

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

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

This Contract is made as of \_\_\_\_\_ (the “Effective Date”), by and between

The **Owner:**

The Board of Regents of the Texas State University System  
c/o Vice Chancellor for Contract Administration  
200 East 10th Street, Suite 600  
Austin, Texas 78701

and the **Construction Manager:**

Name  
Address  
City, State, Zip  
Phone:  
Fax:

for the **Project:**

Name of Project  
Campus

**Architect/Engineer:**

Name  
Address  
City, State, Zip  
Phone:  
Fax:

The Owner and the Construction Manager agree as follows:

## TABLE OF CONTENTS

### ARTICLE

#### **1 SCOPE OF WORK**

#### **2 CONTRACT DOCUMENTS**

- 2.1 Contract Documents
- 2.2 Terms Interchangeable
- 2.3 Integration
- 2.4 Unenforceable or Invalid Term
- 2.5 Captions
- 2.6 Venue

#### **3 DEFINITIONS**

- 3.1 Construction Cost Limitation
- 3.2 Construction Documents
- 3.3 Construction Phase Services
- 3.4 Direct Construction Cost
- 3.5 Estimated Construction Cost
- 3.6 Guaranteed Maximum Price
- 3.7 General Conditions Cost
- 3.8 Monthly Salary Rate
- 3.9 Owner's Designated Representative
- 3.10 Owner's Designated Site Representative
- 3.11 Pre-Construction Phase Services
- 3.12 Project Team
- 3.13 Work
- 3.14 Worker Wage Rate

#### **4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES**

- 4.1 In General
- 4.2 Cooperation
- 4.3 Designation of Representatives
- 4.4 Procedures
- 4.5 Tracking System
- 4.6 Multiple Completion Times
- 4.7 Partnering
- 4.8 Employees and Consultants
- 4.9 HUB Compliance

#### **5 PRE-CONSTRUCTION PHASE SERVICES**

- 5.1 General Coordination
- 5.2 Constructability Program
- 5.3 Scheduling
- 5.4 Budget and Cost Consultation
- 5.5 Coordination of Design and Construction Contract Documents
- 5.6 Construction Planning and Bid Package Strategy
- 5.7 Obtaining Bids/Proposals for the Work
- 5.8 Safety

#### **6 PRE-CONSTRUCTION PHASE SERVICES FEE**

- 6.1 Services Covered
- 6.2 No Increase for Costs and Other Liabilities
- 6.3 Costs Associated with Pre-Construction Phase Fee
- 6.4 Equitable Adjustment
- 6.5 Additional Services

#### **7 GUARANTEED MAXIMUM PRICE PROPOSAL**

- 7.1 GMP Proposal
- 7.2 Coordination with A/E
- 7.3 Items to be Included
- 7.4 Allowance for Changes and Refinements
- 7.5 CM Contingency
- 7.6 Drawings and Specifications
- 7.7 Required Detail: Assumptions and Clarifications
- 7.8 CM's Representation
- 7.9 GMP to Incorporate Contract Terms
- 7.10 Acceptance or Rejection by Owner
- 7.11 CM's Responsibilities Following Acceptance of GMP
- 7.12 Equitable Adjustment
- 7.13 Conversion to Lump Sum
- 7.14 Documentation and Reporting Actual Cost of the Work
- 7.15 Special Events as Part of the Cost of the Work

#### **8 CONSTRUCTION PHASE SERVICES**

- 8.1 In General
- 8.2 Safety and Quality Control
- 8.3 Staffing
- 8.4 Designation of Representative
- 8.5 Regular Project Meetings
- 8.6 Interim Progress Meetings
- 8.7 Owner-Procured Materials and Equipment
- 8.8 Permits and Approvals
- 8.9 Testing
- 8.10 Warranties and Guarantees
- 8.11 Cost Variance Reporting
- 8.12 Record Documents

#### **9 OWNER'S RESPONSIBILITIES**

- 9.1 In General
- 9.2 Designation of A/E

9.3 Preliminary Project Cost and Schedule	<b>16 PRE-EXISTING CONDITIONS &amp; DESIGN ERRORS AND OMISSIONS</b>
9.4 Designation of ODR	16.1 Existing Improvements and Conditions
9.5 Designation of ODSR	16.2 Design Errors or Omissions
9.6 Surveys	<b>17 BONDS AND INSURANCE</b>
9.7 Testing	17.1 In General
9.8 Services	17.2 Bonds
9.9 Furnishing of Required Information and Services	17.3 Insurance
9.10 Inspectors	17.4 Insurance to be Kept in Effect
9.11 Rejection of Work	17.5 Owner's Right to Make Adjustments
<b>10 OWNERSHIP AND USE OF DOCUMENTS</b>	17.6 CM to Provide Copies of Policies
10.1 CM's Limited Authority to Use Documents	17.7 Cost of Additional Coverage to be Borne by CM
10.2 Use of Documents to Meet Regulatory Requirements	<b>18 DISPUTE RESOLUTION</b>
<b>11 TIME</b>	<b>19 PROJECT TERMINATION &amp; SUSPENSION</b>
11.1 In General	19.1 In General
11.2 Essential Element	19.2 During Pre-Construction Phase
11.3 Standard of Care	<b>20 INDEMNITY</b>
11.4 CPM Schedule	20.1 In General
<b>12 PAYMENTS</b>	20.2 Patent or Copyright Infringement
12.1 General Requirements	20.3 Survival
12.2 Pre-Construction Phase Payments	<b>21 SPECIAL WARRANTIES</b>
12.3 Construction Phase Payments	21.1 Reliance of Owner
<b>13 DIRECT CONSTRUCTION COST</b>	21.2 Standard of Care
13.1 General Conditions Cost	21.3 No Diminution by Reason of Owner's Review
13.2 Cost of the Work	21.4 Licensing and Registration
13.3 CM's Contingency	21.5 Duty to Advise Owner
<b>14 CONSTRUCTION PHASE SERVICES FEE</b>	21.6 Good Business Practices
14.1 Profit	21.7 Authority to Execute Contract
14.2 Salaries	21.8 Limitation of Owner's Liability
14.3 Overhead	21.9 Survival
14.4 Financial Costs	<b>22 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK</b>
14.5 Professional Fees	22.1 In General
14.6 Taxes	22.2 Certification Statement with Submittals
14.7 Damages and Related Costs	22.3 Licensing
14.8 Insurance Deductibles	22.4 Affidavit Required
14.9 Costs in Excess of GMP	22.5 Provision of MSDS
14.10 Other Unidentified Costs	22.6 Certification Statement at Final Completion
<b>15 CONTRACT SAVINGS, ALLOWANCES, REBATES &amp; REFUNDS</b>	<b>23 MISCELLANEOUS PROVISIONS</b>
15.1 Savings Credited to Owner	23.1 No Assignment or Delegation by CM
15.2 Owner's Special Cash Allowances	23.2 Accounting Standards and Principles
15.3 Items Permitted to be Deducted from Pay Applications	23.3 Maintenance of Records
15.4 Savings Identified by Audit	23.4 Family Code Certification
	23.5 Eligibility Certification
	23.6 Franchise Tax Certification

23.7	Debts Owed to State
23.8	Waivers
23.9	Binding Effect
23.10	Appointment
23.11	Method of Giving Notice
23.12	Illegal Dumping
23.13	Conflict of Interest Certification
23.14	State Auditor’s Office
<b>24</b>	<b>COMPENSATION</b>
24.1	Construction Cost Limitation
24.2	Pre-Construction Phase Fee
24.3	Construction Phase Fee
24.4	Limitation on General Condition Costs
24.5	Change Order Mark-Up
<b>25</b>	<b>OTHER TERMS AND CONDITIONS</b>
25.1	Schedule and Time of Completion
25.2	Liquidated Damages
25.3	Estimated Construction Cost Reports
25.4	Notices
25.5	Party Representatives
25.6	Construction Document Sets
25.7	Interim Record Drawings and Specifications
25.8	List of Exhibits
Ex.A	Uniform General Conditions
Ex.B	Owner’s Construction Project Division 1 Specifications
Ex.C	Allowable General Conditions Line Items
Ex.D	Guaranteed Maximum Price Proposal Form
Ex.E	<del>Security Bond Not Used</del>
Ex.F	CM’s Personnel & Monthly Salary Rate
Ex.G	Constructability Implementation Program
Ex.H	Policy on Utilization, Historically Underutilized Businesses
Ex.I	HUB Subcontracting Plan for Pre-Construction Phase Services
Ex. J	Additional Services Proposal
Ex. K	Prevailing Wage Rate
Ex. L	CPM Schedule

## ARTICLE 1. SCOPE OF WORK

The Construction Manager shall provide complete Pre-Construction Phase (Article 5) and Construction Phase (Article 8) Services and furnish all materials, equipment, tools and labor necessary 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 Contract and all exhibits and attachments listed, contained or referenced in this Contract;
- b. The referenced 2005 version of the Uniform General Conditions for Construction Contracts as published by the Texas Building and Procurement Commission ("Uniform General Conditions" or "UGC");
- c. Special Conditions and Owner's Specifications;
- d. The Drawings, Specifications, details and other documents developed by Architect/Engineer (A/E) and issued for construction with the Owner's approval;
- e. The Drawings and Specifications developed and issued for construction with the Owner's approval by Owner's other consultants, if any;
- f. All Addenda issued prior to the Effective Date of this Contract;
- g. The Guaranteed Maximum Price (GMP) agreement when negotiated between the Owner and the Construction Manager and incorporated in this Contract by a Change Order signed by both parties;
- h. All other Change Orders issued after the Effective Date of this Contract; and
- i. The HUB Subcontracting plan submitted by the Construction Manager in response to the Request for Proposals issued by the Owner for this Project.

**2.2 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.

**2.3 Integration.** These Contract Documents form the entire and integrated Contract between Owner and CM. Neither this Contract nor any of its provisions can be waived, modified, amended or altered except by a writing signed by CM and Owner.

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

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

**2.6 Venue.** The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Contract. This supersedes any interpretation of UGC Article 2.3.

## 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 Uniform General and Supplemental Conditions.

- 3.1 “Construction Cost Limitation”** (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.
- 3.2 “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.
- 3.3 “Construction Phase Services”** are fully described in Article 8.
- 3.4 “Direct Construction Cost”** includes all actual costs of the Work, but not including Fees. It is fully described in Article 13.
- 3.5 “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 ECC 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.
- 3.6 “Guaranteed Maximum Price”** (GMP) is a negotiated sum that is the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP is fully described in Article 7.
- 3.7 “General Conditions Cost”** means costs incurred and minor work performed by the CM without the use of competitive bids/proposals, as allowed under Texas Education Code section 51.782(i), as amended. The allowable General Conditions cost items are further described and limited by Article 13 and by an attached exhibit.
- 3.8 “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 CM’s salaried personnel assigned to the Project. The Monthly Salary 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.

- 3.9** “**Owner’s Designated Representative (ODR)**” means the person designated pursuant to Paragraph 9.4.
- 3.10** “**Owner’s Designated Site Representative (ODSR)**” means the person designated pursuant to Paragraph 9.5.
- 3.11** “**Pre-Construction Phase Services**” are fully described in Article 5.
- 3.12** “**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.
- 3.13** “**Work**” See the UGC Article 1.30. The Work also 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.
- 3.14** “**Worker Wage Rate**” means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage Rate Form required by the Construction 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. See UGC Article 2.
- 3.15** “**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.

#### **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 negotiated between the two parties.
- 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 Owner's Policy on the Utilization of Historically Underutilized Businesses ("Policy") as referenced in an attached exhibit. CM must comply with the requirements of the Policy, which is founded in the laws of the State of Texas, and adhere to the HUB Subcontracting Plans submitted and approved for Pre-Construction Phase and Construction Phase of Services. No changes to the HUB Subcontracting Plans can be made by the CM without the written approval of Owner.

## **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, Project Schedule and the Construction Cost Limitation, each in terms of the other.
- 5.1.3 Review and understand the standards and requirements in Owner's Specifications sections (located in Division 1) 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 insure 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 Contract.
- 5.1.6 Provide information and recommendations to the Project Team on the following issues and on all other issues that are in the normal and customary province of the Construction Contractor:
  - 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;
  - 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, 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 Attend public meetings and hearings concerning the development and scheduling of the Project, but only when requested by Owner.

## **5.2 Constructability Program**

- 5.2.1 Implement and conduct 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 G. Whenever the term “value engineering” is used in conjunction with this Contract 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 (6) six 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 Refer to UGC Article 9 for basic scheduling requirements and related issues of the Construction Phase of the project. 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 (“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. It 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 This schedule must identify all major milestones from Project inception through Project Final Completion. It shall be created and maintained in accordance with Owner's Specifications (in Division 1) using the Owner specified format and software.
- 5.3.4 Update the schedule and manage the Project throughout the Pre-Construction and Construction Phases as described in the UGC and Owner's Specifications sections in Division 1.

#### **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 (2) two copies contemporaneously to the ODR and (6) six 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, 50% Construction Documents, <<75%>> Construction Documents and 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 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 Schedule requirements. In such cases, recommend reasonable strategies for bringing the Project back in line with the CCL and the 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 Texas State University System 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 of Attachment 1 to Exhibit "D" of this Contract, 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 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 insure that they do not delay timely completion of the Project.

## **5.7 Obtaining Bids/Proposals for the Work**

- 5.7.1 Publicly advertise and solicit competitive lump sum bids/proposals that identify the work packages from trade contractors or subcontractors for the performance of all major elements of the Work and in accordance with *Texas Education Code* section 51.782, as amended. 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 of Section 6, Attachment 1 to Exhibit "D" of this Contract. Bid documentation and recommendations shall be submitted in a format that permits the CM to comply with Tab 11 of Section 6, Attachment 1 to Exhibit "D" of this contract.
- 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 Review all trade contractor or subcontractor bids/proposals with Owner 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) 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 trade contractors or subcontractors, but must submit such bid/proposal directly to the Owner at least 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 Article 11.8 of the U.G.C.
- 5.7.8 Identify every subcontractor it intends to use on the Project to the Owner in writing at least ten (10) 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 trade contractor or 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 trade contractor or subcontractor to do so. Such decisions will be made in consideration of the exigencies of the situation and to good of the Project cost and schedule and will be subject to Owner approval.

## 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 Division 1 Specifications and 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 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.

## 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 based on the fee actually proposed by the CM during the selection process, or as negotiated with the Owner based on that proposed fee.
- 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 agreement.

## 6.5 Additional Services

6.5.1 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:

6.5.1.1 A negotiated additional lump sum amount; or

6.5.1.2 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

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

## ARTICLE 7. GUARANTEED MAXIMUM PRICE

**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 attached Exhibits C and D. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. CM shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) 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 the proposed Contract Time, 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 Contract and all attachments to this Contract. Any proposed deviation from the terms and conditions of this Contract 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 Contract and its attachments, the terms of this Contract and its attachments shall govern.
- 7.10 Acceptance or Rejection by Owner.** Owner may accept or reject the Guaranteed Maximum Price 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 Contract. 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 Contract. If this Contract 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 Contract, 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 trade contractors or 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. In preparing a lump sum conversion proposal, the CM must provide the following information:

- a. The stage of completion of the Project;
- b. The trade packages that have been completely bought out;
- c. The trade packages remaining that have not been bought out;
- d. A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
- e. An accounting of all savings amounts that are to be returned to the Owner as part of the lump sum calculation; and
- f. Any other Project information requested by the Owner.

7.13.1 The parties may agree to convert to a lump sum the general conditions portion of the GMP once the CM has determined a value that is appropriate to support general conditions 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 must be denoted and approved in the GMP Schedule of Values. 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 issued by Owner after arriving a Guaranteed Maximum Price 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. The CM shall perform the following Construction Phase Services.

- 8.1 In General.** Refer to UGC Article 3.3 for General Responsibilities of the CM during the construction phase.
- 8.2 Safety and Quality Control.** Carefully adhere to UGC Article 7 Safety, Article 8 regarding Quality Control and Article 9 regarding Construction Schedules. These articles are further amplified by Sections 013523 (Safety), 014300/014500 (Quality Assurance/Control) and 013200 (Planning and Scheduling) of the Owner's Division 1 Specifications.
- 8.3 Staffing.** 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.** 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.** 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, direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. 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.** Coordinate delivery and installation of Owner-procured material and equipment.
- 8.8 Permits and Approvals.** Obtain building permits and special permits for permanent improvements as required by law, regulation or the Construction Documents. Assist Owner or A/E in obtaining all approvals required from authorities having jurisdiction over the Project.
- 8.9 Testing.** 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 Testing required by the Specifications. This provision specifically supersedes UGC Article 8.2 (Testing).

- 8.10 Warranties and Guarantees.** Provide Warranties and Guarantees to Owner that the CM is required to provide Owner under this Contract.
- 8.11 Cost Variance Reporting.** 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, make recommendations on how to counter any adverse cost movements.
- 8.12 Record Documents.** 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. See UGC Article 6.2 for other record document requirements.

## **ARTICLE 9. OWNER’S RESPONSIBILITIES**

- 9.1 In General.** See UGC Article 3.1 regarding Owner’s responsibilities.
- 9.2 Designation of A/E.** The Owner will retain and designate an A/E for the Project. A/E will be required by contract to work closely with CM, which should facilitate performance of CM’s duties and responsibilities under this Contract. Upon request, Owner will provide CM with relevant sections of the A/E’s contract with Owner. See UGC Article 3.2 regarding the A/E’s role on the Project.
- 9.3 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. 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.
- 9.4 Designation of ODR.** The Owner will identify in writing a person as its Owner Designated Representative (ODR) who is authorized to administer this Contract 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 Contract terms and conditions where called for in the Contract or as otherwise necessary; however, single construction contract change orders less than \$25,000 may be authorized by the ODSR. 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.
- 9.5 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 Twenty Five Thousand Dollars (\$25,000); except for self-performed work which requires ODR approval for any amount.

- 9.6 Surveys.** The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing of Project HVAC equipment, 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.
- 9.7 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).
- 9.8 Services.** The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.
- 9.9 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.
- 9.10 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 strict accordance with the Construction Documents.
- 9.11 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.** See UGC Article 6.1.2. The CM and its subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate only for the execution of the Work.
- 10.2 Use of Documents to Meet Regulatory Requirements.** Submission or distribution of the Construction 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 In General.** See UGC Article 9 and Sections 25.1 and 25.2 of this Contract regarding Time and Liquidated Damages.
- 11.2 Essential Element.** TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THIS CONTRACT.
- 11.3 Standard of Care.** Unless otherwise approved, the Owner and the CM shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.
- 11.4 CPM Schedule.** As of the date of this Agreement, the parties have agreed to the CPM Schedule attached hereto as Exhibit L. Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, the CM shall submit an updated 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 Contract by Change Order.

**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://fmx.cpa.state.tx.us/fm/travel/travelrates.php>. 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://fmx.cpa.state.tx.us/fm/travel/travelrates.php>. 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, laundry service, valet service, entertainment expenses and any non-Project related items. An allowance for tips is included in the per diem rates.

Retainage, as specified in the UGC Article 10.3.2, will not be withheld from Pre-Construction Services Fees due, but will be withheld from all other amounts approved in an Application for Payment including the Cost of the Work, General Conditions, and the CM’s Construction Phase Fee. A 5% retainage fee is established through this Contract between the Contractor and the Owner and a subsequent maximum 5% retainage fee shall be established between the Contractor and any subcontractor(s) who performs work or provides materials for this Project.

12.1.3 See UGC Article 2.6 regarding sales and use taxes.

12.1.4 This Contract 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 for Liquidated Damages amounts.

- 12.1.5 Owner shall have the right to withhold from payments due CM such sums as are 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 Contract.
- 12.1.6 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make full payment to CM under circumstances listed in UGC Article 10.3.3 and any of the following additional circumstances:
- 12.1.6.1 CM is in material breach or default under this Contract;
  - 12.1.6.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, Owner shall pay for those services performed in accordance with the Construction Documents;
  - 12.1.6.3 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;
  - 12.1.6.4 Reasonable evidence that the unpaid balance of the GMP resulting from a making the payment requested will not be sufficient to complete the Work in accordance with the Construction Documents;
  - 12.1.6.5 CM has persistently failed to complete the Work in accordance with the Project Schedule or there is reasonable evidence that the remaining Work will not be completed within the contract time, 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;
  - 12.1.6.6 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
  - 12.1.6.7 CM fails to obtain, maintain or renew insurance coverage as required by this Contract.
- 12.1.7 Partial payments for Work do transfer title, but do not constitute final acceptance. See UGC Article 10.3.4.
- 12.1.8 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 Contract record before making final payment under the Contract. This provision shall survive any termination of the Contract.

## **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 12.2.1.
- 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 Article 10 and in the Owner's Specifications in Division 1. 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.
- 12.3.2 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 Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price 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 Contract, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that CM, its Subcontractors, 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 Contract 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 strict compliance with the Construction 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) days after the date scheduled for Substantial Completion. CM is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Final

Completion, only with prior written approval of Owner. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner

Allowable General Conditions items are identified below and in an attached exhibit. These items shall be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price 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. 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 Contract shall be based on the original cost of the item 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 Primedia, 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 (75%) of the purchase price and maintenance cost of the item. If the

anticipated aggregate rental cost for an item of equipment exceeds ninety percent (75%) 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.
- 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 Project. 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 UGC Article 10.3.
- 13.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations 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 Construction 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 Construction Documents and the terms of this Contract and approved by the Owner.
- 13.2.5 Testing fees pursuant to the Uniform General and Supplemental Conditions.
- 13.2.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

### **13.3 CM's Contingency**

- 13.3.1 The Guaranteed Maximum Price 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 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 20% of the construction duration for each NTP 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 Contract. 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 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.
- 14.5 Professional Fees.** Any legal, accounting, professional or other similar costs incurred by the CM, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

- 14.6 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.
- 14.7 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; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.
- 14.8 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.
- 14.9 Costs in Excess of GMP.** Any and all costs that would cause the Guaranteed Maximum Price to be exceeded..
- 14.10 Other Unidentified Costs.** Any and all costs not specifically identified as an element of the Direct Construction Cost.

## **ARTICLE 15. CONTRACT SAVINGS, ALLOWANCES, REBATES & 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 Guaranteed Maximum Price 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 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 Construction Documents and the Guaranteed Maximum Price proposal. Any claim by the CM for an adjustment to an Allowance amount included in the Guaranteed Maximum Price 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 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 Savings Identified by Audit.** Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

## **ARTICLE 16. PRE-EXISTING CONDITIONS & 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 Contract. CM's investigation and understanding of these conditions is instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. CM shall not make or be entitled to any claim for any adjustment to the Contract Time 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 Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price 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 or the Contract Sum for errors or omissions in the Construction Documents that CM discovered or, in the exercise of reasonable care, 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 UGC Article 5 for basic requirements for Bonds and Insurance.

### 17.2 Bonds

17.2.1 CM shall provide Performance and Payment Bonds per UGC Article 5, 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 Contract.

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 17.2, the expense of such additional coverage shall be included in the construction phase fee amount in Exhibit "D".

### 17.3 Insurance

17.3.1 The CM shall not commence any phase of the work under this Contract 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 Contract:

17.3.1.2 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in UGC Article 5.

17.3.1.3 Construction Phase: In addition to 17.3.1, Builder's Risk and Owner's Protective Liability in the amounts as set forth in UGC Article 5. Builder's risk limits shall be adjusted continuously each time additional the cost of construction work is changed under this contract so that the total amount of work under the contract is covered at all times.

17.3.1.4 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 by this Contract 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 Contract 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 Contract, then Owner shall also allow reasonable premium adjustments to authorized General Conditions Costs.

**17.6 CM to Provide Copies of Policies.** 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 Contract 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.

## **ARTICLE 18. DISPUTE RESOLUTION**

See Article 15 of the UGC. The Owner designates the Vice Chancellor for Contract Administration 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 In General.** Article 14 of the UGC governs any termination or suspension during the Construction Services Phase of this Project.

**19.2 During Pre-Construction Phase.** The following apply to termination or suspension during the Pre-Construction phase:

19.2.1 This Contract may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice.

19.2.2 Upon termination CM will be entitled to the Pre-Construction Phase Services Fees it has earned up to the date of notification of the termination. In order to be paid for these earned Fees CM shall deliver to Owner a complete Application for Payment required by Article 12 and all instruments of its service such as reports, estimates, etc. that were produced prior to the date of notification. After paying CM for its earned Fees and the associated instruments of service, Owner will have the right use the instruments of service as it sees fit, including for the continued work of the project. Upon such payment, Owner shall have no further obligation to the CM.

19.2.3 Termination of this Contract shall not relieve CM or any of its employees, subcontractors, or consultants of liability for violations of this Contract or for any act or omission, or negligence related to the Project. In the event of a termination, CM hereby consents to Owner employing a replacement CM to complete the services under this Contract.

19.2.4 Owner may suspend the work of the project for a period of up to 90 days without adjusting CM's Pre-Construction Phase Services Fee.

19.2.4.1 If Owner does not resume the work of the suspended Project within 90 days, the suspension shall become a termination unless the parties agree otherwise.

- 19.2.4.2 If work on the project is resumed after a 90 day suspension by agreement, CM shall be entitled to an equitable adjustment to its Pre-Construction Phase Services Fee.

## **ARTICLE 20. INDEMNITY**

- 20.1 In General.** SEE ARTICLE 3.3.10 OF THE UGC FOR CM'S GENERAL INDEMNIFICATION OBLIGATIONS.
- 20.2 Patent or Copyright Infringement.** SEE ARTICLE 2.5 OF THE UGC REGARDING PATENTS AND COPYRIGHTS. CM 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 CM OR THE USE BY CM, OR BY OWNER AT THE DIRECTION OF CM, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CM AND CM SHALL BE GIVEN A FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CM 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 CM AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 20.3 Survival.** The indemnities contained herein shall survive any termination of this Contract.

## **ARTICLE 21. SPECIAL WARRANTIES**

- 21.1 Reliance of Owner.** Notwithstanding anything to the contrary contained in this Contract, Owner and CM agree and acknowledge that Owner is entering into this Contract 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 warrants that it will perform its services in conformance with the highest standards of the Construction Management profession and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, 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 Contract, 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 warrants that all persons directly connected to the CM and providing CM's services under this Contract will be duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project or the services.
- 21.5 Duty to Advise Owner.** CM 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 warrants that it will perform its services under this Contract 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 Contract.
- 21.7 Authority to Execute Contract.** CM represents and agrees that the individual executing this Contract 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 Contract, Owner shall have no liability to CM or to anyone claiming through or under CM by reason of the execution or performance of this Contract. 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 Contract.
- 21.9 Survival.** The warranties contained herein shall survive any termination of this Contract.

## **ARTICLE 22. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

- 22.1 In General.** See UGC Article 13.3 concerning Asbestos Certification. The following requirements 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 insure compliance with the following acts from all of his 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 insure that Texas Department of Health 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 affidavit to the Owner and the A/E stating that no asbestos containing materials or work was provided, furnished, installed, or added to 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. CM shall take whatever measures that may be necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns comply with this requirement.
- 22.5 Provision of MSDS.** CM shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or to the A/E who will compile the information from the MSDS and, finding no asbestos in any of the products, make a certification statement.
- 22.6 Certification Statement at Final Completion.** At Final Completion the CM shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

## **ARTICLE 23. MISCELLANEOUS PROVISIONS**

- 23.1 No Assignment or Delegation by CM.** This Contract is a personal services contract for the services of CM. Neither CM's interest in this Contract, 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.
- 23.2 Accounting Standards and Principles.** Records of expenses pertaining to services (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 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.
- 23.3 Maintenance of Records.** Records of CM's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs CM in writing.
- 23.4 Family Code Certification.** By signing this Contract CM is certifying, pursuant to Section 231.006 if the Texas Family Code, that it is not ineligible to receive the award of or payments under this Contract by reason of its Family Support requirements and acknowledges that this Contract may be terminated and/or payments may be withheld if this certification is inaccurate.

- 23.5 Eligibility Certification.** By signing this Contract CM is certifying that, pursuant to Section 2155.004 of the Texas Government Code, the individual or business entity named in this Contract is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 23.6 Franchise Tax Certification.** By signing this Contract CM is certifying that it is not a corporation or limited liability company, or, if it is, that it is not currently delinquent in the payment of any franchise taxes due under Chapter 171 of the *Texas Tax Code*, or it certifies 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 Contract CM agrees that, pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code*, any payments owing to CM under this Contract 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 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 Contract shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Contract shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Contract.
- 23.9 Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 23.10 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 to the contrary.
- 23.11 Method of Giving Notice.** All notices, consents, approvals, demands, requests or other communications permitted or required to be given under this Contract shall be given to the party's representative designated pursuant to the Paragraph 25.4 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.
- 23.12 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.
- 23.13 Conflict of Interest Certification.** By signing this Contract 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 Contract.
- 23.14 State Auditor's Office.** CM understands that acceptance of state funds under this Contract 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 Contract

## ARTICLE 24. COMPENSATION

**24.1 Construction Cost Limitation:** The anticipated Construction Cost Limitation for the Project at the time this Contract is executed is \_\_\_\_\_ ~~(\$00.00).~~

**24.2 Pre-Construction Phase Fee:** The Pre-Construction Phase Services Fee for the Project will be \_\_\_\_\_ ~~(\$00.00).~~ 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 \_\_\_\_\_ Percent(\_\_\_\_%) of the Construction Cost Limitation 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:

\_\_\_\_\_ (\$ \_\_\_\_\_)

24.3.3 If the Owner agrees to a change in the Guaranteed Maximum Price 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 Guaranteed Maximum Price.

24.3.4 The percentage rate established in Paragraph 24.3.1 of this Contract 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 \_\_\_\_\_ Percent (\_\_\_\_%) of the Construction Cost Limitation 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:

\_\_\_\_\_ (\$ \_\_\_\_\_ )

- 24.4.3 If the Owner agrees to a change in the Guaranteed Maximum Price 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 Guaranteed Maximum Price.
- 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, the percentage in 24.4.1 for overhead and the percentage in 24.3.1 for profit. These mark-ups shall supplant the overhead and profit limitations imposed by 11.8.1 of the UGC. 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 Time of Completion**

- 25.1.1 The anticipated date for achieving Substantial Completion for all Work at the time the Contract was executed was \_\_\_\_\_.
- 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 Guaranteed Maximum Price 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 Guaranteed Maximum Price 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 more than Two (2) Months after the Substantial Completion Date identified in Article 25.1.1.
- 25.1.4 Milestone Schedule

[Insert ] For the benefit of the Project and prior to any Notice to Proceed for construction, the CM., with the assistance of the Architect of Record and the ODSR, may optimize the Milestone Schedule through mutual agreement and the augmented schedule will be recognized by amendment to this Agreement.

- 25.1.5 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 Liquidated Damages

25.2.1 Liquidated Damages for the Project is expected to be \_\_\_\_\_ ~~\$(00.00)~~ per day for every day beyond the Substantial Completion date that the Project is not completed and turned over to the Owner for its use. *OPTIONAL- WHEN LDs HAVE NOT BEEN DECIDED AT THE TIME OF THE PROMULGATION OF CONTRACT: <<Both the Substantial Completion date and the Liquidated Damages will be negotiated by the parties as a part of the GMP Change Order for the Project>>.*

25.2.2 The parties stipulate and agree that calculating Owner’s actual damages for late completion of the projects would be impractical, unduly burdensome, and would cause unnecessary delay and that the amount of daily liquidated damages that is negotiated for the Project shall be based upon a reasonable estimate of actual damages as determined by the agreement of the parties at the time of negotiation of the GMP.

**25.3 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%), *the ninety percent (90%)* and the one hundred percent (100%) completion stage of the Construction Documents phase of the Design.

**25.4 Notices.** Notices required or permitted to be given under this Contract shall be sent to the following persons at the indicated locations.

If to Owner: Peter E. Graves  
Vice Chancellor for Contract Administration  
Thomas J. Rusk State Building  
200 East 10th Street, Suite 600  
Austin, Texas 78701

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

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

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

## 25.5 Party Representatives

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

Peter E. Graves  
Vice Chancellor for Contract Administration  
Thomas J. Rusk State Building  
200 East 10th Street, Suite 600  
Austin, Texas 78701  
Phone: (512) 463-1808  
Fax No.: (512) 463-1816

25.5.2 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:

25.5.3 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.

**25.6 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.

**25.7 Interim Record Drawings and Specifications.** As a requirement for acceptance of Substantial Completion, CM shall reproduce two (2) copies of the current As-Build 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".

**25.8 List of Exhibits.** The following exhibits are fully incorporated into this Contract by reference:

- Exhibit A - Uniform General Conditions (Texas Facilities Commission Website)
- Exhibit B - Owner's Construction Project Division 1 Specifications (TSUS Website)
- Exhibit C - Allowable General Conditions Line Items (included)
- Exhibit D - Guaranteed Maximum Price Proposal Form (included)
  - Attachment 1 to Exhibit D - Guidelines for the Preparation of the GMP (included)
  - Attachment 2 to Exhibit D - Payment and Performance Bonds (TSUS Website)

- Exhibit E—~~Security Bond~~ (not used)
- Exhibit F - CM's Personnel and Monthly Salary Rate (included)
- Exhibit G - Constructability Implementation Program (included)
- Exhibit H - Policy on Utilization, Historically Underutilized Businesses (TSUS Website)
- Exhibit I - HUB Subcontracting Plan for Pre-Construction Phase Services (TSUS Website)
- Exhibit J - Additional Services Proposal (included)
- Exhibit K – Prevailing Wage Rate (referenced by link)
- Exhibit L – CPM Schedule

TEMPLATE

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

Name of CM

ATTEST:

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title typed)

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title typed)

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

CONTENT APPROVED:  
Office of Contract Administration  
The Texas State University System

BOARD OF REGENTS  
THE TEXAS STATE UNIVERSITY SYSTEM  
(Owner)

By: \_\_\_\_\_  
(original signature)

By: \_\_\_\_\_  
(original signature)

Name: Peter E. Graves  
Title: Vice Chancellor for  
Contract Administration

Name: Brian McCall  
Title: Chancellor

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

APPROVED:  
Name of Component

By: \_\_\_\_\_  
(original signature)

Name: Name of Component President  
Title: President

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

**EXHIBIT “A”**

**UNIFORM GENERAL CONDITIONS**

*(Please note that the most recent version of this document is dated August 17, 2005, and is provided herein by reference.)*

Visit the Texas Facilities Commission website to download and print the  
Uniform General Conditions:

<http://www.tfc.state.tx.us/divisions/facilities/prog/construct/>

**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:

<http://www.tsus.edu/publications-forms/forms-contracts.html>

**EXHIBIT “C”**

**ALLOWABLE GENERAL CONDITION LINE ITEMS**

On-Site Project Management Staff  
Safety Coordinator/Assistant(s)  
Project Executive  
Office Engineer(s)  
Project Expeditor(s)  
Assistant Superintendent(s)

CPM Scheduler  
Superintendent(s)  
Project Manager(s)  
Project Support Staff  
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 Electricity  
Monthly Telephone / Internet Service  
Street Rental and Barricades  
Fencing and Covered Walkways  
Temporary Water Distribution and Meters  
Temporary Electrical Distribution and Meters  
Site Erosion Control (BMP) and Project Entrance(s)

Project Water, Ice and Supplements to prevent dehydration  
Temporary Toilets  
Temporary Fire Protection  
Telephone / Internet System Installation

Field Offices & Office Supplies  
Partnering Costs  
Job Photos/Videos  
Project Specific Signage  
Postage/Special Shipping  
Project/As-Built (Record) Drawings  
Project Milestone Event(s)\*  
Move-In/Out and Office Setup  
Employee Identification System  
Small Tools and Storage Trailers  
Monthly Office Trailer Rental Costs  
Mobilization and Demobilization (Equipment Only)

First Aid Supplies  
Reproduction Services  
Monthly Office Supplies  
Remote Parking Expenses  
Project Reference Manuals  
Security System/Watchman  
Safety Material and Equipment  
Drinking Water and Accessories(including Ice)  
Office Clean-Up/Janitorial Services  
Field Engineering

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

**EXHIBIT "D"**

**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 Contract 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 Month and Day]*

(the Contract”), a Guaranteed Maximum Price (GMP) for the \_\_\_\_\_

\_\_\_\_\_, *[Insert Project Name and Stage, Component Name, State, City]*

project number \_\_\_\_\_ - \_\_\_\_\_ (as defined in this Contract), based on the Contract Documents

*[ Insert Project No]*

(as defined by this Contract) 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: \_\_\_\_\_

CONTENT APPROVED:

ACCEPTED AND AGREED:

Office of Contract Administration

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

By: \_\_\_\_\_  
(Original Signature)

By: \_\_\_\_\_  
(Original Signature)

Name: Peter E. Graves  
Title: Vice Chancellor for  
Contract Administration

Name: Brian McCall  
Title: Chancellor

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

## ATTACHMENT 1 TO EXHIBIT “D”

### **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 Contract 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 Contract 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.

**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 firm.

### **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 project information, item descriptions, and financial data. Key sections include:

- Project Information (Rows 1-5):** TSUS Project No., TSUS Project Name, Construction Manager Name, Project Address, Application For Payment Number, and Application Period.
- Item Details (Rows 6-72):** Columns for Spec. Section / Bid Package, Description of Work / Subcontractor / Supplier / Vendor / Specification Section, Initial Proposed Line Item Values, Additional Services / GMP Change Order Values, Actual Subcontract Amount at Buyout, Delta (Proposed to Actual), Assembly Category, Detailed Break-down of Contract Line Items, Total Amount Previously Requested & Percent, and Current Application (Total Amount This Period & Percent, Total Amount Completed To Date & Percent).
- Financial Summary (Rows 73-77):** Contractor Provided Owner Equipment / Furniture, Pay Application, SDV, Assembly Categories, GC Back-up, and Final Lien.

The spreadsheet shows various line 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)".

(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 3.5” diskette 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) 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) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first 90 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 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 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 HERE						
Campus					Date:	4/1/2010
HUB Percent on Recommend Bids					0.00%	
Description	Program Budget	100% CD Budget	GMP Budget	Recommended Bid Amount	HUB state (yes or no)	
Division 01 General Requirements	\$1,000,000.00	\$2,000,000.00	\$3,000,000.00	\$4,000,000.00		
Division 02 Existing Conditions						
Division 03 Concrete						
Division 04 Masonry						
Division 05 Metals						
Div. 06 Wood, Plastics, and Comp.						
Div. 07 Thermal & Moisture Protection						
Division 08 Openings						
Division 09 Finishes						
Division 10 Specialties						
Division 11 Equipment						
Division 12 Furnishings						
Division 13 Special Construction						
Division 14 Conveying Equipment						
Division 21 Fire Suppression						
Division 22 Plumbing						
Division 23 HVAC						
Division 25 Integrated Automation						
Division 26 Electrical						
Division 27 Communications						
Division 28 Ect. Safety & Security						
Division 31 Earthwork						
Division 32 Exterior Improvements						
Division 33 Utilities						
Division 34 Transportation						
Division 35 Waterway and Marine						
Other						
Subtotal Cost of the Work (COW)	\$1,000,000.00	\$2,000,000.00	\$3,000,000.00	\$4,000,000.00	\$0.00	
Payment/Performance Bonds						
Additional Permissible Bonds						
<b>Total Price with Bond (COW)</b>	\$1,000,000.00	\$2,000,000.00	\$3,000,000.00	\$4,000,000.00		
Escalation Contingency 5.00%	incl.	\$100,000.00	\$150,000.00	\$200,000.00		
COW W/Conts.	\$1,000,000.00	\$2,100,000.00	\$3,150,000.00	\$4,200,000.00		
Sum of Deductive/Add Alternates			\$100,000.00	\$100,000.00		
<b>Total COW</b>	\$1,000,000.00	\$2,100,000.00	\$3,250,000.00	\$4,300,000.00		
CMR Contingency (%)	3.00%	incl.	incl.	incl.	incl.	
General Conditions (%)	10.72%	incl.	incl.	incl.	incl.	
CMR Fee (%)	3.00%	incl.	incl.	incl.	incl.	
<b>GMP</b>	\$1,200,768.49	\$2,521,613.83	\$3,902,497.60	\$5,163,304.51		
over/(under) Program Budget	\$0.00	\$1,320,845.24	\$2,701,729.11	\$3,962,536.02		

(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:				
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									
<b>Total Price with Bond</b>	\$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
<b>Qualifications Criterion</b>									
EMR (5%)									
Safety (10%)									
D & B (5%)									
Past Performance (15%)									
Price (65%)									
<b>Total Composite Score</b>									0.00%
Remarks/Justification on Selected Respondent:									

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

**ATTACHMENT 2 TO EXHIBIT “D”**

**PAYMENT AND PERFORMANCE BONDS**

Actual Bonds shall be drafted by Owner and executed **after** the execution of the GMP Proposal.

**Obligee Name and Address are as follows:**

Texas State University System  
Board of Regents  
Attn: Vice Chancellor of Contract Administration  
Thomas J. Rusk Building  
200 East 10<sup>th</sup>, Suite 600  
Austin, Texas 78701

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

<http://www.tsus.edu/publications-forms/forms-contracts.html>

**EXHIBIT "E"**  
**SECURITY BOND**

(NOT USED)

TEMPLATE

**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. 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 (Less than 1%)	Social Security & Medicare (Less than 7.65%)	Worker's Compensation	Health & Insurance	Pension / 401(k)	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”

### CONSTRUCTABILITY IMPLEMENTATION PROGRAM

#### Program Objectives:

- Implement a rigorous constructability program
- Identify and document project cost and schedule savings (targeted cost savings: 5% of construction costs)

#### 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 CII 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

- **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
- **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
- **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 ‘H’**

**POLICY ON UTILIZATION, HISTORICALLY UNDERUTILIZED BUSINESSES**

Visit the TSUS website to download the latest forms and instructions:

<http://www.tsus.edu/publications-forms/forms-contracts.html>

TEMPLATE

**EXHIBIT “I”**

**HUB SUBCONTRACTING PLAN FOR PRE-CONSTRUCTION PHASE SERVICES**

Visit the TSUS website to download the latest forms and instructions at:

<http://www.tsus.edu/publications-forms/forms-contracts.html>

TEMPLATE

**EXHIBIT "J"**

**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: CM: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**CM**

Please refer to the Contract 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 "Contract") pursuant to which CM is to perform certain services. The terms, which are defined in the Contract, 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.

**CM**

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:	(\$ _____)

**VICE CHANCELLOR FOR CONTRACT 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: \_\_\_\_\_

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

**EXHIBIT “K”**

**PREVAILING WAGE RATE**

Texas Prevailing Wage Law will be administered in accordance with the policies and procedures set forth in the Prevailing Wage Schedule located on the \_\_\_\_\_ website at:

\_\_\_\_\_ *enter website link here*

TEMPLATE

**EXHIBIT “L”**

**CPM SCHEDULE**

*To be provided by CM@R*

TEMPLATE