desired, add the following sentence: Such reimbursable expenses shall be limited to a maximum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).] Travel costs, but not the salary costs during travel, of out of town trips required by the Owner shall be treated as reimbursable expenses under this Agreement. Reimbursement for these expenses shall be limited to the lesser of actual expenses incurred and the reimbursement rates then allowable for travel by employees of the State of Texas.>>
- 2.2 The A/E services contracted in this Agreement, and those services that may be added by Amendment, are those normal and customary services necessary to the design and construction administration of a project of the type, size and quality standards [Alternative A: described in the Architectural Program document dated \_\_\_\_\_, 20\_\_ for the [Project Name] (the “Architectural

Program”)] or [Alternative B (if no Program document): as indicated by the Scope of Work provided by the Owner], and those generally found in the public higher education sector in the State of Texas for similar projects. The A/E shall not deviate from the [Alternative A: Architectural Program document] or [Alternative B: such] requirements without written approval from the Owner’s Designated Representative (“ODR”). The A/E services required are further defined and detailed in, but not limited by, Article 3.

- 2.3 The times and conditions of payment for the Fee shall be as described in Article 7.
- 2.4 The A/E agrees to make a Good Faith Effort to allocate twenty percent (20%) of the services required under this Agreement to qualified consultants, which are Historically Underutilized Businesses (“HUB” or “HUBs”). If the A/E is a HUB, it shall perform at least twenty-five percent (25%) of the work. At the time of the construction contract award, the A/E shall report and justify to the Owner the percentages of work performed by HUBs.
- 2.5 Insurance Coverage. The A/E shall carry such professional liability/errors and omissions insurance, covering the services provided under this Agreement, whether provided by the A/E or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable (collectively, “Consultants”), and other coverages as further described, acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the A/E. The insurance policy shall remain in force for a period of one (1) year beyond the final Project completion date. A Certificate of Insurance indicating the expiration date, and representing the existence, of the A/E’s insurance coverages is required prior to commencement or continuation of performance of the services under this Agreement. Within five (5) business days of the Owner’s request, A/E shall provide the Owner a complete copy of each insurance policy required under this Agreement, with all their endorsements, without cost to Owner. Each request for payment by the A/E shall include the expiration date of the insurance. A/E shall deliver to Owner replacement certificates not less than thirty (30) calendar days prior to the expiration of any such insurance. If, however, A/E fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming due to A/E under this Agreement.
- 2.5.1 A Certificate of Professional Liability Insurance is required with a minimum limit of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) aggregate. The Certificate shall indicate the expiration date of the A/E’s professional liability and errors and omissions insurance. The Certificate is to identify the specific name of the Project according to the terms of this Agreement and identify the Board of Regents of The Texas State University System as the Project’s Owner.
- 2.5.2 On Site Insurance: For services performed on Owner's premises, the A/E shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence \$1,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence

- 2.5.3 Notice of Cancellation: Required insurance shall not be cancelable without written notice to the certificate holder in accordance with the terms of the insurance policy. The A/E agrees to provide to the Owner notice of cancellation of any required insurance within five (5) business days of its receipt of notice of such cancellation.
- 2.5.4 A/E shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner. To the fullest extent permitted by applicable law, including but not limited to Section 271.904 of the Texas Local Government Code, such General Liability policy shall provide for the defense of the additional insureds in suits or legal actions brought against additional insureds on claims that, if proven by final judgment, would constitute covered claims under such General Liability policy.
- 2.5.5 A/E 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 3 SERVICES OF THE A/E**

**3.1 Schematic Design Phase**

- 3.1.1 Based upon the <<Architectural Program>> or <<Scope of Work>> provided by the Owner, careful observation and investigation of the project site and existing conditions by the A/E and their Consultants, the CCL, and a desired Project Schedule established by the Owner, the A/E shall prepare sufficient alternative approaches to design of the Project to satisfy Owner's requirements and at completion of this phase, shall submit Schematic Design documents in accordance with Owner's Design Guidelines.
- 3.1.2 A/E shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in Owner's Design Guidelines.
- 3.1.3 A/E shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

- 3.1.4 A/E shall demonstrate adherence to the <<Architectural Program>> or <<Scope of Work>> by providing clear and concise information showing such adherence within the documents submitted for approval.
- 3.1.5 The A/E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the Owner's Designated Site Representative ("ODSR") and all attendees within seven (7) business days from the date of the meeting to allow for comments and/or corrections to the minutes. The A/E may be required to attend a project meeting weekly either in person, through video conferencing, or telephonically as directed by the ODSR.
- 3.1.6 The A/E shall furnish and deliver to the Owner electronic and printed sets of Schematic Design documents, in the quantity and type requested by the ODSR. All sets shall be distributed as directed by the ODSR.
- 3.1.7 The A/E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the CCL and complete it within two (2) weeks of delivering the completed Schematic Design documents. (See Section 6.2 for estimate requirements). The A/E shall consult with the Owner, and its designated representatives including the ODR and ODSR, and recommend any value engineering adjustments to the Project that may be necessary to align the cost estimate and the Project budget with the established CCL. The A/E shall revise the Schematic Design documents as may be required to incorporate value engineering recommendations accepted by the Owner.
- 3.1.8 Before proceeding into the Design Development Phase, the A/E shall obtain written acceptance of the Schematic Design documents and approval of the A/E's preliminary construction cost estimate and schedule by both the ODR and the ODSR. The A/E shall submit a fully executed Certificate of Compliance (as required by the Owner's Policies and Procedures for Planning and Construction) ("Certificate of Compliance"). The A/E shall furnish and deliver to the ODR and ODSR one (1) flash drive each of the complete documents for this phase of the design in a format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).

## 3.2 Design Development Phase

- 3.2.1 Based on the approved Schematic Design documents and any adjustments to the <<Architectural Program>> or <<Scope of Work>> or CCL authorized by the Owner, and upon receipt of a Notice to Proceed to the Design Development Phase executed by the ODR, the A/E shall prepare, for approval by the Owner, Design Development documents in accordance with the Owner's written requirements. These documents will further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines. The Design Development approval package, if required, is in addition to the Design Development documents that are submitted to the ODSR for review and approval.
- 3.2.2 The A/E shall furnish and deliver to the Owner electronic and printed sets of Design Development documents, in the quantity and type requested by the ODSR. All sets shall be distributed as directed by the ODSR.

- 3.2.3 During the Design Development Phase, the A/E shall, in compliance with Texas Government Code Section 2166.403, verify in writing to the Owner the economic feasibility of incorporating into the Project's design any proposed energy system alternative energy devices for space heating and cooling functions, water heating functions, electrical load functions, and interior lighting functions, with a comparison of the estimated cost of providing energy for each function through conventional systems with the estimated cost of providing energy for each function based on the base of alternative energy devices, over the projected economic life of the building.
- 3.2.4 The A/E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the CCL and complete it within two (2) weeks of delivering the completed Design Development documents (See Section 6.2 for estimate requirements). The A/E shall consult with the Owner, and its designated representatives including the ODR and ODSR, and recommend any value engineering adjustments to the Project that may be necessary to align the cost estimate and the project budget with the established CCL. The A/E shall revise the Design Development documents as may be required to incorporate value engineering recommendations accepted by the Owner.
- 3.2.5 A/E shall demonstrate adherence to the <<Architectural Program>> <<Scope of Work>> by providing clear and concise information showing such adherence within the documents submitted for approval.
- 3.2.6 The A/E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the ODSR and all attendees within seven (7) business days from the date of the meeting to allow for comments and/or corrections to the minutes. The A/E may be required to attend a project meeting weekly either in person, through video conferencing, or telephonically as directed by the ODSR.
- 3.2.7 Before proceeding into the Construction Document Phase, the A/E shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established CCL and schedule by the ODSR. The A/E shall submit a fully executed Certificate of Compliance to the ODR. The A/E shall furnish and deliver to the ODSR electronic and printed sets of the complete documents for this phase of the design in a quantity and format acceptable by the ODSR for the ODSR's record (i.e. all drawings, specifications, product data, cost estimates, etc.).
- 3.2.8 The A/E shall prepare presentation materials as defined in Owner's Design Guidelines at completion of Design Development and, if so requested, shall present same to the Board of Regents at a regular or called meetings or at a meeting of the Planning and Construction Committee of the Board of Regents where scheduled within the State of Texas. Alternatively, A/E shall submit presentation materials to the Chancellor when the Project falls outside of the Board of Regents approval authority. These presentation materials may include a color and finishes selection board recommendation for the entire building, including the type and color of all fixed and loose furniture. The A/E shall furnish and deliver to the ODR and the ODSR a draft Board of Regents Design Development submittal in accordance with the guidelines attached hereto as Exhibit B. A/E shall incorporate such changes to the submittal as may be required by Owner and submit to the ODR eight (8) sets

of the final submittal no later than twenty (20) business days prior to the scheduled Board meeting.

- 3.2.9 The A/E shall prepare and make available all electronic versions of any suitable renderings that A/E prepared during the design of Project (including but not limited to those used in the Design Development submittal to the Board of Regents). A/E's renderings and photographs will be used exclusively for artistic display by Owner. Submission of these files shall be in any high-resolution format.
- 3.2.10 The A/E shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.
- 3.2.11 A/E shall assist the Owner with preparation of an application for the Project with the Texas Higher Education Coordinating Board ("THECB"), if necessary. Such assistance shall include (i) the preparation of a listing of the rooms, room type and usage codes, and square footages in the project; (ii) the preparation of project cost information, in accordance with THECB Guidelines; and, (iii) the preparation of a presentation to the THECB, if required. This information shall be provided at the completion of the Design Development Phase when requested by the Owner.
- 3.2.12 Travel costs, but not the salary costs during travel, of out-of-town trips required by the Owner for presentations to the THECB or the Board of Regents shall be treated as reimbursable expenses under this Agreement. Reimbursement for these expenses shall be limited to the lesser of actual expenses incurred and the reimbursement rates then allowable for travel by employees of the State of Texas.

### **3.3 Construction Document Phase**

- 3.3.1 Based on the approved Design Development documents and any further adjustments in the scope or quality of the Project or in the CCL authorized by the Owner, and following approval of the Design Development submittal by the Board of Regents or Chancellor, and upon issuance of a Notice to Proceed to the Construction Document Phase, the A/E shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines. The plans, drawings and specifications for the entire Project shall be prepared so that the construction of the building and related facilities, including built-in permanent fixtures and equipment, will cost no more than the CCL established by Owner. The A/E is responsible for managing the design elements of the Project to stay within the CCL based upon pricing information provided by its independent cost estimator.
- 3.3.2 Construction document drawings shall be produced on a Building Information Model ("BIM") software system as part of Basic Services. The Owner will define the BIM drawing requirements and the final media for the BIM data.
- 3.3.3 The A/E shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project.

- 3.3.4 The A/E shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.
- 3.3.5 The A/E shall file and obtain approval of the project from the Texas Department of Licensing and Regulations, Architectural Barriers Division, in accordance with Chapter 469, *Texas Government Code*, as amended, and Title III of the Americans with Disability Act ("ADA") of 1990, 42 U.S.C., Section 12181. The fees for these approvals will be paid by the Owner.
- 3.3.6 The A/E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the ODSR and all attendees within seven (7) business days from the date of the meeting to allow for comments and/or corrections to the minutes. The A/E may be required to attend a project meeting weekly either in person, through video conferencing, or telephonically as directed by the ODSR.
- 3.3.7 The A/E shall provide services reasonably designed to ensure coordination and inclusion of sequence of operations for all operable systems in the facility.
- 3.3.8 The A/E, at the **fifty percent (50%), ninety percent (90%), and one hundred percent (100%)** stages of the Construction Documents, shall furnish and deliver to the ODSR electronic and printed sets of all plans, drawings, and specifications in a quantity and format acceptable to the ODSR. The A/E shall incorporate into the plans, drawings, and specifications such changes as are necessary to satisfy the Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause. The A-/E shall furnish and deliver electronic and printed sets of the complete documents for the **fifty percent (50%), ninety percent (90%), and one hundred percent (100%)** stages of the Construction Document Phase in a quantity and format acceptable by the Owner for the Owner's record (i.e., all drawings, specifications, product data, cost estimates, etc.).
- 3.3.9 The A/E shall provide with each review submittal a Coordination Document set with colored overlays of required design disciplines. These shall include, but not be limited to, mechanical, electrical, plumbing, sprinkler, slab penetrations, telecommunications, and instructional technologies support. With the exception of fire sprinkler design, the A/E shall provide all designs and shall not use design performance documents, unless approved by the Owner.
- 3.3.10 Prior to releasing the Construction Documents "For Construction", the A/E shall provide a document that summarizes all design code requirements and provide written certification that the Construction Documents meet all applicable design codes and the requirements of the local Campus Standards. The A/E shall further certify in writing that no asbestos or lead containing materials have been specified or approved by the A/E for installation into the Project.
- 3.3.11 The general contractors bidding on the project will pay directly for all reproduction provided for bidders/proposers during the bidding stage of the Project; however, addenda documents issued after the bid/proposal documents are reproduced, except for changes generated by Owner, shall be supplied at the A/E's expense.



- 3.3.12 The A/E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the CCL and provide it to the ODR and ODSR within ten (10) business days after submitting the completed documents at the stages of design listed in Paragraph 3.3.8 (See Section 6.2 for estimate requirements). The A/E shall advise the ODR and ODSR of any adjustments to the project needed to align the cost estimate and the project budget with the established CCL. The A/E shall revise the Construction Documents as may be required by the adjustments at the A/E's sole expense.
- 3.3.13 Before proceeding into the Bidding and Proposal Phase, the A/E shall obtain ODSR's written acceptance of the Final Construction Documents and will reconfirm with the ODR and ODSR the alignment of the construction cost estimate with the established final CCL. The A/E shall furnish and deliver to the ODSR electronic and printed copies of the complete Final Bid Construction Documents in a quantity and format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).

### **3.4 Bidding and Proposal Phase**

- 3.4.1 The A/E shall assist the Owner in obtaining and evaluating bids or proposals including preparation for and attendance at Pre-proposal Conferences and HUB meetings. A/E shall answer inquiries from bidders/proposers at Owner's request and shall prepare and issue any necessary addenda to the bidding or proposal documents.
- 3.4.2 In the event the best value proposal received for the Project exceeds the final CCL established at the completion of the Construction Document Phase, the A/E, if so directed by Owner, shall revise the drawings and specifications as necessary to bring the cost of the Project within the final CCL. If the A/E has not altered the scope or quality level of the Project, then the A/E may be compensated as an Additional Service for changes to the Construction Documents needed to satisfy Owner's budget limitations. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the final CCL, if such award is determined by ODR and ODSR to be in the Owner's best interest. The A/E's Fee will not be adjusted if the Owner decides to accept such a proposal. The A/E shall furnish and deliver to the ODSR electronic and printed sets of the complete final revised Construction Documents in a quantity and format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).

### **3.5 Construction Phase**

- 3.5.1 The Construction Phase shall commence with the award of the Contract for Construction and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) calendar days after Final Payment to the Contractor is made, or when all of A/E's services have been satisfactorily performed, whichever occurs later.
- 3.5.2 A/E shall assist the Owner in its administration of the Contract for Construction as set forth below.
- 3.5.2.1 The A/E shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary

instructions and shall provide updated records at each Owner's monthly meeting and when requested.

- 3.5.2.2 The A/E shall chair all meetings scheduled by the Owner or A/E and shall promptly provide summary notes to all parties. The A/E shall attend Contractor's regularly scheduled planning meetings when requested and/or appropriate to the stage of the construction at no additional cost to the Owner.
- 3.5.3 The A/E shall review the Contractor's list of proposed subcontractors for the work, initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate basis for construction monitoring, payment processing, and system commissioning. The A/E shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The A/E shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.
- 3.5.4 The A/E and its Consultants shall prepare appropriate materials for and participate in a Pre-Construction Conference at the site prior to commencement of construction by the Contractor.
- 3.5.5 The A/E shall be a representative of the Owner during the Construction Phase and shall advise and consult with the Owner. Instructions to the Contractor regarding changes to the Work shall be forwarded through the A/E. The A/E shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents (as defined in the Contract between the Owner and the Contractor). Duties, responsibilities, and limitations of authority of the A/E shall not be restricted, modified, or extended without written acceptance of the ODR.
- 3.5.6 The A/E shall visit the site periodically (not less than monthly) during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of A/E's Consultants shall visit the site periodically (not less than monthly) during construction activities related to the Consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. A/E and its Consultants shall submit timely written reports of their site visits and meetings. The A/E shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work. The Owner may require site visits and inspections by the A/E or the A/E's Consultants at any time. The total number of site visits and inspections shall average not more than one (1) per week during the Construction Phase. Owner-required visits beyond this total shall be compensated as an Additional Service.
  - 3.5.6.1 On the basis of the onsite observations, the A/E shall keep the ODSR informed of the progress and quality of the Work and shall endeavor to identify defects and deficiencies in the Work of the Contractor. A/E shall notify ODSR and the Contractor in writing of any portions of the Work, which A/E has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. A/E shall make its site representatives available and shall consult with ODSR and the Contractor on any occasion arising during the course of construction, which would make such consultation in Owner's interests.
  - 3.5.6.2 In addition to site visits for general observation, the A/E and its Consultants shall visit the site as appropriate for specific purposes related to: certification of progress

payments, start-up or mock-up reviews, for significant work activities, and for formal inspections of the Work. The A/E and its Consultants shall provide written reports of all site visits to the OSDR and Contractor.

- 3.5.7 The A/E shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.
- 3.5.8 The A/E at all times shall have access to the Work wherever it is in preparation or progress.
- 3.5.9 The A/E shall determine the amounts owing to the Contractor based on observations of Work placed at the site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with the OSDR, and shall certify Contractor's Application for Payment in an appropriate amount.
- 3.5.10 The certification of a Contractor's Application for Payment shall constitute a representation by the A/E to the Owner, based on the A/E's observations at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the A/E's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Application for Payment shall not be a representation that the A/E has: (i) made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum; ii) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (iii) reviewed construction means, methods, techniques, sequences or procedures; (iv) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (v) accepted the Contractor's responsibility for the quality or quantity of the Work.
- 3.5.11 The A/E shall be the interpreter of the technical requirements of the Contract Documents and the judge, to the extent provided herein, of the performance of the work of the Contractor. The A/E shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 3.5.12 Interpretations and recommendations of the A/E shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.
- 3.5.13 Subject to approval of the Owner, the A/E's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents. As applicable, the A/E shall review interior designs and/or furniture selections proposed by the Owner and advise the Owner on their aesthetic compatibility with the A/E's design.

- 3.5.14 The A/E shall have the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the A/E's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the A/E will have authority to require special observation or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work will then be fabricated, installed or completed. The A/E shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.
- 3.5.15 The A/E and its Consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples specifically required by the Construction Documents, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide supplemental information as appropriate. Action on submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than ten (10) business days after receipt. The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The A/E's review shall not constitute approval of any construction means or methods, or of any safety precautions. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.
- 3.5.16 A/E shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.
- 3.5.17 A/E shall review and verify the Contractor's requests for change orders or claims for additional time or costs and make recommendations to Owner as to such requests or claims.
- 3.5.18 The A/E shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the A/E shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the Contractor's proposal is acceptable when the change is greater than Seventy-Five Thousand Dollars (\$75,000). R. S. Means Cost Resources, or Owner approved equivalent cost estimating resources, shall be the basis for all such Change Order estimates.
- 3.5.19 A/E shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by approved Change Orders. All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on the media acceptable to Owner, including, without limitation, BIM. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered

and dated addenda. All changes to design documents or specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be “clouded” to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

- 3.5.20 A/E and its Consultants shall participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion observations, and Final Completion observations. In association with each observation, A/E and its Consultants shall prepare a list of items which A/E and its Consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official list of deficiencies (“Punch list”) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all Punch list items.
- 3.5.21 A/E shall review, for conformance with the Contract Documents, Contractor’s submission of guarantees and warranties.
- 3.5.22 The A/E and its Consultants shall assist the Owner in checking the Contractor’s as-built drawings and specifications during the course of the Work in association with certifying progress payments. Failure to review and advise on the Contractor’s progress and update the as-built drawings in a timely manner will affect the progressing of the monthly payment to the A/E for the Construction Phase (Article 7). The A/E shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project. As a part of the Record Drawing and Closeout Documents Submittal phase of this Agreement (Article 7), the A/E shall enter all the Contractor’s records of changes onto the original Construction Documents and shall furnish and deliver to the ODSR electronic and printed copies of the complete documents in a quantity and format acceptable by the Owner for the Owner’s record.
- 3.5.23 A/E shall receive and review Contractor’s submission of as-built drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other closeout documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Contract between Owner and Contractor, shall forward to ODSR. The A/E shall certify final payment to the Contractor when the A/E believes the requirements of the Contract between Owner and Contractor have been met.
- 3.5.24 A/E shall monitor the Contractor’s schedule for the construction phase work and assist the Owner in reviewing all relevant activities and advise the ODSR of the Contractor’s scheduled progress.
- 3.5.25 A/E shall prepare a complete list of project close-out and Owner-training requirements contained in the Construction Documents and will display them in matrix form similar to Exhibit D. The matrix shall be displayed as part of the front end of the Construction Document Specifications.
- 3.5.26 The A/E shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period. A/E shall participate in the Project’s one (1) year warranty review.

#### ARTICLE 4      ADDITIONAL SERVICES

- 4.1 Services may be required for the design of the Project which are not included as part of the Basic Services described in Articles 1 and 3 <<OPTIONAL: or the Additional Services described in Exhibit A>>. If such services are required, they will either be provided by the Owner, contracted for separately from a third party, or authorized in writing to be performed by the A/E and paid for by the Owner as hereinafter provided. If authorized in writing to be performed by the A/E, pursuant to an Amendment, such services will be subject to this Article 4.
- 4.2 Change Order effort performed by the A/E during the Construction Phase of the Project shall be compensated as an Additional Service unless the change order is the result of an error or omission on the part of the A/E. The A/E shall not be entitled to any fee for the portion of the effort required to correct errors or omissions.
- 4.3 Any Additional Service cost of change order effort shall be agreed to and authorized in writing by the ODR before the work is performed. Fees for change order effort performed by the A/E's staff shall be proposed to the ODR showing a detailed documented required level of effort and using the hourly rate schedule included as Exhibit C. Consultant services for change order work, provided under subcontract to the A/E, shall be compensated at actual cost, plus ten percent (10%). Reimbursable expenses for both the A/E and its Consultants shall be compensated at direct cost (with no markup). The Owner may decide to reach a lump sum agreement with the A/E prior to authorizing Additional Services change order effort or may direct the effort to be performed on a time and expenses basis.

#### ARTICLE 5      THE OWNER'S RESPONSIBILITIES

- 5.1 The Owner shall provide general requirements and description for the Project (budget limitations and required delivery schedules, etc.).
- 5.2 The Owner, through its authorized representatives, shall examine and review documents submitted by the A/E and shall render decisions and provide comments pertaining thereto promptly, to avoid unreasonable delay in the progress of the A/E's work.
- 5.3 The Owner shall furnish any existing as-built drawings. When required for the Project, the Owner shall furnish to the A/E existing boundary surveys and topographic maps giving, as applicable, grades and lines of streets and other physical features, both on and adjoining site, boundaries and contours of land, rights-of-way, restriction, easements, deed restrictions, locations, dimensions and complete data pertaining to existing buildings, location of trees, and full information concerning available utility services, public and private. The Owner shall provide any additional boundary and topographical surveys that are found to be needed during design.
- 5.4 The Owner shall provide the necessary geotechnical surveys, reports, soil borings and laboratory testing services, including required test interpretations, test data and reports.
- 5.5 The services and information, required by paragraph 5.3 and 5.4, shall be furnished at the Owner's expense, and the A/E shall be entitled to rely on the accuracy thereof; however, the A/E shall make

site visit(s) to identify any inconsistencies, which may be visually observed without special instrumentation. The A/E shall notify the ODSR promptly of any such inconsistencies observed.

- 5.6 The Owner shall furnish the A/E, when available and applicable, copies of the UGC (to the extent modified for the Project), Contract Forms, Bond Forms, bidding information and instructions, minimum wage rates for inclusion in the specifications, and design and construction standards of the Owner.

## **ARTICLE 6 REVISION TO DRAWINGS AND SPECIFICATIONS**

- 6.1 The A/E shall prepare Construction Documents containing such provisions which will permit the Owner to obtain a Competitive Sealed Proposal within the CCL. In the event the lowest acceptable proposal exceeds the CCL, and if the Owner does not see fit to allot additional funds, the A/E agrees to revise the Construction Documents as may be necessary to bring the Construction Cost within the CCL. If the A/E has not altered the scope or quality level of the project, then the A/E may be compensated as an Additional Service for changes to the Construction Documents needed to satisfy Owner's budget limitations.
- 6.2 Since a CCL is stated herein, an estimate of cost prepared in detail form shall be provided by the A/E at each stage of the design where a review submittal is required by this Agreement. All such estimates shall be prepared by a recognized independent third-party estimating consultant retained and paid by the A/E out of its Basic Services Fee. The estimates shall be prepared in detail in the Construction Specifications Institute format. If such estimates, at any required submittal stage, exceed the stated CCL (including contingencies), the Owner may modify the CCL, accept value engineering recommendations; revise the program, scope or quality, or any combination of these to bring the construction cost within the CCL. The A/E shall then revise the Construction Documents (at no added charge to the Owner) as may be necessary. The Owner may decide to include alternate bid items in the Construction Documents as a means of adjusting the actual construction cost to the cost limit. If the Owner requests alternates to be designed which by estimate exceed the CCL during design, and those alternates, or parts thereof, are not constructed within the CCL, then the A/E shall be compensated for having prepared these alternate bids items on an Additional Services basis as provided in Article 4. This compensation will be provided whether or not the alternates are actually constructed.
- 6.3 After the Owner approves a definite plan, with the revisions above being made during the Design Development Phase, then if decisions by the Owner are subsequently made which, for their proper execution, involves added services and expenses for conceptual revisions and additions to the Construction Documents, or if the A/E is put to added labor or expense by delays imposed on them from causes not within their control, such as the delinquency or insolvency of construction contractors, the A/E shall be equitably compensated as an Additional Service.

## **ARTICLE 7 DELIVERABLE SCHEDULE AND PAYMENTS TO THE A/E**

- 7.1 Payments of Fees shall be made monthly, in accordance with the Prompt Payment Provisions of *Texas Government Code* Chapter 2251 and in proportion to the services performed, to increase the compensation for services to the following percentages at the completion and acceptance of each phase of the work. Should the Project subsequently be designed in several phases or bid packages,

the A/E shall submit a revised payment schedule for signatory approval by the ODR prior to the payment of any services.

	<u>By Phase</u>	<u>Cumulative</u>
7.1.1 Schematic Design Phase	18%	18%
7.1.2 Design Development Phase	20%	38%
7.1.3 Construction Documents Phase	37%	75%
7.1.4 Bidding or Negotiation Phase	2%	77%
7.1.5 Construction Phase	21%	98%
7.1.6 Record Drawing and Closeout Documents Submittal	2%	100%

7.2 No deduction shall be made from the A/E's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Contractors.

7.3 If any work designed or specified by the A/E is abandoned or suspended, in whole or in part, the A/E will be paid for the service actually performed on account of it, provided that such abandonment or suspension is not caused by the nonfeasance, malfeasance, fault and/or negligence of the A/E.

**ARTICLE 8 CONSTRUCTION COST LIMITATION**

8.1 The CCL, as defined herein, is to be used as a basis for determining whether the A/E has met its obligation under to this Agreement to design the project within the Owner's budget allowance.

8.2 The A/E Fee shall be a lump sum amount as stated in this Agreement whether the Owner chooses to award the project over or under the CCL. The A/E Fee will not be adjusted based on the actual construction cost of the Project.

**ARTICLE 9 SCHEDULE**

The schedule of events below represents a basic timeline for the Project. With the exception of an adjustment to the A/E completes Construction Documents date, a final and more detailed project timeline for construction will be developed with the Owner and the selected Contractor. The A/E can be expected to work with the ODSR and the selected Contractor to optimize this initial schedule.

9.1 Schematic Design begins .....	XX/XX/XX
9.2 A/E completes Schematic Design .....	XX/XX/XX
9.3 Design Development Phase begins .....	XX/XX/XX
9.4 A/E completes Design Development submittal for Board of Regents (or Chancellor) ...	XX/XX/XX
9.5 Board of Regents (or Chancellor) approval of Design Development submittal .....	XX/XX/XX
9.6 Construction Document Phase begins.....	XX/XX/XX
9.7 A/E completes Construction Documents .....	XX/XX/XX
9.8 Bidding and Proposal Phase begins .....	XX/XX/XX
9.9 Contractor selected.....	XX/XX/XX
9.10 Notice to Proceed for Construction Phase issued .....	XX/XX/XX
9.11 Owner accepts Substantial Completion .....	XX/XX/XX
9.12 Furniture and Special Equipment Move-in Complete .....	XX/XX/XX



9.13	Owner Occupancy.....	XX/XX/XX
9.14	Final Completion .....	XX/XX/XX

**ARTICLE 10      TERMINATION OF AGREEMENT**

- 10.1      Should either party be in material breach of this Agreement, the other party may give written notice to the breaching party that it intends to terminate this agreement for default absent appropriate corrective action upon the seventh (7<sup>th</sup>) calendar day following receipt of such notice by the breaching party. At such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.
  
- 10.2      Owner may terminate this Agreement without cause upon the seven (7) calendar days' written notice. If Owner terminates this Agreement pursuant to this section, the A/E shall be paid for services performed to the termination date and any costs incurred by A/E for which the Owner is responsible under Article 2 of this Agreement. As a condition of the final payment involving such a termination, the A/E shall promptly and orderly arrange data accumulated and products of its professional services, and delivery of same to the Owner.

**ARTICLE 11      OWNERSHIP OF DOCUMENTS**

- 11.1      At the completion or termination of services, and as a part of the Basic Services of this Agreement, the A/E shall deliver to the ODSR one (1) printed copy of the drawings and specifications and one (1) complete electronic file of all drawings and specifications, including all architectural clarifications, change order supplemental drawings, in a format acceptable to the Owner. All such deliverables shall be marked as "Record Documents". The Owner will retain ownership of the documents produced under this Agreement though the A/E shall be free to reuse any part of them as it sees fit in its sole discretion.
  
- 11.2      The A/E shall insert in the specifications the requirement that the Contractor will keep a current set of Project drawings and specifications on the Work site and will timely indicate changes made during construction as they occur. These documents will be reviewed at least monthly by the A/E and will inform the Owner of their status immediately after this review.

**ARTICLE 12      SUCCESSORS AND ASSIGNS**

The A/E binds itself, its partners, successors, assigns and legal representatives to the Owner, successors, assigns and legal representatives in respect to all covenants of this Agreement. Neither the Owner nor the A/E shall assign, sublet or transfer its interest in or delegate any of its duties under this Agreement without the written consent of the other

**ARTICLE 13      VENUE AND GOVERNING LAW**

- 13.1      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, A/E is required to make any information created or exchanged with the 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.

- 13.2 Dispute Resolution. In the event of any dispute arising under this Agreement, the parties agree to follow the procedures set forth in Chapter 2260 of the *Texas Government Code*. 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.
- 13.3 State Auditor’s Office. A/E 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. A/E further agrees to cooperate fully with the State Auditor’s Office in the conduct of the audit or investigation, including providing all records requested. A/E 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 A/E relating to this Agreement. A/E further understands that Owner may conduct a financial and/or performance audit of this Agreement and agrees to cooperate fully in such an audit to the same extent as an audit by the State Auditor’s Office. The provisions of this Article 13.3 shall survive the termination of this Agreement.
- 13.4 Licensure of Architects. The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Phone (512) 305-9000, has jurisdiction over individuals licensed under the Regulation of the Practice of Architecture Law, *Texas Occupations Code*, Section 1051.
- 13.5 Licensure of Engineers. The Texas Board of Registration for Professional Engineers, 1917 IH35 South, Austin, Texas 78741, Phone (512) 440-7723, has jurisdiction over individuals licensed under the Texas Engineering Registration Law, *Texas Occupations Code*, Section 1001.
- 13.6 Family Code Certification. By signing this Agreement A/E 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.
- 13.7 Eligibility Certification. By signing this Agreement A/E 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.
- 13.8 Franchise Tax Certification. By signature hereon, A/E 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.

- 13.9 Debts Owed to State. By signing this Agreement A/E agrees that, pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code*, any payments owing to A/E under this Agreement may be applied directly toward any debt or delinquency that A/E 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.
- 13.10 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between A/E 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 A/E and Owner.
- 13.11 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.
- 13.12 Conflict of Interest Certification. By signing this Agreement, A/E 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.
- 13.13 Ethics Matters; No Financial Interest. A/E and its employees, agents, representatives, and Consultants have read and understand The Texas State University System Conflicts of Interest Policy available at: <https://www.tsus.edu/about-tsus/policies.html> and The Texas State University System Rules and Regulations, Chapter VIII. Neither A/E nor its employees, agents, representatives, or Consultants 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. A/E 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 offices, 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..
- 13.14 Disclosure of Interested Parties. A/E certifies that, if the value of this Agreement exceeds One Million Dollars (\$1,000,000), it has complied with Section 2252.908 of the Texas Government Code and Part 1 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 A/E.
- 13.15 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 Agreement.
- 13.16 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.

- 13.17 Project Management Software: A/E shall use the Owner's designated project management software system to transact, correspond, and maintain all Project related correspondence and documentation throughout the life of the Project including Project close-out and final payments.
- 13.18 Non-Boycott Israel Verification: To the extent required in Chapter 271, Texas Government Code, by executing this Agreement, A/E hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. "Boycott Israel" shall have the meaning set forth in Section 808.001, Texas Government Code.
- 13.19 Cybersecurity Training Program: Pursuant to Section 2054.5192, Texas Government Code, A/E and its Consultants, officers, and employees who are provided credentials granting access to Component's computer system also known as Component's information system, must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. A/E shall verify in writing completion of the program to the Component 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 of the Agreement.
- 13.20 A/E Certification regarding Business with Certain Countries and Organizations: Pursuant to Subchapter F, Chapter 2252.152, Texas Government Code, by executing this Agreement, A/E hereby certifies A/E is not engaged in business with Iran, Sudan, or a foreign terrorist organization. A/E acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 13.21 Other Provisions Required by Applicable Law. In accordance with Section 51.9335 (h), Texas Education Code, the parties acknowledge and agree that any provision required by Applicable Law to be included in the Agreement is considered to be a part of the executed Agreement without regard to to:
  - 13.21.1 Whether the provision appears on the face of the Agreement; or
  - 13.21.2 Whether the Agreement includes any provision to the contrary.
- 13.22 Presence on Campus: A/E agrees to comply with all Component policies including but not limited to the following and, at a minimum, shall apply to the A/E's employees, subcontractors, and agents while on the Component campus:
  - 13.22.1 On-campus driving and parking;
  - 13.22.2 Prohibition on smoking or tobacco use;
  - 13.22.3 Fire safety;

13.22.4 Hazardous Materials;

13.22.5 Drug-free workplace; and,

13.22.6 Prohibition of sexual harassment, or harassment or discrimination based on race, color, national origin, age, sex, religion, disability, or sexual orientation, gender identity or expression

[\[Enter Component Name\]](#) Policies and Procedures Statements may be viewed at:

[\[Enter Component Link\]](#)

13.23 Background Checks: A/E will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the Component campus:

13.23.1 Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;

13.23.2 Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by Owner;

13.23.3 A/E will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. A/E will not knowingly assign any individual to provide services on Component's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

A/E will provide Component a letter signed by an authorized representative of A/E certifying compliance with this Section. A/E will provide Component an updated certification letter each time there is a change in the individuals assigned to perform the work.

13.24 Non-Discrimination of Firearm Industry Verification. Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 19 in the 87<sup>th</sup> Regular Legislative Session [2021]), by executing this Agreement A/E hereby certifies that either (i) it has less than ten (10) full time employees; or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, *Texas Government Code*) and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

13.25 Anti-Boycott Energy Companies Verification. Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 13 in the 87<sup>th</sup> Regular Legislative Session [2021]), by executing this Agreement A/E hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not “boycott energy companies” (as defined under Section 809.001, *Texas Government Code*) and will not “boycott energy companies” during the term of this Agreement.

13.26 Vaccine Passport Prohibition. Pursuant to Section 161.0085, *Texas Health and Safety Code* (as enacted in SB 968 in the 87<sup>th</sup> Regular Legislative Session [2021]), by executing this Agreement A/E

hereby certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from A/E's business. A/E acknowledges that such a vaccine or recovery requirement would make A/E ineligible for a state-funded contract and shall be grounds for termination of this Agreement for cause.

- 13.27 Critical Infrastructure Affirmation. Pursuant to Section 2274.0102, *Texas Government Code*, by executing this Agreement A/E hereby certifies that neither it nor its parent company, nor any affiliate of A/E or its parent company, is (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

#### ARTICLE 14 INDEMNIFICATION

- 14.1 To the fullest extent permitted by law, the A/E hereby indemnifies and holds harmless Owner and Component and their Regents, officers, directors, attorneys, employees, representatives, employees, and agents (hereinafter referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") from and against all damages to the extent caused by or resulting from, in whole or in part, an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the A/E or the A/E's agents, the A/E's consultants under contract, or another entity over which the A/E exercises control (**even if such damage is caused in part by the concurrent or partial negligence of an Indemnified Party**). However, the indemnity provided for in this paragraph does not apply to the extent of any liability caused by the negligence or fault, the breach or violation of applicable law, or the breach of contract of the Indemnitees or their agents or employees, or any third party under their control or supervision other than the A/E or its agents, employees, subcontractors, or consultants of any tier.
- 14.2 A/E's obligation to indemnify the Indemnified Parties shall extend to the reimbursement of those reasonable attorney's fees and litigation or arbitration costs and expenses incurred by the Indemnified Parties in the defense of claims asserted against the Indemnified Parties which arise from the alleged acts or omissions described in Paragraph 14.1 above. However, except to the extent covered by insurance for which the Owner is an Additional Insured in accordance with applicable law and Paragraph 14.4 below, the indemnity and hold harmless obligation of the A/E with regard to the reasonable attorney's fees and litigation or arbitration costs and expenses incurred by such Indemnified Party in defense of such claim shall be apportioned comparatively (*i.e.*, limited to the amount based on the percentage of negligence or fault of the A/E and/or its subconsultants of any tier) in accordance with the Laws of the State of Texas, without waiving any governmental immunity available to the State and its Agencies and Subdivisions under Texas law and without waiving any defense of the Parties under Texas law.
- 14.3 The provisions of this Article 14 will not be construed to eliminate or reduce any other indemnification or right, which any Indemnitee has, by law or equity.
- 14.4 Notwithstanding any limitations on the indemnity obligations under this Article 14, but to the fullest extent permitted by Section 271.904 of the Texas Local Government Code, Chapter 130 of the Texas Civil Practice and Remedies Code, or such other applicable law, Owner shall be named as an additional insured on the A/E's general liability policy required by the Agreement, and A/E shall

defend or cause to be defended Owner and such other Indemnified Parties against those claims covered by such insurance to the extent such defense is provided by such insurance.

- 14.5 The indemnification obligations assumed under this Article 14 shall not be limited by a limitation on the amount or type of damages which might otherwise be recoverable by Owner against the A/E.
- 14.6 The A/E's indemnity and defense obligations shall survive the termination of this Agreement and completion of the services required hereunder.

#### **ARTICLE 15 REPRESENTATIVES AND NOTICES**

- 15.1 The Owner's Designated Representative ("ODR") authorized to act in the Owner's behalf with respect to the Project is:

Peter Maass, RA, NCARB, CTCM  
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

- 15.2 The A/E's designated representative authorized to act on the A/E's behalf and bind the A/E with respect to the Project is:

Name, Title  
Company  
Address  
City, State, Zip  
Phone:  
Fax:  
Email:

- 15.3 The Owner's Designated Site Representative ("ODSR") who will serve as the Component's point of contact for the A/E with respect to this Project is:

Name  
Title  
Component  
Address  
City, Texas Zip  
Phone:  
Email:

The ODSR will not have authority to negotiate cost, time or Agreement terms or to issue Notices to Proceed, but will have the authority to make decisions on behalf of the Owner concerning coordination with the Component of the A/E's work on the site including, traffic controls, site safety, scheduling of

utility outages, materials and color selections, and all matters within the Agreement that do not involve changes to the scope, cost and/or time for completion. The ODSR or designee, will coordinate and conduct quality inspections of the construction work as it is installed and authorize payment.

- 15.4 Any notices required or permitted under this Agreement shall be effective if sent to the representatives designated pursuant to this Article 15. The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

*[Remainder of page intentionally left blank].*

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**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement, to be effective on the day and year first above written:

**For the Architect/Engineer:**

**[Insert Name of Firm]**

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Type or Write Name*

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For the Owner:**

\_\_\_\_\_  
Brian McCall, Ph.D., Chancellor  
The Texas State University System

\_\_\_\_\_  
Date

**Reviewed and Recommended:**

\_\_\_\_\_  
Daniel Harper  
Vice Chancellor and Chief Financial Officer  
The Texas State University System

\_\_\_\_\_  
Date

**Approved as To Legal Form:**

\_\_\_\_\_  
Nelly R. Herrera, J.D., Vice Chancellor,  
General Counsel  
The Texas State University System

\_\_\_\_\_  
Date

**Index to Exhibits:**

- Exhibit A: Additional Services and Fees Not Included Under Basic Services
- Exhibit B: Owner's Design Development Submittal Guidelines
- Exhibit C: **[Insert A/E Name]** Hourly Rate Schedule
- Exhibit D: Project Close-out and Owner Training Requirements

**EXHIBIT A**

**Additional Services and Fees Not Included Under Basic Services**

The following Additional Service(s) may become part of this Agreement, at the stated stipulated fee(s). If the Owner chooses to incorporate these Additional Services, they will be added by Amendment as provided in Article 4 of the Agreement:

*[The following is a list of additional services that may be negotiated as a part of the A/E's initial fee. Specify all services not described in Article 1 that may become a part of the contract through an Amendment issued at a later date.]*

1. Building envelope assessment including recommendations regarding any needed corrective actions, as well as, review of newly designed exterior envelope(s). Total Fee: \_\_\_\_\_ Dollars (\$XXX)
2. Food service design and documentation for the proposed meeting room catering function. Total Fee: \_\_\_\_\_ Dollars (\$XXX)
3. Design, specification and documentation of equipment, movable furniture and furnishings. Total Fee: \_\_\_\_\_ Dollars (\$XXX)
4. Coordination of A/E services associated with commissioning requirements during design and construction phases, including modifications of drawings and specifications required to satisfy commissioning requirements. Total Fee: \_\_\_\_\_ Dollars (\$XXX)

**EXHIBIT B**

**Owner's Design Development Submittal Guidelines**

The following describes the submittal package requirements for Components requesting Design Development Phase approval from the Board of Regents. Please note that this is only the information that is required to present the project to the Board of Regents for their approval and does not address what is required to complete the Design Development Phase services. **The Board of Regents submittal at the Design Development Phase shall contain the following items, each behind a separate tab:**

1. **Architectural Renderings:** A complete set of architectural exterior elevations reflecting a complete design concept if exterior is altered by the project (by prior Owner/Component agreement). Submitted renderings shall be free of dimensioning and grid lines. Spaces should be clearly labeled with shading/coloring where possible to communicate any spatial adjacency relationships.
2. **Complete Set of Architectural Floor Plans** (ninety percent (90%) complete\*): Submitted drawings should be free of excessive dimensioning and grid lines. Spaces should be clearly labeled with shading/coloring where possible to communicate any spatial adjacency relationships.
3. **Enlarged Architectural Floor Plans** (ninety percent (90%) complete\*): Showing major core areas such as entryways, lobbies, typical functional rooms (like classrooms), utility room layout, etc.
4. **Complete Listing of All Major Building Systems:** Selection of every system is required (i.e., drilled caisson foundations, reinforced concrete frame, two-way slab construction, brick façade with precast elements, built up flat roof, chilled water/hot water HVAC from central plant, etc.). All system narratives shall be presented simply and economically, providing straightforward, concise descriptions, with emphasis on quality, and clarity of content. A/E and Consultants shall avoid the use of overtly technical terms and the use of abbreviations unless first spelled out in total.
5. **Detailed Cost Estimate:** Prepared by A/E's independent third-party estimator in Construction Specifications Institute 50 Master Format Division taken off from the Design Development Phase document with very few lump sum per gross square foot estimates permitted.
6. **Total Project Cost ("TPC"):** A summary TPC breakdown by construction cost, design cost, moveable furnishings cost, other work costs miscellaneous costs, project contingencies and fees.
7. **Cost Comparison:** A summary showing the Project cost compared to similar size and type projects recently built in the region under similar conditions, or a statement that no such comparable projects have been identified. Information regarding projected operating and maintenance costs of the facility or (in the case of renovation) the projected impact of the project on operating and maintenance costs.
8. **Proposed Project Schedule:** A milestone schedule in chronological order stating the projected dates for the GMP approval, completion of Construction Documents, Substantial Completion and Final Completion. If the project is phased, provide the projected dates for each phase.

9. **Environmental Impact:** Information regarding the projected environmental impact of the Project.
  10. **Certification:** By the A/E of Record, Component and Owner that the submittal has been reviewed and found to be a complete and satisfactory Design Development Phase submittal. (This will be based partially on formal certification by the A/E of Record, for every discipline, that the design is complete, all calculations are completed, all major equipment has been sized, etc., such that there is nothing left but provide details and prepare construction documents). The Certificate of Compliance statement may be included with the Board Motion rather than the submittal package.
- \* Ninety percent (90%) complete means the floor plans are fixed and will not change. There may be minor dimensioning and missing or incomplete referencing to supporting detail drawings needed to complete the architectural design.

This submittal shall be delivered in hard copy and in electronic form (Adobe Acrobat PDF format): Eight (8) 3-ring binders shall be delivered to the Owner, plus however many the Component may need.

**EXHIBIT C**  
**[A/E Name]**  
**Hourly Rate Schedule**

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**EXHIBIT D**  
**Project Close-Out and Owner Training Requirements (Sample)**

System/Component Description	Spec. Section Materials	Record Submission	O & M Manuals	Equipment to be Furnished	Training	Manufacturers Warranty	Extra
<b>General Conditions</b>	UGC		12.1.1 Substantial Completion			13.1 13.2	
<b>Project Closeout</b>	01705		1.4.E & J		3.1	1.4.C	1.4.F
<b>Project Record Documents</b>	01720						
- Record Drawings, Specs	01720	1.3, 1.4					
- Record Product Data	01720	1.5					
- Maintenance Manuals	01720		1.7				
- Mockups	01720	1.6					
- Misc. Submittals	01720	1.8					
<b>Warranties &amp; Bonds</b>	01740					1.4	
<b>Building Systems</b>							
Irrigation System	02811	1.4.B, C		1.4, Tools		1.7, 1 year	
Landscape Planting	02900					1.6, 1 year	
Hot Fluid-Applied Waterproofing	07142					1.8, 10 years	
Exterior Insulation & Finish Systems	07241					1.10, 5 years	
Coal Tar Elastomeric Roofing	07535					1.9, 20 years	
Joint Sealants	07920					GE Gold?	
Interior Aluminum Frames	08125					1.8, life	
Flush Wood Doors	08211					1.7, varies	
Aluminum Framed sliding-glass doors	08316					1.7, 5 years	
Automatic Sliding Glass Doors	08460					1.7, 5 years	
Aluminum Windows	08520					1.8, varies	
Glazed Aluminum Curtain Walls	08920					1.9, 5 years	
Ceramic Tile	09310						1.7, 5%
Acoustic Panel Ceilings	09511						1.7, 5%
Resilient Tile Flooring	09651						1.8, 2%
Resilient Wall Base	09653						1.8, 2%
Carpet	09680					1.10, 1 year	1.7, 1%
Carpet Tile	09690					1.10, 15 years	1.11, 1%
Acoustic Wall Panels	09841						1.7, 2%


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Visual Display Boards	10100					1.6, 5 years	
Access Flooring	10270						1.10
Toilet Accessories	10800					1.6, 2 years	
Audio-Visual	11200			As specified	Page 13,	Page 2, 1 year	
Electric Traction Elevators	14210				3.5	1.7, 1 year	
<b>General Mechanical Requirements</b>	15010						
- Record Drawings, Specs		12.3					
- Operational & Maintenance Data			12.4				
- Warranties & Guarantees					12.7	12.5, 1 year	
- Final Construction Review					12.6		
Piping Expansion Compensation	15121	1.6	1.7B			1.10, 5 years	
Motors & Controllers	15170	1.5	1.6			1.10, 3 years	1.11
Variable Frequency Drives	15171	1.5	1.6				
Vibration Isolation	15245	1.8					
Fire Protection Piping	15310	1.6	1.7				
Fire Pumps	15320	1.6	1.7			1.12, 1year	1.13
Fire Sprinkler Systems	15325	1.7	1.8		3.1.F.6, 16.		1.13, 1%
Plumbing Piping	15410	1.6	1.7	1.13			1.13
Plumbing Specialties	15430	1.6	1.8	1.10			1.10
Plumbing Fixtures	15440	1.6	1.7			1.10, 5 years	1.11
Plumbing Equipment	15450	1.5	1.6			1.10, 5 years	
Hydronic Piping	15510	1.6	1.7				
Hydronic Specialties	15515		1.6			1.10	1.11
Hydronic Specialties	15520						1.11
Steam & Condensate Specialties	15225						1.11
Chilled & Heating Water Pumps	15540		1.6				1.9
Packaged Terminal Air Cond. Units	15782		1.6			1.10, 5 years	
Fans	15860		1.6				1.9
Air Cleaning Devices	15885		1.7				1.13
Ductwork Accessories	15910						1.9
Air Terminal Units	15930	1.8	1.9			1.12, 5 years	
Air Outlets and Inlets	15940	1.6					
Testing & Balancing	15990	1.6					
<b>General Electrical Provisions</b>	16010						
- Record Drawings, Specs		3.6					
- Operational & Maintenance Data			3.4				
- Warranties & Guarantees							

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- Final Construction Review					3.5.B		
Feeder & Plug-In Busway	16465	1.6.B	1.6.C				
Motor Control Centers	16482		1.6				
Lighting	16482			3.2.B Re-lamp			
Static UPS	16610					1.9, 3.3.A	3.3.B
Packaged Engine Generator Systems	16620		1.4			1.8	
Lightning Protection Systems	16670	1.7				1.8	
Fire Alarm Systems	16720				3.2- testing	3.3	
Telecommunications Equip. & wiring	16741	1.4				1.7, 1 year	
CATV/CCTV System	16771	3.6	3.7		3.9	3.4, 3.8, 1 year	
Facility Info. Management Systems	17000	PG 15 Line 3	PG 15 Line 23	PG 14 Line 42	PG 14 line 27 PG 17 Line 29		

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