

**AGREEMENT
BETWEEN OWNER AND DESIGN/BUILD CONTRACTOR**

This Agreement (this "Agreement") is made as of **Month Day, Year** (the "Effective Date"), by and between:

The **Owner** (the "Owner"): The Board of Regents of The Texas State University System
c/o Vice Chancellor and Chief Financial Officer
601 Colorado Street
Austin, Texas 78701

and the **Design/Build Contractor**:

Design/Build Contractor Company Name
Address
City, State, Zip
Phone: **(xxx) xxx-xxxx**
Fax: **(xxx) xxx-xxxx**

Texas Tax Account No: **_____**

for the following **Project** (the "Project"):

Name of Project
Campus
City, Texas

Component: **_____**

Owner's Project Number: 758-**xx-xxxxx**

Project Architect/Engineer: **A/E Company Name**
Address
City, State, Zip
Phone: **(xxx) xxx-xxxx**
Fax: **(xxx) xxx-xxxx**

The Owner and the Design/Build Contractor agree as follows:

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ARTICLE 1 SCOPE OF WORK

- 1.1 The Design/Build Contractor has overall responsibility for and shall provide complete Pre-Construction Phase Services (including Pre-Construction Services and Design Services) and Construction Phase Services (including Construction Services and Construction Administration Services) and furnish all design services, materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in an expeditious and economical manner and in accordance with the Owner's requirements and the terms of this Agreement.
- 1.2 The Construction Cost Limitation ("CCL") for the Project, as of the date this Agreement is executed, is set forth in Paragraph 24.1 below. This will be the Owner's target amount for the Guaranteed Maximum Price under this Agreement. The Project must be constructed within the CCL and meet the following objectives:
- 1.3 This project includes the design, construction, and implementation of <<Insert Project description>>.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 **Contract Documents.** The Contract Documents form the entire and integrated Contract between Owner and Design/Build Contractor and supersede all prior negotiations, representations, or agreements, written or oral. The Contract Documents (referred to collectively as the "Contract Documents") consist of:
 - 2.1.1 This Agreement and all exhibits and attachments listed, contained, or referenced in this Agreement and expressly incorporated herein, including but not limited to any Special Conditions of the Contract and Owner's Specifications;
 - 2.1.2 The Uniform General Conditions for The Texas State University System ("UGC" or "TSUS UGC") as modified by this Agreement and the Special Conditions of the Contract (the "Special Conditions"), if any, attached hereto as Exhibit A;
 - 2.1.3 Owner's Construction Project Division 1 specifications as identified herein;
 - 2.1.4 Campus Standards for the respective Component, <<insert Component name>>;
 - 2.1.5 The current, Board-approved version of those relevant provisions of the TSUS "Policies and Procedures Manual for Planning and Construction"; <https://www.tsus.edu/offices/finance/capital-projects.html>
 - 2.1.6 The HUB Subcontracting Plan for Design Phase Services as identified herein;
 - 2.1.7 The Guaranteed Maximum Price Proposal as executed by the parties;
 - 2.1.8 The HUB Subcontracting Plan for Construction Phase Services, when accepted by the Owner;
 - 2.1.9 All Additional Services Proposals, when accepted by the Owner;
 - 2.1.10 All Change Orders (including Change Directives) entered into after the Effective Date of this Agreement;
 - 2.1.11 The drawings and specifications developed by Design/Build Contractor and accepted by Owner;
 - 2.1.12 The drawings and specifications developed or prepared by Owner's independent consultants, if any, that are included in the Guaranteed Maximum Price Proposal executed by the parties or otherwise incorporated into the Contract Documents by the parties;
 - 2.1.13 Project Manuals developed for the design or construction of the Project;

- 2.1.14 All Addenda (revisions to drawings and specifications) issued after the Effective Date of this Agreement and incorporated into the Contract Documents by the parties and other amendments to this Agreement entered into by the parties; and
- 2.1.15 Any other documents listed in this Agreement and identified as “Contract Documents”.
- 2.2 **The Contract / Integration.** These Contract Documents form the entire and integrated Contract between Owner and Design/Build Contractor and supersede all prior negotiations, representations, or agreements, written or oral. Neither this Agreement nor any of its provisions can be waived, modified, amended, or altered except by a written document signed by Design/Build Contractor and Owner.
- 2.3 **Unenforceable or Invalid Term / Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected, and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.
- 2.4 **Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 2.5 **Terms Interchangeable.** The term Design/Build Contractor is interchangeable with the terms “Contractor” and “General Contractor” or other similar terms used in the various parts of the Contract Documents, including the UGC
- 2.6 **Conflict between Contract Documents.** If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written amendments to this Agreement entered into in accordance with the requirements hereof after execution of this Agreement with the amendment bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein; (3) the UGC; (4) the Contract Documents which comprise the Owner’s Design Requirements; and (5) the other Contract Documents identified herein. For purposes of determining the Design/Build Contractor’s obligations and responsibilities with regard to the construction of the Project and without limiting the foregoing, the final drawings and specifications incorporated into the Contract Documents shall control over the preliminary drawings and specifications incorporated into the Contract Documents, with those bearing the latest date taking precedence. Further, the terms of the Agreement and the UGC shall control over any terms in the drawings or specifications inconsistent therewith.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions for The Texas State University System applicable to this Agreement (the “UGC”) and as follows.

- 3.1 **“Additional Services”** means those Pre-Construction Services, Design Services, and Construction Administration Services that are beyond the Basic Services (see below) required under the Contract Documents (referred to herein as “Additional Pre-Construction Services”, “Additional Design Services”, and “Additional Construction Administration Services”, respectively, and referred to collectively as “Additional Services”). Additional Services may be further identified in the attached “Additional Services and Services Expressly Included as Basic Services” Exhibit. Additional Services must be authorized in writing by the Owner in accordance with Paragraph 4.14.

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

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

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

3.3 **“Applicable Law”** or **“applicable laws”** means all laws, statutes, ordinances, regulations, guidelines, or requirements now in force or hereafter enacted by any applicable local, state, or federal governmental authority relating to or affecting the Project or arising from this Agreement, including, if and as applicable, those applicable laws as further identified in the UGC.

3.4 **“Basic Services”** means those Pre-Construction Services under Paragraph 5.1, Design Services under Paragraph 5.2, and Construction Administration Services under Paragraph 8.2 and those other Pre-Construction Services, Design Services, and Construction Administration Services that Design/Build Contractor is required to furnish under the Contract Documents for which payment shall be limited to the Pre-Construction Services Fee, Design Services Fee, and Construction Administration Services Fee, respectively (referred to herein as “Basic Pre-Construction Services”, “Basic Design Services”, and “Basic Construction Administration Services”, respectively, and referred to collectively as “Basic Services”).

3.5 **“Building Information Modeling”** or **“BIM”** means the process of generating and managing building data using three dimensional (“3D”), real-time, dynamic building modeling software resulting in a BIM Model which is a digital representation of physical and functional characteristics of a facility encompassing building geometry, spatial relationships and quantities, and properties of building components and systems. Design/Build Contractor shall employ the BIM process to establish a level of detail for constructability and clash detection in the development of the drawings or as otherwise set forth in the Special Conditions, if any.

3.6 **“Campus Standards”** means the documents prepared by the respective Component to be used by Design/Build Contractor and Project Architect/Engineer for their use related to Building Codes, Construction Building Systems, and specifications to ensure the Project is designed to a certain level of finish and quality found throughout the Component’s campus.

3.7 **“Certificate of Compliance”** means that certain Certificate, a form of which is attached hereto as an Exhibit, to be furnished by the Design/Build Contractor at such times as required by the Contract Documents.

- 3.8 “**Component**” means the higher education institution member of The Texas State University System identified on page one of this Agreement and on whose campus the Project is to be located.
- 3.9 “**Construction Administration Services**” means those services required to be performed during the Construction Phase of the Contract by or through the Project Architect/Engineer pursuant to Paragraph 8.2 and as otherwise expressly provided by the Contract Documents. Construction Administration Services shall also include those Additional Construction Administration Services that are authorized in writing by the Owner pursuant to Paragraph 4.14.
- 3.10 “**Construction Cost Limitation**” or “**CCL**” means the maximum monetary amount payable to the Design/Build Contractor 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 Design/Build Contractor’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 Pre-Construction Phase Fee, Design Services Fee, Construction Administration Fee, or Owner’s Special Cash Allowance.
- 3.11 “**Construction Documents**” means, collectively, the UGC, Owner’s Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders, and other documents prepared by the Project Architect/Engineer, 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.
- 3.12 “**Construction Services**” means the implementation and execution of the construction work required by the Contract Documents. The Construction Phase of the Project may be divided into different stages, each with different start and completion dates.
- 3.13 “**Contract**” means the contractual agreement between Owner and the Design/Build Contractor for the Project formed by the Agreement and the Contract Documents as identified herein.
- 3.14 “**Contractor**” references therein to “Contractor” shall mean the Design/Build Contractor.
- 3.15 “**Contract Sum**” means the total amount of all compensation payable to the Design/Build Contractor for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Services Fees, the Construction Administration Services Fee, and the amount of the Guaranteed Maximum Price in the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Design/Build Contractor without reimbursement by Owner.
- 3.16 “**Contract Time Requirements**” means the requirements for the achievement of any major or “Critical” Milestones and Substantial Completion and Final Completion of designated portions of the Work or the entire Work of the Project as may be expressly required in the Project Schedule or any Owner-approved CPM Schedule or as otherwise expressly required by the Contract Documents.
- 3.17 “**CPM Milestone Schedule**” or “**CPM Schedule**” means the Critical Path Method Schedule which the Design/Build Contractor is required to prepare and update in accordance with Article 4 and Paragraph 11.3 for Owner’s approval.

- 3.18 “**Design/Build Contractor’s Designated Representative**” means the person designated by the Design/Build Contractor to act on the Design/Build Contractor’s behalf and bind the Design/Build Contractor with respect to the Project pursuant to Subparagraph 25.5.3 herein.
- 3.19 “**Design/Build Contractor’s Designated Representative for Construction**” or “**DBC DR for Construction**” means the person designated by the Design/Build Contractor to act as the Design Build Contractor’s designated representative for Construction Services with respect to the Project pursuant to Subparagraph 25.5.4 herein and as required under Subparagraph 8.1.3 hereof.
- 3.20 “**Design/Build Contractor’s Designated Representative for Design**” or “**DBC DR for Design**” means the person designated by the Design/Build Contractor to act as the Design Build Contractor’s designated representative for Design Services with respect to the Project pursuant to Subparagraph 25.5.5 herein and as required under Subparagraph 5.2.1.1 hereof.
- 3.21 “**Design Services**” means all professional services required to fulfill the Pre-Construction Phase obligations of this Agreement, including, but not limited to, Project Facility Program validation, and preparation of Schematic Design, Design Development and Construction Documents, as set forth in Paragraph 5.2 or as otherwise expressly provided by the Contract Documents. Design Services shall also include those Additional Design Services that are authorized in writing by the Owner pursuant to Paragraph 4.14. The Design/Build Contractor is responsible for Design Services; however, they will be performed by or through the Project Architect/Engineer or such other separate design professional consultants retained by the Design/Build Contractor with the Owner’s prior written consent.
- 3.22 “**Direct Construction Cost**” means the sum of the amounts that the Design/Build Contractor actually and necessarily incurs for General Conditions Costs, Cost of the Work and Design/Build Contractor’s Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Services Fees (including the Pre-Construction Services Fee and Design Services Fee) or Construction Phase Fees (including the separate Construction Administration Services Fee).
- 3.23 “**Direct Salary Expense**” or “**DSE**” means the actual gross salary, expressed on an hourly wage basis, of Design/Build Contractor’s and Project Architect/Engineer’s employees and consultants directly engaged on the Project. DSE does not include the respective employers’ contributions for taxes (including federal and state unemployment, Social Security, Medicare, workers compensation), health and related insurance, pension / 401(k), and vacation/holidays. For DSE purposes, Project Architect/Engineer’s employees include, but are not limited to, architects, officers, principals, engineers, designers, job captains, draftspersons, and specifications writers, who are performing consultation, research, or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services that are directly attributable to and necessary for the Project.
- 3.24 “**Electronic Copy**” means a copy of the document in the software medium in which the document was created for initial approval and subsequent required updates.
- 3.25 “**Estimated Construction Cost**” or “**ECC**” means the total cost of all elements of the Project, including, without limitation, all alternates, allowances, and contingencies, designed and specified by the Design/Build Contractor based on the Contract Documents available at the time(s) that the ECC is prepared. The ECC shall include, at current market rates with a reasonable allowance for overhead, profit and price escalation, the cost of labor and materials necessary for the installation of equipment that Owner has agreed to furnish and any equipment which has been shown in the drawings, specified, and specially provided for by the Design/Build Contractor. ECC does not include the Design Services

Fee or Construction Administration Fee. ECC does not include the cost of the land, rights-of-way, or any costs that are the 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.

- 3.26 “**Final Completion**” means the actual completion of the Work (the entire Work or the designated portion thereof), including any extras or Work authorized by Change Orders reasonably required or contemplated under the Contract, other than warranty work or replacement or repair of the Work (after the initial acceptance by the Owner) performed under the Contract. References to “Final Completion of the Work” in the Contract Documents shall mean the Final Completion of the entire Work required under the Contract, except as otherwise expressly provided therein.
- 3.27 “**General Conditions Costs**” means costs incurred and minor work performed on the jobsite by the Design/Build Contractor without the need for competitive bids/proposals. The allowable General Conditions items are further described in the Agreement and limited by attached exhibit.
- 3.28 “**Guaranteed Maximum Price**” or “**GMP**” means the amount proposed by the Design/Build Contractor and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Design/Build Contractor’s Construction Phase Fee (but not the Construction Administration Fee), the General Conditions Costs, the Cost of the Work, and the Design/Build Contractor’s Construction Contingency amount, and Owner’s Special Cash Allowance.
- 3.29 “**Monthly Salary Rate**” means the DSE computed on a monthly basis plus the employer’s contributions for taxes (including federal and state unemployment, Social Security, Medicare, workers compensation), health and related insurance, pension/401(k), and vacation/holidays in 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 Design/Build Contractor’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment seeking reimbursement for that person. The Monthly Salary Rate is for convenience only and any payments made for Design/Build Contractor’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Design/Build Contractor for services performed for the Project.
- 3.30 “**Owner’s Construction Project Division 1 Specifications**” means The Texas State University System Construction Project Division 1 specifications published by the Owner (on its website at: <https://www.tsus.edu/offices/finance/capital-projects.html>)
- 3.31 “**Owner’s Design Consultant**” means any licensed professionals or firms, other than the Project Architect/Engineer, engaged by Owner as independent consultants for the Project improvements.
- 3.32 “**Owner’s Design Criteria Package**” means the set of documents and information with regard to the Project furnished pursuant to *Texas Education Code* section 51.780(a)(3).
- 3.33 “**Owner’s Design Requirements**” means the Owner’s stated objectives and requirements with regard to the design of the Project, including but not limited to the information furnished in the Owner’s Design Criteria Package, TSUS’ Manual for Planning and Construction, the Campus Standards for the respective Component, the Owner’s Construction Project Division 1 specifications, and this Agreement and the Exhibits attached hereto or otherwise expressly incorporated herein.

- 3.34 **“Owner’s Designated Representative”** or **“ODR”** means the person designated by the Owner to act as the Owner’s Designated Representative pursuant to Paragraph 9.3 herein and identified in Subparagraph 25.5.1 herein.
- 3.35 **“Owner’s Designated Site Representative”** or **“ODSR”** means the person, if any, designated by the Owner to act as the Owner’s Designated Site Representative pursuant to Paragraph 9.4 herein. Also see Subparagraph 25.5.2 herein if the ODSR has been selected at the time the Agreement is executed.
- 3.36 **“Pre-Construction Phase Services”** means those services required to be performed by the Design/Build Contractor required to fulfill the Pre-Construction Phase obligations of this Agreement, other than the Design Services, as set forth in Paragraph 5.1 and as otherwise expressly provided by the Contract Documents. Pre-Construction Services shall also include those Additional Pre-Construction Services that are authorized in writing by the Owner pursuant to Paragraph 4.14.
- 3.37 **“Preliminary Project Cost”** or **“PPC”** means the total estimated cost of the entire Project, including design, construction, and other associated costs and services which is established prior to the commencement of design.
- 3.38 **“Project Architect/Engineer”** means the professional architect or engineer employed by the Design/Build Contractor to perform all or part of the Design Services and the Construction Administration Services, in accordance with the Contract. The Project Architect/Engineer and its professional consultants must be qualified to perform the Design Services and the Construction Administration Services and be licensed in the State of Texas in their respective professions.
- 3.39 **“Project Facility Program”** means the document that identifies the space allocations of the Project requirements and their adjacency relationships with the given space assignments. Site information related to orientation and infrastructure as well as architectural aesthetics with cost parameters will also be addressed within this document. Other information may be gleaned through the programming exercise based on the Project requirements and Owner directives.
- 3.40 **“Project Schedule”** means the schedule incorporated into the Contract Documents for the design and construction of the Project initially prepared by the Owner (see Exhibit O attached to this Agreement), reflecting various milestone and completion dates, and subsequently modified by mutual agreement between the Owner and Design/Build Contractor to reflect any refinement in its requirements.
- 3.41 **“Project Team”** means the Owner, Design/Build Contractor, Project Architect/Engineer, Owner’s Design Consultant(s), any separate contractors employed by Owner, and other consultants employed by any of them for the purpose of programming validation, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.42 **“Record Documents”** mean the drawing set, specifications, and other materials maintained by the Design/Build Contractor that documents all addenda, Project Architect/Engineer’s supplemental instructions, change orders and postings and markings that record the “as-constructed” conditions of the Work and all changes made during construction. Record Documents is distinguishable from “Record Drawings” which, if required by the Contract Documents, are prepared by the Project Architect/Engineer as part of its Construction Administration Services and reflect the on-site changes the Design/Build Contractor noted in the “As-Built” drawings.
- 3.43 **“Subcontractor”** means a person or entity that has an agreement with or through the Design/Build Contractor to perform any portion of the Work. The term Subcontractor includes what is commonly

referred to as a “trade contractor” and a “supplier” (who furnishes materials or equipment only) and Sub-Subcontractors, except to the extent clearly not applicable in the context of its use in the Contract Documents. The term Subcontractor does not include the Project Architect/Engineer, or any person or entity hired directly by the Owner. The term “Sub-subcontractor” refers to a trade contractor, subcontractor, or supplier contracting under or directly with a Subcontractor or another Sub-subcontractor.

- 3.44 **“Total Project Cost”** or **“TPC”** means the total budget established for the Project by The Texas State University System Board of Regents at the end of the Design Development phase (subject to subsequent modification by Owner in accordance with the Rules or the Policies and Procedures of such Board of Regents), which includes but is not limited to professional services costs, Design/Build Contractor’s costs, the costs of the General Conditions items, furniture, fixtures and equipment costs, landscaping costs, moving costs, and other miscellaneous costs.
- 3.45 **“TSUS UGC”** or **“Uniform General Conditions of The Texas State University System”** or **“UGC”** shall mean the Uniform General Conditions for Construction Contracts issued by the Texas State University System, dated December 01, 2021, a copy of which is published on the Owner’s website at: <https://www.tsus.edu/offices/finance/capital-projects.html>, and as may be modified by the Special Conditions attached as an Exhibit to this Agreement and incorporated herein.
- 3.46 **“Work”** means the provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Pre-Construction Phase Services, Design Services, the GMP proposal, the Construction Phase Services, and any Additional Services and other services required. The term “reasonably inferable” takes into consideration the understanding of the parties that not every detail will be shown on the drawings and included in the specifications.
- 3.47 **“Work Progress Schedule”** means the CPM Schedule prepared and maintained in accordance with the Critical Path Method and the requirements of the Agreement, the Special Conditions, if any, and the UGC, reflecting the Design/Build Contractor’s actual progress of the construction of the Work and the scheduled activities and current plans for completing the Work and updated as required by Paragraph 11.3.
- 3.48 **“Work Remaining to Procure”** means a limited portion of the Work that the Design/Build Contractor was unable to price through the buyout process. These items must be presented to the Owner for approval prior to bidding any Work. These limited Work items must be quantifiable into a unit cost with the necessary supporting breakdown that reveals the justification for the requested unit cost. Supporting documentation must also be provided that establishes a quantity of the unit costs. Items include but are not limited to dewatering, concrete washout haul offs, etc.
- 3.49 **“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 Contract Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Worker Wage Rate is only a convenient device for monthly payments, the actual salary costs and other employer contributions are subject to audit and actual final payments on these accounts may be altered by the audit. Minimum Worker Wage Rates are also established by a “Prevailing Wage Schedule” as required by Applicable Law and the Contract Documents (see attached Prevailing Wage Rates Exhibit J).

ARTICLE 4 DESIGN/BUILD CONTRACTOR'S GENERAL RESPONSIBILITIES

- 4.1 **In General.** The Design/Build Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. Design/Build Contractor agrees to perform these services using its best efforts, skills, judgments, and abilities.
- 4.2 **Coordination.** The Design/Build Contractor shall coordinate with the Project Architect/Engineer and endeavor to further the interests of the Owner and the Project. The Design/Build Contractor shall furnish or cause to be furnished Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule incorporated into the Contract Documents.
- 4.3 **Scheduling.** Within seven (7) calendar days of receipt of the Notice to Proceed with Pre-Construction Phase Services, the Design/Build Contractor shall submit for the Owner's review and acceptance a Critical Path Method ("CPM") Milestone Schedule in accordance with the Project Planning and Scheduling requirements of the Owner's specifications. The CPM Milestone Schedule shall encompass the entire Project duration, including performance of both the Pre-Construction Phase Services and the Construction Phase Services with sufficient total Project float to allow for a minimum of Construction Phase float as specified.
- 4.3.1 The CPM Milestone Schedule for the Pre-Construction Phase of the Project shall include reasonable amounts of time for the Owner's review and approval of design drawings and specifications and for approval of authorities having jurisdiction over the Project.
- 4.3.2 Upon acceptance of the CPM Milestone Schedule, it shall become the baseline for evaluating performance of the Project, and the Design/Build Contractor shall monitor the progress of the Project in relation to the CPM Milestone Schedule and provide the Owner with at least monthly updates and status reports as outlined in the Owner's specifications. The time periods established in the CPM Milestone Schedule for the Pre-Construction Phase and the Construction Phase, and the overall duration of the Project shall not be changed without written consent from the Owner. Modifications to the CPM Milestone Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with any scheduling requirements set forth in the Contract Documents or as otherwise approved by the Owner. Upon Owner's approval of the GMP Proposal, the CPM Milestone Schedule shall be replaced by the CPM Schedule pursuant to Paragraph 11.3.
- 4.4 **Designation of Representative.** The Design/Build Contractor shall designate a representative authorized to act on the Design/Build Contractor's behalf with respect to the Project.
- 4.5 **Procedures.** The Design/Build Contractor shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the project, and implement such procedures.
- 4.6 **Tracking System.** The Design/Build Contractor shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.
- 4.7 **Multiple Completion Times.** If the Owner elects to "fast-track" or develop the Project in multiple stages, the Design/Build Contractor shall cooperate fully with the Owner and organize and perform its

services to be most appropriate and efficient for each stage. Each stage of the Project may have a unique schedule for completion and a specific CCL, at Owner's discretion.

- 4.8 **Partnering.** The Design/Build Contractor shall attend and participate in Owner's "Partnering" Program for all phases of the Project.
- 4.9 **Employees and Consultants.** The Design/Build Contractor shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. The Design/Build Contractor shall also identify any consultants that will be performing services for the Project. The Project Architect/Engineer shall identify to the Owner the employees and other personnel that it will assign to the Project and provide such Personnel Rates information as required in the Special Conditions. The Project Architect/Engineer shall also identify any sub-consultants that will be performing services for the Project. After execution of this Agreement by the Owner, the Design/Build Contractor and the Project Architect/Engineer shall not add, remove, or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. The Design/Build Contractor and the Project Architect/Engineer shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. The Design/Build Contractor and the Project Architect/Engineer shall promptly update and resubmit such Personnel Rates Schedules as required in the Special Conditions or Exhibits to this Agreement, including the "Design/Build Contractor's Personnel and Monthly Salary Rates" form, indicating the list of persons by name and title and consultants if they change during the course of the Project. Design/Build Contractor's employees and other personnel that it assigns to the Project shall be identified on the Schedule of Values by name and title.
- 4.10 **HUB Compliance.** Design/Build Contractor, as a provision of the Agreement, must comply with the Owner's established policies regarding the utilization of Historically Underutilized Businesses ("HUBs") and all applicable administrative rules and statutes relating to utilization of HUBs by Owner for the Project and adhere to the HUB Subcontracting Plans submitted for Pre-Construction Phase and Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by the Design/Build Contractor without the written approval of Owner.
- 4.11 **Computer Project Management System.** Design/Build Contractor shall use the Owner's designated project management software system to transact, correspond, and maintain all project related correspondence throughout the life of the Project including Project close-out and final payments.
- 4.12 **Additional Services.** Additional Services shall be provided by or through the Design/Build Contractor and paid for in accordance with this Agreement by the Owner if authorized in writing by the Owner. Prior to commencing any Additional Service, Design/Build Contractor shall submit to the Owner an Additional Services Proposal in the form attached hereto as Exhibit I. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Services (including whether such Additional Services are Additional Pre-Construction Services, Additional Design Services, or Additional Construction Administration Services), the basis upon which Design/Build Contractor believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Services. Design/Build Contractor shall proceed with the Additional Service only after written acceptance by Owner of the Additional Services Proposal.
- 4.12.1 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design/Build Contractor pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully

and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

- 4.12.2 To the extent approved in writing by the Owner in accordance with the requirements hereof, Additional Services shall include, but not be limited to, any Additional Services identified in the “Services Expressly Included in Basic Services and Additional Services Not Included Under Basic Services” Exhibit K, incorporated into this Agreement.
- 4.12.3 Compensation for such Additional Services (Additional Services Fees) shall be computed as provided in Paragraph 24.6.

ARTICLE 5 PRE-CONSTRUCTION PHASE

The Pre-Construction Phase shall commence on the date specified in a Notice to Proceed issued by Owner. Pre-Construction Phase Services include Pre-Design Stage Services, Pre-Construction Services and Design Services and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Design/Build Contractor 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 Construction Phase Services. The Design/Build Contractor shall perform the following Pre-Construction Phase Services.

5.1 PRE-CONSTRUCTION SERVICES

5.1.1 General Coordination

- 5.1.1.1 The Design/Build Contractor’s Pre-Construction Phase Services team, including the Project Architect/Engineer, shall attend and actively participate in Project Team meetings with the Owner and the Owner’s representatives at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner’s acceptance of the GMP and during completion of the Construction Documents. Without limiting the foregoing, the Project Architect/Engineer shall attend all scheduled Project Team meetings in person or through video or telephonic conference, as directed by the ODR or ODSR.
- 5.1.1.2 As soon as possible after receiving a Notice to Proceed, the Design/Build Contractor shall provide a preliminary evaluation of the Owner’s Design Requirements, the Project Schedule developed by the Owner, and the CCL, each in terms of the other.
- 5.1.1.3 The Design/Build Contractor shall review and understand the standards and requirements of the Owner’s Design Requirements and perform all services in accordance with those standards and requirements.
- 5.1.1.4 The Design/Build Contractor shall visit the site and inspect the existing facilities, systems, and become thoroughly familiar with the existing conditions to ensure an accurate understanding of how the Project can proceed.
- 5.1.1.5 The Design/Build Contractor shall participate as a member of the Project Team in the development of the Project Facility Program if such a program is required by the Owner and has not been developed prior to the Effective Date of this Agreement.

- 5.1.1.6 The Design/Build Contractor shall 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 a general contractor responsible for construction of the Work:
 - 5.1.1.6.1 site usage and site improvements;
 - 5.1.1.6.2 building systems, equipment and construction feasibility;
 - 5.1.1.6.3 selection and availability of materials and labor;
 - 5.1.1.6.4 time requirements for construction and equipment installation ;
 - 5.1.1.6.5 safety issues and available precautions related to work under consideration;
 - 5.1.1.6.6 selection and installation of temporary Project facilities, equipment, materials and services needed for common use of the Design/Build Contractor and Owner's separate contractors, if any;
 - 5.1.1.6.7 cost factors, including costs of alternative materials, construction methods, or designs;
 - 5.1.1.6.8 conceptual budgets and possible cost savings available in alternative approaches or designs;
 - 5.1.1.6.9 identification and resolution of conflicts in the proposed drawings and specifications as they evolve;
 - 5.1.1.6.10 methods of delivery and handling of materials, systems, and equipment;
 - 5.1.1.6.11 traffic, parking and materials and equipment storage in and around the site; and
 - 5.1.1.6.12 any other matters necessary to accomplish the Project in accordance with the Project Schedule and the CCL.
- 5.1.1.7 The Design/Build Contractor shall assist the Owner in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing consultants, commissioning agents, environmental surveys, or other special consultants hired by the Owner (to the extent such services are not expressly included in the Design/Build Contractor's Basic Services - see Services Expressly Included as Basic Services and Additional Services Not Included Under Basic Services – Exhibit K) to develop additional information for the design or construction of the Project.
- 5.1.1.8 At the Owner's request, Design/Build Contractor shall attend public meetings and hearings concerning the development and scheduling of the Project.
- 5.1.1.9 The Design/Build Contractor shall employ a qualified Consultant (the "TPDES Consultant"), experienced in the Texas Pollutant Discharge Elimination System ("TPDES") requirements and in the Best Management Practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "BMPs"). TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality ("TCEQ") regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Project Architect/Engineer or other Subcontractors under this Contract, (2) preparing of Storm Water Pollution Prevention Plans ("SWPPPs") and, as requested in writing by Owner, assisting in the updating of SWPPPs and all

other permit documentation required by the TCEQ for the Project, and (3) the drafting of technical specifications governing the Design/Build Contractor's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites (General Permit) No. TXR 150000, and governing the Design/Build Contractor's recommended courses of action under BMPs. The TPDES Consultant shall ensure that the SWPPPs has been prepared for the site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The Texas State University System Component on which the site is located. The TPDES Consultant, through the Design/Build Contractor, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Design/Build Contractor's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to ensure that the Design/Build Contractor of each project can comply with TPDES requirements and BMPs. DESIGN/BUILD CONTRACTOR SHALL INDEMNIFY AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO AN ACT OR OMISSION OF DESIGN/BUILD CONTRACTOR, PROJECT ARCHITECT/ENGINEER OR ITS CONSULTANTS.

5.1.2 Constructability Program

- 5.1.2.1 The Design/Build Contractor shall implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be in accordance with the requirements of the attached Constructability Implementation Program – Exhibit H. Whenever the term “value engineering” is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not 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.
- 5.1.2.2 The Design/Build Contractor shall prepare a “Constructability Report” that identifies items that, in the Design/Build Contractor's opinion, may negatively impact construction of the Project, and recommends alternatives that will mitigate the impacts. The Constructability Report shall address the overall coordination of Project drawings, specifications, and details, and shall identify discrepancies that may generate change orders or claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase.
- 5.1.2.3 The Design/Build Contractor shall provide and implement a system for tracking questions, resolutions, decisions, directions, and other information matters that arise during the development of the drawings and specifications for the Project. The

decision tracking system shall be in a format approved by the Owner and updated at least monthly during the Pre-Construction Phase.

5.1.3 **Budget and Cost Consultation**

5.1.3.1 The Design/Build Contractor is responsible for preparing and updating all construction cost estimates and distributing them to the Project Team throughout the duration of the Project. Except as otherwise required by the Contract Documents and consistent with Subparagraphs 5.1.3.1.1 and 5.1.3.1.2 below, Design/Build Contractor shall employ an independent specialized construction cost estimation firm approved by Owner to prepare additional corresponding construction cost estimates. The Design/Build Contractor shall be required to reconcile the two independent cost estimates at each design schedule milestones to the reasonable satisfaction of the Owner. The Design/Build Contractor shall distribute all cost estimates to the Project Team throughout the duration of the Project.

5.1.3.1.1 The Design/Build Contractor shall provide Estimated Construction Cost reports (“DB ECC Reports”) at the required stages of completion of the Schematic Design, Design Development, Construction Document stages of the Project as required in Paragraph 25.3 below. The DB ECC Reports for the Design Development and Construction Document stages 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 DB ECC Report must explicitly address cost escalation (inflation) in a manner approved by the Owner. Each DB ECC Report shall be organized in Construction Specifications Institute (“CSI”) division format (Divisions 1 through 50, except as otherwise directed by the Owner) for each portion of the Work.

5.1.3.1.2 In addition to the DB ECC Report which may be prepared internally by the Design/Build Contractor, the Design/Build Contractor shall retain and pay, out of its Pre-Construction Phase Fee, a recognized, independent third party estimating consultant approved by Owner, such approval not to be unreasonably withheld, to prepare Estimated Construction Cost reports (the “TP ECC Reports”) at the same stages required for the DB ECC Reports and consistent with the requirements for the DB ECC Reports.

5.1.3.1.3 Except as otherwise provided in the Owner’s Supplemental Design and Construction Requirements (if any) attached hereto as an Exhibit, such ECC Reports shall be provided to the Owner within fourteen (14) calendar days after Design/Build Contractor submits the completed documents at the stages required for price estimating under Paragraph 25.3. Any adjustments or reconciliations required to be made shall be provided to the Owner no later than seven (7) calendar days after Owner’s written request for adjustment or reconciliation.

5.1.3.2 The Design/Build Contractor shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. The Design/Build Contractor shall advise the Owner

immediately if the Design/Build Contractor has reason to believe that the most current ECC (based upon the reconciled ECC Reports pursuant to this Subparagraph 5.1.3) will exceed the CCL or not meet CPM Schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the CPM Schedule.

5.1.3.3 The Design/Build Contractor shall promptly identify all variances between estimated costs and actual costs during the Construction Phase, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

5.1.3.4 Should any reconciled ECC Report (or any DB ECC Report or TP ECC Report, if the two Reports have not been reconciled to Owner's satisfaction) vary significantly from the approved CCL, the Owner may, in its sole discretion, elect to negotiate changes to the Project requirements or the CCL as required to regain the feasibility of completing the Project within target parameters or terminate this Agreement for convenience pursuant to Paragraph 19.2. The Owner shall define a significant variance.

5.1.4 **Coordination of Design and Construction Contract Documents**

5.1.4.1 The Design/Build Contractor shall review all drawings, specifications, and other Construction Documents as they are developed by the Project Architect/Engineer during the Schematic Design, Design Development, and Construction Document design stages of the Project.

5.1.4.2 The Design/Build Contractor shall consult with Owner and Project Architect/Engineer 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.

5.1.4.3 The Design/Build Contractor shall promptly and timely advise Owner of any error, inconsistency, or omission discovered in the drawings, specifications, and other Contract Documents.

5.1.4.4 The Design/Build Contractor shall advise Owner on reasonable adjustments in the Project scope, quality, or other options for keeping the Project cost within the CCL.

5.1.4.5 The Design/Build Contractor shall review the Construction Documents for compliance with all applicable laws, rules, and regulations, and with The Texas State University System requirements, including the Owner's Design Requirements as they may have been revised during design.

5.1.5 **Construction Planning and Bid Package Strategy**

5.1.5.1 The Design/Build Contractor shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner 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, and subject to Owner's prior

approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation using a process developed by the Design/Build Contractor and approved by the Owner before it is used. These and Design/Build Contractor's other bid package strategies (see, for example, Subparagraph 5.1.5.4 below) shall be complementary to those identified in the Guidelines for the Preparation of the Guaranteed Maximum Price Proposal attached hereto as Exhibit E.

- 5.1.5.2 The Design/Build Contractor shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The 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.
- 5.1.5.3 The Design/Build Contractor shall review the Contract 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.
- 5.1.5.4 The Design/Build Contractor shall develop a bid/proposal package strategy in coordination with the Project Team that addresses the entire scope of Work for each phase and stage of the Project. In developing the bid/proposal package strategy, the Design/Build Contractor shall identify all bid/proposal packages on which the Design/Build Contractor intends to submit a self-performance bid/proposal. These and Design/Build Contractor's other bid package strategies (see, for example, Subparagraph 5.1.5.1 above) shall be complementary to those identified in the Guidelines for the Preparation of the Guaranteed Maximum Price Proposal attached hereto as Exhibit E. The bid/proposal package strategy shall be reviewed with the Owner on a regular basis. It may be revised throughout the buyout of the Project further the interests of the Owner and the Project.
- 5.1.5.5 The Design/Build Contractor shall assist the Owner, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and the Owner's insurance provider, and others as they become known.
- 5.1.5.6 The Design/Build Contractor shall 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, and improve upon the target goals were possible.
- 5.1.5.7 The Design/Build Contractor shall advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants. Develop with the Owner a clear understanding of who will assume direct responsibility for the work of such laboratories and consultants, and their compensation.

- 5.1.5.8 The Design/Build Contractor shall review the Contract Documents to ensure that they contain adequate provision 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 if these services involve third parties.
- 5.1.5.9 The Design/Build Contractor shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Make recommendations that minimize adverse effects of labor shortages.
- 5.1.5.10 The Design/Build Contractors shall 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.
- 5.1.5.11 The Design/Build Contractor shall consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture, and equipment, and coordinate with the Owner as may be required to meet the CPM Schedule. Assist Owner in including such activities on the Project CPM Schedule to avoid or mitigate delay in timely completion of the Project.

5.1.6 **Obtaining Bids/Proposals for the Work**

- 5.1.6.1 To the same extent as required of a Construction Manager at Risk under *Texas Education Code* Section 51.782, as amended and as provided herein, Design/Build Contractor shall publicly advertise and solicit competitive lump sum bids/proposals that identify the work packages from Subcontractors for the performance of all major elements of the Work. Such bids/proposals should follow the same approved CSI division format used to develop the previous cost estimates. All prospective bidders/proposers shall be given at least fifteen (15) business days from the date of the initial public advertising in which to submit their bids/proposals. 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. Bid documentation and recommendations shall be submitted in a format that permits the Design/Build Contractor to comply with Tab 11 under Section 6, of the Guidelines for the Preparation of the GMP (see Exhibit E of this Agreement).
- 5.1.6.2 Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Design/Build Contractor shall notify the Owner in advance in writing of the date it will receive the bids/proposals.
- 5.1.6.3 The Design/Build Contractor shall schedule and conduct pre-bid conferences with interested bidders/proposers, first tier Subcontractors, including material suppliers and equipment suppliers, and record minutes of the conferences. Respond in writing to all parties attending, to questions raised in these conferences.

- 5.1.6.4 In the presence of the Owner, the Design/Build Contractor shall open and review all Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team. Based on the selection criteria established by the Project Team and included in the request for proposals, Design/Build Contractor shall recommend to the Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Design/Build Contractor may negotiate the terms of the subcontract with the apparent best value bidder/proposer. All involved in the evaluation process must sign a non-disclosure statement provided by the Owner.
- 5.1.6.5 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Owner. Upon Owner's concurrence in the final terms of the subcontract, Design/Build Contractor shall enter into a written subcontract for the subcontract work and provide a copy to the Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) calendar days after the date of final selection, whichever is later.
- 5.1.6.6 If Owner directs Design/Build Contractor to select a bid/proposal other than the best value one recommended by the Design/Build Contractor based on the established selection criteria, Owner shall compensate Design/Build Contractor by a change in price, time, or Guaranteed Maximum Price, for any additional cost and risk that Design/Build Contractor incurs by reason of Owner's direction.
- 5.1.6.7 The Design/Build Contractor may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Design/Build Contractor must submit a bid/proposal for the self-performance work in the same manner as all other Subcontractors but must submit such bid/proposal directly to the Owner at least 24 hours prior to receiving similar bids from other parties. The Owner will determine whether the Design/Build Contractor'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, Design/Build Contractor must perform in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Design/Build Contractor shall account for self-performance work in the same manner as it does all other subcontract costs. In the event an adjustment is required to the cost of any awarded, self-performed Work, the awarded amount shall be treated as a lump sum amount and any adjustment to said amount must be approved through the change order process identified in the UGC or Special Conditions, if any.
- 5.1.6.8 The Design/Build Contractor shall identify every first tier Subcontractor it intends to use on the Project, including Design/Build Contractor self-performed work, to the Owner in writing at least ten (10) business days before entering into any subcontract. Design/Build Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Design/Build Contractor shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner's written acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.
- 5.1.6.9 If a selected Subcontractor fails to execute a subcontract after being selected in accordance with this Subparagraph 5.1.6 or defaults in the performance of its work, the Design/Build Contractor may, in consultation with the Owner (and subject to Owner's approval as provided below) and without further advertising, fulfill the

subcontract requirements itself or select a replacement Subcontractor to do so. Such decisions will be made in consideration of the exigencies of the situation and to the good of the Project cost and schedule and will be subject to Owner approval.

5.1.7 **Safety**

5.1.7.1 The Design/Build Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Design/Build Contractor's safety program shall comply with all applicable requirements of the UGC, Owner's Specifications, the Occupational Safety and Health Act of 1970, and all other applicable federal, state, and local laws and regulations.

5.1.7.2 The Design/Build Contractor shall provide recommendations and information to Owner 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 Design/Build Contractor shall verify that appropriate safety considerations and provisions are included in the Contract Documents and that the Work envisioned does not include any unnecessary safety risks.

5.1.7.3 The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Design/Build Contractor's safety responsibilities.

5.2 **DESIGN SERVICES**

5.2.1 **General Responsibilities**

5.2.1.1 The Design/Build Contractor shall designate in writing a representative (the "Design/Build Contractor's Designated Representative for Design" or "DBC DR for Design") who is responsible for the day-to-day management of the Design Services. The DBC DR for Design shall be the Owner's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the Owner. The DBC DR for Design shall be authorized to act on behalf of and to bind the Design/Build Contractor in all matters related to Design Services. The DBC DR for Design shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.

5.2.1.2 The Design/Build Contractor shall engage the services of a Project Architect/Engineer and other qualified professionals as required for performance of the Design Services. Design/Build Contractor certifies that the Project Architect/Engineer and all other professional consultants have been or will be selected on the basis of competence and qualifications pursuant to *Texas Education Code* section 51.780(f)(1). The Design/Build Contractor shall not perform any architectural or engineering services directly unless provided by design professionals appropriately licensed in Texas to perform such services. All drawings, specifications, change orders and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas.

- 5.2.1.3 All references to the Design/Build Contractor's obligation to perform Design Services shall also mean the Project Architect/Engineer as required above.
- 5.2.1.4 The Design/Build Contractor shall be solely responsible for all obligations to the Project Architect/Engineer and shall pay for the services of the Project Architect/Engineer and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Project Architect/Engineer and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Architect/Engineer or other design professionals not hired directly by the Owner.
- 5.2.1.5 The Design/Build Contractor shall be responsible for managing the Design Services so as to ensure that the Project, as designed, can be constructed for an amount that is within CCL and will achieve the programmatic requirements set forth in the Contract. The obligation to design the Project so as to achieve the Owner's Design Requirements, including its objectives of scope and cost, shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the CCL or the Owner's Design Requirements during the design phase shall be mutually agreed upon and shall be considered normal to that process.
- 5.2.1.6 The Design/Build Contractor shall submit the names of all proposed consultants for Design Services, including the Project Architect/Engineer and any of its consultants, for approval by the Owner, which approval shall not be unreasonably withheld. The Design/Build Contractor shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such consultant. All such contracts shall provide that the consultants are bound to Design/Build Contractor in the same manner and to the same extent as Design/Build Contractor is bound to Owner with regard to the services to be performed pursuant to such contract.
- 5.2.1.7 The Design Services shall incorporate current technology as appropriate to the stated mission of the institution and the programmed functional activities that is compatible with any existing facility and acceptable to the Owner.
- 5.2.1.8 To the fullest extent as may be required pursuant to Section 271.904 of the Texas Local Government Code (pursuant to Section 2254.0031 of the *Texas Government Code*) and Chapter 130, Texas Civil Practice and Remedies Code, or as otherwise permitted by Applicable Law, all Design Services for the Project (by Project Architect/Engineer and all of its consultants performing professional design services) shall be performed consistent with the professional skill and care ordinarily provided by competent design professionals practicing under the same or similar circumstances and professional licenses and as expeditiously as is prudent considering the ordinary professional skill and care of such competent architect or engineer (the "Standard of Care"). Subject to its Standard of Care, the Design/Build Contractor, and its design personnel, shall perform such services consistent with the orderly progress of the Project and within the time parameters as may be required by this Agreement. Without limiting the foregoing, all Design Services shall be provided in compliance with and in furtherance of the Owner's Design Requirements and any other criteria applicable to the Facility Program (if any) and the needs of the institution.

5.2.1.9 Approval or acceptance of any Design Services by Owner shall not in any way release Design/Build Contractor from any duty, responsibility, or liability for such services, it being understood that Owner is at all times relying upon Design/Build Contractor's skill and knowledge in performing the Design Phase Services.

5.2.1.10 Owner shall have the right to reject any defective Design Services or other defective Work on the Project of which Owner becomes aware and Design/Build Contractor shall promptly correct any such defect at Design/Build Contractor's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by Design/Build Contractor, Design/Build Contractor shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design/Build Contractor refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

5.2.1.11 Owner may elect, at its option, to stage or to "fast-track" construction of the Project in different stages. Such stages may or may not overlap. Design/Build Contractor shall perform Design Services in staged packages as appropriate to each stage of construction which may result in differing schedules and reviews for the completion of each design stage and for each stage of planned construction. The Owner may elect, at its option, to establish a different CCL for each such stage.

5.2.1.12 At each stage of the Design Services, Design/Build Contractor shall provide the following services as appropriate:

- Architectural Services
- Landscape Architectural Services
- Civil Engineering Services
- Structural Engineering Services
- Mechanical Engineering Services
- Electrical Engineering Services
- Fire Protection Engineering Services - Performance Criteria
- Construction Cost Estimating
- Scheduling Services
- Storm Water Pollution Prevention Plan Design Services
- Building Information Modeling ("BIM")

5.2.1.13 The Design/Build Contractor, as part of Basic Services, shall assist with and attend with Owner representatives an open meeting to be held pursuant to *Texas Government Code* Section 2166.403, to verify the economic feasibility of incorporating alternative energy devices for space heating, cooling, water heating, electrical loads, and interior lighting into the building's design and proposed energy system. At a minimum, Design/Build Contractor shall provide an evaluation for the potential of renewable energy applications pursuant to the legislative requirements.

5.2.1.14 The Design/Build Contractor shall comply with the Energy Conservation Design Standard for New State buildings adopted by the State Energy Conservation Office, 34 *Texas Administrative Code*, Part 1, Chapter 19, and provide a Statement of Compliance certifying that the project design complies with the standards.

5.2.1.15 The Design/Build Contractor shall not proceed to any subsequent stage of Design Services until the Owner has authorized Design/Build Contractor to proceed in writing, except at the Design/Build Contractor's sole financial risk. Prior to proceeding to any subsequent stage of Design Services, the Design/Build Contractor shall comply with the requirements in the *Policies and Procedures Manual for Planning and Construction* (see Section 3.6 of the aforementioned manual) and furnish a fully executed Certificate of Compliance in the form attached hereto as Exhibit M (for those stages set out in the form of Certificate) and shall furnish and deliver to the Owner for the Owner's record two (2) sets of the complete documents for the respective stage of design (including all drawings, specifications, product data, and cost estimates) in a format and medium acceptable to the Owner.

5.2.1.16 If the construction cost estimates required under Subparagraph 5.1.3, at any required submittal stage, exceed the stated CCL (including contingencies), the Owner may modify the CCL, accept value engineering recommendations, revise the program, scope or quality, or any combination of these to bring the construction cost within the CCL. The Design/Build Contractor shall then revise the respective construction design documents as may be necessary. Such revision shall be without increase in the Pre-Construction Phase Fee or Design Services Fee under Paragraph 24.2, except as otherwise expressly provided in this Agreement (or the Exhibits attached hereto).

5.2.2 Pre-Design Stage

5.2.2.1 The Design/Build Contractor shall provide a preliminary evaluation of the Owner's Design Criteria and the CCL, each in terms of the other.

5.2.2.2 The Design/Build Contractor shall visit the site to become sufficiently familiar with the existing facilities, systems, and conditions to ensure that the Project, as designed, will functionally interface with the existing conditions as required.

5.2.2.3 The Design/Build Contractor shall review laws applicable to the design and construction of the Project and advise the Owner if any program requirement may cause a violation of such laws.

5.2.2.4 Without limiting Subparagraph 5.2.1.15 above, before proceeding to the Schematic Design Stage, the Design/Build Contractor shall obtain Owner's written approval of the Facility Program (if any provided as part of the Design/Build Contractor services) and the preliminary construction cost estimate and written authorization to proceed.

5.2.3 Schematic Design Stage

5.2.3.1 The Design/Build Contractor shall prepare the Schematic Design Documents and such construction cost estimates in accordance with Subparagraph 5.1.3 and in alignment with the procurement and bid/proposal package strategies required under Subparagraph 5.1.5 above and this Subparagraph 5.2.3 (collectively referred to as the

“Preliminary Schematic Design Approval Package”) and submit them to the Owner for its initial review. Based on the pre-design documents reviewed by the Owner (and approved for proceeding to the next stage) and any adjustments to the Owner’s Design Requirements, the Project CPM Schedule, or CCL authorized by the Owner, the Design/Build Contractor shall develop sufficient alternative approaches to design and construction of the Project and review them with the Owner.

5.2.3.1.1 The Design/Build Contractor shall direct the preparation of such detailed construction cost estimates and reconciliations as required by Subparagraph 5.1.3 to confirm compliance with the CCL and shall furnish such cost estimates to the Owner within the time required in Subparagraph 5.1.3.

5.2.3.1.2 The Design/Build Contractor shall consult with the ODSR and recommend any value engineering adjustments that may be necessary to align the cost estimate and the project budget with the established CCL. The Design/Build Contractor shall revise the Schematic Design Documents as may be required to incorporate value engineering recommendations accepted by the Owner.

5.2.3.1.3 The Design/Build Contractor shall make such revisions in the Schematic Design Documents as required herein and submit such revised Schematic Design Documents and the required cost estimates (collectively referred to as the “Schematic Design Approval Package”) to the Owner for approval to proceed to the Design Development Stage.

5.2.3.2 The Design/Build Contractor shall furnish and deliver to ODSR two (2) sets of the documents in the format and medium as required by Subparagraph 5.2.1.15 and such complete printed sets of the Schematic Design Approval Package as required by the Owner.

5.2.3.3 Without limiting Subparagraph 5.2.1.15 above, before proceeding to the Design Development Stage, the Design/Build Contractor shall submit its Certificate of Compliance in the form attached hereto as Exhibit M and shall obtain ODR’s written authorization to proceed.

5.2.4 Design Development Stage

5.2.4.1 The Design Development documents shall further define, finalize, and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

5.2.4.2 The Design/Build Contractor shall prepare the Design Development Documents and such construction cost estimates in accordance with Subparagraph 5.1.3 and in alignment with the procurement and bid/proposal package strategies required under Subparagraph 5.1.5 above and this Subparagraph 5.2.4 (collectively referred to as the “Preliminary Design Development Approval Package”) and submit them to the ODSR for its initial review. Based on the Schematic Design Documents reviewed by the Owner (and approved for proceeding to the Design Development Stage) and any adjustments to the Owner’s Design Requirements, the Project CPM Schedule, or CCL authorized by the Owner, the Design/Build Contractor shall develop sufficient

alternative approaches to design and construction of the Project and review them with the ODSR.

5.2.4.2.1 The Design/Build Contractor shall direct the preparation of such detailed construction cost estimates and reconciliations as required by Subparagraph 5.1.3 above to confirm compliance with the CCL and shall furnish such cost estimates within the time required in Subparagraph 5.1.3.

5.2.4.2.2 The Design/Build Contractor shall consult with the ODSR and recommend any value engineering adjustments that may be necessary to align the cost estimate and the project budget with the established CCL. The Design/Build Contractor shall revise the Design Development Documents as may be required to incorporate value engineering recommendations accepted by the ODSR.

5.2.4.2.3 The Design/Build Contractor shall make such revisions in the Design Development Documents as required herein and submit such revised Design Development Documents and the required cost estimates (collectively referred to as the "Design Development Submittal" package) to the ODSR first for review and then to the ODR for final approval for submission to the Board and the approval to proceed to the Construction Documents Stage.

5.2.4.3 Except as otherwise provided in the Owner's Supplemental Design and Construction Requirements (if any) attached hereto as Exhibit B, the Design/Build Contractor shall prepare preliminary recommended furniture layouts for all spaces and include such layouts in the Design Development Submittal package where it is deemed important by the ODR and ODSR to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical, and electrical elements.

5.2.4.4 The Design/Build Contractor shall furnish and deliver to ODSR, for the Owner's record, two (2) sets of the complete documents in a format and medium acceptable to the Owner as required by Subparagraph 5.2.1.15 and such complete printed sets of Design Development Approval Package as required by the Owner.

5.2.4.5 The Design/Build Contractor shall prepare presentation materials as described in the Owner's Supplemental Design and Construction Requirements (if any) and/or the Owner's Design Development Submittal Guidelines attached as Exhibit L to this Agreement at completion of Design Development and, if requested, present them at a Board of Regents meeting. Except as may otherwise be required by such Exhibit(s), a draft set of the presentation materials shall be furnished to the ODR and ODSR at least thirty (30) calendar days prior to the date of the scheduled Board meeting. Such presentation materials shall be revised and/or supplemented to meet the requirements of this Agreement and the attached Exhibits, as reasonably required by the ODSR first, and resubmitted to the ODR and ODSR within five (5) business days after receipt of comments from the ODR and ODSR. Once approved by the ODR, such materials shall be furnished in electronic format as may be required by the Owner and in hard copy eight (8) sets.

5.2.4.6 Upon Owner's request, Design/Build Contractor shall assist the Owner with preparation of an application for the Project with the Texas Higher Education

Coordinating Board (“THECB”). Except as otherwise required by the Owner’s Supplemental Design and Construction Requirements (if any) attached hereto as Exhibit B, such assistance shall include (i) the preparation of a listing of the rooms, room type and usage codes, and square footages in the project and (ii) the preparation of project cost information, in accordance with THECB Guidelines.

5.2.4.7 After approval at the Board of Regents Meeting, the Design/Build Contractor may submit a Guaranteed Maximum Price Proposal (“GMP”) within the CCL. In the event the GMP Proposal exceeds the CCL, and if the Owner does not see fit to allot additional funds, the Design/Build Contractor agrees to revise the Construction Documents as may be necessary to bring the GMP within the CCL. If the scope or quality level of the Project has been materially changed at the Owner’s direction or with the Owner’s prior written approval (after having been reasonably advised in writing by the Design/Build Contractor of the potential impact on the Owner’s budget limitations), then the Design/Build Contractor will be compensated as an Additional Service for those changes to the Construction Documents needed to satisfy Owner’s budget limitations.

5.2.4.8 Without limiting Subparagraph 5.2.1.15 above or any other requirement in this Subparagraph 5.2.4, before proceeding into the Construction Document Stage, the Design/Build Contractor shall submit its Certificate of Compliance in the form attached hereto as Exhibit M and shall obtain ODR’s written authorization to proceed.

5.2.5 **Construction Documents Stage**

5.2.5.1 The Construction Documents shall consist of the drawings and specifications that set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the approved CCL.

5.2.5.1.1 The Design/Build Contractor shall prepare a complete list of project close-out and Owner-training requirements contained in the Construction Documents and will display them in matrix form similar to that shown in the Close-Out Procedures Exhibit N, attached hereto. The matrix shall be displayed as part of the front end of the Construction Documents.

5.2.5.2 Based on the Design Development Documents and prior preliminary Construction Documents reviewed by the Owner and approved for further design and any further adjustments to the Project CPM Schedule, the Owner’s Design Requirements, or the CCL as authorized by the Owner, the Design/Build Contractor shall prepare and revise the Construction Documents and such construction cost estimates at such stages in accordance with Subparagraph 5.1.3 and in alignment with the procurement and bid/proposal package strategies required under Subparagraph 5.1.5 above, this Subparagraph 5.2.5, and Subparagraph 5.2.6 below, without increase in the Pre-Construction Phase Fee or Design Services Fee under Paragraph 24.2, and submit them to the Owner at such respective stages for its review.

5.2.5.3 The Construction Documents shall be consistent in all material respects with Design/Build Contractor’s prior design proposals to Owner and with the approved GMP proposal.

- 5.2.5.4 The Design/Build Contractor shall advise the Owner regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.
- 5.2.5.5 The Design/Build Contractor shall assist and advise the Owner in connection with the Owner's responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.
 - 5.2.5.5.1 Without limiting the foregoing, the Design/Build Contractor shall file and obtain approval of the project from the Texas Department of Licensing and Regulations, Architectural Barriers Division, in accordance with Chapter 469, *Texas Government Code*, as amended, and Title III of the Americans with Disability Act ("ADA") of 1990, 42 U.S.C., Section 12181. The fees for these approvals will be paid by the Owner except to the extent that the Design/Build Contractor's Basic Services expressly includes the requirement to secure and pay for such approvals (see the Services Expressly Included in Basic Services and Additional Services Not Included Under Basic Services, Exhibit K).
- 5.2.5.6 The Design/Build Contractor shall furnish and deliver to the Owner the number of complete printed sets of Construction Documents as required.
 - 5.2.5.6.1 Following Owner's approval of the Construction Documents, Design/Build Contractor shall deliver to the Owner Building Information Modeling ("BIM") system copies of the Construction Documents and Adobe Acrobat ("PDF") copies or such other format and media approved by the Owner.
 - 5.2.5.6.2 In accordance with *Texas Education Code* Section 51.780(j), the Design/Build Contractor shall supply a signed and sealed set of complete Construction Documents for the Project to the Owner at final completion of the Project.
- 5.2.5.7 If a GMP is not provided after the Board Meeting as set forth in article 5.2.4.7, the Design/Build Contractor may prepare Construction Documents containing such provisions which will permit it to submit a GMP within the CCL. In the event the GMP Proposal exceeds the CCL, and if the Owner does not see fit to allot additional funds, the Design/Build Contractor agrees to revise the Construction Documents as may be necessary to bring the GMP within the CCL. If the scope or quality level of the Project has been materially changed at the Owner's direction or with the Owner's prior written approval (after having been reasonably advised in writing by the Design/Build Contractor of the potential impact on the Owner's budget limitations), then the Design/Build Contractor will be compensated as an Additional Service for those changes to the Construction Documents needed to satisfy Owner's budget limitations.
 - 5.2.5.7.1 Before proceeding into bidding pursuant to Subparagraph 5.1.6 for establishing the GMP Proposal, the Design/Build Contractor shall obtain the Owner's written authorization to use the set of documents at either Schematic Design, Design Development, or some percentage of completion associated with Construction Documents for such purpose and will reconfirm with the Owner the alignment of the ECC, with regard to that

stage of document development most recently established, and approved CCL.

5.2.5.7.2 The Owner may decide to include alternate bid items in the Construction Documents as a means of adjusting the actual construction cost to the cost limit. If the Owner requests alternates to be designed which by estimate exceed the CCL during design, and those alternates, or parts thereof, are not constructed within the CCL, then the Design/Build Contractor shall be compensated for having prepared these alternate bids items as Additional Design Services. This compensation will be provided whether or not the alternates are actually constructed.

5.2.5.8 Prior to releasing the Construction Documents “for Construction”, the Design/Build Contractor shall provide a document that summarizes all design code requirements and provide written certification that the Construction Documents meet all applicable design codes and the requirements of the local Campus Standards. The Design/Build Contractor shall, as required by Article 22, further certify in writing that no asbestos or lead containing materials have been specified or approved by the Design/Build Contractor for installation into the Project.

5.2.5.9 In addition to the foregoing, prior to releasing the Construction Documents “for Construction”, the Design/Build Contractor shall provide such Certificate of Compliance and furnish such documentation as required under Subparagraph 5.2.1.15.

5.2.6 **Review drawings**

5.2.6.1 The Design/Build Contractor, at its sole expense, shall provide Owner with the required number of design document review sets at each required stage of completion.

5.2.6.2 The Design/Build Contractor shall incorporate into the documents such corrections and amendments as the Owner requests at each stage review, unless the Design/Build Contractor objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design/Build Contractor’s failure to incorporate Owner’s requested corrections and amendments shall be borne by the Design/Build Contractor.

5.2.6.3 The Design/Build Contractor shall identify to Owner in writing anything in Design/Build Contractor’s drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design/Build Contractor (by Owner or any other party) that Design/Build Contractor regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. The Design/Build Contractor shall be solely responsible for the use of such documents or data unless Design/Build Contractor advises Owner in writing that, in its opinion, such documents or data are unsuitable, improper, or inaccurate, and Owner instructs the Design/Build Contractor in writing to proceed in accordance with the documents or data as originally provided.

5.2.6.4 The Design/Build Contractor shall pay all costs for drawings, specifications and other design and construction documents used by the Design/Build Contractor and its

consultants and Subcontractors, and all documents produced for review by the Owner, except for changes generated solely by Owner.

5.2.6.5 If any of the drawings, specifications, and other design and construction documents or other work materials produced or used by Design/Build Contractor pursuant to this Agreement are damaged or destroyed by fire or other casualty, Design/Build Contractor shall prepare and provide Owner with new copies of any such documents or materials, at no additional cost to Owner, unless Design/Build Contractor or Owner has a complete and undamaged set thereof.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

- 6.1 **Services Covered.** The Pre-Construction Services Fee and the Design Services Fee are collectively referred to as the “Pre-Construction Phase Fee”. Such Pre-Construction Phase Fee is the total compensation payable to the Design/Build Contractor for the performance of Pre-Construction Phase Services, except for Additional Services required for the Pre-Construction Phase (Additional Pre-Construction Services and/or Additional Design Services) approved in advance and in writing by the Owner. The Pre-Construction Fee and the Design Services Fee shall each be a lump sum amount as set out in Paragraph 24.2.
- 6.2 **No Increase for Costs and Other Liabilities.** as specifically allowed in Paragraph 6.4, the Design/Build Contractor shall not be entitled to any increase in the Pre-Construction Services Fee or the Design Services Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services, including but not limited to any fees to be paid to Design/Build Contractor’s design professionals (including the Project Architect/Engineer) for Design Services performed or required to be performed under Article 5 (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 Services Fee and Design Services Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; fees and other payments to the Project Architect/Engineer, its consultants and other professional service providers hired by the Design/Build Contractor to perform the Design Services; 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.
- 6.4 **Equitable Adjustment.** If the scope of the Pre-Construction Phase Services (whether Pre-Construction Services or Design Services or both) is changed materially by the Owner, the Pre-Construction Fee and/or the Design Services Fee, as applicable, shall be equitably adjusted through negotiation with the Owner or as otherwise expressly provided by the Contract Documents. Personnel rates for Additional Services under Paragraph 24.6 or the Special Conditions shall be used in computing any equitable adjustment, except as otherwise mutually agreed by the parties. There shall be no adjustments in the Pre-Construction Fee or the Design Services Fee following acceptance of the GMP Proposal.
- 6.5 **Additional Services.** For Additional Pre-Construction Phase Services that are approved in advance and in writing by the Owner, Design/Build Contractor shall be entitled to additional compensation computed as provided in Paragraph 24.6.

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

- 7.1 **GMP Proposal.** When the parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, Design/Build Contractor 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 D and E. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Design/Build Contractor shall not withdraw its GMP Proposal for ninety (90) calendar days following submission to the Owner.
- 7.2 **Coordination.** The Design/Build Contractor shall review development of the GMP Proposal with the Owner on an ongoing basis 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 and assumptions made by the Design/Build Contractor in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Design/Build Contractor’s estimated General Conditions Costs and estimated Costs of the Work organized by trade; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.
- 7.4 **Bid Strategies.** The GMP Proposal shall employ the bid/proposal package strategies required under Subparagraph 5.1.5 and shall allow for all changes and refinements in the drawings and specifications through completion of the Construction Documents, except for material changes in scope.
- 7.5 **Contingency.** The GMP Proposal may include a Design/Build Contractor’s Contingency amount as allowed under Direct Construction Cost.
- 7.6 **Drawings and Specifications.** Included with its GMP Proposal, Design/Build Contractor shall provide 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 in detail 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 GMP. The GMP Proposal and the supporting documents are complementary and, 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 **Design/Build Contractor’s Representation.** In submitting the GMP Proposal, the Design/Build Contractor 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 for their complete operating installation, unless otherwise specifically accepted by the Owner. Upon Owner’s acceptance of the GMP Proposal, the Design/Build Contractor shall not be entitled to any increase in the GMP 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. Any costs that exceed the

GMP shall be borne solely by the Design/Build Contractor without reimbursement by the Owner. Design/Build Contractor is responsible for all design, including incidental designing/detailing as required by the specifications for shop drawing purposes, except for design provided by Owner's separate design consultants, if any.

- 7.9 **Schedule.** Prior to commencement of the Construction Phase Services and concurrently with submission of the GMP Proposal, the Design/Build Contractor shall submit for the Owner's acceptance a schedule for the performance of Construction Phase Services as specified. The Construction Phase CPM Schedule shall include reasonable periods of time for the Owner's review and acceptance of design drawings and submissions and for approval of authorities having jurisdiction over the Project. Upon acceptance of a GMP Proposal by the Owner, the Construction Phase CPM Schedule shall not be modified except for good cause as approved by the Owner at the Owner's sole option and discretion.
- 7.10 **GMP to Incorporate Agreement Terms.** The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.
- 7.11 **Acceptance or Rejection by Owner.** Owner may accept or reject the GMP Proposal or attempt to negotiate its terms with Design/Build Contractor. Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the GMP and the supporting documents, shall become part of the Contract between the Owner and the Design/Build Contractor. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.
- 7.12 **Design/Build Contractor's Responsibilities Following Acceptance of GMP.** Following Owner acceptance of the GMP Proposal, Design/Build Contractor 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 identified in the GMP Proposal. During the Construction Documents stage, the Design/Build Contractor and the Project Architect/Engineer shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues, and all other matters relevant to the establishment of the GMP into the Construction Documents.
- 7.13 **Equitable Adjustment.** The Design/Build Contractor 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 acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.
- 7.14 **Documentation and Reporting Actual Cost of the Work.** The Design/Build Contractor shall document the actual Cost of the Work at buyout as compared to the GMP Proposal and shall report this information to the Owner monthly with Design/Build Contractor's recommendation for selection of a bid/proposal for each subcontracting package. Monthly reports shall be formatted as provided under Tab 11 of the "Guidelines for Preparation of Guaranteed Maximum Price Proposal" Exhibit E.
- 7.15 **Special Events as Part of the Cost of the Work.** The only "special event" that may be included as part of the Cost of the Work shall be the traditional topping out party. The cost of this event may

include only items that will be consumed at the event, must be denoted and approved in the GMP Schedule of Values, and may not exceed the amount shown in the line item for the event. The cost of any other events desired by the Design/Build Contractor that are related to the Project shall be included in the 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 approval of the GMP Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Design/Build Contractor shall not incur any Subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Design/Build Contractor shall perform the following Construction Phase Services.

8.1 General Responsibilities

- 8.1.1 **In General.** The Design/Build Contractor shall construct the Work in accordance with the Contract Documents, including but not limited to the UGC, within the time required by the Project CPM Schedule approved by Owner.
- 8.1.2 **Staffing.** The Design/Build Contractor shall organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.
- 8.1.3 **Designation of Representative.** The Design/Build Contractor shall designate in writing a representative (the “Design/Build Contractor’s Designated Representative for Construction” or “DBC DR for Construction”) who is responsible for the day-to-day management of the Construction Services. The DBC DR for Construction 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 DBC DR for Construction shall be authorized to act on behalf of and bind the Design/Build Contractor in all matters related to Construction Services including, but not limited to, execution of change orders and applications for payment. The DBC DR for Construction shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.
- 8.1.4 **Regular Project Meetings.** The Design/Build Contractor shall attend Owner’s regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality, and changes. At each meeting, the Design/Build Contractor shall report on all agenda items and metrics outlined in Exhibit Q.
- 8.1.5 **Interim Progress Meetings.** In addition to attending Owner’s regularly scheduled Project progress meetings, Design/Build Contractor shall schedule, direct, and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Design/Build Contractor shall record and distribute the minutes of each meeting to each Project Team member within seven (7) business days. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.
- 8.1.6 **Owner-Procured Material and Equipment.** The Design/Build Contractor shall coordinate delivery and installation of Owner-procured material and equipment.

- 8.1.7 **Performance and Payment for the Work.** In accordance with the UGC, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in accordance with the requirements of the Contract Documents.
- 8.1.8 **Permits and Approvals.** The Design/Build Contractor shall obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Project Architect/Engineer in obtaining all approvals required from authorities having jurisdiction over the Project.
- 8.1.9 **Coordination of the Work.** The Design/Build Contractor shall coordinate, monitor, and inspect the work of Subcontractors to ensure conformance with the Contract Documents.
- 8.1.10 **Means and Methods.** The Design/Build Contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. The Design/Build Contractor shall keep the Owner informed of the progress and quality of the Work.
- 8.1.11 **Correction of Work.** Design/Build Contractor shall promptly correct any defective Work at Design/Build Contractor's sole expense, unless the Owner specifically agrees to accept the Work in writing.
- 8.1.12 **Warranties and Guarantees.** The Design/Build Contractor shall warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Contract Documents. The Design/Build Contractor shall be responsible for correcting Work that does not comply with the Contract Documents at its sole expense without cost to the Owner.
- 8.1.13 **Record Documents.** In accordance with the UGC regarding Record Documents, the Close-Out Procedures Exhibit to this Agreement, and such other close-out requirements in the Contract Documents, the Design/Build Contractor shall maintain and deliver the required 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. Design/Build Contractor shall revise and update such "As-Built" drawings and other Record Documents to correct such incompleteness or non-compliance identified by the Project Architect/Engineer pursuant to Subparagraph 8.2.18. Two sets of the corrected and complete Record Documents, including the "As-Built" drawings, shall be furnished to the Owner in Adobe Acrobat (PDF) format or such other format and medium acceptable to the Owner.
- 8.2 **Construction Administration**
- 8.2.1 The Design/Build Contractor, through the Project Architect/Engineer, shall furnish the following Construction Administration Services during the Construction Phase. Fees for these services are included in the Design/Build Contractor's Construction Phase Fee.
- 8.2.2 The Project Architect/Engineer shall assist in the administration of construction as set forth herein and in the Contract Documents.

- 8.2.3 The Project Architect/Engineer, and its related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement, but not less than monthly, to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Project Architect/Engineer shall observe the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in the Work.
- 8.2.4 In addition to site visits for general inspection and observation, the Project Architect/Engineer shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities, and for formal inspections of the Work. The Project Architect/Engineer shall provide written reports of all site visits to the Owner and the Design-Build Contractor within three (3) business days.
- 8.2.5 The Design/Build Contractor shall establish and maintain a numbering and tracking system for all project records, including changes, requests for information, submittals, and supplementary instructions, and shall provide updated records at each Owner's meeting and when requested.
- 8.2.6 The Design/Build Contractor shall administer all regular progress and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within seven business days. The Project Architect/Engineer shall attend the Design/Build Contractor's regularly scheduled planning meetings.
- 8.2.7 The Design/Build Contractor shall prepare an agenda for and conduct conferences for attendance by representatives of the Design-Build Contractor, major Subcontractors, the Project Architect/Engineer and Owner, and prepare and distribute minutes of the meetings and a construction status report within seven business days.
- 8.2.8 The Project Architect/Engineer's certification of Design/Build Contractor's Application for Payment shall constitute a representation by the Project Architect/Engineer to the Owner, based on the Project Architect/Engineer's observations at the site, as provided in this Agreement and on the data comprising the Design/Build Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Project Architect/Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. However, the certification of a Design/Build Contractor's Application for Payment shall not be a representation that the Project Architect/Engineer has made any examination to ascertain how and for what purpose the Design/Build Contractor has used the monies paid on account of the Contract Sum.
- 8.2.9 The Project Architect/Engineer, with the approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Architect/Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness upon written request of either the Owner or the Design/Build Contractor, and shall render written recommendations to the Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 8.2.10 The Project Architect/Engineer shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Architect/Engineer's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Project Architect/Engineer's

interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents.

- 8.2.11 The Project Architect/Engineer shall review and approve or take other appropriate action upon the Design/Build Contractor's submittals such as Shop drawings, Product Data, and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents and shall respond to Design/Build Contractor's inquiries and questions and provide such supplemental information as appropriate. One (1) copy of each submittal, shop drawing, product data, etc., shall be provided to the Owner.
- 8.2.12 The Project Architect/Engineer shall provide assistance to the Owner in the review of the Design/Build Contractor's requests for change orders and pricing thereof.
- 8.2.13 The Project Architect/Engineer shall prepare change orders for the Owner's approval and execution in accordance with the Contract Documents, and shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. In conjunction with each change proposal, the Project Architect/Engineer shall review the cost and time estimate and recommend to the Owner whether the proposal is appropriate and consistent with any pricing requirements, conditions, or limitations as set forth in the Contract Documents (including the Special Conditions). When estimated individual cost change proposals are greater than Seventy-Five Thousand Dollars (\$75,000), the Project Architect/Engineer shall prepare an independent cost and time estimate for comparison with the Design/Build Contractor's proposal. R. S. Means Cost Resources shall be the basis for all such change order estimates. The Project Architect/Engineer shall prepare revised Contract drawings, where appropriate, to illustrate and document the work required by the Change.
- 8.2.14 All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, BIM. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.
- 8.2.15 The Project Architect/Engineer shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Pre-Final Inspections to determine the Dates of Substantial Completion, and Final Acceptance. In association with each observation, the Project Architect/Engineer and its consultants shall prepare a list of items which the Project Architect/Engineer and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official list of deficiencies ("Punch List") to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all Punch List items.
- 8.2.16 The Project Architect/Engineer shall participate in the Owner's final walk thru inspection one year after Final Completion.

- 8.2.17 The Project Architect/Engineer shall review, for conformance with the Contract Documents, Design/Build Contractor's submission of guarantees and warranties.
- 8.2.18 The Project Architect/Engineer shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review final as-built documents for completeness and compliance with Contract requirements.
- 8.2.19 The Project Architect/Engineer shall review the "As-Built" Drawings and other Record Documents furnished by the Design/Build Contractor pursuant to Subparagraph 8.1.13 for completeness and compliance with the requirements of the Contract Documents and shall notify the Owner in writing of any incompleteness or non-compliance discovered by the Project Architect/Engineer. The Project Architect/Engineer shall prepare, based on the complete and compliant "As-Built" Drawings and other Record Documents, and furnish to the Owner two sets of Record Drawings in Adobe Acrobat (PDF) format or such other format and medium acceptable to the Owner.
- 8.2.20 The Project Architect/Engineer shall prepare and administer the construction Punch List until all Punch List items have been resolved to the Owner's satisfaction.
- 8.2.21 The Project Architect/Engineer shall review Design/Build Contractor's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Design/Build Contractor for conformance with the requirements of the Contract Documents.

ARTICLE 9 OWNER'S RESPONSIBILITIES

- 9.1 **Criteria Package.** The Owner will provide the Design Criteria Package for the Project pursuant to *Texas Education Code* section 51.780(a)(3).
- 9.2 **Preliminary Project Cost and Schedule.** The Owner will provide a preliminary project budget and Project Schedule for the Project. The budget will include the CCL, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner. The Project Schedule sets forth the Owner's plan for milestone dates and completion of the Project.
- 9.3 **Designation of ODR.** The Owner will designate a representative (the "Owner's Designated Representative" or "ODR") who is authorized to act in the Owner's behalf with respect to the Project. Without limiting the foregoing, the Owner's Designated Representative is authorized to administer this Contract on behalf of the Owner, including final determination of fees and costs earned by the Design/Build Contractor and equitable back charges against the Design/Build Contractor, if any. The Owner's Designated Representative 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, bilateral construction contract change order proposals less than Seventy-Five Thousand Dollars (\$75,000) may be authorized by the Owner's Designated Site Representative. In all matters, Design/Build Contractor shall act only upon instructions from ODR unless otherwise specifically notified to the contrary in writing. Also see UGC Article 3.1.2.

- 9.4 **Designation of ODSR.** The Owner will identify in writing a person as its “Owner Designated Site Representative” or “ODSR” who will be authorized to take all actions and render all decisions necessary to facilitate a fast, efficient and safe project development on the construction site, subject to such limitations as stated herein or in any written notice to the Design/Build Contractor from Owner or ODR. The ODSR will serve as the single point of contact for the Design/Build Contractor on matters concerning the site, use of the site, and integration of the construction activities into the Component’s 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 Design/Build Contractor, 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 Construction Phase Applications for Payment except the final. The ODSR will not have authority to negotiate project scope, cost, time or Contract terms and conditions issues with the Design/Build Contractor, but will be authorized to direct the start of Design/Build Contractor 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 bi-lateral construction change order proposal that does not increase the GMP and does not exceed Seventy-Five Thousand Dollars (\$75,000) (but not a unilateral construction change order of any amount).
- 9.5 **Owner’s Examination of Documents.** The Owner shall examine the documents submitted by the Design/Build Contractor and shall render decisions pertaining thereto.
- 9.6 **Surveys.** The Owner, at Owner’s cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, hazardous materials surveys, laboratory testing, environmental or other special consultants to develop such additional information as may be necessary for the design of the project except to the extent that the Design Build Contractor’s Basic Services expressly includes the requirement to secure or furnish such services (see the Additional Services and Services Expressly Included in Basic Services Exhibit). The Design/Build Contractor shall provide the Owner with parameters for inclusion in the Owner’s instructions to such providers.
- 9.7 **Testing.** The Owner shall arrange and pay for materials, structural, mechanical, chemical, and other laboratory tests as specified to be performed by the Owner in the Contract Documents.
- 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 **Owner’s Examination of Design Documents.** The Owner shall examine the design documents submitted by the Design/Build Contractor and provide comments concerning corrections or amendments to such documents in writing to the Design/Build Contractor. The Owner may obtain independent review of the design documents by Owner’s Design Consultant(s). The Owner may require the Design/Build Contractor to halt production during design review.
- 9.10 **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 Design/Build Contractor’s services and of the Work.
- 9.11 **Inspectors.** The Owner may designate one or more of its own construction inspectors who shall be given access to the Work as requested or needed. The provision of such inspectors by Owner

shall not reduce or lessen in any respect Design/Build Contractor's responsibilities for the Work. Design/Build Contractor shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by Design/Build Contractor, and for constructing the Project in accordance with the Contract Documents.

- 9.12 **Rejection of Work.** Owner shall have the right to reject any defective Work on the Project. Should Design/Build Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Design/Build Contractor on demand.

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

- 10.1 **Owner's Authority to Use Documents.** Design drawings, specifications, and BIM Models, and other documents furnished by the Design/Build Contractor, Project Architect/Engineer, their design consultants or sub-consultants are instruments of service and shall remain their property whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies of the drawings, specifications, and BIM Models, and other documents for information and reference in connection with the Owner's use and occupancy of the Project. Design/Build Contractor and Project Architect/Engineer hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use the drawings, specifications, and BIM Models, and other documents and instruments of service furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose regardless of whether their services for the Project are completed, modified, or terminated. This license shall survive the termination of this Agreement. If this Agreement is terminated, Design/Build Contractor and Project Architect/Engineer hereby expressly consent to the employment by Owner of a substitute architect/engineer to complete the Design Services under this Agreement, with the substitute architect/engineer having all of the rights and privileges of the original Project Architect/Engineer.
- 10.2 **Use of Documents to Meet Regulatory Requirements.** Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design/Build Contractor's or Project Architect/Engineer's rights.

ARTICLE 11 TIME

- 11.1 **Essential Element.** TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THIS AGREEMENT.
- 11.2 **Timeliness of Performance.** Unless otherwise approved, the Design/Build Contractor shall perform its obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work and any applicable standard of care. Notwithstanding the foregoing, the Design/Build Contractor shall perform its obligations consistent with any Contract Time Requirements set forth in the Contract Documents.
- 11.3 **CPM Schedule.** Prior to commencement of the Construction Phase Services and concurrently with submission of the GMP Proposal, the Design/Build Contractor shall submit an up-to-date CPM Schedule for the performance of Construction Phase Services as specified, that is consistent with and meets the Contract Time Requirements and the Owner's Project Schedule

requirements and provides for the expeditious and practicable execution of the Work. The CPM Schedule shall include reasonable periods of time for the Owner's and Project Architect/Engineer's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project. When the Design/Build Contractor's initial CPM Schedule is approved by the ODR in connection with the GMP approval process, this updated schedule will become a part of the GMP Agreement that will be incorporated into this Agreement and shall become the baseline for evaluating performance of the Design/Build Contractor. The Design/Build Contractor shall monitor the progress of the Work in relation to the CPM Schedule and the Contract Time Requirements and the Owner's Project Schedule requirements and shall provide the Owner with at least monthly updates and status reports as required by the Contract Documents. The initial CPM Schedule shall be revised in accordance with the Work Progress Schedule requirements of the UGC at appropriate intervals as required by the conditions of the Work and Project to reflect the current status of completed or in-progress activities, with thorough updates to such Schedule prepared at least monthly and furnished to Owner upon request. The time periods established by the Contract Time Requirements and the Owner's Project Schedule requirements shall not be changed without the written consent from the Owner. Whenever significant changes to the Project approved by the Owner do occur, such as added or deleted activities, must be reflected on an updated CPM Schedule to be submitted to Owner. However, any modifications to the CPM Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with any scheduling requirements set forth in the Contract Documents or as otherwise approved by the Owner.

ARTICLE 12 PAYMENTS

12.1 General Requirements

- 12.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Design/Build Contractor's overhead and profit, shall not exceed the unpaid balance of the GMP, less retainage on Work previously completed.
- 12.1.2 Pre-Construction Phase 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 to the Reimbursable Expenses described Paragraph 24.5.
- 12.1.3 Retainage as specified in the UGC will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work and the Design/Build Contractor's Construction Phase Fee. Notwithstanding the foregoing, retainage will not be withheld from payments for General Conditions, Pre-Construction Phase Services (including Pre-Construction Services Fee and Design Fee), Construction Administration Services (the Construction Administration Services Fee), or approved Additional Services. Pursuant to Section 2252.032(d) of the *Texas Government Code*,

(as enacted in HB 692 in the 87th Regular Legislative Session [2021]), the Design/Build Contractor may not withhold from a Subcontractor a greater percentage of retainage than the percentage that may be withheld from the Design/Build Contractor by the Owner under this Agreement.

- 12.1.4 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Design/Build Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.
- 12.1.5 This Agreement is subject to the assessment of liquidated damages against Design/Build Contractor. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any monies due Design/Build Contractor pending complete resolution of the underlying issues. See Section 25.2 and the Special Conditions, if any, for liquidated damages amounts.
- 12.1.6 Owner shall have the right to withhold from payments due Design/Build Contractor such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design/Build Contractor or any Subcontractor or failure of Design/Build Contractor or any Subcontractor to perform their obligations under this Agreement.
- 12.1.7 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment, to Design/Build Contractor under any of the following circumstances:
- 12.1.7.1 Design/Build Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;
 - 12.1.7.2 The payment request includes services that are not performed in accordance with the Contract Documents; provided, however, Owner shall pay for those services performed in accordance with the Contract Documents;
 - 12.1.7.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;
 - 12.1.7.4 Design/Build Contractor is in violation of Applicable Law, to include the Prevailing Wage requirements, or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Design/Build Contractor;
 - 12.1.7.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Contract Documents;

12.1.7.6 Design/Build Contractor has persistently failed to complete the Work in accordance with the CPM Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the contract time;

12.1.7.7 Design/Build Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

12.1.7.8 Design/Build Contractor fails to obtain, maintain, or renew insurance coverage as required by the Agreement.

12.1.8 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of Design/Build Contractor from any of its obligations or liabilities with respect to the Work.

12.1.9 Owner shall have the right to verify and audit the details of Design/Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Design/Build Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design/Build Contractor's employees; (4) visiting the Project site; and (5) any other reasonable action. Design/Build Contractor's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board and organized by each Application for Payment period. Design/Build Contractor should anticipate that Owner will audit the entire Agreement record before making final payment under the Agreement. This provision shall survive any termination of the Agreement.

12.2 **Pre-Construction Phase Payments**

12.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the services actually performed in the month for which the Application for Payment is being submitted, but in such amounts not to exceed the percentage completion of the Design/Build Contractor's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the schedule in Article 24, Compensation.

12.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner and shall include all required attachments identifying payments to Project Architect/Engineer, Historically Underutilized Businesses, and to all Subcontractors.

12.3 **Construction Phase Payments**

12.3.1 Payments for Construction Phase Services shall be made as provided for in the UGC. 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 Design/Build Contractor'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 application by the Owner and its return to the Design/Build Contractor.

- 12.3.1.1 Within sixty (60) days after the GMP Proposal is approved and accepted by the Owner, the Design/Build Contractor shall submit for Owner's approval a submittal schedule that provides for the purchase of all materials necessary for the Work of the Construction Phase, as shown on the approved construction CPM Schedule. In the event that exigent circumstances prevent the Design/Build Contractor from complying with this requirement, Design/Build Contractor shall request the ODSR's written approval, prior to initial submission of the submittal schedule, for a variance from this requirement, and shall comply with the terms of any such variance.
- 12.3.2 The Design/Build Contractor's Construction Phase Fee and Construction Administration Fee shall each be shown as separate line items on the Schedule of Values. Payment of the Design/Build Contractor's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.
- 12.3.3 For General Conditions Costs, Design/Build Contractor'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, subject to Subparagraph 7.14.1, and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.
- 12.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.
- 12.3.5 Design/Build Contractor's Request for 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 that, to the best of Design/Build Contractor information, knowledge and belief, the release includes and covers all materials and services over which Design/Build Contractor 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, Design/Build Contractor 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, Design/Build Contractor shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court 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 Design/Build Contractor 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 Design/Build Contractor an aggregate amount for Construction Phase Services that exceeds the GMP or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP less previous payments to Design/Build Contractor. The total amount of all Construction Phase payments to the Design/Build Contractor shall not exceed the actual verified Direct Construction Cost for the Project plus the Design/Build Contractor's Construction Phase Fee.
- 12.3.8 The acceptance by Design/Build Contractor or Design/Build Contractor's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Design/Build Contractor, 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 Agreement except for those previously made in writing and identified by Design/Build Contractor 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 Design/Build Contractor actually and necessarily incurs constructing the Work in compliance with the Contract Documents. Direct Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fee, the Design Services Fee, the Construction Phase Fee, or the Construction Administration Services Fee, unless specifically noted. References in the UGC to adjustments in "cost" or "costs" mean the Direct Construction Cost.

13.1 General Conditions Costs

- 13.1.1 Design/Build Contractor is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project plus thirty (30) calendar days. Design/Build Contractor is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner.
- 13.1.2 Allowable General Conditions items are identified below and further detailed in the attached "Allowable General Conditions Line Items" Exhibit C. These items shall be included in the General Conditions cost amount shown as a line item in the GMP Proposal and as detailed on the schedule of values. Items not specifically included below or in the exhibit will not be allowed as a General Condition costs.

- 13.1.2.1 Personnel Costs. The actual Worker Wage Rate for Design/Build Contractor's hourly employees and the Monthly Salary Rate of Design/Build Contractor'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. 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 Design/Build Contractor for services performed for the Project.
- 13.1.2.2 Costs of long-distance telephone calls, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Design/Build Contractor's jobsite office if incurred at the Project site and directly and solely in support of the Work.
- 13.1.2.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Design/Build Contractor, 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 cost shall be based on actual cost of the item less its fair market salvage value.
- 13.1.2.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Design/Build Contractor, 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 Design/Build Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by EquipmentWatch, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.
- 13.1.2.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Design/Build Contractor 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.
- 13.1.2.6 Permit and inspection fees that are not subject to exemption. Permit and inspection fees paid by Design/Build Contractor where Owner is exempt will not be reimbursed by Owner.
- 13.1.2.7 Premiums for insurance and bonds to the extent directly attributable to this Project. Notwithstanding the foregoing, premiums for subcontractor payment and performance bonds required by the Design/Build Contractor shall not be reimbursable

as Direct Construction Costs except as may otherwise be provided in the Special Conditions.

13.1.2.7.1 If Design/Build Contractor elects to purchase Subcontractor Default insurance (“SDI”) to cover the default of its Subcontractors in lieu of performance and payment bonds, such SDI cost shall be reimbursable as Direct Construction Cost (Cost of the Work allocated to the respective Subcontractors covered by the SDI) at the rate(s) set forth below.

One percent (1.0%) of the value of the subcontracts in excess of One Hundred Thousand Dollars (\$100,000), for subcontractors who are furnishing only labor or both labor and materials and who are covered by (enrolled in) such SDI program. No other costs or expenses incurred by Design/Build Contractor relating to SDI shall be reimbursable as Direct Construction Cost.

Premium rates for SDI are fixed for the duration of the Work and are not subject to change or audit.

Note: SDI will not be reimbursable as a general category or line item under General Conditions Costs but must be included and identified in the Cost of the Work for the respective Subcontractors covered by the SDI

13.1.2.8 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**

13.2.1 Design/Build Contractor 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. Design/Build Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner’s written authorization.

13.2.2 Cost of the Work includes the following:

13.2.2.1 Costs of materials and equipment purchased directly by the Design/Build Contractor and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the UGC and Special Conditions, if any.

13.2.2.2 Costs of site debris removal and disposal in accordance with all Applicable Laws and regulations if not otherwise included in General Conditions.

13.2.2.3 Payments made to Subcontractors and their Sub-subcontractors, including vendors or suppliers, by Design/Build Contractor for the subcontract work in accordance with the Contract Documents and the requirements of the subcontracts with the Subcontractors, vendors, or suppliers.

13.2.2.4 Payments earned by Design/Build Contractor for self-performed subcontract work, other than General Conditions work, in accordance with the Contract Documents and the terms of this Agreement and approved by the Owner.

13.2.2.5 Testing fees pursuant to the UGC.

13.2.2.6 Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.

13.3 **Design/Build Contractor's Contingency**

13.3.1 The GMP Proposal may include a Design/Build Contractor's 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 Design/Build Contractor's Contingency shall be as set forth in the Special Conditions, if any, or as negotiated between the parties and 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 Design/Build Contractor'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 Design/Build Contractor's Contingency, the Design/Build Contractor shall provide detailed documentation of the scope of work affected and the bases for any increases in costs resulting in the need to use Design/Build Contractor's Contingency funds.

13.3.3 The Design/Build Contractor's Contingency is specifically not to be used for Contractor rework, cost increases caused by lack of coordination or communication with the Project Architect/Engineer or trade Subcontractors, or to correct errors or omissions in the Construction Documents.

13.3.4 As the Construction Documents are finalized and the buyout of the Work progresses, the Design/Build Contractor's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Except as otherwise agreed in writing by the ODR, buyout of the Work shall be completed within the first twenty percent (20%) of the construction duration for each respective stage of construction. Should savings from buyout occur after the period required for completion of buyout, such savings, and related reductions to the Design/Build Contractor's Contingency amount, will be handled in accordance with the provisions of Article 15.

13.3.5 Any balance in the Design/Build Contractor's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

ARTICLE 14 CONSTRUCTION PHASE FEE

The Design/Build Contractor's Construction Phase Fee is the maximum amount payable to the Design/Build Contractor 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 the Agreement. References in the

UGC to Design/Build Contractor's "overhead" and "profit" mean the Design/Build Contractor's Construction Phase Fee. Except as may otherwise be provided in the Special Conditions, the Construction Phase Fee includes, but is not limited to, the following items that are not separately reimbursable Direct Construction Costs.

- 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 Design/Build Contractor.
- 14.2 **Salaries.** Salaries of Design/Build Contractor'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 Design/Build Contractor's personnel; and travel, per diem and subsistence expense of Design/Build Contractor, its officers or employees except as specifically allowed as General Conditions costs.
- 14.4 **Subcontractor Default Insurance and Surety Bonds.** The costs of a subcontractor default insurance program, except for those costs expressly reimbursable as Direct Construction Cost under Article 13, and cost associated with payment and performance bonds obtained from Subcontractors (including premium costs) or the Special Conditions, shall be included in the Construction Phase Fee.
- 14.5 **Construction Administration.** All costs associated with Construction Administration Services including those provided by the Project Architect/Engineer or other consultants shall only be reimbursable as the separate Construction Administration Services Fee.
- 14.6 **Financial Costs.** Any financial costs incurred by the Design/Build Contractor 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.
- 14.7 **Professional Fees.** Any legal, accounting, professional or other similar costs incurred by the Design/Build Contractor, 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.
- 14.8 **Taxes.** Any Federal and/or State income and franchise taxes paid by Design/Build Contractor. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Design/Build Contractor.
- 14.9 **Damages and Related Costs.** Any cost arising out of a breach of this Contract or the fault, failure or negligence of Design/Build Contractor, 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 Design/Build Contractor'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.

- 14.10 **Insurance Deductibles.** The cost of any and all insurance deductibles payable by the Design/Build Contractor and costs due to the failure of Design/Build Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- 14.11 **Costs in Excess of GMP.** Any and all costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
- 14.12 **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 Design/Build Contractor's Contingency is less than the amount established for each of those categories in the originally approved GMP Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. When buyout of the Project is at least eighty five percent (85%) complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.
- 15.2 **Owner's Special Cash Allowances.** Items to be provided for through Owner's Special Cash Allowances ("Allowances") shall be clearly identified in the Contract Documents and the GMP proposal. The Cost of the Work included in the Allowances shall be determined in accordance with the UGC or as otherwise agreed in writing by the parties. Any claim by the Design/Build Contractor for an adjustment to an Allowance amount included in the GMP, based on the cost of Allowance work, shall be made within a reasonable time after the issuance of the Construction Documents for the Allowance items. The Design/Build Contractor 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 Design/Build Contractor. Owner shall be entitled to retain one hundred percent (100%) of the balance of any unused Allowance amount.
- 15.3 **Items Permitted to be Deducted from Pay Applications.** 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 Design/Build Contractor:
 - 15.3.1 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, Design/Build Contractor 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 Design/Build Contractor 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.
 - 15.3.2 Discounts earned by the Design/Build Contractor through advance or prompt payments funded by the Owner. The Design/Build Contractor shall obtain all possible trade and time discounts on bills for material furnished and shall pay bills within the highest discount periods. The Design/Build Contractor shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

- 15.3.3 Rebates, discounts, or commissions obtained by the Design/Build Contractor from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance, and sales taxes.
- 15.3.4 Deposits made by Owner and forfeited due to the fault of the Design/Build Contractor.
- 15.3.5 Balances remaining on any Allowances, the Design/Build Contractor's Contingency, or any other identified contract savings.
- 15.4 **Use of Savings.** Owner shall be entitled to recover any savings realized between the GMP and the buyout price for subcontracting work, provided however, that Design/Build Contractor may use such savings to offset other buyout packages that exceed the amounts identified in the initial GMP, so long as the total Cost of Work proposed in the GMP does not increase.
- 15.5 **Savings Identified by Audit.** Owner shall be entitled to recognize and recover one hundred percent (100%) of any savings identified by cost review or audit at any time, before or after Final Payment.

ARTICLE 16 PRE-EXISTING CONDITIONS; DESIGN ERRORS AND OMMISIONS

- 16.1 **Existing Improvements and Conditions.** The Design/Build Contractor 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 Design/Build Contractor obligation under this Agreement. Design/Build Contractor's investigation and understanding of these conditions is instrumental in preparing its GMP Proposal for the Work. Design/Build Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time Requirements, Pre-Construction Services Fee, the Contract Sum for Design Phase Services, or Construction Phase Services arising from Project conditions that Design/Build Contractor discovered or, in the exercise of reasonable care, using Ordinary Care as defined in the UGC, should have discovered in Design/Build Contractor's obligatory investigation.
- 16.2 **Design Errors or Omissions.** Before proceeding with the Work, the Design/Build Contractor shall review the drawings, specifications and other Contract Documents and notify the Owner of any errors, omissions, or discrepancies in the documents of which it is aware. Design/Build Contractor is responsible for discovering and correcting any error, omission, conflict, inconsistency, or lack of clarity, in the Contract Documents prepared by Design/Build Contractor or its Project Architect/Engineer. Design/Build Contractor shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

ARTICLE 17 BONDS AND INSURANCE

- 17.1 **Security Bond.** Upon execution of this Agreement, Design/Build Contractor shall provide a security bond on the form provided by the Owner (see Exhibit P) in the amount of five percent (5%) of the anticipated GMP set out in Paragraph 24.1.2 and in compliance with Section 51.780(k) of the *Texas Education Code*. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

- 17.2 **Payment and Performance Bonds.** Upon acceptance by the Owner of a GMP Proposal, Design/Build Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the attached Exhibit G to this Agreement. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all GMPs in effect.
- 17.3 **Design/Build Contractor Furnished Insurance.** Design/Build Contractor shall not commence any phase of the work under the Agreement until it has obtained all required insurance for that phase and until evidence of the required insurance has been reviewed and accepted by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Design/Build Contractor. The following insurance coverage is required in the phases of services under this Contract:
- 17.3.1 Pre-Construction Phase: Design/Build Contractor shall secure and maintain Professional Liability, Workers' Compensation, Employer's Liability, Comprehensive General Liability, and Comprehensive Automobile Liability in the amounts as set forth in this Article 17, the UGC, or as otherwise provided in the Special Conditions, if any.
- 17.3.2 Construction Phase: Design/Build Contractor shall secure and maintain the coverages set forth in 17.2, as well as Builder's Risk and Owner's Protective Liability as may be required by the Special Conditions, if any. For Builder's Risk coverage furnished by the Design/Build Contractor, Builder's risk limits shall be adjusted continuously each time the cost of construction work is changed under this Agreement so that the total amount of work under the contract is covered at all times.
- 17.3.3 Design/Build Contractor 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 **Professional Liability Insurance.** The Design/Build Contractor shall furnish or cause to be furnished professional liability and errors and omissions insurance covering the design services provided under this Agreement, as is acceptable to and approved by the Owner, and as required in this Article 17, or the UGC, and as otherwise provided in the Special Conditions. The fees for such insurance will be at the expense of the Design/Build Contractor. The Design/Build Contractor shall cause such insurance to be maintained throughout the course of the Work and for a minimum of two (2) years beyond the final Project completion date as accepted by the Owner. Certificate(s) of Insurance indicating the expiration date and representing the existence of the insurance coverages is required prior to commencement or continuation of performance of the services under this Agreement. No policy providing such insurance shall be cancelled without thirty (30) calendar days prior written notice to the Owner. If Design/Build Contractor is performing the Design Services, then the professional liability insurance shall be in Design/Build Contractor's name and shall include a Design/Build endorsement in form acceptable to Owner. If Design/Build Contractor is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for the Project, and Design/Build Contractor shall also provide a Contractor's Errors and Omissions policy naming it as the insured. If Design/Build Contractor is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.
- 17.5 **Insurance to be Kept in Effect.** The Design/Build Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement

or as required in the Agreement. If the Design/Build Contractor fails to obtain, maintain, or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Design/Build Contractor.

- 17.6 **Owner's Right to Make Adjustments.** The Owner reserves the right to review the insurance requirements set forth in this Article and the Special Conditions during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Design/Build Contractor.
- 17.7 **Design/Build Contractor to Provide Copies of Policies.** The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Design/Build Contractor, and not covered by insurance, shall be paid by the Design/Build Contractor.
- 17.8 **Cost of Additional Coverage to be Borne by Design/Build Contractor.** Except as otherwise provided in the Special Conditions, the cost of premiums for any additional insurance coverage, subcontractor default insurance programs, or subcontractor payment and performance bonds desired by the Design/Build Contractor, in excess of that required by this Agreement, shall be borne solely by the Design/Build Contractor out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

ARTICLE 18 DISPUTE RESOLUTION

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

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

- 19.1 **Termination for Cause during Pre-Construction Phase.** This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) calendar days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such fifteen (15) calendar day period.
- 19.2 **Termination for Convenience by Owner.** This Agreement may be terminated by the Owner for its convenience (at its sole discretion and that is not the fault of the Design/Build Contractor) at any time during the Pre-Construction Phase or Construction Phase, consistent with Article 14 of the UGC, upon at least five (5) business days written notice to the Design/Build Contractor in the event that the Project is to be temporarily or permanently abandoned or that the parties are unable or unwilling to agree on a GMP Proposal.
- 19.3 **Recovery upon Termination (other than for fault of the Design/Build Contractor).** In the event of termination that is not the fault of the Design/Build Contractor, the Design/Build Contractor shall be entitled to compensation for all services performed to the termination date together with Reimbursable Expenses then due provided, however, Design/Build Contractor has delivered to Owner such

statements, accounts, reports, and other materials as required below together with all reports, documents, and other materials prepared by or through the Design/Build Contractor (including but not limited to the Project Architect/Engineer) prior to termination. Upon such payment, Owner shall have no further obligation to the Design/Build Contractor.

- 19.4 **No Release of Liability.** Termination of this Agreement shall not relieve Design/Build Contractor or any of its employees, Subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Design/Build Contractor. In the event of a termination, Design/Build Contractor hereby consents to employment by Owner of a substitute Design/Build Contractor to complete the services under this Agreement, with the substitute Design/Build Contractor having all rights and privileges of the original Design/Build Contractor of the Project.
- 19.5 **Rights to Use Documents, Ideas, and Designs.** As of the date of any termination of this Agreement, Design/Build Contractor shall furnish to Owner all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by Design/Build Contractor in connection with Design/Build Contractor's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.
- 19.6 **Suspension or Abandonment.** If the Project is suspended or abandoned in whole or in part for more than three (3) months, the Design/Build Contractor shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with reimbursable expenses then due. If the Project is resumed after being suspended for more than three (3) months, the Design/Build Contractor's compensation for Pre-Construction Phase Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.
- 19.7 **Other Grounds of Suspension or Termination.** Except as otherwise set forth herein and in any Special Conditions, the UGC governs any termination or suspension during the Construction Services Phase of the Project.

ARTICLE 20 INDEMNITY

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

ARTICLE 21 SPECIAL WARRANTIES

- 21.1 **Reliance of Owner.** Notwithstanding anything to the contrary contained in this Agreement, Owner and Design/Build Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Design/Build Contractor's represented expertise and ability to provide design/build services. Design/Build Contractor 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 procedures.
- 21.2 **Standard of Care.** The Design/Build Contractor represents and warrants that it will perform its services in accordance with the usual and customary standards of Design/Build Contractor's profession or business and in compliance with all Applicable Law, including all regulations, codes, ordinances, and orders of third parties having jurisdiction over the Project. Design/Build Contractor agrees to bear the full cost of correcting negligent or improper work and services, and any harm caused by the 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.** The Design/Build Contractor's duties shall not be diminished by any approval by Owner nor shall the Design/Build Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Design/Build Contractor's skill and knowledge in performing the services required hereunder.
- 21.4 **Licensing and Registration.** The Design/Build Contractor represents and warrants that all persons directly connected to the Design/Build Contractor and providing services under this Agreement are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project or the services, to the extent such licensure or registration is required.
- 21.5 **Duty to Advise Owner.** The Design/Build Contractor represents and warrants that it will advise Owner of anything of any nature discovered in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Design/Build Contractor (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 Design/Build Contractor represents and warrants that it will perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner. Design/Build Contractor further warrants that there are no existing obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.
- 21.7 **Authority to Execute Contract.** Design/Build Contractor represents and warrants that the individual executing this Agreement on behalf of Design/Build Contractor has been duly authorized to act for and to bind Design/Build Contractor to its terms.
- 21.8 **Limitation of Owner's Liability.** Except for the obligation of Owner to pay Design/Build Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Design/Build Contractor or to anyone claiming through or under Design/Build Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design/Build Contractor, 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 Design/Build Contractor or to anyone claiming through or under Design/Build Contractor by reason of the execution or performance of this Agreement.

21.9 **No Waiver.** Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by the Owner of its constitutional, statutory, or common law rights, privileges, immunities, or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.

21.10 **Survival.** The warranties contained herein shall survive any termination of this Agreement.

ARTICLE 22 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

22.1 **In General.** The Design/Build Contractor shall comply with the requirements of the UGC (see Article 16) concerning Asbestos Certification. The following requirements set forth below shall also apply.

22.2 **Certification Statement with Submittals.** The Design/Build Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing building materials (“ACBM”) or work is included within the scope of the proposed submittal. All materials used shall be certified as non-Asbestos Containing Building Materials (“non-ACBM”). The Design/Build Contractor shall ensure 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.** The Design/Build Contractor shall ensure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement drawings/specifications, asbestos abatement, asbestos project management, and third-party asbestos monitoring.

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

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

ARTICLE 23 MISCELLANEOUS PROVISIONS

- 23.1 **Public Information Pertaining to the Official Business of Governmental Bodies and to Contracts by Certain State Governmental Entities That Involve the Exchange or Creation of Public Information.** The Texas State University System adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to Owner, Design/Build Contractor is required to make any information created or exchanged with the Owner pursuant to this contract, that is not otherwise excepted from disclosure under the TPIA, available in a format reasonably requested by Owner that is accessible by the public. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
- 23.2 **No Assignment or Delegation by Design/Build Contractor.** This Agreement creates a personal services contract of Design/Build Contractor. Neither Design/Build Contractor’s interest in this Agreement, nor duties, nor fees due hereunder may be assigned or delegated to a third party. Any attempted assignment or delegation by Design/Build Contractor shall be null and void.
- 23.3 **Records and Accounting Standards and Principles.** Records of costs and expenses reimbursable to Design/Build Contractor’s as actual Cost of the Work and other costs and expenses pertaining to the Project reimbursable under the Contract on the basis of actual cost incurred, including Additional Services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be maintained and made available for audit by the Owner or the Owner's authorized representative for a period of four (4) years after Final Completion of the Project or termination of the Contract. Owner will give reasonable notice prior to undertaking such an audit.
- 23.4 **Family Code Certification.** By signing this Agreement, Design/Build Contractor is certifying, pursuant to Section 231.006, *Texas Family Code*, that it is not ineligible to receive the award of or payments under this Agreement by reason of its Family Support requirements and acknowledges that this Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.
- 23.5 **Eligibility Certification.** By signing this Agreement, Design/Build Contractor is certifying that, pursuant to Section 2155.004 of the *Texas Government Code*, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 23.6 **Franchise Tax Certification.** By signature hereon, Design/Build Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 23.7 **Debts Owed to State.** By signing this Agreement Design/Build Contractor agrees that, pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code*, any payments owing to Design/Build Contractor under this Agreement may be applied directly toward any debt or delinquency that Design/Build Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

- 23.8 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Design/Build Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by a writing signed by Design/Build Contractor and Owner.
- 23.9 **Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Travis County, Texas, shall be the exclusive venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.
- 23.10 **Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses, or immunities of the parties.
- 23.11 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 23.12 **Appointment.** Owner hereby expressly reserves the right from time to time to designate, by written notice to Design/Build Contractor 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. Design/Build Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.
- 23.13 **Method of Giving Notice.** All notices, consents, approvals, demands, requests, or other communications permitted or required to be given under this Agreement shall be given to the party's representative designated pursuant to the Paragraph 25.4 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 (3rd) business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.
- 23.14 **Illegal Dumping.** The Design/Build Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.
- 23.15 **Conflict of Interest Certification.** By executing this Agreement, Design/Build Contractor is certifying that no member of the Board of Regents of The Texas State University System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.
- 23.16 **Ethics Matters; No Financial Interest.** Design/Build Contractor and its employees, agents, representatives, and Subcontractors under this Agreement have read and understand The Texas State University System Conflicts of Interest Policy available at <http://www.tsus.edu/about-tsus/policies.html>, and The Texas State University System Rules and Regulations, Chapter VIII. Neither Design/Build Contractor nor its employees, agents, representatives, or Subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy as stated in The

Texas State University System Rules and Regulations. Design/Build Contractor represents and warrants that no previously undisclosed member of The Texas State University System Board of Regents, The Texas State University System's Chancellor or any of its executive officers, or any president or executive officers of its respective Components has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

- 23.17 **Disclosure of Interested Parties.** Design/Build Contractor certifies that, if the value of this Agreement exceeds One Million Dollars (\$1,000,000), it has complied with Section 2252.908 of the *Texas Government Code* and Part 1 *Texas Administrative Code* Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission ("TEC"), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Design/Build Contractor.
- 23.18 **State Auditor's Office.** Design/Build Contractor understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Design/Build Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Design/Build Contractor 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 Design/Build Contractor relating to this Agreement.
- 23.19 **Nondiscrimination.** In their execution of this Agreement, the parties and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity, or gender expression. Any breach of this covenant may result in termination of this Agreement.
- 23.20 **Non-Boycott Israel Verification.** To the extent required in Chapter 271, *Texas Government Code*, by executing this Agreement, Design/Build Contractor hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. "Boycott Israel" shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 23.21 **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, by executing this Agreement Design/Build Contractor hereby certifies Design/Build Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Design/Build Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 23.22 **Domestic Iron and Steel Certification.** Pursuant to Sections 2252.201-2252.205 of the *Texas Government Code*, and except as otherwise expressly authorized in writing by Owner, Design/Build Contractor shall require that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States. Design/Build Contractor will require that the bid documents provided to all bidders and each applicable subcontract include this same requirement.
- 23.23 **179 D Benefit Allocation.** Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Design/Build Contractor.

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

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

- 23.24 **Cybersecurity Training Program.** Pursuant to Section 2054.5192, *Texas Government Code*, the Design/Build Contractor and its subcontractors, consultants, officers, and employees, who have access to the Component’s computer system, also known as Component’s information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Design/Build Contractor shall verify in writing completion of the program to the Component within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the Agreement.
- 23.25 **Non-Discrimination of Firearm Industry Verification.** Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 19 in the 87th Regular Legislative Session [2021]), by executing this Agreement Design/Build Contractor hereby certifies that either (i) it has less than ten (10) full time employees; or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, *Texas Government Code*) and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- 23.26 **Anti-Boycott Energy Companies Verification.** Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 13 in the 87th Regular Legislative Session [2021]), by executing this Agreement Design/Build Contractor hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not “boycott energy companies” (as defined under Section 809.001, *Texas Government Code*) and will not “boycott energy companies” during the term of this Agreement.
- 23.27 **Vaccine Passport Prohibition.** Pursuant to Section 161.0085, *Texas Health and Safety Code* (as enacted in SB 968 in the 87th Regular Legislative Session [2021]), by executing this Agreement Design/Build Contractor hereby certifies that it does not require its customers to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Design/Build Contractor’s business. Design/Build Contractor acknowledges that such a vaccine or recovery requirement would make Design/Build Contractor ineligible for a state-funded contract and shall be grounds for termination of this Agreement for cause.
- 23.28 **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102, *Texas Government Code*, by executing this Agreement Design/Build Contractor hereby certifies that neither it nor its parent company, nor any affiliate of Design/Build Contractor or its parent company, is (i) majority owned or controlled

by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

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

23.29.1 Whether the provision appears on the face of the Agreement or Contract; or

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

ARTICLE 24 COMPENSATION

24.1 Construction Cost Limitation / Guaranteed Maximum Price

24.1.1 Construction Cost Limitation: The anticipated Construction Cost Limitation for the Project at the time this Agreement was executed is <<Amount>> Dollars (\$0).

24.1.2 Guaranteed Maximum Price: The anticipated Guaranteed Maximum Price for the Project at the time this Agreement was executed is: <<Amount>> Dollars (\$0).

24.2 Pre-Construction Phase Fee and Separate Design Services Fee

24.2.1 For Pre-Construction Phase Services, other than for Design Services, Owner shall pay Design/Build Contractor a Pre-Construction Phase Fee in the amount of <<Amount>> Dollars (\$0), in accordance with the following schedule:

Pre-Design Stage Services (10%)	\$ 0
Schematic Design Stage Services (30%)	\$ 0
Design Development Stage Services (30%)	\$ 0
Construction Documents Stage Services (10%)	\$ 0
GMP Development / Subcontractor Selection (20%)	\$ 0
Total	\$ 0

24.2.2 For Design Services, Owner shall pay Design/Build Contractor a lump sum fee for the Design Services (“Design Services Fee”) in the amount of <<Amount>> Dollars (\$0), with Reimbursable Expenses not-to-exceed <<Amount>> Dollars (\$0), in accordance with the following schedule:

Pre-Design Stage (5%)	\$ 0
Schematic Design Stage (30%)	\$ 0
Design Development Stage (20%)	\$ 0
Construction Documents Stage (35%)	\$ 0
GMP Development / Subcontractor Selection (10%)	\$ 0
Total	\$ 0

24.2.3 The parties acknowledge that the Design Services Fee is separate from and not included in the Pre-Construction Phase Fee and has been separately negotiated after selection of the Design/Build Contractor as the offeror offering the best value for the Owner in accordance with the requirements of Section 51.780(2) of the *Texas Education Code*. The parties further acknowledge and agree that certain Design Services (particularly those in the Construction Documents Stage) may not be completed during the Pre-Construction Phase and, therefore, some portion of the Design Services Fee may not be earned or paid to Design/Build Contractor prior to commencement of the Construction Phase Services.

24.2.4 The parties further acknowledge that the GMP Development and Subcontractor Selection fees under both Subparagraphs 24.2.1 and 24.2.2 are the fees for those services to be performed in accordance with Subparagraphs 5.1.5 and 5.1.6 above and are separate from such other services required to be performed during the Design “Stages” identified in Subparagraphs 5.2.2 through 5.2.4. Such GMP Development and Subcontractor Selection services may be required to be performed during one or more of the Design “Stages”.

24.3 Construction Phase Fee

24.3.1 For Construction Phase Services, other than Construction Administration Services, Owner shall pay Design/Build Contractor a stipulated Construction Phase Fee equal to **<<Percent>>** (**0.00%**) of the Guaranteed Maximum Price for the Project.

24.3.2 Based on the anticipated Guaranteed Maximum Price established at the time of this Agreement, the Construction Phase Fee would be the total stipulated amount of: **<<Amount>>** Dollars (**\$0**).

24.3.3 In addition to the Construction Phase Fee and based upon the Project requirements and description set forth in this Agreement and the Exhibits and other Contract Documents identified in the Agreement (including the Project Schedule attached as an Exhibit), the Owner shall pay Design/Build Contractor a fee for Construction Administration Services (the “Construction Administration Services Fee”) including those performed by or through the Project Architect/Engineer, in the amount of **<<Amount>>** Dollars (**\$0**), in accordance with the following schedule:

Construction Administration (80%)	\$0
Record Drawing and Closeout Documents Submittal and Warranty (20%)	\$ 0
Total	\$0

24.3.4 The parties acknowledge that the Construction Administration Services Fee is separate from and not included in the Construction Phase Fee and has been separately negotiated after selection of the Design/Build Contractor as the offeror offering the best value for the Owner in accordance with the requirements of Section 51.780(2) of the *Texas Education Code*. In the event of a material change in the Project requirements and Project Schedule, through no fault of the Design/Build Contractor, the parties may agree to an equitable adjustment of the Construction Administration Services Fee in the amendment approving the GMP Proposal. No other adjustments shall be made to the Construction Administration Services Fee except to the extent Design/Build Contractor is entitled to an adjustment for Additional Services.

24.3.5 If the Owner agrees to an increase in the GMP during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph

24.3.1 to the amount of the increase in the GMP. For change order work which increases the contract amount, other than GMP Change Orders, overhead and profit costs shall be determined in accordance with the “Changes” section of the UGC or as otherwise provided in the Special Conditions, if any.

24.3.6 The percentage rate established in paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the ODR.

24.3.7 If the scope of the Project and/or the Project Schedule has changed through no fault of the Design/Build Contractor such that Design/Builder Contractor’s obligations to perform Construction Administration Services have materially changed, the Construction Administration Services Fee shall be equitably adjusted to reflect such material change in obligations through negotiations with the Owner or as otherwise expressly provided by the Contract Documents. Personnel rates for Additional Services under Paragraph 24.6 or the Special Conditions shall be used in computing any equitable adjustment, except as otherwise mutually agreed by the parties. For Additional Construction Administration Services that are approved in advance and in writing by the Owner, Design/Build Contractor shall be entitled to additional compensation computed as provided in Paragraph 24.6

24.4 **Limitation on General Condition Costs**

24.4.1 The maximum allowable amount of General Conditions Costs (as authorized to be reimbursed as Direct Construction Costs under Paragraph 13.1) payable to the Design/Build Contractor during the Construction Phase of the Project shall not exceed <<Percent>> Dollars (0.00%) of the CCL for the Project.

24.4.2 Based on the anticipated CCL established at the time of this Agreement, the maximum allowable amount of General Conditions Costs would be the total amount of: <<Amount>> Dollars (\$0).

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

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

24.5 **Reimbursable Expenses**

24.5.1 Reimbursable Expenses for Pre-Construction Phase Services and Construction Administration Services are in addition to the Compensation for Basic Design Services (the Design Services Fee) and Basic Construction Administration Services and Additional Services. These include actual out-of-pocket reasonable expenditures made by the Design/Build Contractor, Project Architect/Engineer, and the Project Architect/Engineer’s employees and design consultants incurred solely and directly in connection with the Project Team’s performance of its Design Services hereunder for the following expenses:

- 24.5.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project for design phase services.
 - 24.5.1.2 Professional models and renderings related to building design as requested by the Owner.
 - 24.5.1.3 When expressly directed and approved in advance by the Owner, reproductions, printing, binding, collating, and handling of reports, drawings, specifications, and associated shipping and mailing, or other project-related work product, other than that used solely in-house for Project Team and its consultants or for project progress/review meetings.
 - 24.5.1.4 Expense of any additional insurance coverage or limits, requested by the Owner in, addition to the coverage required by the contract.
 - 24.5.1.5 Travel from Texas to out of state locations:
 - Lodging: Actual cost of lodging, not to exceed 140% of the “Out of State Meals and Lodging Rates”, established by the Texas Comptroller of Public Accounts, plus city and state taxes.
Website: <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>
 - Meals: Limited to the meal per diem established by the Texas Comptroller of Public Accounts. Meal per diem will only be paid on trips involving overnight travel.
 - 24.5.1.6 Travel to Texas from out of state locations:
 - Lodging: Actual cost of lodging, not to exceed 140% of the current State of Texas per diem rate, plus city and state taxes.
 - Meals: Limited to the meal per diem established by the Texas Comptroller of Public Accounts. Meal per diem will only be paid on trips involving overnight travel.
 - 24.5.1.7 Automobile Expenses Related to Out-of-State Travel: Actual auto rental for moderate size category, related auto insurance, gasoline, parking, and taxi service. Costs include applicable taxes.
 - 24.5.1.8 Airline Travel: Actual coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than seven (7) calendar days in advance when possible. Reimbursement for air travel booked within seven (7) calendar days of departure, without the prior approval of the Owner, may be limited.
 - 24.5.1.9 Unless expressly directed and approved in writing by the Owner, amounts exceeding the above stipulated limitations will not be subject to reimbursement.
- 24.5.2 Unless expressly directed, and approved in advance, by the Owner, transportation and living expenses incurred within the State of Texas, for firms whose principal address is within the State of Texas, will not be subject to reimbursement.

24.5.3 Expenses not allowed for reimbursement include telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment, or any non-project related items. All tips must be included within the per diem allowances.

24.5.4 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursables identified in Subparagraphs 24.5.1.1 through 24.5.1.3 above. A mark-up shall not be paid on lodging, meals, or travel expenses. Design/Build Contractor shall submit receipts for all reimbursable expenses along with any reimbursement request.

24.6 **Additional Services Fees**

24.6.1 For Additional Services performed by employees of Design/Build Contractor, the respective Additional Services Fee shall be established by one of the following methods:

24.6.1.1 A pre-established lump sum amount agreed to by the parties;

24.6.1.2 The actual cost of reimbursable expenses incurred in the performance of the Additional Services plus the hourly cost of Design/Build Contractor's employees who are authorized to perform such services hereunder and are actually performing such Additional Services as set forth in a Personnel Rates Schedule of Additional Services, if any, in the Special Conditions, or in the absence thereof, as follows: (i) the respective employee's Direct Salary Expense, (ii) the employer contributions for taxes (including federal and state unemployment, Social Security, Medicare, workers compensation), health and related insurance, pension/401(k), and vacation/holidays, and (iii) markup of ten percent (10%) of the total cost as the profit and overhead for the Design/Build Contractor; or as otherwise agreed by the parties.

24.6.2 For Additional Services performed by employees of the Project Architect/Engineer or other consultants or design professionals of the Design/Build Contractor, the respective Additional Services Fee shall be established by one of the following methods:

24.6.2.1 A pre-established lump sum amount agreed to by the parties;

24.6.2.2 The actual cost of reimbursable expenses incurred in the performance of the Additional Services plus the hourly cost of employees of the Project Architect/Engineer or other such consultant or design professional of the Design/Build Contractor or Project Architect/Engineer who are authorized to perform such services hereunder and are actually performing such Additional Services as set forth in a Personnel Rates Schedule of Additional Services, if any, in the Special Conditions, or in the absence thereof, as follows: (i) the respective employee's Direct Salary Expense, (ii) the employer contributions for taxes (including federal and state unemployment, Social Security, Medicare, workers compensation), health and related insurance, pension/401(k), and vacation/holidays, and (iii) markup of ten percent (10%) of the total cost as the combined profit and overhead for the Design/Build Contractor, the Project Architect/Engineer, and the respective employer (if different from the Project Architect/Engineer); or as otherwise agreed by the parties.

24.6.3 The Project Architect/Engineer or such other employers of such employees shall not be entitled to any markup on the personnel costs for such employees except as that markup is paid out of Design/Build Contractor's markup as set forth in Subparagraph 24.6.2.2.

ARTICLE 25 OTHER TERMS AND CONDITIONS

25.1 Time of Completion

- 25.1.1 Except as may otherwise be provided in the Special Conditions, the anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is: **<<Month, Day, Year>>**.
- 25.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner after approval of the GMP Proposal.
- 25.1.3 The Design/Build Contractor shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the GMP Proposal, subject to time extensions granted by Change Order. It is anticipated that Final Completion will occur no later than two (2) months after the Substantial Completion date identified in Article 25.1.1.
- 25.1.4 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GUARANTEED MAXIMUM PRICE PROPOSAL ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT. 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 Except as may otherwise be provided in the Special Conditions, for each consecutive calendar day after the Substantial Completion date that the Work is not substantially completed, the Owner may deduct the amount of: **<<Amount>> Dollars (\$0) Per Day**.
- from any money due or that becomes due the Design/Build Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the “loss of use” damages that the Owner will sustain for late completion.
- 25.2.2 The parties stipulate and agree that calculating Owner’s actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is based on a reasonable estimate of the actual “loss of use” damages as determined and agreed by the parties at the time of the negotiation of this Agreement.

- 25.3 **Design Document Review Sets and Estimated Construction Cost Reports.** Design/Build Contractor shall provide the following design review document sets (two sets except as otherwise required by Owner) along with the ECC Reports in accordance with Subparagraph 5.1.3 at the indicated stages of completion as part of Pre-Construction Services and at no cost to the Owner:

Schematic Design (100%)

Design Development (100%)

Reconciled GMP

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

the indicated locations.

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

25.4.2 With Copies to: Name
Title
Component
Address
City, State, Zip

25.4.3 If to DB: Design/Build Contractor Contact
Title
Company Name
Address
City, State, Zip

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

25.5 Party Representatives

25.5.1 The Owner's Designated Representative ("ODR") authorized to act in the Owner's behalf pursuant to Paragraph 9.3 hereof with respect to the Project is:

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

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

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

25.5.3 The Design/Build Contractor's Designated Representative authorized to act on the Design/Build Contractor's behalf and bind the Design/Build Contractor with respect to the Project is:

Name
Title
D/B Company Name
Address
City, State, Zip
Phone:
Email:

25.5.4 The Design/Build Contractor's Designated Representative for Construction authorized to act on the Design/Build Contractor's behalf for Construction Services pursuant to Subparagraph 8.1.3 is:

Name
Title
D/B Company Name
Address
City, State, Zip
Phone:
Email:

25.5.5 The Design/Build Contractor's Designated Representative for Design authorized to act on the Design/Build Contractor's behalf for Design Services pursuant to Subparagraph 5.2.1.1 is:

Name
Title
D/B Company Name
Address
City, State, Zip
Phone:
Email:

25.5.6 The Design/Build Contractor's Designated Representatives shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably or untimely withheld.

ARTICLE 26 EXHIBITS

The following exhibits are attached to this Agreement and/or fully incorporated herein by reference:

- Exhibit A - Special Conditions of the Contract
- Exhibit B - Owner's Supplemental Design and Construction Requirements
- Exhibit C - Allowable General Conditions Line Items
- Exhibit D - Guaranteed Maximum Price Proposal Form
- Exhibit E - Guidelines for the Preparation of the Guaranteed Maximum Price Proposal
- Exhibit F - Design/Build Contractor's Personnel and Monthly Salary Rates
- Exhibit G - Forms for Payment and Performance Bonds
- Exhibit H - Constructability Implementation Program

- Exhibit I - Form for Additional Services Proposal for Pre-Construction Phase Services and/or Construction Administration Services
- Exhibit J - Prevailing Wage Rates
- Exhibit K - Services Expressly Included as Basic Services and Additional Services Not Included Under Basic Services
- Exhibit L - Owner's Design Development Submittal Guidelines
- Exhibit M - Form of Certificate of Compliance
- Exhibit N - Close-Out Procedures - Sample
- Exhibit O - Project Schedule
- Exhibit P - Security Bond Form
- Exhibit Q - Regular Project Meeting Agenda

DRAFT

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

For Firm:
<<Name of Firm>>

For Owner:

By: _____
Signature

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

Name: _____
Type or Write Name

Date

Title: _____

Date: _____

Reviewed and Recommended:

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

Date

Approved as To Legal Form:

Nelly R. Herrera
Vice Chancellor and General Counsel
The Texas State University System

Date

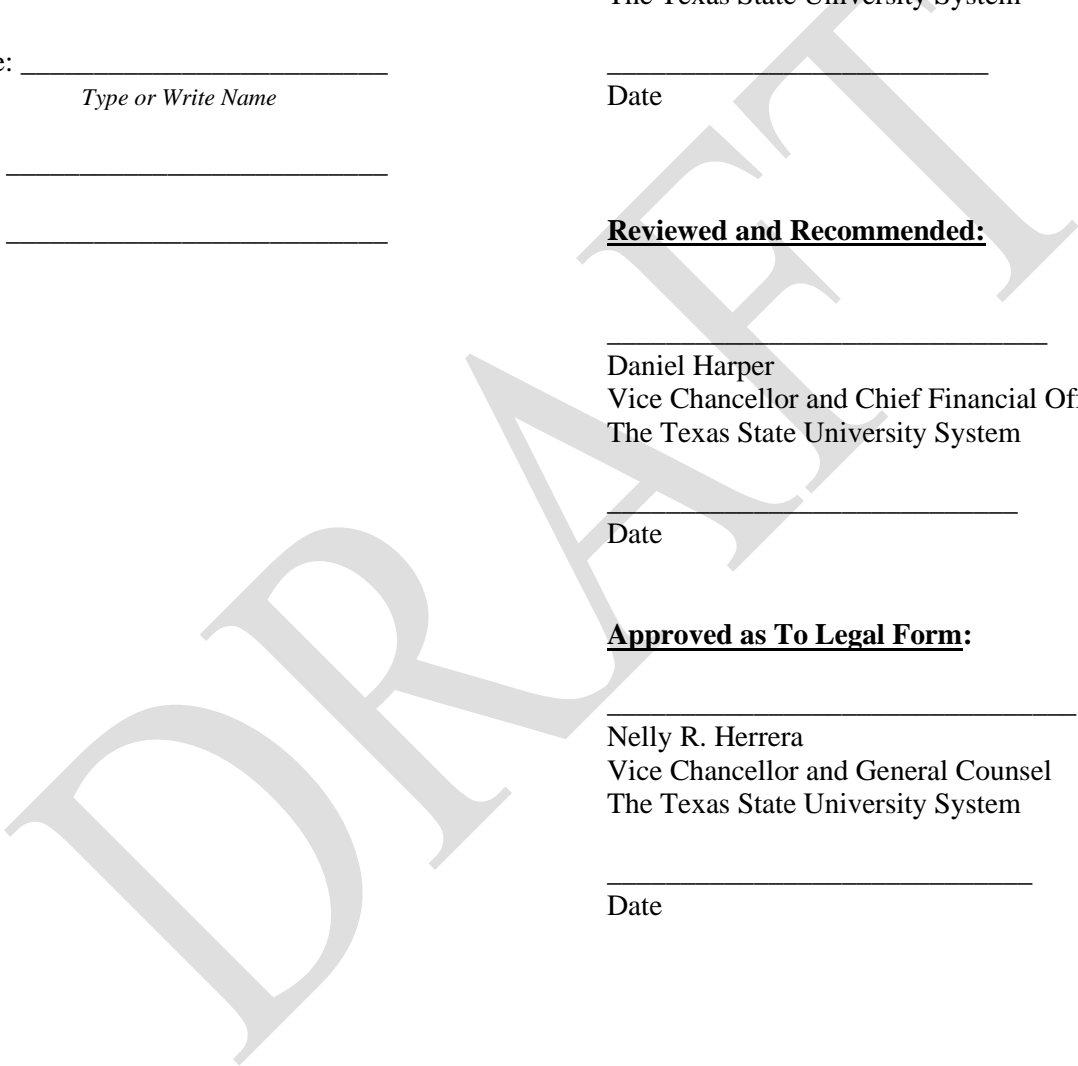


EXHIBIT A

SPECIAL CONDITIONS OF THE CONTRACT

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

I. ADDITIONAL / SUPPLEMENTAL INSURANCE REQUIREMENTS.

The following terms and conditions with regard to insurance shall supplement the terms and conditions regarding insurance as set forth in the UGC (as revised herein), but the terms and conditions below shall control over any inconsistent terms and conditions in the UGC (as revised herein).

- A. **Design/Build Contractor / Project Architect/Engineer Professional Insurance Requirements.** Without limiting the requirements for Professional Liability insurance as set forth in Article 17 of the Agreement, such required Professional Liability insurance shall cover all professional services rendered by or on behalf of the Design/Build Contractor (or its Project Architect/Engineer, as applicable) and its sub-consultants under the Agreement. Renewal policies written on claims-made basis will maintain the same retroactive date as is in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Design/Build Contractor (or its Project Architect/Engineer, as applicable) agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of this policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration of cancellation of this policy. Such coverage shall be underwritten by a company or companies authorized to do business in the State of Texas or an eligible surplus lines insurer operating in accordance with the Texas Insurance Code and currently rated A- VII or better by A.M. Best Company, or otherwise acceptable to Owner. Minimum limits for such coverage are as follows:

\$2,000,000 each occurrence and **\$5,000,000** aggregate.

- B. **Sub-consultants' Professional Liability Insurance Requirements.** The Design/Build Contractor (or its Project Architect/Engineer, as applicable) shall also require that the following sub-consultants (if any) maintain professional liability insurance in the minimum amounts set forth below and in compliance with the other requirements for professional liability insurance coverage for the Design Professional as set forth herein and Article 17 of the Agreement:

Structural Engineer	\$5,000,000 per occurrence
Mechanical, Electrical, and/or Plumbing Engineer	\$1,000,000 per occurrence
Civil Engineer	\$1,000,000 per occurrence

II. PERSONNEL RATES SCHEDULE FOR ADDITIONAL SERVICES

A. In lieu of the personnel cost formula for determining any Additional Services Fee under Subparagraph 24.6.1.2 of the Agreement, the parties agree that the hourly cost of the following Design/Build Contractor’s employees who are actually performing such Additional Services shall be computed on the basis of the following agreed hourly rates:

Design/Build Contractor Company Name

<u>Employee or Position/Classification</u>	<u>Agreed Hourly Rates</u>
Project Director	\$ 0.00
Pre-Construction Manager	\$ 0.00
Project Manager	\$ 0.00
Superintendent	\$ 0.00

Project Architect/Engineer Name:

<u>Employee or Position/Classification</u>	<u>Agreed Hourly Rates</u>
Senior Principal	\$ 0.00
Principal	\$ 0.00
Project Director	\$ 0.00
Project Manager III	\$ 0.00
Project Manager II	\$ 0.00
Project Manager I	\$ 0.00

Architecture

Architectural Lead	\$ 0.00
Architectural Designer III	\$ 0.00
Architectural Designer II	\$ 0.00
Architectural Designer I	\$ 0.00
Architect III	\$ 0.00
Architect II	\$ 0.00
Architect I	\$ 0.00
Designer II	\$ 0.00
Designer I	\$ 0.00
BIM Manager	\$ 0.00
BIM Specialist	\$ 0.00

Interiors

Interior Lead	\$ 0.00
Interior Designer III	\$ 0.00
Interior Designer II	\$ 0.00
Interior Designer I	\$ 0.00

Landscape Architecture

Landscape Architectural Lead	\$ 0.00
Landscape Architect II	\$ 0.00
Landscape Architect I	\$ 0.00
Administrative Staff	\$ 0.00

Civil Engineering

Civil Engineering Lead	\$ 0.00
Civil Engineer III	\$ 0.00
Civil Engineer II	\$ 0.00

Civil Engineer I.....	\$ 0.00
Civil Designer II.....	\$ 0.00
Civil Designer I	\$ 0.00

Structural Engineering

Structural Engineering Lead	\$ 0.00
Structural Engineer III.....	\$ 0.00
Structural Engineer II.....	\$ 0.00
Structural Engineer I	\$ 0.00
Structural Designer II.....	\$ 0.00
Structural Designer I.....	\$ 0.00

Mechanical Engineering

Mechanical Engineering Lead	\$ 0.00
Mechanical Engineer III.....	\$ 0.00
Mechanical Engineer II.....	\$ 0.00
Mechanical Engineer I	\$ 0.00
Mechanical Designer II.....	\$ 0.00
Mechanical Designer I.....	\$ 0.00

Electrical Engineering

Electrical Engineering Lead.....	\$ 0.00
Electrical Engineer III	\$ 0.00
Electrical Engineer II	\$ 0.00
Electrical Engineer I.....	\$ 0.00
Electrical Designer II	\$ 0.00
Electrical Designer I	\$ 0.00

Plumbing Engineering

Plumbing Engineering Lead	\$ 0.00
Plumbing Engineer III.....	\$ 0.00
Plumbing Engineer II.....	\$ 0.00
Plumbing Engineer I	\$ 0.00
Plumbing Designer II.....	\$ 0.00
Plumbing Designer I	\$ 0.00

Fire Protection Engineering

Fire Protection Lead.....	\$ 0.00
Fire Protection Engineer III	\$ 0.00
Fire Protection Engineer II.....	\$ 0.00
Fire Protection Engineer I.....	\$ 0.00

Controls Engineering

Instruments & Controls Lead.....	\$ 0.00
Instruments & Controls Engineer III.....	\$ 0.00
Instruments & Controls Engineer II.....	\$ 0.00
Instruments & Controls Engineer I.....	\$ 0.00

Graphic Design and Branding

Graphic Design Lead	\$ 0.00
Senior Graphic Designer.....	\$ 0.00
Graphic/ Signage Designer III	\$ 0.00

Graphic/ Signage Designer II.....	\$ 0.00
Graphic/ Signage Designer I.....	\$ 0.00
Experiential Graphics Media Expert.....	\$ 0.00
Branding Lead	\$ 0.00
Branding Senior Graphic Designer.....	\$ 0.00
Branding Graphic/ Web Designer.....	\$ 0.00
Branding Multimedia Expert	\$ 0.00

The above hourly rates have been agreed by the parties as the hourly rates (inclusive of all personnel costs, including taxes and all benefits) that Design/Build Contractor may charge for the performance of the Additional Services for such employees, subject to the agreed markup as provided below. The amount of the rates set forth above for the respective employees are not subject to audit; however, the time chargeable for the Additional Services and the property classification of employees (when rates are based upon classification) shall be subject to verification and audit.

In determining the amount of the Additional Services Fee based on the hourly cost of the above identified Design/Build Contractor’s employees, the Design/Build Contractor shall also be entitled to a markup on the total costs chargeable for such employees’ time in the amount of ten percent (10%) of such costs.

The total costs chargeable for such employees’ time, with the markup authorized above, and the Reimbursable Expenses reasonably and necessarily incurred in the performance of such Additional Services shall be the Design/Build Contractor’s total compensation for the respective Additional Services.

* * * * *

EXHIBIT B
OWNER'S SUPPLEMENTAL DESIGN AND CONSTRUCTION REQUIREMENTS

<INSERT>

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EXHIBIT C

ALLOWABLE GENERAL CONDITIONS LINE ITEMS*

These costs are not allowed in the Cost of the Work category. Not all items are needed for all projects.

<p>Full Time On-Site Project Management Staff</p> <ul style="list-style-type: none"> Project Manager(s) Assistant Project Manager(s) Superintendent(s) Assistant Superintendent(s) Safety Coordinator/Assistant(s) Project Expeditor(s) Project / Office / Field Engineer(s) Project Support Staff 	<p>Full/Part Time On-Site Management Staff</p> <ul style="list-style-type: none"> Project Executive Commissioning Coordinator CPM Scheduler Quality Control Managers Cost Estimator(s) / Change / Data Mgmt. BIM Coordinator(s) / Technician(s) Project IT Support Out-of-State Project Specific Travel** 		
<p>Bonds and Insurance</p> <ul style="list-style-type: none"> Builder's Risk Insurance General Liability Insurance Payment and Performance Bonds Other Project Insurance as Required by Contract 			
<p>Temporary Project Utilities & Site Conditions</p> <table border="0" style="width: 100%;"> <tbody> <tr> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> Dumpsters, Trash Chutes Project Electricity Temporary Fencing and Covered Walkways Street Rental and Barricades Traffic Control Measures & Maintenance Daily Construction Cleanup & Debris Removal (not final cleaning) Site Erosion Control (BMP) and Project Entrance(s) / Truck Washes Monthly Hardwire Telephones / Internet Services (Field Office(s) only) Temporary Water Distribution and Meters (Field Office(s) only) Temporary Electrical Distribution and Meters (Field Office(s) only) </td> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> Project Water, Ice & Hydration Supplements Temporary Toilets Temporary Fire Protection Telephone / Internet System Installation Temporary Lighting </td> </tr> </tbody> </table>		<ul style="list-style-type: none"> Dumpsters, Trash Chutes Project Electricity Temporary Fencing and Covered Walkways Street Rental and Barricades Traffic Control Measures & Maintenance Daily Construction Cleanup & Debris Removal (not final cleaning) Site Erosion Control (BMP) and Project Entrance(s) / Truck Washes Monthly Hardwire Telephones / Internet Services (Field Office(s) only) Temporary Water Distribution and Meters (Field Office(s) only) Temporary Electrical Distribution and Meters (Field Office(s) only) 	<ul style="list-style-type: none"> Project Water, Ice & Hydration Supplements Temporary Toilets Temporary Fire Protection Telephone / Internet System Installation Temporary Lighting
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<p>Field Offices & Office Supplies</p> <table border="0" style="width: 100%;"> <tbody> <tr> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> 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) </td> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> 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 </td> </tr> </tbody> </table>		<ul style="list-style-type: none"> 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) 	<ul style="list-style-type: none"> 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
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* Final determination of appropriate staffing and project support expenses shall be made with Owner's approval and established in the GMP.

** 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 FORM

(To be submitted with the Guaranteed Maximum Price Proposal for the project covered by the Contract)

The Design/Build Contractor (DB) 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 Agreement by and between The Board of Regents of The Texas State University System for the use and benefit of _____ [Insert Component Name] and _____ [DB Name], dated _____ 20__ [Insert Month and Day] (the “Agreement”), a Guaranteed Maximum Price (GMP) for the _____ [Insert Project Name and Stage, Component Name, State, City] (the “Project”), project number _____ [Insert Project No] (as defined in the Agreement), based on the Contract Documents (as defined in the Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the Cost of the Work pursuant to the Agreement: \$ _____
2. A not-to exceed amount for the General Conditions pursuant to the Agreement: \$ _____
3. A not-to exceed amount for the DB’s Contingency pursuant to the Agreement: \$ _____
4. A lump sum amount for the Construction Phase Services Fee pursuant to the Agreement: \$ _____
5. A lump sum amount for the Construction Administration Services Fee pursuant to the Agreement: \$ _____
6. 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 FORM - SIGNATURE PAGE
(Continuation of Exhibit D)

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

Design/Build Contractor Company Name

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

By: _____
(original signature)

(name and title typed)

Date: _____

By: _____
(original signature)

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

Date: _____

DRAFT

EXHIBIT E

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

1. CONTRACT REQUIREMENTS:

Refer to Article 7 of the Agreement. The provisions of the Guaranteed Maximum Price (“GMP”) are defined here, and other related requirements are included throughout the Agreement. In the event of irreconcilable conflict between the GMP Proposal and the Agreement, 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 Agreement. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner. In general, proposed revisions or modifications to the language, terms, or conditions of the Agreement will not be accepted.

2. PRE-SUBMITTAL REQUIREMENTS:

- A. Scope Definition: Prior to GMP submittal, the Design/Build Firm 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, Mechanical, Electrical, Plumbing (“MEP”) systems descriptions including materials, MEP system options shall be defined and accepted.
- B. Schedule: The anticipated Notice to Proceed and Substantial Completion dates for Construction shall be coordinated and approved by the Component Institution and ODR.
- C. Value Engineering (“VE”): Proposed VE items included in the GMP shall be updated from previously submitted VE items 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 Design/Build Contractor shall schedule a conference with the ODR and ODSR 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 Design/Build 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 Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The Project Architect/Engineer, Component staff, the ODSR, and the ODR shall provide review comments. The Design/Build 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 Design/Build Contractor for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the Design/Build Contractor and may not extend the required Substantial Completion date.

5. MULTIPLE GMP'S:

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

6. GMP PROPOSAL PACKAGE

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

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

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

All pages within each tab shall be numbered.

Submit an electronic version of the GMP in PDF format.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

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

TAB 1 – Guaranteed Maximum Price Proposal (Exhibit D)

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

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 affected by other governmental agencies (i.e., right-of-way issues)
- State the anticipated Notice to Proceed date and Substantial Completion date. (Allow sufficient time in setting the Notice to Proceed date for Owner to review and accept the GMP Proposal.)

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 Agreement (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.

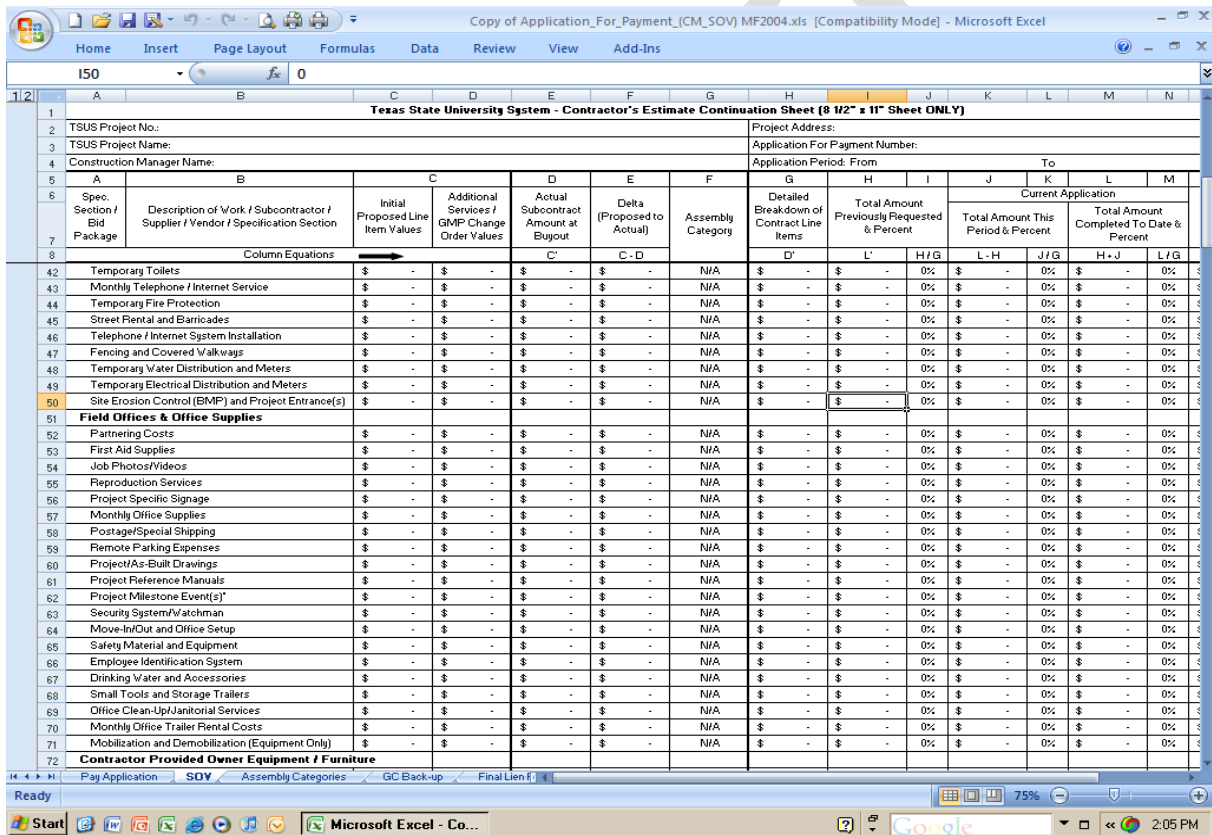
TAB 5 - Qualifications and Value Engineering

- 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.

- VE 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, Design/Build Contractor’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 (From/To).
- Item Details (Rows 6-72):** Columns include 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 Bidout, Delta (Proposed to Actual), Assembly Category, Detailed Breakdown of Contract Line Items, Total Amount Previously Requested & Percent, Total Amount This Period & Percent, and Total Amount Completed To Date & Percent.
- Financial Summary (Rows 73-74):** Contractor Provided Owner Equipment / Furniture.

The spreadsheet contains numerous line items with associated dollar amounts and percentages, such as "Temporary Toilets", "Monthly Telephone / Internet Service", and "Field Offices & Office Supplies".

(An Electronic Copy is available upon request)

- The Design/Build Contractor shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration.
- The Design/Build Contractor shall include an updated Exhibit F, “Design/Build Contractor’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 USB Flash Drive or Compact Disk and as a Gantt Chart Report within the GMP Proposal showing the Activity ID,

Activity Description, Original Duration, Early Start, Early Finish, Total Float, Weather Days, Late Start and Late Finish column titles.

- Summary Schedule Requirements:
 - The schedule shall form the basis for the “Detail” schedule, which shall be submitted within sixty (60) calendar days following Notice to Proceed for Construction Services.
 - The schedule shall be a computer-generated CPM schedule.
 - The schedule shall be presented in “bar chart” form and contain detailed activities for all events and milestones included in Pre-construction Services.
 - The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first ninety (90) calendar days) may be summarized by trades and may have longer durations than the “detailed” activities mentioned above.
 - The total float indicated on the Master Project Schedule shall be no less than ten percent (10%) of the total Construction Phase duration (NTP to Substantial Completion). i.e. - All paths in the schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately ninety percent (90%) of the time allowed by contract for the Owner established Substantial Completion Date.

TAB 8 - Bid/Proposal Package Strategy

- The Design/Build 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 Subcontracting Plan

- Complete the attachments required by exhibit of the Agreement.
- For all first and second tier Subcontractors currently under contract or anticipated to be contracted, provide completed Attachments C, D, and E of the HUB form.
- 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 Design/Build 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 Agreement, contained in the GMP Proposal, shall be approved in writing by the ODR and included herein.**

TAB 11 - Bid Documentation and Recommendations

- Design/Build Contractor will provide the bid documentation and recommendations in a 3-ring binder. This binder will have dividers separating the following contents:
 - Table of Contents
 - A summary spreadsheet that compares the bid amounts of each recommended Subcontractor to the last reconciled cost estimate prepared by the Design/Build

Contractor 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 Design/Build Contractor 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 Design/Build Contractor 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 Design/Build Contractor 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.

DRAFT

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

(SUMMARY SHEET- An Electronic Copy is available upon request)

TEXAS STATE UNIVERSITY SYSTEM									
GMP Bid Package Tabulation Sheet									
PROJECT NAME HERE									
Bid Package: name of bid package			Bid Date and Time: 4/1/2010						
Date: 4/1/2010			2:00pm						
7	Ranking		1	2	3	4	5	6	7
8	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
9	name of bid package	\$1,000,000.00							
10	Addendum #1 Acknowledged								
11	Addendum #2 Acknowledged								
12	Addendum #3 Acknowledged								
13	Addendum #4 Acknowledged								
14	Addendum #5 Acknowledged								
15	Addendum #5 Acknowledged								
16									
17	Base Bid Subtotal	\$1,000,000.00	\$1,000,001.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
18	Pay/Perf. Bond								
19	Total Price with Bond	\$1,000,000.00	\$1,000,001.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20	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
21									
22	Qualifications Criterion								
23	EMR (5%)								
24	Safety (10%)								
25	D & B (5%)								
26	Past Performance (15%)								
27	Price (65%)								
28	Total Composite Score		0.00%						
29									
30	Remarks/Justification on Selected Respondent:								
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									

(BID DIVISIONAL/PACKAGE SHEET- An Electronic Copy is available upon request)

EXHIBIT F

DESIGN/BUILD CONTRACTOR'S PERSONNEL AND MONTHLY SALARY RATES

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

The following Monthly Salary Rate (MSR) shall identify the estimated billable rate prior to execution of the Agreement, and shall be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Owner's approved Schedule of Values Format for all salaried General Conditions type personnel pursuant to the Agreement. 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. Design/Build Contractor shall define the monthly salary rate by dividing the fifty-two (52) weeks of a year into the twelve (12) months of a year. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Articles 14 and 24 of the Agreement. These rates do not apply to Pre-Construction Services, Design Services, or Construction Administration Services.

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.	\$	\$	\$	\$	\$	\$	\$	\$
12.	\$	\$	\$	\$	\$	\$	\$	\$
13.	\$	\$	\$	\$	\$	\$	\$	\$

Design/Build Contractor shall certify, to the best of his knowledge, that the above referenced salary information is accurate.

DB signature: _____ (same individual who signs agreement) **Date:** _____

EXHIBIT G

FORMS FOR PAYMENT AND PERFORMANCE BONDS

Payment and performance bonds required under Paragraph 17.2 of the Agreement shall be drafted on forms provided by the Owner based on the forms posted on the The Texas State University System (“TSUS”) website or as otherwise approved in advance by the Owner and the Attorney General of the State of Texas. Such bonds shall be furnished within ten (10) calendar days after the Design/Build Contractor executes this Agreement unless the Design/Build Contractor has furnished a security bond as provided in Paragraph 17.1 of the Agreement, acceptable to Owner.

If the Design/Build Contractor has furnished the security bond as provided in Paragraph 17.1, the payment and performance bonds required under Paragraph 17.2 shall be furnished to the Owner prior to commencement of the Work covered by the bonds.

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

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

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

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

EXHIBIT H

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

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

Proposed Steps:

- **Constructability Implementation Meeting**
 - identification of all project team personnel and all project stakeholders
 - clarification of project goals, objectives, and progress to date
 - team briefing on objectives, methods, and concepts of constructability
 - familiarization with implementation program
 - preliminary identification of constructability priorities and special challenges or concerns
- **Constructability Review of Schematic Design Documents; Comments Submitted to Design/Build Contractor Team**
 - establishment of project constructability procedures, including procedures for documenting savings
- **Meeting to Review Schematic Design Constructability Comments**
 - assessment of applicability of 17 Construction Industry Institute 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 Design/Build Contractor 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 drawings & 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
- **50% Construction Documents (CD) Constructability Review Comments to Design/Build Contractor Team**
 - review drawings and 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 Design/Build Contractor Team**
 - review drawings & 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
- **100% CD Constructability Review Comments to Design/Build Contractor Team**
 - review drawings & 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
- **Reconciled GMP Constructability Review Comments to Design/Build Contractor Team**
- **Constructability Discussions with Design/Build Contractor Team**
- **Document On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**

EXHIBIT I

**FORM FOR ADDITIONAL SERVICES PROPOSAL FOR
PRE-CONSTRUCTION PHASE SERVICES AND/OR CONSTRUCTION ADMINISTRATION
SERVICES**

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

To: Owner' Designated Representative: Peter Maass, Director of Capital Projects Administration
Street Address: 601 Colorado Street
City, State, Zip: Austin, Texas 78701

From: Design/Build Contractor: _____
Street Address: _____
City, State, Zip: _____

DESIGN/BUILD CONTRACTOR

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

[INSERT THE FOLLOWING AS APPLICABLE.]

1. Owner has requested the performance of the services described below which Design/Build Contractor deems to be Additional Pre-Construction Services (other than Additional Design Services).

[INSERT DESCRIPTION OF ADDITIONAL PRE-CONSTRUCTION SERVICES THAT ARE NOT DESIGN SERVICES]

2. Design/Build Contractor agrees to perform the Additional Pre-Construction Services (other than Additional Design Services) described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement, but which will not exceed _____ Dollars (\$_____).

* * * * *

3. Owner has requested the performance of the services described below which Design/Build Contractor deems to be Additional Design Services.

[INSERT DESCRIPTION OF ADDITIONAL DESIGN SERVICES]

4. Design/Build Contractor agrees to perform the Additional Design Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars (\$_____).

* * * * *

5. Owner has requested the performance of the services described below which Design/Build Contractor deems to be Additional Construction Administration Services.

[INSERT DESCRIPTION OF ADDITIONAL CONSTRUCTION ADMINISTRATION SERVICES]

6. Design/Build Contractor agrees to perform the Additional Construction Administration Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement, but which will not exceed _____ Dollars (\$_____).

7. Design/Build Contractor will perform the services no later than _____, 20____ (_____) days after Design/Build Contractor 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.

Design/Build Contractor

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

[INSERT THE FOLLOWING AS APPLICABLE.]

Current Pre-Construction Services Fee Summary

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

Current Design Fee Summary

ORIGINAL Design Fee: (\$ _____)
Previous Additions: (\$ _____)
Previous Deductions: (\$ _____)
NET BALANCE of Design Fee: (\$ _____)
THIS Addition / Deduction: (\$ _____)
Adjusted Design Fee: (\$ _____)

Current Construction Administration Fee Summary

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

DIRECTOR OF CAPITAL PROJECTS ADMINISTRATION
The Texas State University System

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

Owner's Designated Representative

By: _____

Name: Peter Maass

Title: Director of Capital Projects Administration

EXHIBIT J

PREVAILING WAGE RATES

Attention is called to the *Texas Government Code*, Chapter 2258, Prevailing Wage Rates. This Chapter provides that it shall be mandatory upon the Design/Build Contractor and upon any Subcontractor under them to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Agreement. The Design/Build Contractor or Subcontractor who violates the provisions of Chapter 2258, *Texas Government Code*, shall pay to Owner, in addition to such other sums for which the Design/Build Contractor is liable under the statute, the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by *Texas Government Code* Section 2258.023(b).

Texas Prevailing Wage Law will be administered in accordance with the policies and procedures set forth in the Prevailing Wage Schedule for <<Insert County>>, can be found on the following website at:

<https://beta.sam.gov/>

EXHIBIT K

**SERVICES EXPRESSLY INCLUDED AS BASIC SERVICES
AND ADDITIONAL SERVICES NOT INCLUDED UNDER BASIC SERVICES**

- I. Without limiting any other requirements of the Contract Documents with regard to the services to be furnished by or through the Design/Build Contractor during the Pre-Construction Phase or with regard to Construction Administration Services during the Construction Phase, the following services shall be included as Basic Services to be furnished by the Design/Build Contractor and the fee or compensation for such services shall be included in the Design/Build Contractor's Pre-Construction Fee, Design Fee, or Construction Administration Fee, respectively, as set forth in Article 24 of the Agreement:
- A. The following Pre-Construction Services are expressly included as Basic Pre-Construction Services: <<Insert>>
 - B. The following Design Services are expressly included as Basic Design Services: << Insert>>
 - C. The following Construction Administration Services are expressly included as Basic Construction Administration Services: <<Insert>>
- II. If requested and approved by the Owner, the Design/Build Contractor will perform (or cause to be performed) the following services as Additional Services:

<<The following is a list of Additional Services that may be negotiated as part of the Design/Build Contractor's initial fee. Specify all services not described as Basic Services, that may become part of the Agreement through an Additional Services proposal approved at a later date.>>

- A. Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project. Total Fee: _____ Dollars (\$XXX).
- B. Providing planning surveys, site evaluations, environmental studies, or comparative studies of prospective sites. Total Fee: _____ Dollars (\$XXX).
- C. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase. Total Fee: _____ Dollars (\$XXX).
- D. Providing services to make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by the Owner. Total Fee: _____ Dollars (\$XXX).
- E. Providing coordination of Work performed by Owner's separate Contractors or by the Owner's own forces (other than the assistance or coordination with Owner's separate Contractors or own forces as required by the Contract Documents). Total Fee: _____ Dollars (\$XXX).
- F. Providing services in connection with the Work of separate consultants retained by the Owner (other than the assistance or coordination with Owner's separate consultants as required by the Contract Documents). Total Fee: _____ Dollars (\$XXX).
- G. Providing services for planning tenant or rental spaces. Total Fee: _____ Dollars (\$XXX).
- H. Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or due to Changes approved by the Owner and not due to errors or omissions by the Design/Build Contractor (including its Project Architect/Engineer). Total Fee: _____ Dollars (\$XXX).

- I. Making revisions in drawings, specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents. Total Fee: Dollars (\$).
- J. Making investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities, except as necessary and appropriate for the performance of the Design Phase Services required in connection with construction performed by the Owner. Total Fee: Dollars (\$).
- K. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the Design/Build Contractor or a Subcontractor. Total Fee: Dollars (\$).
- L. Providing services after final payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract. Total Fee: Dollars (\$).
- M. Preparing to serve or serving as an expert witness at the request of the Owner in connection with any public hearing, arbitration proceeding or legal proceeding. Total Fee: Dollars (\$).
- N. Providing any other services not required by the Contract Documents and not otherwise customarily furnished in accordance with generally accepted architectural or engineering practice. Total Fee: Dollars (\$).
- O. Providing a Hazardous Material Abatement Consultant to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through any programming, Schematic Design, Design Development, Construction Document and Construction Service Phases of the Project. The Hazardous Material Abatement Consultant shall be selected on the basis of competence and qualifications pursuant to *Texas Education Code* Section 51.780(f)(1) from a list of approved consultants provided by the Owner. Consultant shall review Owner provided surveys, make recommendations regarding the need for additional surveys, develop design and cost alternatives for hazardous material abatement, prepare drawings and specifications to include abatement in the general construction scope of work, provide a licensed individual to monitor hazardous material removal as required by State and EPA guidelines, and prepare a final abatement report. Design/Build Contractor shall provide the Owner with a written itemized cost proposal to provide Hazardous Material Abatement Consulting services, including coordination of the Design/Build Contractor. Hazardous Materials Abatement insurance shall be provided by the Design/Build Contractor and coverage for this service will not be included in any Owner provided insurance program. Total Fee: Dollars (\$).
- P. Providing a Commissioning Consultant to provide commissioning expertise through any programming, Schematic Design, Design Development, Construction Document and Construction. Total Fee: Dollars (\$).
- Q. Loose Furniture coordination with architectural spaces. Selection and procurement of loose furniture by Owner. Total Fee: Dollars (\$).
- R. Additional Project meetings and site visits beyond those reasonably required for fulfilling the Design/Build Contractor's and its Project Architect/Engineer's obligations under the Contract Documents based upon the initial scope and Project Schedule established in the Agreement. Total Fee: Dollars (\$).
- S. Renderings other than those provided in the Board of Regents Design Development Submission. Total Fee: Dollars (\$).
- T. Artwork Selection. Total Fee: Dollars (\$).
- U. Civil Engineering outside the Project's Limits of Construction. Total Fee: Dollars (\$).
- V. Civil Engineering associated with Groundwater Issues. Total Fee: Dollars (\$).

EXHIBIT L

OWNER'S DESIGN DEVELOPMENT SUBMITTAL GUIDELINES

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

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

***Ninety Percent (90%) Complete** means the actual floor plans are frozen and will not change following DD submittal approval. There can be minor dimensioning, missing, and incomplete referencing to supporting detail drawings needed to complete the architectural design.

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

EXHIBIT M

FORM OF CERTIFICATE OF COMPLIANCE

(see attached)

DRAFT

CERTIFICATE OF COMPLIANCE

To: Peter Maass, Director of Capital Projects Administration
The Texas State University System
601 Colorado Street
Austin, Texas 78701
peter.maass@tsus.edu

Component: _____

Project: _____

Document Development Phase (select one):

- Schematic Design
- Design Development
- Reconciled GMP
- 100% Construction Documents

(Name of Architect of Record)

Certifies to The Texas State University System that the specified phase above for the design and construction documents meet the requirements of The Texas State University System Owner / Design/Build Contractor Agreement and all deliverables for the specified phase named above and have been prepared in accordance with the compliance of all applicable codes, Texas Accessibility Standards, State Energy Conservation Office requirements, Campus Standards and Program parameters.

In Witness whereof, I have made and executed this certification this ____ Day of _____, 20____.

By: * _____
** Must be the person who ultimately seals the documents*

Title: _____

Date: _____

NOTARY:

Subscribed and sworn before me on this _____ Day of _____

Notary Signature

ODSR:

Owner's Designated Site Representative's Signature

Date

Attachment:

EXHIBIT N
CLOSE-OUT PROCEDURES - Sample

System/Component Description	Spec. Section	Record Submission	O & M Manuals	Equipment to be Training Furnished	Manufacturers Warranty	Extra Materials
General Conditions	UGC		9.1.1 Prior to SC		11.1 11.2	
Project Closeout	01705		1.4.E & J	3.1	1.4.C	1.4.F
Project Record Documents	01720					
- Record drawings, Specs	01720	1.3, 1.4				
- Record Product Data	01720	1.5				
- Maintenance Manuals	01720		1.7			
- Mockups	01720	1.6				
- Misc. Submittals	01720	1.8				
Warranties & Bonds	01740				1.4	
Building Systems						
Irrigation System	02811	1.4.B, C		1.4, Tools	1.7, 1 year	
Landscape Planting	02900				1.6, 1 year	
Hot Fluid-Applied Waterproofing	07142				1.8, 10 years	
Exterior Insulation & Finish Systems	07241				1.10, 5 years	
Coal Tar Elastomeric Roofing	07535				1.9, 20 years	
Joint Sealants	07920				GE Gold?	
Interior Aluminum Frames	08125				1.8, life	
Flush Wood Doors	08211				1.7, varies	
Aluminum Framed sliding-glass doors	08316				1.7, 5 years	
Rolling Smoke Barriers	08380				1.6, 1 year	
Automatic Sliding Glass Doors	08460				1.7, 5 years	
Aluminum Windows	08520				1.8, varies	
Glazed Aluminum Curtain Walls	08920				1.9, 5 years	
Ceramic Tile	09310					1.7, 5%
Acoustic Panel Ceilings	09511					1.7, 5%
Resilient Tile Flooring	09651					1.8, 2%
Resilient Wall Base	09653					1.8, 2%
Resilient Wall Base	09653					1.8, 2%

Carpet	09680					1.10, 1 year	1.7, 1%
Carpet Tile	09690					1.10, 15 years	1.11, 1%
Acoustic Wall Panels	09841						1.7, 2%
Visual Display Boards	10100					1.6, 5 years	
Access Flooring	10270						1.10
Toilet Accessories	10800					1.6, 2 years	
Audio-Visual	11200			As specified	Page 13,	Page 2, 1 year	
Photo Laboratory Equipment	12511			As specified		3.07, 1 year	
Electric Traction Elevators	14210				3.5	1.7, 1 year	
General Mechanical Requirements	15010						
- Record drawings, Specs		12.3					
- Operational & Maintenance Data			12.4				
- Warranties & Guarantees					12.7	12.5, 1 year	
- Final Construction Review					12.6		
Piping Expansion Compensation	15121	1.6	1.7B			1.10, 5 years	
Motors & Controllers	15170	1.5	1.6			1.10, 3 years	1.11
Variable Frequency Drives	15171	1.5	1.6				
Vibration Isolation	15245	1.8					
Fire Protection Piping	15310	1.6	1.7				
Fire Pumps	15320	1.6	1.7			1.12, 1 year	1.13
Fire Sprinkler Systems	15325	1.7	1.8		3.1.F.6,		1.13, 1%
Plumbing Piping	15410	1.6	1.7	1.13			1.13
Plumbing Specialties	15430	1.6	1.8	1.10			1.10
Plumbing Fixtures	15440	1.6	1.7			1.10, 5 years	1.11
Plumbing Equipment	15450	1.5	1.6			1.10, 5 years	
Hydronic Piping	15510	1.6	1.7				
Hydronic Specialties	15515		1.6			1.10	1.11
Hydronic Specialties	15520						1.11
Steam & Condensate Specialties	15225						1.11
Chilled & Heating Water Pumps	15540		1.6				1.9
Packaged Terminal Air Cond. Units	15782		1.6			1.10, 5 years	
Fans	15860		1.6				1.9
Air Cleaning Devices	15885		1.7				1.13
Ductwork Accessories	15910						1.9
Air Terminal Units	15930	1.8	1.9			1.12, 5 years	
Air Outlets and Inlets	15940	1.6					

Testing & Balancing	15990	1.6					
General Electrical Provisions	16010						
- Record drawings, Specs		3.6					
- Operational & Maintenance Data			3.4				
- Warranties & Guarantees							
- Final Construction Review					3.5.B		
Feeder & Plug-In Busway	16465	1.6.B	1.6.C				
Motor Control Centers	16482		1.6				
Lighting	16482			3.2.B Re-lamp			
Static UPS	16610					1.9, 3.3.A	3.3.B
Packaged Engine Generator Systems	16620		1.4			1.8	
Lightning Protection Systems	16670	1.7				1.8	
Fire Alarm Systems	16720				3.2- testing	3.3	
Telecommunications Equip. & wiring	16741	1.4				1.7, 1 year	
CATV/CCTV System	16771	3.6	3.7		3.9	3.4, 3.8, 1 year	
Facility Info. Management Systems	17000	PG 15 Line 3	PG 15 Line 23	PG 14 Line 42	PG 14 line 27		

EXHIBIT O

PROJECT SCHEDULE

<<The following milestones and respective dates shall be as established in the Design/Build Contractor solicitation documents or as negotiated by the parties to this Agreement>>

Notice to Proceed for Pre-Construction/Design Services.....	XX	XX	/20	XX
Board of Regents approval of Design Development Submittal	XX	XX	/20	XX
Owner approves Guaranteed Maximum Price Proposal	XX	XX	/20	XX
Notice to Proceed for Construction Phase issued	XX	XX	/20	XX
Construction Documents Complete.....	XX	XX	/20	XX
Occupancy	XX	XX	/20	XX
Final Completion	XX	XX	/20	XX

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EXHIBIT P

SECURITY BOND FORM

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____ §

That we, _____, as Principal, and _____, as Surety, are hereby held and firmly bound unto The Board of Regents of The Texas State University System as Obligees in the penal sum of Five Percent (5%) of _____ (\$ _____), the Guaranteed Maximum Price for the Project defined hereinbelow, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed a contract, with Obligees for the use and benefit of _____, dated _____, _____ (the "Contract"), for _____, Project No. _____, (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to all parties, the said Principal will, within the time required by the Contract, give Performance and Payment Bonds, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation to be void; otherwise the Principal and surety will pay unto the Obligees the difference in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal and the amount for which the Obligees legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this _____ day of _____ in the year _____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

EXHIBIT Q
REGULAR PROJECT MEETING AGENDA

The following topics shall be presented and discussed at each regular project meeting, reference Paragraph 8.1.4. The Design/Build Contractor may rearrange the order in which the agenda items are reported, however, all agenda items must be included at each meeting.

Project Name:

Date:

Reporting Month:

Milestones/Decisions/Activities Reached this Month:

Provide narrative or bullet summary and photo images

Upcoming Activities/Look Ahead Schedule:

Provide narrative, bullet summary, or schedule

Issues/New Business:

Provide narrative or bullet summary

Schedule Status:

Schedule Milestone

Schedule Date

Actual Date

List key upcoming milestones

Enter schedule date

Enter actual date

List key upcoming milestones

Enter schedule date

Enter actual date

Substantial Completion*

Enter schedule date

TBD

Final Completion*

Enter schedule date

TBD

* Required entry every month.

Schedule Float Days:

Original Float:

X Days

Remaining Float:

Y Days

Provide brief explanation for days consumed

Financials Status:

Original GMP:

\$00,000,000.00

Approved GMP Changes:

\$000.00

Current Contract:

\$000.00

Original CM Contingency:

\$000,000.00

Current CM Contingency:

\$000,000.00

Projected CM Contingency:

\$000,000.00

Current Buyout Savings:

\$000,000.00

Projected Buyout Savings:

\$000,000.00

Original Owner's Contingency:

\$000,000.00

Projected Owner's Contingency:

\$000,000.00

Remaining Owner's Contingency:

\$000,000.00

Provide Cash Flow Tracking Graph

Change Proposal (CP)

Status:

	Count	Value
Pending CPs:	0	\$000.00
Critical Pending CPs:	0	\$000.00
Approved CPs:	0	\$000.00

GMP Buyout

Status:

	Estimated Value	Actual Value	Buyout Savings
Package No. 1:	\$0,000,000.00	\$0,000,000.00	\$000,000.00
Package No. 2:	\$000,000.00	\$000,000.00	\$000,000.00
Package No. 3:	\$000,000.00	\$000,000.00	\$000,000.00
Subtotal:	<hr/> \$0,000,000.00	<hr/> \$0,000,000.00	<hr/> \$0,000,000.00
WRP:	\$000.00	\$000	\$000
Total:	<hr/> \$0,000,000.00	<hr/> \$0,000,000.00	<hr/> \$0,000,000.00

HUB Status:

Original HSP Goal Percentage:	0.0%
Current Paid Percentage:	0.0%
HUB Payments – to last Pay Application:	\$0,000.00

Safety Summary:

	Current Month	Total to Date
Man Hours:	0	0
Average Daily Work Population:	0	0
Average Number of Trade Contractors on Site:	0	0
Builder’s Risk of GL incidents:	0	0
OSHA Recordable Incidents:	0	0
Number of Lost Workdays:	0	0

Architect’s Supplemental Instructions (ASI) Status:

Total ASIs Issued to Date	0
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Requests for Information (RFI) Status:

Total RFIs to Date	0
Total RFI’s Closed	0
Total RFI’s Open	0
Average No. of Days to Close	0

RFI Metrics:

Response Time	Count	%
<5Days	0	0%
<10 Days	0	0%
<15 Days	0	0%
<20 Days	0	0%
<25 Days	0	0%
+26 Days	0	0%

Submittal Status:

Total Submittals to Date	0
Total Submittals Complete	0
Total Submittals Open	0
Average No. of Days to Close	0

Submittal Metrics:

Response Time	Count	%
<5Days	0	0%
<10 Days	0	0%
<15 Days	0	0%
<20 Days	0	0%
<25 Days	0	0%
+26 Days	0	0%

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