

Form No. OGC-S-2010-05

**THE UNIVERSITY OF HOUSTON SYSTEM
Office of Facilities Planning and Construction**

DESIGN BUILD AGREEMENT

Agreement No. _____

Account No. _____

This Design Build Agreement (this “***Agreement***”) is made as of _____ (the “***Effective Date***”), by and between the University of Houston System (“***Owner***”), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, and

Name:

Address:

Phone:

Fax:

(“***Design/Build Contractor***”) for the following project:

Name:

Address:

(the “***Project***”).

The Project Architect is:

Name:

Address:

Phone:

Fax:

(“***Project Architect***”).

Owner and Design/Build Contractor may be referred in this Agreement singularly as a “***Party***” and collectively as the “***Parties***.”

TABLE OF CONTENTS

	Page
ARTICLE 1 - SCOPE OF WORK.....	1
ARTICLE 2 - CONTRACT DOCUMENTS	1
2.1 CONTRACT DOCUMENTS.....	1
2.2 INTERPRETIVE	1
ARTICLE 3 - DEFINITIONS	2
ARTICLE 4 - GUARANTEED MAXIMUM PRICE; SAVINGS.....	5
4.1 GUARANTEED MAXIMUM PRICE PROPOSAL	5
4.2 CONSTRUCTION CONTINGENCY	7
4.3 ALLOWANCES	7
4.4 DOCUMENTATION	7
4.5 SAVINGS	7
ARTICLE 5 - TIME AND SCHEDULING.....	8
5.1 SUBSTANTIAL COMPLETION	8
5.2 LIQUIDATED DAMAGES	9
5.3 SCHEDULING AND SCHEDULE UPDATES	9
5.4 CRITICAL PATH METHOD MILESTONE SCHEDULE.....	9
5.5 CONSTRUCTION PHASE SCHEDULE	9
5.6 WORK PROGRESS SCHEDULE	9
5.7 FAST TRACK/MULTIPLE COMPLETION TIMES.....	10
5.8 FLOAT	10
ARTICLE 6 - DESIGN/BUILD CONTRACTOR'S GENERAL RESPONSIBILITIES	10
6.1 OVERVIEW	10
6.2 PROJECT ARCHITECT	10
6.3 DESIGN/BUILD CONTRACTOR'S DESIGNATED REPRESENTATIVE.....	12
6.4 COMMUNICATIONS	12
6.5 RECORDS; TRACKING.....	12
6.6 CONSULTANTS	13
6.7 UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES.....	13
6.8 SAFETY	13
6.9 CONSERVATION	13
6.10 NON-CONFORMING WORK.....	13
ARTICLE 7 - PRE-CONSTRUCTION PHASE SERVICES.....	13
7.1 PRE-CONSTRUCTION PHASE	13
7.2 PRE-CONSTRUCTION PHASE SERVICES	14
7.3 DESIGN/BUILD CONTRACTOR'S RISK	22
7.4 ADDITIONAL SERVICES	22
ARTICLE 8 - BIDDING PHASE.....	23
8.1 OBTAINING BIDS/PROPOSALS FOR THE WORK	23
8.2 SELF-PERFORMANCE	24
8.3 IDENTIFICATION OF SUBCONTRACTORS	24
8.4 BUYOUT REPORTS.....	25
ARTICLE 9 - CONSTRUCTION PHASE SERVICES	25
9.1 CONSTRUCTION PHASE	25
9.2 CONSTRUCTION PHASE SERVICES.....	25
ARTICLE 10 - DRAWINGS AND CADD FILES	26
10.1 FORMAT.....	26
10.2 CLARIFICATION AND DISTRIBUTION OF DRAWINGS	26
10.3 DELIVERY OF REVIEW SETS.....	27

10.4	REVIEW OF DRAWINGS	27
10.5	RECORD DRAWINGS; CLOSE-OUT REQUIREMENTS	27
10.6	COSTS	28
ARTICLE 11 - OWNERSHIP AND USE OF DOCUMENTS		28
11.1	WORK PRODUCT	28
11.2	LICENSE	28
11.3	OWNERSHIP	28
11.4	REQUIRED DISCLOSURES	28
ARTICLE 12 - OWNER'S RESPONSIBILITIES		28
ARTICLE 13 - PAYMENTS.....		29
13.1	DESIGN/BUILD CONTRACTOR'S OBLIGATIONS	29
13.2	SCHEDULE OF VALUES	29
13.3	APPLICATIONS FOR PAYMENT.....	30
13.4	SPECIFIC PAYMENTS	30
13.5	OFFSETS; DEDUCTIONS; WITHHOLDING	31
13.6	RETAINAGE	32
13.7	FINAL PAYMENT	32
13.8	NO WAIVER	33
13.9	AUDIT.....	33
ARTICLE 14 - REIMBURSABLE EXPENSES		33
14.1	DESIGN/BUILD CONTRACTOR'S REIMBURSABLE EXPENSES	33
14.2	NOT REIMBURSABLE EXPENSES	34
ARTICLE 15 - GENERAL CONDITIONS.....		34
15.1	GENERAL CONDITIONS COSTS.....	34
15.2	GENERAL CONDITIONS ITEMS.....	34
ARTICLE 16 - COST OF THE WORK.....		35
16.1	COST OF THE WORK.....	35
16.2	NOT COST OF THE WORK	36
ARTICLE 17 - DESIGN/BUILD CONTRACTOR'S CONSTRUCTION PHASE FEE.....		37
17.1	CONSTRUCTION PHASE FEE	37
17.2	ITEMS TO BE PAID FROM CONSTRUCTION PHASE FEE.....	37
ARTICLE 18 - COMPENSATION.....		38
18.1	PRE-CONSTRUCTION PHASE FEE	38
18.2	CONSTRUCTION PHASE FEE	38
18.3	APPROVED ADDITIONAL SERVICES	38
ARTICLE 19 - BONDS AND INSURANCE.....		38
19.1	BONDS	38
19.2	PRE-CONSTRUCTION PHASE SERVICES INSURANCE REQUIREMENTS	38
19.3	CONSTRUCTION PHASE SERVICES INSURANCE REQUIREMENTS	39
19.4	FOR ALL INSURANCE REQUIRED OF DESIGN/BUILD CONTRACTOR.....	39
ARTICLE 20 - PROJECT TERMINATION AND SUSPENSION		40
20.1	MUTUAL RIGHT TO TERMINATE	40
20.2	TERMINATION BY OWNER.....	40
20.3	DESIGN/BUILD CONTRACTOR'S OBLIGATIONS ON TERMINATION.....	40
20.4	SUSPENSION OF PROJECT	41
ARTICLE 21 - INDEMNITY		41
21.1	BODILY INJURY AND PROPERTY DAMAGE	41
21.2	INTELLECTUAL PROPERTY	41
21.3	SURVIVAL	42

ARTICLE 22 - WARRANTIES	42
22.1 BASIS	42
22.2 WARRANTIES	42
22.3 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK	43
22.4 NO WAIVER	43
ARTICLE 23 - RECORD RETENTION; OWNER AUDIT RIGHTS.....	43
23.1 AUDIT RECORDS	43
23.2 INSPECTION; AUDIT	44
23.3 SUBCONTRACTS	45
ARTICLE 24 - OTHER TERMS AND CONDITIONS	45
24.1 LIMITATION OF LIABILITY	45
24.2 SITE OBSERVATION REQUIREMENTS	45
24.3 PROGRESS MEETINGS	45
24.4 ASSIGNMENT.....	45
24.5 STATUTORY CERTIFICATIONS.....	46
24.6 DISPUTE RESOLUTION.....	46
24.7 CAPTIONS	46
24.8 GOVERNING LAW AND VENUE	46
24.9 WAIVERS	46
24.10 AMENDMENTS.....	46
24.11 BINDING.....	46
24.12 APPOINTMENT.....	46
24.13 SEVERABILITY	46
24.14 NEW LAWS.....	46
24.15 NOTICES	46
24.16 EXHIBITS.....	47
24.17 REGISTRATION OF SEX OFFENDERS	47

Exhibit A	Guaranteed Maximum Price Proposal with Guidelines for the Preparation of the GMP
Exhibit B	Owner's Milestone Schedule
Exhibit C	Design/Build Contractor's Personnel and Monthly Salary Rates
Exhibit D	Payment and Performance Bonds
Exhibit E	Approved General Conditions Line Items
Exhibit F	Constructability Implementation Program
Exhibit G	Additional Services Proposal
Exhibit H	Project Architect's Personnel, Titles and DSE Rates
Exhibit I	Calculations and Definitions of Building Areas
Exhibit J	Project-Specific BIM Requirements

ARTICLE 1 - SCOPE OF WORK

Design/Build Contractor shall perform complete design and construction services, including but not limited to Pre-Construction Phase Services and Construction Phase Services, and furnish all materials, equipment, tools and labor necessary to complete the Project, or any phase of the Project, in compliance with or reasonably inferable from Owner's requirements and the terms of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Contract Documents. The Contract Documents are included in the definition of "Agreement" and consist of the following, all of which are incorporated by reference:

- 2.1.1 This Agreement and all attachments hereto;
- 2.1.2 The State of Texas Uniform General Conditions for Construction Contracts ("**Uniform General Conditions**" or "**UGC**") most recently issued by the Texas Facilities Commission, a copy of which may be found online at the Texas Facilities Commission website (<http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/>);
- 2.1.3 University of Houston Supplemental General Conditions and Special Conditions of Construction ("**SGC**") located online at the website of the University of Houston System Office of Contract Administration (<http://www.uh.edu/legal-affairs/contract-administration/contract-documents/index.php>);
- 2.1.4 The Design Guidelines in effect on the Effective Date. The Design Guidelines are located online at www.uh.edu/plantops/emanual/forms/00_campus_design_guidelines.pdf
- 2.1.5 The BIM Protocol in effect on the Effective Date (the "**BIM Protocol**"). The BIM Protocol is located online at <http://www.uh.edu/plantops/departments/fpc/UHS-BIM-Protocol.pdf>;
- 2.1.6 The Master Specifications in effect on the Effective Date. The Master Specifications are located online at <http://www.uh.edu/plantops/departments/fpc/master-specs/index.php>;
- 2.1.7 The Guaranteed Maximum Price Proposal;
- 2.1.8 All Change Orders, contingency authorizations, and written orders for minor change in the Work issued after the Effective Date;
- 2.1.9 The drawings and specifications developed by Design/Build Contractor and accepted by Owner;
- 2.1.10 The drawings and specifications developed or prepared by Owner or Owner's independent consultants, if any;
- 2.1.11 Owner's Request for Proposal and/or Request for Qualifications issued in relation to the Project, including any addenda and/or clarifications issued by Owner, and Design/Build Contractor's Response(s) to Owner's Request for Proposal and/or Request for Qualifications including, but not limited to, Design/Build Contractor's HUB Subcontracting Plan for Pre-Construction Phase Services and HUB Subcontracting Plan for Construction Phase Services (both, once accepted by Owner);
- 2.1.12 Notices to Proceed; and
- 2.1.13 Any other documents referenced in this Agreement, including any attachments thereto.

2.2 Interpretive.

- 2.2.1 To the extent the terms of this Agreement conflict with the Uniform General Conditions and/or the Supplemental Conditions, the terms of this Agreement will control.
- 2.2.2 If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

ARTICLE 3 - DEFINITIONS

Terms not defined in this Agreement will have the meanings given in the Uniform General Conditions and Supplemental Conditions.

“Additional Services” is defined in Section 7.4.

“Application for Payment” means the application(s) for payment provided by Design/Build Contractor to Owner for payment of construction services rendered by Design/Build Contractor pursuant to this Agreement.

“Basic Services” means all the services Design/Build Contractor is required to deliver in accordance with the Contract Documents, with the exception of the Additional Services.

“Building Information Modeling” or **“BIM”** means a digital representation of physical and functional characteristics of a facility. As such it serves as a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle from inception onward. A basic premise of BIM is collaboration by different stakeholders at different phases of the life cycle of a facility to insert, extract, update or modify information in the BIM process to support and reflect the roles of that stakeholder. The BIM is a shared digital representation founded on open standards for interoperability. Owner’s specific BIM requirements for the Project, including MDC and the LOD for each MDC, are set forth in **Exhibit J**.

“Change Order Fee Percentage” means _____ %

“Completion Date” is defined in Section 5.1.

“Constructability Report” is defined in Section 7.2.3.2.

“Construction Contingency” an amount specified in **Exhibit A** to cover any shortfalls in the scope of work as it was known at the time of the GMP Agreement. Use of Construction Contingency shall only be authorized via a fully executed Construction Contingency Expenditure Authorization (CCEA).

“Construction Documents” Models and drawings and specifications based on the Models, illustrating and describing the further development of the approved design development documents detailing the quality levels of materials and systems and other requirements for construction of the Project within the approved GMP and schedules, as further described in Section 7.2.9.1.

“Construction Phase” is defined in Section 9.1.

“Construction Phase Fee” is Design/Build Contractor’s overhead and profit on the Construction Phase of the Project and is calculated adding (a) the product of the Construction Phase Fee Percentage multiplied by the actual Cost of the Work (which does not include General Conditions Costs and Reimbursable Expenses) not related to a Change Order, plus (b) the product of the Change Order Fee Percentage multiplied by the actual Cost of the Work (which does not include General Conditions Costs and Reimbursable Expenses) identified in a Change Order. The originally anticipated Construction Phase Fee is subject to reduction by way of deductive Change Order, as further set forth in Section 17.1.1.

“Construction Phase Fee Percentage” means _____ %

“Construction Phase Schedule” means a detailed schedule for the performance of the Construction Phase Services.

“Construction Phase 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.

“Cost Guide” is defined in Section 15.2.3.

“General Conditions” or **“General Conditions Work”** means those items listed in Exhibit E. General Conditions and General Conditions Work are not included in the Cost of the Work, but are part of the Guaranteed Maximum Price.

“General Conditions Costs” is defined in Section 15.1.

“Guaranteed Maximum Price” or **“GMP”** means the amount proposed by Design/Build Contractor and accepted by Owner as the maximum cost to Owner for the completion of the Project in accordance with the Contract Documents. The GMP includes the Construction Phase Fee (based on the Cost of the Work), the General Conditions Cost, the Cost of the Work, and any Construction Contingency.

“GMP Agreement” means the Guaranteed Maximum Price Proposal once signed and dated by Owner.

“Guaranteed Maximum Price Proposal” or **“GMP Proposal”** means the document prepared by Design/Build Contractor in the form attached hereto as Exhibit A (or such other form as Owner may designate). The GMP Proposal will be prepared with Project Architect’s assistance, will include the qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements identified within Attachment 1 to Exhibit A, and will satisfy the requirements of Section 4.1 below.

“Job Conferences” means meetings held between Design/Build Contractor and Subcontractors.

“Level of Development,” or **“LOD”** means the level of development for each Model Development Category, as specified in the BIM Protocol or in the Project-specific BIM requirements (**Exhibit J**).

“Liquidated Damages Amount” means either (*check appropriate box*):



a flat rate of _____ DOLLARS (\$ _____), or



the sum of the amounts resulting from the following schedule:

day 1 through day 15 _____ DOLLARS (\$ _____)

plus

day 16 through day 30 _____ DOLLARS (\$ _____)

plus

each day beyond day 30 _____ DOLLARS (\$ _____)

“Model Development Category,” or **“MDC”** means a category specified in the BIM Protocol on in the Project-specific BIM requirements (**Exhibit J**) for development of a Model.

“Monthly Salary Rate” means the amount expressly approved by Owner in writing for calculation of the amount Design/Build Contractor may charge to the Project (as General Conditions Costs) in Applications for Payment throughout the Construction Phase to account for the services of Design/Build Contractor’s salaried personnel assigned to the Project. The Monthly Salary Rate is not a billing rate; it is the actual cost to Design/Build Contractor for its employee’s service. The Monthly Salary Rate for each salaried Design/Build Contractor employee must be approved in writing by Owner in advance of any Application for Payment seeking reimbursement for that employee’s services. Owner’s approval of a Monthly Salary Rate does not constitute Owner’s stipulation that the rate is accurate or appropriate and/or that the employee is appropriately billing to the Project; any payments made for Design/Build Contractor’s personnel are subject to audit to determine the actual costs of the wages and allowable employer contributions incurred by Design/Build Contractor for services performed for the Project.

“Pre-Construction Phase Fee” is defined in Section 18.1.

“Pre-Construction Phase Services” means all professional services required to fulfill the design obligations set forth in this Agreement, as more fully set forth in Section 7.1.

“Program” means Owner’s comprehensive facility program for the Project.

“Progress Meetings” means meetings held among Design/Build Contractor, Owner and Owner’s Designated Representative.

“Project Architect” means the professional architect or engineer employed by Design/Build Contractor to perform all or part of the Pre-Construction Phase Services in accordance with the Agreement. Project Architect and its professional consultants must be qualified to perform the Pre-Construction Phase Services and must be licensed in the State of Texas in their respective professions. Project Architect shall be considered a Subcontractor for purposes of this Agreement.

“Project Team” means Owner, Design/Build Contractor, Project Architect, and any separate contractors and other consultants employed for the purpose of programming, design and construction of the Project. The composition of the Project Team may vary at different phases of the Project. The Project Team will include such Subcontractors, engineers and other consultants as required by Owner from time to time.

“Record Drawings” is defined in ARTICLE 10.

“Reimbursable Expenses” is defined in Section 14.1.

“Value Engineering” is defined in Section 7.2.9.1.

“Warranty” means Design/Build Contractor’s warranty in accordance with Article 13 of the UGC.

“Work” means the provision of all services, labor, materials, supplies and equipment required or reasonably inferable to complete the Project in strict compliance with the Contract Documents. Work includes, but is not limited to, the Pre-Construction Phase 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/or included in the specifications.

“Work Product” is defined in Section 11.1.

ARTICLE 4 - GUARANTEED MAXIMUM PRICE; SAVINGS

4.1 Guaranteed Maximum Price Proposal. Design/Build Contractor shall prepare and submit a Guaranteed Maximum Price Proposal to Owner by _____% completion of Documents. If Owner accepts the GMP Proposal, both Parties shall sign the proposal and the Guaranteed Maximum Price, Contract Time and date of Substantial Completion therein shall become part of this Agreement. Based on particular Project requirements and the development of the Project design, Owner, at its sole option and discretion, may specify a different format than that contained at Exhibit A, which is provided as an example only.

4.1.1 In developing the GMP Proposal, Design/Build Contractor shall coordinate with Project Architect and any other Design Consultants to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of the GMP. Design/Build Contractor shall review development of the GMP Proposal with Owner on an ongoing basis to address clarifications of the scope and pricing, distribution of contingencies, schedule, assumptions, exclusions and other matters relevant to the establishment of the GMP. In connection with this Agreement or the Project, “value engineering” has the meaning commonly accepted and utilized within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas.

4.1.2 The GMP Proposal shall include a Construction Contingency to allow for costs arising out of the continued development and completion of the Drawings and Specifications necessary for the development of the Project and consistent with the design intent (as inferable from the Drawings and Specifications). The Construction Contingency may

only be applied to costs actually incurred to correct gaps or errors in the Drawings and Specifications that would not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the proposal. The Construction Contingency shall be administered in accordance with Section 4.2 below.

- 4.1.3 In submitting the GMP Proposal, 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 and the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by Owner in writing. Upon Owner's acceptance of the GMP Proposal, 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 Agreement or the supporting documents used to establish the GMP.
- 4.1.4 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 Owner in writing and specifically accepted by Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by Owner and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments shall control.
- 4.1.5 Owner, at its sole option and discretion may reject the GMP Proposal, attempt to renegotiate the proposal with Design/Build Contractor (with the right to cease negotiations at any time and reject the proposal), or increase the Estimated Construction Cost. Design/Build Contractor shall not withdraw its GMP Proposal for sixty (60) days after Owner's receipt.
- 4.1.6 Following Owner's 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 Agreement. During the Construction Documents stage, Design/Build Contractor and Project Architect shall jointly deliver a monthly status report to 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.
- 4.1.7 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 assessment, or any rate increase of an existing tax or assessment, except taxes or assessments on income and/or Design/Build Contractors operations, holdings or assets, 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.
- 4.1.8 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 Owner at least monthly and with Design/Build Contractor's recommendation for selection of a bid/proposal for each subcontracting package.

- 4.1.9 Notwithstanding anything to the contrary herein, Design/Build Contractor shall have no liability for delay or liquidated damages if the Parties are unable to reach an agreement on the GMP.
- 4.2 Construction Contingency. The GMP Agreement may include a Construction Contingency to cover increases in the Cost of the Work and/or General Conditions identified through the refinement, development and completion of the Construction Documents or procurement of the Work.
- 4.2.1 Any re-allocation of funds from Construction Contingency to cover increases in the Direct Construction Cost must be approved by Owner in advance and in writing. In written requests to use Construction Contingency, Design/Build Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs.
- 4.2.2 Construction Contingency shall not be used for Contractor rework, or unforeseen conditions that Design/Build Contractor could have foreseen in the exercise of Design/Build Contractor's Standard of Care, cost increases caused by lack of coordination or communication with Project Architect or trade Subcontractors, to correct errors or omissions in the Work or the Construction Documents, or for Warranty work.
- 4.2.3 Any balance in Construction Contingency funds remaining at the end of the Project shall be returned to Owner as savings and a credit applied to the Project in the amount of such balance multiplied by the Construction Phase Fee Percentage to reimburse Owner for the portion of the Construction Phase Fee calculated on the Construction Contingency.
- 4.3 Allowances. Any specified allowances are preliminary estimates and include labor and material costs. The costs included in the Allowances shall be determined in accordance with the Uniform General Conditions and Supplemental Conditions except that any claim by Design/Build Contractor for an adjustment to the GMP based on the cost for allowance work shall be made within a reasonable time after the cost of the allowance is known. Prior to expending any specified allowances, Design/Build Contractor shall provide Owner with a detailed breakdown of the costs involved in constructing the improvement, including those costs identified on the Change Proposal form and shall not proceed unless it has previously received an Allowance Expenditure Authorization form counter-signed by Owner.
- 4.4 Documentation. Design/Build Contractor shall maintain a detailed log of contingency and allowance expenditures and shall submit the log for review by Owner and Project Architect at each Progress Meeting and otherwise upon Owner's request.
- 4.5 Savings. Each of the following items shall be credited against the GMP or refunded to Owner if realized, discovered or received after Final Payment:
- 4.5.1 The savings, if any between the sum of the actual Cost of the Work plus General Conditions, plus the Design/Build Pre-Construction Phase Fee, plus the Design/Build Contractor's Construction Phase Fee, and the GMP.
- 4.5.2 The balance remaining, if any, in the "Allowances" after the allowance items have been selected and purchased.
- 4.5.3 100% of any unexpended funds categorized as Contingency, Reimbursable Expenses, allowance and savings resulting from any design or construction changes reducing the scope of the Work, at any time, whether before or after Final Payment.
- 4.5.4 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 Schedule of Values, so long as the total Cost of the Work proposed in the GMP does not increase.

- 4.5.5 100% of any savings identified by cost review or audit, at any time, whether before or after Final Payment.
- 4.5.6 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to Owner, Design/Build Contractor, or to some other party; and any such sale, if made to others than Owner, shall be at fair market price. The fair market value shall be determined by referring to the Contractor's Equipment Cost Guide or www.equipmentwatch.com. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Design/Build Contractor shall use its best efforts to obtain the highest price in respect of such sales.
- 4.5.7 If Owner makes funds available to Design/Build Contractor, discounts earned by Design/Build Contractor through advance or prompt payments. Design/Build Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. Design/Build Contractor shall purchase materials for this Project in such quantities as will provide the most advantageous prices to Owner.
- 4.5.8 Reasonable market value as approved by Owner at the time of removal of all materials, tools, and equipment actually purchased for the Work and upon completion of the Work retained by Design/Build Contractor.
- 4.5.9 Rebates, discounts, or commissions allowed to and collected by Design/Build Contractor from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or, to the extent attributable to this Project, on bond premiums, insurance and sales taxes.
- 4.5.10 Deposits made by Owner and not returned to Owner due to the fault of Design/Build Contractor with respect to the Project or in connection with any other agreement between Owner and Design/Build Contractor. Should Design/Build Contractor not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design/Build Contractor, including, but not limited to, by deducting the amount from payments due Design/Build Contractor.
- 4.5.11 If the actual cost of any item comprising the ECC or GMP is less than the listed or assumed cost of such item, Owner may recover the savings by reducing the GMP and/or electing to increase the Project scope.

ARTICLE 5 - TIME AND SCHEDULING

5.1 Substantial Completion. Design/Build Contractor shall achieve Substantial Completion of the Work on the date identified for Substantial Completion in the Owner's Notice to Proceed with Pre-Construction Phase Services ("**Completion Date**"). The Completion Date may only be extended by Change Order. Design/Build Contractor shall achieve Final Completion of the Work within thirty (30) days after Substantial Completion. Reasonably foreseeable adverse weather conditions will not constitute an Excusable Delay. For purposes of this Agreement, "reasonably foreseeable adverse weather conditions" means weather conditions in keeping with the historical averages listed by the National Oceanic and Atmospheric Administration on its website, www.noaa.gov.

- 5.1.1 As part of Owner's testing and inspection obligations pursuant to the UGC (including, but not limited to Article 8 of the UGC), Design/Build Contractor acknowledges that Owner will engage a third party to commission, test and balance the Project's systems. Substantial Completion cannot occur unless and until such third party reports that the

commissioned elements of the Project are satisfactory, adequate and in proper working order.

5.2 Liquidated Damages. For each consecutive calendar day after the Completion Date that Design/Build Contractor fails to achieve Substantial Completion and/or Final Completion, the Liquidated Damages Amount (or such lesser amount as may be required by law) will be deducted from any money due or that becomes due Design/Build Contractor, not as a penalty but as liquidated damages representing the Parties' estimate as of the Effective Date of the damages Owner will incur for late completion. The Parties stipulate and agree that the ascertainment of actual damages would be impractical, unduly burdensome, and cause unnecessary delay and that the Liquidated Damages Amount of daily liquidated damages is reasonable.

5.3 Scheduling and Schedule Updates.

5.3.1 Owner's initial milestone is attached to and incorporated in this Agreement as Exhibit B.

5.3.2 Within ten (10) days after receiving the Notice to Proceed with Pre-Construction Phase Services, Design/Build Contractor shall submit for Owner's review and acceptance a CPM Milestone Schedule.

5.3.3 Design/Build Contractor will submit an updated milestone schedule (the "**Construction Phase Schedule**") to Owner as part of its GMP Proposal.

5.3.4 Within twenty-one (21) days after receiving the Notice to Proceed with Pre-Construction Phase Services, Design/Build Contractor shall submit for Owner's review and acceptance a detailed baseline schedule (the "**Baseline Schedule**").

5.3.5 Design/Build Contractor will issue periodic updates to the Baseline Schedule as necessary (each such update, a "**Work Progress Schedule**") for Owner's approval in accordance with the requirements of the UGC.

5.4 Critical Path Method Milestone Schedule. The CPM Milestone Schedule must encompass the entire Project duration, including performance of 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.

5.4.1 The CPM Milestone Schedule for the Pre-Construction Phase of the Project must include reasonable amounts of time for Owner's review and approval of design drawings and specifications and for approval of authorities having jurisdiction over the Project.

5.4.2 Design/Build Contractor shall revise the preliminary CPM Milestone Schedule as required by the conditions of the Work, but only with the written approval of Owner. Upon Owner's acceptance of the GMP, the Construction Phase Schedule will not be modified except for good cause as provided in the Contract Documents.

5.5 Construction Phase Schedule. Prior to commencing the Construction Phase Services, Design/Build Contractor shall submit for Owner's approval a Construction Phase Schedule. The Construction Phase Schedule must include reasonable periods of time for Owner's review and approval of all change documents and submittals issued during construction and for approval of authorities having jurisdiction over the Project. Upon Owner's acceptance of the GMP, the Construction Phase Schedule may not be modified except for good cause as provided in the Contract Documents and as mutually agreed upon in writing signed by authorized representatives of both Parties.

5.6 Work Progress Schedule. Design/Build Contractor shall monitor the progress of the Project in comparison with the Baseline Schedule and provide Owner with at least monthly Work Progress Schedules and status reports as outlined in Owner's specifications. The Work Progress Schedule must show the time frames from the Baseline Schedule as well as the revised time frames proposed in the

update. A Work Progress Schedule is not binding until accepted in writing by Owner; the time periods established in the Baseline Schedule may not be changed without written consent from Owner. Modifications to the Work Progress Schedule logic, coding, layouts and filters, detail and activity durations must be in accordance with Owner's specifications.

5.7 Fast Track/Multiple Completion Times. If Owner elects to "fast-track" or develop the Project in multiple stages, Design/Build Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific GMP, at Owner's discretion. As each stage, phase or bid package is approved by Owner, Design/Build Contractor shall provide its best estimate of the value of the remaining scope of work that is not bid, whether or not each phase or bid package is in budget, and if any phase or bid package is not within budget, the steps that will be taken to insure the Project is completed within the GMP (if then established) or the Design/Build Budget Limitation (if the total Project GMP is not then established).

5.8 Float. Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Work Process Schedule. Float time contained in the CPM Milestone Schedule is for the exclusive benefit of, and will be used as determined by, Owner.

ARTICLE 6 - DESIGN/BUILD CONTRACTOR'S GENERAL RESPONSIBILITIES

6.1 Overview. In addition to the requirements of Section 3.3 of the Uniform General Conditions, Design/Build Contractor shall perform all services specifically allocated to it by the Contract Documents, including but not limited to the Basic Services, as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project in compliance with the requirements of the Contract Documents including, but not limited to schedules (ARTICLE 5) and GMP (ARTICLE 4), using its best efforts, skills, judgments and abilities ("***Design/Build Contractor's Standard of Care***"). Except to the extent specifically provided elsewhere in this Agreement, Design/Build Contractor shall provide (or cause to be provided) and shall pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, temporary facilities and other facilities and services necessary or reasonably inferable for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated into the Project.

6.2 Project Architect. Design/Build Contractor shall coordinate with Project Architect and utilize its best efforts to further the interests of Owner and the Project. Unless otherwise approved, Owner and Design/Build Contractor shall perform their respective obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work. Design/Build Contractor shall be solely responsible for Project Architect's compliance with the requirements of the Architect/Engineer under Uniform General Conditions and with the following requirements:

- 6.2.1 Project Architect shall assist in the administration of this Agreement and the Contract Documents as set forth below and in the Project manual, the Design Guidelines and any other criteria applicable to the Program and Owner's needs.
- 6.2.2 Project Architect shall utilize BIM authoring software and BIM based design processes to produce and deliver to Owner and the rest of the Project Team, at no cost to Owner, a BIM model (each, a "***Model***") and the BIM Deliverables (as defined in and requirement by the BIM Protocol and/or **Exhibit J**) at each phase of this Project in accordance with the requirements of the BIM Protocol and/or the Project-specific BIM requirements (**Exhibit J**), including the requirements for LOD of the Model Development Categories. Each Model will be published in its native file format through the Project information management system. At each phase of the Services, Project Architect shall conduct Model coordination, aggregation and clash detection to identify and resolve conflicts in

design between or among systems, structures and components prior to generating and circulating the design documents pertinent to that phase.

- 6.2.3 Project Architect shall be knowledgeable of BIM use for all phases of the design and utilize data, graphics and drawings derived from the Model(s) for decision-making support and construction documentation.
- 6.2.4 Project Architect shall use BIM to:
 - 6.2.4.1 prepare and present to Owner alternative approaches for design and construction of the Project based on the Program, DBBL and schedules; and
 - 6.2.4.2 alternative approaches to design and construction for the Project as they are being modeled at intervals appropriate to the progress of the Project with the Owner; and
 - 6.2.4.3 provide updated documents derived from the Models at each Project Team meeting and when requested by owner in writing.
- 6.2.5 Project Architect shall provide, at no additional cost to Owner, Electronic Files (including Models) to Design/Build Contractor for Design/Build Contractor's convenience for the purpose of preparing its submittals, including, but not limited to, shop drawings and coordination drawings.
- 6.2.6 Project Architect shall take reasonable precautions, including confirmation and investigation through BIM, to review, verify the accuracy and suitability of, and approve or take other appropriate action upon 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. An electronic copy of each submittal (shop drawing, product data and/or sample) must be provided to Owner at the end of the Project. Owner's submittal commentary shall be incorporated into the final submittal response unless 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 will be the responsibility of Design/Build Contractor at no cost to Owner.
- 6.2.7 Prior to presenting design documents to Owner for approval, Project Architect shall demonstrate and provide written assurance to Owner that all conflicts, clashes, and/or collisions have been removed and resolved.
- 6.2.8 Upon Owner's written request (as a Reimbursable Expense), Project Architect shall prepare presentation materials including an animation derived from the Models at the completion of the Design Development Phase. If further requested by Owner in writing, Architect shall present same to Owner's Board of Regents.
- 6.2.9 Project Architect shall review Site surveys, subsoil data and other data logs of borings, etc., furnished or obtained pursuant to Section 12.4 and Section 7.2, and advise Owner whether such data is sufficient for the purpose of design, or if additional data is necessary before Project Architect can proceed with the Services.
- 6.2.10 Project Architect shall provide assistance to Owner in the review of Design/Build Contractor's requests for Change Orders and associated pricing.
- 6.2.11 Project Architect shall incorporate into the Models, plans, drawings, specifications and schedules of every character made or furnished in connection with the Work such

changes as are necessary to satisfy Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

6.2.11.1 Upon Final Completion, Project Architect shall revise the Models and the drawings and specifications derived from the Models to incorporate all Addenda, Change Orders and any modifications recorded by the Contractor on the Record Drawings maintained at the Site. Project Architect shall label the revised drawings and specifications as "Record Drawings" and shall deliver copies to Owner for record purposes as follows:

6.2.11.1.1. Two (2) copies of electronic media as required by the BIM Protocol and in AutoCAD format in accordance with the CADD Standards Manual.

6.2.11.1.2. One (1) reproducible mylar film and one (1) bond paper copy. Sepias are not acceptable.

6.2.11.1.3. Electronic versions of specifications in Microsoft Word format and Schedules and equipment and product data shall be in Microsoft Excel format on CD-ROM/DVD.

6.2.11.1.4. CD-ROM/DVDs shall be labeled with the Project Name and Agreement Number indicated on the first page of this Agreement and contain an index or contents file.

6.2.12 Project Architect and Design/Build Contractor shall prepare Change Orders for 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 GMP or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. In conjunction with each change, Project Architect shall review the cost and time estimate and recommend to Owner whether the proposal is appropriate. Project Architect shall prepare revised Construction Documents, where appropriate, to illustrate and document the work required by the change.

6.2.13 Project Architect shall review Design/Build Contractor's submission of guarantees and warranties for conformance with the Contract Documents.

6.3 Design/Build Contractor's Designated Representative. Design/Build Contractor shall designate Design/Build Contractor's Designated Representative to act on Design/Build Contractor's behalf with respect to the Project for all purposes, including (by way of example and not of limitation) execution of Change Orders, Applications for Payment and Additional Services requisitions. Design/Build Contractor's Designated Representative shall be responsible for the day-to-day management of the Project from Pre-Construction Phase Services through Final Completion. Design/Build Contractor's Designated Representative will be Owner's primary contact and must be available as required for the benefit of the Project and Owner. Design/Build Contractor shall not replace the Design/Build Contractor's Designated Representative without Owner's prior written approval, such approval not to be unreasonably withheld.

6.4 Communications. Design/Build Contractor shall establish and implement procedures for communication and coordination among the Project Team, Subcontractors, separate contractors and others regarding all aspects of constructing the Project. Design/Build Contractor shall administer all Progress Meetings and special meetings scheduled by Owner and shall promptly provide meeting minutes to all parties within three (3) days after each meeting. Project Architect shall attend Design/Build Contractor's regularly scheduled meetings.

6.5 Records; Tracking. Design/Build Contractor shall establish and maintain a numbering and tracking system for all Project records, including modifications thereto, requests for information,

submittals, deficiency reports, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested. During the Construction Phase, Design/Build Contractor shall submit to Owner detailed monthly progress reports that include a description of the Project status, a summary update of the Work by CSI division, photographs, updated and current schedules and logs, and any other information necessary to convey the progress of the Work.

6.6 Consultants. Prior to executing any Subcontracts, Design/Build Contractor shall identify to Owner the employees and other personnel it will assign to the Project, including their Monthly Salary Rate. Design/Build Contractor shall also identify any consultants (including Project Architect) that will be performing services for the Project, and their respective DSE hourly wages. Design/Build Contractor shall not remove or replace the persons or entities assigned to the Project except with Owner's prior written consent, which consent shall not be unreasonably withheld. Design/Build Contractor shall not assign to the Project, or contract with, any person or entity to which Owner has a reasonable objection.

6.7 Utilization of Historically Underutilized Businesses. Further to Article 4 of the Uniform General Conditions, Design/Build Contractor shall not make any changes to the HUB Subcontracting Plan without Owner's prior written approval. Design/Build Contractor shall comply with the requirements of the HUB Policy and adhere to the HUB subcontracting plans submitted with Design/Build Contractor's Proposal for Design Phase Services and, following acceptance of the GMP Proposal, for Construction Phase Services. No changes to the HUB subcontracting plans can be made by Design/Build Contractor without Owner's prior written approval.

6.8 Safety. Further to the provisions of Article 7 of the Uniform General Conditions and Section 6 of the SGC, Design/Build Contractor's Safety Plan shall include recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities and equipment, materials and services for common use of the Subcontractors. Design/Build Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence of any Owner-controlled insurance programs will not operate to diminish or eliminate Design/Build Contractor's responsibilities under this Agreement. Owner agrees that Owner-provided Subcontractors shall be responsible for their safety precautions and programs of their employees, agents and independent contractors.

6.9 Conservation. Design/Build Contractor shall comply with the Energy Conservation Design Standard for New State Buildings adopted by the State Energy Conservation Office ("**SECO**"), 34 Texas Administrative Code, Part 1, Chapter 19 and with any SECO water conservation or reclamation standards, and provide a certification that the Project design complies with the standards as required by applicable law.

6.10 Non-Conforming Work. Upon discovering that any portion of the Work is non-conforming, damaged or defective, Design/Build Contractor shall promptly correct such condition at no cost to Owner. For all purposes in this Agreement, "at no cost to Owner" means that the cost(s) may not be paid from savings, Construction Contingency or allowance, or as General Conditions Cost, Cost of the Work, Additional Services, or Reimbursable Expenses.

ARTICLE 7 - PRE-CONSTRUCTION PHASE SERVICES

7.1 Pre-Construction Phase. The Pre-Construction Phase will be deemed to commence upon the date specified in Owner's Notice to Proceed with Pre-Construction Phase Services and will continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Design/Build Contractor will not be reimbursed for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed with Pre-Construction Phase Services. Pre-Construction Phase Services may overlap Construction Phase Services. In addition to the representations contained elsewhere in this Agreement, Design/Build Contractor warrants, represents, covenants, agrees and acknowledges the following:

- 7.1.1 That Design/Build Contractor has evaluated Owner's design criteria in conjunction with the GMP Proposal.
- 7.1.2 That Design/Build Contractor has visited the Project site to become sufficiently familiar with the existing facilities, systems and conditions to insure that the Project as designed will functionally interface with the existing conditions.
- 7.1.3 That Design/Build Contractor has reviewed the survey and environmental reports, and all other reports and investigations provided by Owner or obtained by or on behalf of Design/Build Contractor and is sufficiently familiar with all of the components having or likely to have an impact on the Project to make decisions and render advice to Owner regarding the Project as required in this Agreement.
- 7.1.4 That Design/Build Contractor has reviewed all laws, codes, ordinances, rules and regulations applicable to the design and construction of the Project to determine if any Program requirement may cause a violation of such laws, codes, ordinances, rules and/or regulations and has determined that no such violations will occur.
- 7.1.5 That Design/Build Contractor has received and reviewed the Program and represents, warrants and covenants that, at each stage or phase, the Project will adhere to all requirements of the Program.
- 7.1.6 That Design/Build Contractor is sufficiently familiar with Owner's conceptual layout, massing, blocking and stacking and guarantees adherence to all design requirements and objectives.

7.2 Pre-Construction Phase Services. Design/Build Contractor shall perform the following Pre-Construction Phase Services:

7.2.1 GENERAL RESPONSIBILITIES

- 7.2.1.1 Design/Build Contractor shall enter into separate agreements with Project Architect and other qualified professionals as required for performance of the Pre-Construction Phase Services. Design/Build Contractor certifies that Project Architect 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). Design/Build Contractor shall not perform any architectural or engineering services directly unless Design/Build Contractor is licensed in Texas to perform such services. All drawings, specifications and other design documents must bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas.
- 7.2.1.2 Design/Build Contractor shall be solely responsible for all obligations to Project Architect and shall pay for the services of Project Architect and all other professional service providers. However, Owner shall be identified as an intended beneficiary and or obligee in all such agreements and Project Architect and all other professional service providers shall acknowledge in writing that they owe a duty of professional care to Owner for the Pre-Construction Phase Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from Owner to Project Architect or other design professionals not hired directly by Owner.
- 7.2.1.3 Prior to retaining them, Design/Build Contractor shall submit the names of all proposed consultants for Pre-Construction Phase Services, including Project Architect and any of its consultants, for approval by Owner, such approval not to be unreasonably withheld. Design/Build Contractor shall provide Owner

with a copy of the fully executed contract or agreement authorizing services by any such party. All such contracts must 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.

7.2.1.4 All Pre-Construction Phase Services shall be provided in accordance with the Design Guidelines, and the UIT Telecommunication Infrastructure Standards (a copy or website address of which has previously been provided by Owner to Design/Build Contractor), the Framework Plan and any other criteria applicable to the Program and Owner's needs. Any additional cost incurred due to Design/Build Contractor's failure to incorporate these requirements will be the responsibility of Design/Build Contractor at no cost to Owner.

7.2.1.5 At each stage of the Pre-Construction Phase, Design/Build Contractor shall provide the following services as appropriate:

- Architectural Services
- Geotechnical Engineering Services
- Landscape Architectural Services
- Civil Engineering Services
- Structural Engineering Services
- Mechanical & Plumbing Engineering Services
- Electrical Engineering Services
- Construction Cost Estimating
- Storm Water Pollution Prevention Plan Design Services
- Accessibility Review and Compliance
- SECO Certification
- Technology Design-Telecom & Audio/Visual Design
- Lighting Design
- Acoustical Design
- Elevator Consulting Services
- Roofing and Waterproofing Consultants
- Graphics and Wayfinding Services
- Traffic and Parking Consultant
- Fire Protection Engineer

7.2.1.6 Design/Build Contractor shall prepare, based on Models, and submit to Owner a calculation and tabulation of both gross and assignable floor areas as defined by the most current version of The Texas Higher Education Coordinating Board Facilities Inventory Procedures Manual, including copies of Computer-Aided Design and Drafting ("CADD") files with all such measurements utilizing polylines and a room attribute "block" provided by Owner. Refer to Exhibit I, Calculation and Definitions of Building Areas. CADD files must be prepared in accordance with ARTICLE 10.

7.2.1.7 Design/Build Contractor shall provide an evaluation for the potential of energy conservation and renewable energy applications pursuant to any legislative requirements as part of Basic Services including, but not limited to:

7.2.1.7.1. Energy Conservation Design Standard for New State Buildings adopted by the State Energy Conservation Office ("SECO"), 34 Texas Administrative Code, Part 1, Chapter 19 and with any SECO water conservation or reclamation standards. Design/Build contractor shall

provide Project Architect's Statement of Compliance certifying that the project design complies with the standards **prior to** commencement of the Construction Phase.

7.2.1.7.2. Owner will provide Design Guidelines and criteria and determine the level of LEED certification to be achieved by the Project. Design/Build Contractor will use concerted and cost effective efforts to design and construct the Project according to such LEED principles and will coordinate with Owner and its representatives in the commissioning of the Project.

7.2.1.8 Design/Build Contractor 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 solar energy devices for space heating, cooling, water heating, electrical loads and interior lighting into the building's design and proposed energy system.

7.2.2 GENERAL COORDINATION

7.2.2.1 Attend Project Team meetings with Owner, Owner's representatives and Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated and during completion of the Construction Documents;

7.2.2.2 Review and understand the standards and requirements in Owner's specifications and perform all services in accordance with those standards and requirements;

7.2.2.3 Visit the Project site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions;

7.2.2.4 Participate as a member of the Project Team in developing the Program if requested by Owner;

7.2.2.5 Provide recommendations and information to the Project Team regarding site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Design/Build Contractor and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed drawings and specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the CPM Milestone Schedule and the GMP.

7.2.2.6 Assist Owner in selecting and directing the services of surveyors, existing facility surveys, testing and balancing, environmental surveys or other special consultants to be hired by Owner to develop additional information for the design or construction of the Project;

7.2.2.7 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

7.2.3 CONSTRUCTABILITY PROGRAM

- 7.2.3.1 Design, implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program must follow accepted industry practices and be in accordance with the requirements of the attached Exhibit F.
- 7.2.3.2 Prepare a “Constructability Report” identifying items that, in Design/Build Contractor’s opinion, may negatively impact construction of the Project. The Constructability Report must address the overall coordination of Project drawings, specifications and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report must be updated at least monthly during the Pre-Construction Phase.
- 7.2.3.3 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 must be in a format approved by Owner and must be updated at least monthly during the Pre-Construction Phase.

7.2.4 BUDGET AND COST CONSULTATION

- 7.2.4.1 Prepare and update all procurement and Estimated Construction Cost reports and distribute them to the Project Team throughout the duration of the Project. The ECC reports for the design development and construction document stages shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications Institute Division 1-49 MasterFormat for each portion of the Work.
- 7.2.4.2 Estimated Construction Cost reports must be updated and distributed at the completion of the schematic design, design development, and construction document stages of the Project.
- 7.2.4.3 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. Design/Build Contractor shall advise the Project Team immediately if Design/Build Contractor has reason to believe that the most current ECC will exceed the GMP or not meet schedule requirements. Design/Build Contractor shall recommend reasonable strategies for bringing the Project in line with the GMP and the schedule.
- 7.2.4.4 Promptly identify all variances between estimated costs and actual costs during construction and report such variances to the Project Team along with recommendations for action no later than two (2) business days after acquiring such information.

7.2.5 COORDINATION OF DESIGN AND CONSTRUCTION CONTRACT DOCUMENTS

- 7.2.5.1 Review all drawings, specifications, and other Construction Documents as they are developed by Project Architect during the schematic design, design development, and construction document design stages of the Project.
- 7.2.5.2 Consult with Owner and Project Architect on the selection of materials, equipment, component systems and types of construction used on the Project.

Design/Build Contractor shall advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements and construction coordination.

- 7.2.5.3 Advise Owner of any error, inconsistency or omission discovered in the drawings, specifications or other Construction Documents.
- 7.2.5.4 Suggest and advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the GMP.
- 7.2.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Owner requirements.

7.2.6 CONSTRUCTION PLANNING AND BID PACKAGE STRATEGY

- 7.2.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Design/Build Contractor shall advise Owner and Project Architect 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, Design/Build Contractor shall issue requests for technical proposals to qualified sources, receive proposals and assist in their evaluation.
- 7.2.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and award of construction subcontracts in a manner that promotes the interests of the Project and Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations must 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, Owner's goals for HUB contractor participation and other constraints.
- 7.2.6.3 Review the Construction Documents with the Project Team to identify and eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- 7.2.6.4 Develop a bid/proposal package strategy in coordination with Project Architect that addresses the entire scope of work for each phase and stage of the Project. In developing the bid/proposal package strategy, Design/Build Contractor shall identify all bid/proposal packages on which Design/Build Contractor intends to submit a self-performance bid/proposal. The bid/proposal package strategy and the packages on which Design/Build Contractor intends to bid, must be submitted for Owner's review and approval on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of Owner including, but not limited to, the good and workmanlike completion of the Project timely and in accordance with the other requirements of the Contract Documents. Personnel and Subcontractors must be selected in accordance with this Agreement.
- 7.2.6.5 Assist Owner, Project Architect, Owner's other consultants and 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 Owner's insurance provider.

- 7.2.6.6 Refine, implement and monitor required HUB subcontracting plans to promote equal employment opportunity in the provision of goods and services to Owner for the Project.
- 7.2.6.7 Advise Owner of any tests to be, or that should be performed in consideration of the intended use of the Project or the characteristics of the Site, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants except as otherwise required in this Agreement.
- 7.2.6.8 Review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary to perform the Work, and provisions for all job site facilities necessary to manage, inspect and supervise construction of the Work.
- 7.2.6.9 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. Design/Build Contractor shall make recommendations that minimize adverse effects of labor shortages.

7.2.7 SCHEMATIC DESIGN PHASE

- 7.2.7.1 Based on Owner's approved pre-design documents and any adjustments to the Program and/or the GMP authorized in writing by Owner, Design/Build Contractor shall develop and review with Owner alternative approaches to design and construction of the Project illustrating the scale and relationship of the Project components sufficient to enable Owner, Project Architect and Design/Build Contractor to agree on the most appropriate and cost-effective preliminary design.
- 7.2.7.2 Based on Owner's approved preliminary design, Design/Build Contractor shall prepare or cause to be prepared schematic design documents for Owner's approval. The schematic design documents shall consist of drawings and other documents including a site plan, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches or digital modeling. Preliminary selections of major building systems and construction materials must be noted on the drawings or otherwise described in writing.
- 7.2.7.3 The schematic design documents shall incorporate all feasible and appropriate environmentally responsible design alternatives, such as material choices and building orientation, taking into account the value of alternative materials, building systems and equipment, together with other considerations based on the Program and aesthetics in developing a design for the Project that is consistent with Owner's Program, schedule and the approved GMP.
- 7.2.7.4 In conjunction with the development of schematic design documents, Design/Build Contractor shall prepare and deliver an Estimated Construction Cost in accordance with the GMP.

- 7.2.7.5 Design/Build Contractor shall submit the schematic design documents to Owner and obtain Owner's written approval and authorization before proceeding to the design development phase.

7.2.8 DESIGN DEVELOPMENT PHASE

- 7.2.8.1 Based on Owner's approved schematic design documents and any adjustments to the Program or GMP authorized in writing by Owner, Design/Build Contractor shall prepare or cause to be prepared design development documents and a detailed Estimated Construction Cost and submit them to Owner for approval. The design development documents must illustrate and describe the development of the Project in accordance with approved schematic design documents and must consist of drawings and other documents including plans, sections, elevations, typical construction details and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, site development and such other elements as may be appropriate. The design development documents must also include outline specifications that identify major materials and systems and establish in general their quality levels. The detailed Estimated Construction Cost must be in accordance with the GMP.
- 7.2.8.2 Design/Build Contractor shall prepare presentation materials, including finish and material boards and rendered plans, elevations, sections and perspective views as necessary to illustrate the final design and shall present the materials to Owner's Designated Representative as part of Basic Services, without extra cost to Owner.
- 7.2.8.3 Design/Build Contractor shall submit the design development documents to Owner and obtain Owner's written approval and authorization before proceeding to the Construction Document Phase.

7.2.9 CONSTRUCTION DOCUMENTS PHASE

- 7.2.9.1 Based on Owner's approved design development documents and any further adjustments to the Program and/or the GMP as authorized in writing by Owner, Design/Build Contractor shall prepare Construction Documents and submit them to Owner for review and approval. Design/Build Contractor shall develop the Construction Documents so that, when complete, such documents incorporate and address all qualifications, assumptions, clarifications, exclusions and Value Engineering issues contained in the GMP Proposal. The Construction Documents must be consistent in all material respects with Design/Build Contractor's prior design proposals to Owner and with the approved GMP Proposal. Whenever the term "**Value Engineering**" is used in conjunction with this Agreement or the Project, it has the meaning commonly accepted and utilized within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas.
- 7.2.9.2 Design/Build Contractor and Project Architect shall jointly provide monthly status reports on the progress of incorporating all such qualifications, assumptions, clarifications, exclusions, Value Engineering issues and all other matters relevant to the GMP Proposal.

- 7.2.9.3 Design/Build Contractor shall advise Owner regarding construction phasing and scheduling and such other construction conditions considered appropriate for the Project.
- 7.2.9.4 Design/Build Contractor shall furnish and deliver to Owner the required number of complete printed sets of Construction Documents.
- 7.2.9.5 Following Owner's approval of the Construction Documents, Design/Build Contractor shall deliver to Owner CADD system copies of the Construction Documents in the format and media specified by Owner.
- 7.2.9.6 Following Owner's approval of the Construction Documents, Design/Build Contractor may not adjust the approved GMP except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project that are ordered or approved by Owner in writing in accordance with the Uniform General Conditions, Supplemental Conditions and this Agreement.
- 7.2.10 FURNITURE, FIXTURES AND EQUIPMENT. Design/Build Contractor shall consult with and make recommendations to Owner related to the acquisition schedule for fixtures, furniture and equipment, and coordinate with Owner as may be required to meet the schedule.
- 7.2.11 TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM CONSULTANT. Design/Build Contractor shall employ a qualified Consultant ("**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**"), which 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 or other subcontractors under this Agreement, (2) preparing 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) drafting technical specifications governing 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 Design/Build Contractor's recommended courses of action under BMPs. The TPDES Consultant shall insure that the storm water pollution prevention plan 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 Owner on which the site is located. The TPDES Consultant, through 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 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 insure that Design/Build Contractor complies with TPDES requirements and BMPs.

7.3 Design/Build Contractor's Risk. Design/Build Contractor shall not proceed to any subsequent stage of Pre-Construction Phase Services until Owner has authorized Design/Build Contractor to proceed in writing, Design/Build Contractor will be solely responsible for any financial risk or responsibility

incurred in proceeding prior to receiving such written authorization.

7.4 Additional Services. If authorized in writing by Owner, Design/Build Contractor shall provide Additional Services in accordance with this Agreement. Prior to commencing any Additional Service, Design/Build Contractor shall submit to Owner an Additional Services Proposal in a form acceptable to Owner. The Additional Services Proposal must describe in detail the nature and scope of the Additional Services, the basis upon which Design/Build Contractor believes such services constitute Additional Services, the maximum amount of fees and Reimbursable Expenses for performance of the Additional Services and a proposed schedule for performance of the Additional Service. Design/Build Contractor shall proceed with the Additional Service only after receiving Owner's written acceptance of the Additional Services Proposal. Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design/Build Contractor pursuant to such Additional Services Proposal will be subject to this Agreement. The following services, if requested by Owner, are Additional Services:

- 7.4.1 Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, or the cost of the Project.
- 7.4.2 Providing planning surveys, economic/feasibility site evaluations, environmental studies or comparative studies of prospective sites.
- 7.4.3 Providing services related to future facilities, systems and equipment, including but not limited to, information technology, which are not intended to be constructed during the Construction Phase.
- 7.4.4 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 Owner.
- 7.4.5 Providing coordination of Work performed by Owner's separate contractors or by Owner's own forces.
- 7.4.6 Providing services in connection with the work of separate consultants retained by Owner.
- 7.4.7 Providing services for planning tenant or rental spaces.
- 7.4.8 Making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by Owner or due to changes approved by Owner and not due to errors or omissions of Design/Build Contractor or Project Architect.
- 7.4.9 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 drawings, specifications or other documents.
- 7.4.10 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 Owner.

- 7.4.11 Providing consultation concerning replacement of any Work damaged by fire or other casualty 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 Design/Build Contractor or a Subcontractor.
- 7.4.12 Providing services after Final Payment or expiration of the Warranty (as defined in the Uniform General Conditions), whichever is later, except as otherwise required by this Agreement.
- 7.4.13 Preparing to serve or serving as an expert witness at the request of Owner in connection with any public hearing, arbitration proceeding or legal proceeding.
- 7.4.14 Providing any other services not set forth in this Agreement and not otherwise customarily furnished in accordance with generally accepted architectural or engineering practice.
- 7.4.15 Providing a Hazardous Material Abatement Consultant to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through the Program, schematic design, design development, construction document and construction administration 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 Owner. Consultant shall review Owner-provided environmental surveys of the Site, make recommendations regarding the need for additional surveys, develop design and cost alternatives for hazardous material abatement, prepare plans 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 Owner with a written itemized cost proposal to provide Hazardous Material Abatement Consulting services, including coordination of Design/Build Contractor. Hazardous Materials Abatement insurance shall be provided by Design/Build Contractor and coverage for this service will not be included in any Owner provided insurance program.
- 7.4.16 Commissioning services shall be considered Additional Services. Fundamental Commissioning services shall conform to U.S. Green Building Council criteria. Any LEED-related requirements, including certification, issued by Owner beyond those stated in Owner's Request for Proposal and/or Request for Qualifications will be considered Additional Services.

ARTICLE 8 - BIDDING PHASE

- 8.1 Obtaining Bids/Proposals for the Work. Design/Build Contractor shall conscientiously formulate bid packages to promote adequate and accurate bids from market subcontractors. Owner shall provide specific bidding requirements prior to the commencement of the bidding phase.
 - 8.1.1 Design/Build Contractor shall publicly advertise and solicit competitive sealed bids/proposals from trade contractors or Subcontractors, in the manner prescribed by Owner, for the performance of all major elements of the Work other than the minor work that may be included in General Conditions. Design/Build Contractor shall notify Owner in advance in writing of the date it will receive the bids/proposals.
 - 8.1.2 Design/Build Contractor shall schedule and conduct pre-bid conferences with interested bidders/proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

- 8.1.3 Design/Build Contractor and Owner shall review all trade contractor or subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Criteria for determining the bid/proposal that provides the best value to Owner will be established by the Project Team and included in the request for bids/proposals. Based on the selection criteria, Design/Build Contractor shall recommend to 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.
- 8.1.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by Owner. Upon Owner's concurrence in the final financial terms of the subcontract, Design/Build Contractor shall enter into a written subcontract for the subcontract work and provide a copy to Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.
- 8.1.5 If Design/Build Contractor reviews, evaluates, and recommends to Owner a bid/proposal from a trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Design/Build Contractor by a change in price, time, or GMP for any additional cost and risk that Design/Build Contractor incurs because of Owner's requirement that the other bid/proposal be accepted.

8.2 Self-Performance. Design/Build Contractor may seek to self-perform portions of the Work. If Design/Build Contractor intends to perform any Work other than General Conditions Work, it shall notify Owner in writing in advance and the Parties shall proceed in accordance with the Texas Education Code Section 51.780. Design/Build Contractor must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. Owner will determine whether Design/Build Contractor's bid/proposal provides the best value for Owner and Owner's determination is final. Design/Build Contractor must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors, except that self-performed work shall be subject to audit in accordance with ARTICLE 23. For payment purposes, Design/Build Contractor shall account for self-performance work in the same manner as it does all other subcontract costs.

8.3 Identification of Subcontractors. Design/Build Contractor shall identify every subcontractor it intends to use on the Project, including subcontractors used for self-performed work, to Owner in writing at least ten (10) 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 acceptance of a subcontractor, that subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld. If the proposed but rejected subcontractor was reasonably capable of performing the Work, the GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change in Subcontractors, and an appropriate Change Order must be issued before commencing the substitute subcontractor's work.

- 8.3.1 Design/Build Contractor will be solely responsible for any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.
- 8.3.2 If a selected Subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, Design/Build Contractor may, in consultation with Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

8.4 Buyout Reports. 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 Owner monthly and immediately following receipt of proposals for each subcontracting package. Design/Build Contractor may use such savings to offset other buyout packages that exceed the amounts identified in the GMP, so long as the total Cost of the Work proposed in the GMP does not increase.

ARTICLE 9 - CONSTRUCTION PHASE SERVICES

9.1 Construction Phase. The Construction Phase will commence upon the date specified in the Notice to Proceed with Construction Phase Services issued by Owner after approval of the Construction Documents and will continue until Final Completion. Pre-Construction Phase Services may overlap Construction Phase Services.

9.2 Construction Phase Services. In addition to the requirements set forth elsewhere in the Contract Documents, Design/Build Contractor shall:

- 9.2.1 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.
- 9.2.2 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. The minutes must identify critical activities that require action and the dates by which each activity must be completed.
- 9.2.3 Prepare an agenda for and conduct Job Conferences for attendance by representatives of Design/Build Contractor, major trade contractors and subcontractors, Project Architect and FP&C, and prepare and distribute minutes of the meetings and a construction status report.
- 9.2.4 Maintain and update the calculations and tabulations of both gross and assignable floor areas as defined by the most current version of The Texas Higher Education Coordinating Board Facilities Inventory Procedures Manual and all associated CADD files throughout the course of the Project to reflect any changes made to the design in later stages of the Project, and shall submit to Owner a final document during Project Close-Out.
- 9.2.5 Cause Project Architect to inspect the Site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement 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, Project Architect shall observe the progress and quality of the Work and endeavor to guard Owner against defects and deficiencies in the Work.
- 9.2.6 Cause Project Architect to 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. Project Architect shall provide written reports of all site visits to Owner and Design/Build Contractor within three (3) business days after each site visit.
- 9.2.7 Cause Project Architect, with the approval of Owner, to interpret the technical requirements of the Contract Documents. Project Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either Owner or Design/Build Contractor, and shall render written recommendations to Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents. Project

Architect shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Architect's interpretations and recommendations must be consistent with the intent of and reasonably inferable from the Contract Documents. Project Architect'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.

- 9.2.8 Cause Project Architect to participate in concealed space inspections, systems start-up inspections, and all inspections through the Final Inspection to determine the dates of Substantial Completion and Final Acceptance. Project Architect shall provide a written statement of Final Acceptance of the Work to Owner. Project Architect shall also participate in Owner's final walk thru inspection approximately one (1) year after Final Completion.
- 9.2.9 Cause Project Architect to assist 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.
- 9.2.10 Provide Record Drawings in accordance with ARTICLE 10.
- 9.2.11 Cause Project Architect to prepare and administer the construction punch list(s) until all punch list items have been resolved to Owner's satisfaction.
- 9.2.12 Cause Project Architect to review Design/Build Contractor's submission of operation and maintenance manuals and all other close-out documentation furnished by Design/Build Contractor for conformance with the requirements of the Construction Documents. Design/Build Contractor shall provide two (2) sets of all close-out documentation to Owner and provision of such will be considered a material condition for the release of Retainage.
- 9.2.13 Upon Owner taking beneficial occupancy of the Project, arrange to provide factory-certified personnel to train Owner's maintenance personnel in accordance with the manufacturers' warranties.
- 9.2.14 Coordinate delivery and installation of Owner-procured material and equipment

ARTICLE 10 - DRAWINGS AND CADD FILES

10.1 Format. Design/Build Contractor shall prepare all Project CADD files in accordance with the requirements of Owner's CADD Standards Manual, which Owner has previously provided to Design/Build Contractor. The CADD Standards Manual can also be accessed at www.uh.edu/plantops. All documents, including Project CADD files, shall be created based on Models and the information contained and disclosed therein.

10.2 Clarification and Distribution of Drawings. Design/Build Contractor shall utilize project information management software, such as Newforma Project Center, throughout the course of the Project for purposes of file sharing and document management. All Project documentation, such as Models, notifications and responses for requests for information and submittals, Project Architect's supplemental instructions, proposal requests, revised logs and other standard documentation must be uploaded and distributed via the information management software. The software must include an e-mail notification system and have capacity to store all posted files for a minimum of thirty (30) days. A user ID and password will be provided for all Project Team members to disseminate project reports and information. A mutually acceptable file naming convention will be established by the Project Team prior to the commencement of the Work.

10.2.1 All proposed changes to drawings, plans and specifications, regardless of how initiated, must be fully described in the document depicting them as to scope of work added, removed or changed and accompanied by the Model(s). Upon Owner's approval of a proposed change, the original copies of the Construction Documents shall be revised to show such change, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions must be clearly indicated and a current revision date must be included on the reproducible copy. Changes to the specifications must be made by consecutively numbered and dated revisions. 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.

10.3 Delivery of Review Sets. Design/Build Contractor shall provide to Owner one (1) digital and one (1) hard copy of document review sets at each required stage of completion as follows (each, a "**Review Period**"):

90% - Schematic Design
50% & 90% - Design Development
50% & 90% - Construction Documents

10.4 Review of Drawings.

10.4.1 Design/Build Contractor shall participate in a review session with Owner's Designated Representatives at the end of each Review Period. Owner shall provide all review commentary in writing to Design/Build Contractor and Design/Build Contractor shall incorporate into the Construction Documents such corrections and amendments as Owner requests, unless Design/Build Contractor reasonably 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 the responsibility of Design/Build Contractor at no cost to Owner.

10.4.2 Design/Build Contractor shall identify to Owner in writing anything in Design/Build Contractor's drawings and specifications and any other 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. 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 Design/Build Contractor in writing to proceed in accordance with the documents or data as originally provided.

10.5 Record Drawings; Close-out Requirements.

10.5.1 Design/Build Contractor shall provide As-Constructed Drawings and Record Drawings (one (1) electronic file in accordance with Owner's CADD Standards Manual and in the media prescribed by Owner; one (1) full size mylar set and one (1) set full size bond prints) and record specifications (bound) within 90 days of Substantial Completion. Record Drawings and specifications must include all changes made to the Project by addenda, Project Architect's supplemental instructions, field orders, field reports, requests for information, shop drawings, Change Orders, field conditions and all other directives and information resulting in a change to the initial design. Each sheet of the bond set must be stamped "Record Drawing" with Project Architect's seal.

10.5.2 Design/Build Contractor shall also provide Owner with one (1) electronic file containing all operating and maintenance manuals, approved submittals and other record documents as required by the Contract Documents.

10.6 Costs.

10.6.1 Design/Build Contractor shall pay all costs for plans, specifications and other design and construction documents used by Design/Build Contractor and its consultants and subcontractors.

10.6.2 If any of the plans, specifications and/or 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.

ARTICLE 11 - OWNERSHIP AND USE OF DOCUMENTS

11.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design/Build Contractor to Owner under this Agreement and specifically including the Electronic Files used to create any such data (“**Work Product**”) are deemed to be instruments of service and Design/Build Contractor shall retain ownership to such documents, subject to the following provisions of this ARTICLE 11.

11.2 License. Owner shall be permitted at all phases of the Project to retain copies of all Work Product, including Electronic Files (such as Models), reproducible copies and CADD copies, of the drawings, specifications and other documents for information and reference in connection with Owner’s use and occupancy of the Project. Design/Build Contractor and Project Architect hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use (but not sell or further license) the drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein. This license will survive the termination or expiration of this Agreement. If this Agreement expires, is terminated or limited in scope, Design/Build Contractor and Project Architect hereby expressly consent to the employment by Owner of a substitute architect to complete the Pre-Construction Phase Services under this Agreement, with the substitute architect having all of the rights and privileges of the original Project Architect.

11.3 Ownership. Upon Owner’s Final Payment, the Work Product (including the Electronic Files used to create any such Work Product) shall become the property of Owner to the extent allowed by applicable law. Owner may utilize all or any portion of the Work Product for the repair, maintenance, modification, expansion or renovation of the Project, and for any other purpose as permitted by law to the owner of such material. Owner understands that all such drawings, specifications, models, renderings, work product, instruments of service and other documents may be inappropriate for use in the construction of any other project. Design/Build Contractor shall not be responsible for the use or workability of such drawings, specifications, models, renderings, work product, instruments of services and other documents in connection with any project other than the project for which they were specifically designed.

11.4 Required Disclosures. 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 Design/Build Contractor’s or Project Architect’s rights.

ARTICLE 12 - OWNER’S RESPONSIBILITIES

12.1 Owner will provide the design criteria package for the Project pursuant to Texas Education Code Section 51.780(a)(3).

12.2 Owner will provide a preliminary project budget and schedule for the Project. The budget may include contingencies for changes in the Work during construction and other costs which are Owner's responsibility. The schedule will set forth Owner's plan for milestone dates and completion of the Project.

12.3 Owner's Designated Representative shall examine the documents submitted by Design/Build Contractor and may render decisions pertaining to such documents. If Owner has actual knowledge of any fault or defect in the Project or non-conformance with the drawings and Project manual, Owner shall give prompt written notice of such fault, defect, or non-conformance to Design/Build Contractor.

12.4 Owner, at Owner's cost, will secure the services of surveyors, air and water testing and balancing or other special consultants to develop such additional information as may be necessary for the design of the Project. Design/Build Contractor shall provide Owner with parameters for inclusion in Owner's instructions to such providers.

12.5 Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as necessary during construction; provided, however, that Design/Build Contractor shall pay for any tests required by special or unique construction procedures proposed by Design/Build Contractor. The Parties accordingly agree that, if the designed construction method requires a special test that is outside of the industry norm, the test will be paid for by Design/Build Contractor.

12.6 Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

12.7 Owner shall examine the design documents submitted by Design/Build Contractor and provide comments concerning corrections or amendments to such documents in writing to Design/Build Contractor. Owner may obtain independent review of the design documents by its own Design Consultant. Owner may require Design/Build Contractor to suspend production during design review.

12.8 Owner shall furnish information and services as required by this Agreement and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of Design/Build Contractor's services and of the Work.

12.9 Owner may designate one or more construction inspectors of its own who will be given access to the Work as requested or needed. The provision of such inspectors by Owner will not reduce or lessen in any respect Design/Build Contractor's responsibilities for the Work. Design/Build Contractor will remain fully and solely responsible for the drawings, specifications and other documents furnished by Design/Build Contractor, and for constructing the Project in strict compliance with the Contract Documents.

ARTICLE 13 - PAYMENTS

13.1 Design/Build Contractor's Obligations. Design/Build Contractor shall promptly pay all bills for labor and material performed and furnished by others in connection with the Project and/or the Work.

13.2 Schedule of Values. A Schedule of Values subdividing the Project into its respective parts and which includes values for all items comprising the Project will serve as the basis for monthly progress payments made to Design/Build Contractor throughout the Project. Each Schedule of Values submitted must maintain the originally established value for each work classification line item or Subcontractor and must contain any revisions to costs or cost estimates for each such classification or Subcontractor. The format and tracking method of the original Schedule of Values and of all updates thereto will be subject to the approval of Owner and Owner's Designated Representative. 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).

- 13.2.1 Design/Build Contractor's Construction Phase Fee must be shown as a separate line item on the Schedule of Values. In determining the percentage of completion, Design/Build Contractor shall use the lesser of the total percentage of the Work actually completed for each classification on the Schedule of Values, or the percentage of the GMP allocable to that item which has been actually incurred and demonstrated as an expense by Design/Build Contractor. Payment of 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.

13.3 Applications for Payment. All payment requests must be submitted on Owner's then-current form and must contain the MSR information required in Exhibit C, and identify payments to HUBs and to all Subcontractors. Failure to submit the HUB Subcontracting Plan Prime Contractor Progress Assessment Report form (currently located at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>) with each Application for Payment will result in Owner's rejection of the application.

- 13.3.1 With each Application for Payment, Design/Build Contractor shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, including certified payrolls, and any and all other evidence required in the Uniform General Conditions and which Owner or Owner's Designated Representative deem necessary to support the amount requested.
- 13.3.2 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 Owner's Designated Representative deems necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if 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.
- 13.3.3 Notwithstanding the certification of Design/Build Contractor's payment applications by Project Architect, Owner will independently review Design/Build Contractor's payment applications and make a determination as to the amount properly payable to Design/Build Contractor. Design/Build Contractor shall submit its payment applications to Owner by the last day of each month. Provided that Design/Build Contractor's payment applications are submitted by the last day of each month and approved by Owner, Owner shall pay Design/Build Contractor the approved amount in accordance with Chapter 2251 of the *Texas Government Code*.
- 13.3.4 Payments to Subcontractors included in an Application for Payment will not exceed the percentage of Work allocable to that Subcontractor for each respective Schedule of Values classification which has been actually completed and will not exceed the total value of the subcontract amount.

13.4 Specific Payments.

- 13.4.1 All Pre-Construction Phase Services must be billed separately from Construction Phase Services and not as a Cost of the Work. Payments for Pre-Construction Phase Services will be made monthly based on the percentage completion of Design/Build Contractor's required services for each stage of development of the Construction Documents. Design/Build Contractor's statement of services for the Pre-Construction Phase must

itemize the services performed during that payment period and include itemized payments to each design team consultant with a copy of each consultant's invoice and must include a certification that all payments to consultants made from the previous statement were made within five (5) days of receiving payment from Owner. Requests for reimbursement payments during the Pre-Construction Phase must include back-up documentation, including invoices, receipts and any and all other evidence which Owner deems necessary to support the request. Final Payment of the Pre-Construction Phase services is contingent upon Owner's receipt and verification of Record Drawings & Area Calculations as provided for in this Agreement.

13.4.2 Payments for Construction Phase Services will be made in accordance with the Contract Documents.

13.4.3 Payments for approved Additional Services and Reimbursable Expenses will be made monthly upon presentation of Design/Build Contractor's statement of services rendered or expenses incurred.

13.5 Offsets; Deductions; Withholding.

13.5.1 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.

13.5.2 Amounts assessed as liquidated damages in accordance with Section 5.2 and other amounts to which Owner is entitled by way of setoff or recovery, if any, shall be deducted from any amounts due Design/Build Contractor.

13.5.3 Notwithstanding any other contractual provision to the contrary, Owner may withhold any payment from Design/Build Contractor to the extent reasonably required to protect Owner's interests under any of the following circumstances:

13.5.3.1 Design/Build Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in breach or default under this Agreement;

13.5.3.2 Any part of such payment is attributable to services not performed in accordance with the Contract Documents; provided, however, that any part of such payment shall be made to the extent attributable to services performed in accordance with this Agreement;

13.5.3.3 Design/Build Contractor's payment request has insufficient documentation (including, by way of example and not of documentation, Project Architect's certification to Owner that the Work has progressed to the point indicated in Design/Build Contractor's payment request and that, to the best of Project Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents) 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;

13.5.3.4 Design/Build Contractor is in violation of the Prevailing Wage requirements or has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Design/Build Contractor;

- 13.5.3.5 Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement.
- 13.5.3.6 Design/Build Contractor persistently fails to meet schedule requirements or Owner, in its good faith judgment, determines that the remaining Work will not be completed within the Contract Time;
- 13.5.3.7 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;
- 13.5.3.8 Design/Build Contractor fails to obtain, maintain or renew insurance coverage as required by this Agreement;
- 13.5.3.9 Owner's right to withhold payment is contingent on giving Design/Build Contractor a minimum of seven (7) calendar days written notice of specific defects or defaults and opportunity to cure same, and on Design/Build Contractor's failure to cure or to take diligent steps to cure within such seven (7) calendar days.

13.6 Retainage. Retainage will be withheld from the entire amount requested including the Cost of the Work, General Conditions and Design/Build Contractor's Construction Phase Fee. Retainage will not be withheld from the Pre-Construction Phase Services Fee.

13.7 Final Payment. Design/Build Contractor's request for Final Payment must not be made until all Work is completed, all requirements of the Contract Documents have been satisfied, and Design/Build Contractor delivers to Owner: (i) a complete release of all liens arising out of the Work; (ii) written consent of surety to release Final Payment; and (iii) an affidavit that, to the best of Design/Build Contractor's information or knowledge, the release includes and covers all materials and services over which Design/Build Contractor has control and for which a lien could be filed, subject only to the Final Payment by Owner. Alternatively, Design/Build Contractor may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design/Build Contractor shall refund to Owner all money Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

13.7.1 Owner shall have no obligation to make Final Payment until a final accounting of the Cost of the Work has been submitted by Design/Build Contractor and has been audited and verified by Owner and/or Owner's representatives pursuant to the terms of this Agreement. The aggregate total of payments to Design/Build Contractor will not exceed the GMP (as it may be adjusted or modified by duly authorized Change Order or amendment), as verified by Owner or Owner's representative from Design/Build Contractor's final accounting, plus payments for Additional Services, as certified for payment in accordance with this Agreement. If any payments made to Design/Build Contractor exceed that which is due and owing pursuant to this Agreement, then Design/Build Contractor shall promptly refund such excess to Owner. Owner will perform its audit of Design/Build Contractor's final accounting in accordance with this Agreement and Chapter 2251 of the *Texas Government Code*.

13.7.2 The acceptance by Design/Build Contractor or Design/Build Contractor's successors of Final Payment under this Agreement, will constitute a full and complete release of Owner from any and all claims, demands and causes of action whatsoever which Design/Build Contractor or Design/Build Contractor's successors have or may have against Owner under the provisions of this Agreement for payment for the Work except for those

previously made in writing and identified by Design/Build Contractor as unsettled at the time of the final request for payment.

13.8 No Waiver.

13.8.1 Nothing contained in this Agreement will require Owner to pay Design/Build Contractor an aggregate amount for the Project that exceeds the GMP or to make any payment if, in Owner's belief, the cost to complete the Work would exceed the GMP less previous payments to Design/Build Contractor.

13.8.2 No partial payment made under this Agreement will constitute Final Acceptance or approval of that part of the services to which such partial payment relates, or a release of Design/Build Contractor from any of its obligations under this Agreement and/or liabilities with respect to such services.

13.9 Audit. As set forth in greater detail in ARTICLE 23, Owner may verify and audit the details set forth in Design/Build Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the pertinent 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 business employees; (4) visiting the Project site; and (5) other reasonable action.

ARTICLE 14 - REIMBURSABLE EXPENSES

14.1 Design/Build Contractor's Reimbursable Expenses. Reimbursable Expenses must be approved in advance by Owner in writing, will be limited to the Pre-Construction Phase Services and are in addition to the compensation for Basic Services and Additional Services. These include actual out-of-pocket reasonable expenditures made by Design/Build Contractor, Project Architect and Project Architect's employees and design consultants incurred solely and directly in connection with the Project Team's performance of Pre-Construction Phase Services under this Agreement, up to the total, aggregate amount of _____
(_____) for the following expenses:

- 14.1.1 When expressly directed and approved by Owner, expense of long distance telephone calls, reproductions, printing, postage & shipping, binding, collating and handling of reports, drawings and specifications, other than that used solely in-house for Project Team and its consultants or for project progress/review meetings.
- 14.1.2 Fees paid for securing approval of authorities having jurisdiction over the Project.
- 14.1.3 Professional models, mock-ups and renderings related to building design as requested by Owner.
- 14.1.4 Travel from Texas to out of state locations.
- 14.1.5 Lodging: Actual cost of lodging, not to exceed 120% of the "Out of State Meals and Lodging Rates," established by the Texas Comptroller of Public Accounts (<https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>), plus city and state taxes directly attributable to such lodging.
- 14.1.6 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.
- 14.1.7 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.

- 14.1.8 Airline Travel: Actual coach class air travel with rates nearest to the State of Texas contract rate. All airline travel must be booked no less than seven (7) days in advance when possible. Reimbursement for air travel booked within seven (7) days of departure, without the prior approval of the Owner's Designated Representative, may be rejected at Owner's sole discretion.
- 14.1.9 Unless expressly directed and approved in advance by 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 reimbursed.
- 14.2 Not Reimbursable Expenses. Expenses not allowed for travel 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.
- 14.2.1 Owner will not pay a mark-up on any Reimbursable Expenses. Design/Build Contractor shall submit receipts for all Reimbursable Expenses along with any reimbursement request. Any unspent Reimbursable Expenses allowance will accrue 100% to Owner.
- 14.2.2 Unless expressly directed and approved in writing by Owner, amounts exceeding the limitations set forth in this Agreement will not be subject to reimbursement.

ARTICLE 15 - GENERAL CONDITIONS

15.1 General Conditions Costs. Design/Build Contractor is entitled to receive payment for the actual cost of the allowable General Conditions items incurred, as set forth on Exhibit E, after receipt of Owner's Notice to Proceed with Construction through Final Completion. Design/Build Contractor is not entitled to reimbursement for General Conditions Costs incurred before receipt of the applicable Notice to Proceed or after Substantial Completion unless otherwise approved in advance in writing by Owner. General Conditions Costs are charged to Owner, if at all, only to the extent they are actually incurred by Design/Build Contractor, and subject to the limitation of the GMP Agreement.

15.2 General Conditions Items. Allowable General Conditions items are identified below and further detailed in the attached Exhibit E. The General Conditions Total (from Exhibit E) will be included in the General Conditions line item in the GMP Proposal and Agreement and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit E will not be allowed as General Condition costs. General Conditions Costs include:

- 15.2.1 Personnel Costs. The actual prevailing 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 Owner in advance and in writing but only for the time actually stationed at the Project site with Owner's prior consent. The Parties agree that prevailing wage rates adopted by Harris County, Texas as of the Effective Date will apply. The Design/Build Contractor 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 Design/Build Contractor for services performed for the Project.
- 15.2.2 Costs of long-distance telephone calls, telegrams, 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.
- 15.2.3 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, minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost will be based on actual cost of the item less its fair market salvage value. The fair market value will be determined by referring to the "Contractor's Equipment Cost Guide" latest edition published by the Associated General Contractors of America (AGC) ("**Cost Guide**"), or www.equipmentwatch.com, whichever rate is higher.

- 15.2.4 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 in writing. Rental rates may include transportation, installation and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from Design/Build Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, must be approved in advance by Owner, will be in accordance with the Cost Guide and will be no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.
- 15.2.5 The aggregate rental cost of any item charged to Owner may 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 Owner with the fair market resale value of the item.
- 15.2.6 Permit and inspection fees that are not subject to Owner's exemption.
- 15.2.7 Premiums actually paid by Design/Build Contractor to third-party insurers and sureties for insurance and bonds to the extent directly attributable to this Project. Expressly excluded from reimbursement under this Agreement is allocation of Design/Build Contractor's 'risk management department' or 'insurance program' and similar costs, which are Design/Build Contractor's overhead and therefore not Cost of the Work, General Conditions, or Reimbursable Expenses.
- 15.2.8 Governmental sales and use taxes directly attributable to the approved 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.

ARTICLE 16 - COST OF THE WORK

16.1 Cost of the Work. Cost of the Work includes only the items set forth in this ARTICLE and does not include the Pre-Construction Phase Fee, the Construction Phase Fee or the General Conditions Costs. References in the Uniform General Conditions and Supplemental Conditions to adjustments in "cost" or "costs" refer to the Cost of the Work. Cost of the Work includes:

- 16.1.1 Subcontracts: Payments made to Subcontractors by Design/Build Contractor for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors
- 16.1.2 Design/Build Contractor's self-performed work, other than General Conditions work, in accordance with the Contract Documents and the terms of this Agreement.

- 16.1.3 Governmental sales and use taxes directly attributable to the Work. Owner is a state agency and Design/Build Contractor shall avail itself of all exemptions which may exist for such taxes based on Owner's status.
- 16.1.4 Permit and inspection fees, except that as a state agency, Owner is typically exempt from such fees.
- 16.1.5 Testing fees pursuant to the Uniform General Conditions and Supplemental Conditions except as otherwise set forth elsewhere in this Agreement.
- 16.1.6 Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
- 16.1.7 Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Design/Build Contractor.
- 16.2 Not Cost of the Work. The following items are not included in the Cost of the Work and shall not be charged to or paid by Owner:
 - 16.2.1 Costs resulting from the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor when such cost exceed the GMP.
 - 16.2.2 Legal and administrative costs.
 - 16.2.3 Except as otherwise authorized by this Agreement, travel and subsistence expenses of Design/Build Contractor, its officers or employees incurred while traveling between the Project and Design/Build Contractor's principal or branch offices, and any transportation and living expenses incurred within the metropolitan area of the Project.
 - 16.2.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the act(s) or omission(s) of Design/Build Contractor, the Project Architect, any Subcontractor, and/or any Consultant (including their respective employees, agents, officers and representatives).
 - 16.2.5 Costs incurred by Design/Build Contractor resulting from the failure of Design/Build Contractor or its Subcontractors to coordinate their work among themselves or with that of Owner and its contractors, if any, after agreeing to the schedules thereof, or failure of Design/Build Contractor to comply with directives of Owner not in conflict with said schedules.
 - 16.2.6 Costs resulting from the failure of Design/Build Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
 - 16.2.7 Any and all costs that should be billed as General Conditions, including but not limited to personnel costs (including, without limitation, wages, salaries, and benefits, as defined in the General Conditions), or paid from Design/Build Contractor's Construction Phase Fee.
 - 16.2.8 Costs related to Design/Build Contractor's indemnification obligations under this Agreement.
 - 16.2.9 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
 - 16.2.10 Costs incurred by Design/Build Contractor in connection with the Warranty.
 - 16.2.11 Any cost arising out of a breach of this Contract or the fault or negligence of Design/Build Contractor, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, damage to persons or property, errors and

omissions with respect to Pre-Construction Phase Services, and failure to coordinate the Pre-Construction Phase Services.

16.2.12 Liquidated or actual damages imposed by Owner for failure of Design/Build Contractor to complete the Work within the Contract Time unless such failure is caused directly and solely by the action or inaction of Owner.

16.2.13 Any actual increase in cost arising out of the failure of Design/Build Contractor to complete the drawings and specifications in a timely manner unless such failure is caused directly and solely by the acts or omissions of Owner and only to the extent that such delay continues after Design/Build Contractor has provided Owner with written notice of the delay and its cause or causes. If Owner and Design/Build Contractor cannot agree on the amount of such increase in costs, the amount shall be determined as set forth under Article 15 of the Uniform General Conditions.

16.2.14 Costs of Design/Build Contractor's architects, engineers, and other entities and personnel performing Pre-Construction Phase Services.

16.2.15 Any and all costs not specifically authorized in this Agreement.

ARTICLE 17 - DESIGN/BUILD CONTRACTOR'S CONSTRUCTION PHASE FEE

17.1 Construction Phase Fee. The Construction Phase Fee shall cover, to the extent attributable to this Project, Design/Build Contractor's profit, general overhead and all expenses in connection with maintaining and operating Design/Build Contractor's main office and any branch or field offices, other than the Project site office, the costs of which shall be included as General Conditions of the Work. References in the Uniform General Conditions and Supplemental Conditions to Design/Build Contractor's "overhead" and "profit" refer to Design/Build Contractor's Construction Phase Fee.

17.1.1 The Construction Phase Fee will be reduced in proportion to any reduction in the Cost of the Work. Therefore, in the event of a deductive Change Order, the amount of Construction Phase Fee will be reduced by the product of the amount of the deduction from the Cost of the Work indicated in the Change Order multiplied by the Construction Phase Fee Percentage.

17.2 Items to be Paid from Construction Phase Fee. The Construction Phase Fee is intended to cover the costs associated with the following items, which were specifically, but not exclusively, considered in establishing Design/Build Contractor's Construction Phase Fee:

17.2.1 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.

17.2.2 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.

17.2.3 Salaries of persons employed in the main or branch offices of Design/Build Contractor whose time is devoted to the general conduct of Design/Build Contractor's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.

17.2.4 Overhead or general expenses of any kind unless specifically addressed otherwise herein.

17.2.5 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than Pre-Construction Phase Services) relating to accounting in Design/Build Contractor's office and even if at the site, except as specifically identified herein.

- 17.2.6 Interest on Design/Build Contractor's capital or on money borrowed by Design/Build Contractor, including the capital employed by Design/Build Contractor in the performance of the Work.
- 17.2.7 Amounts required to be paid by Design/Build Contractor for Federal and/or State income and franchise taxes, to the extent such taxes apply to Owner.
- 17.2.8 Legal, accounting, or other similar professional services provided by or to Design/Build Contractor, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.

ARTICLE 18 - COMPENSATION

18.1 Pre-Construction Phase Fee. The GMP includes the Pre-Construction Phase Fee equivalent to the sum of all fees for services rendered in the Pre-Design, Schematic Design, Design Development, Construction Document and Construction Administration phases, and which is comprised as follows:

Pre-Design Phase:	\$	(5%)
Schematic Design Phase:	\$	(10%)
Design Development Phase:	\$	(20%)
Construction Documents Phase:	\$	(50%)
Construction Administration Services:	\$	(15%)
Total Amount*	\$	of which _____ represents Project Architect fee.

If the scope of the Project or description of the Pre-Construction Phase Services is changed materially by Owner, the compensation for Pre-Construction Phase Services will be equitably adjusted.

18.2 Construction Phase Fee. The GMP includes the Construction Phase Fee, which calculated as set forth in Section 17.1.

18.3 Approved Additional Services. For Additional Services of Design/Build Contractor or its Consultants that are approved in advance in writing and signed by a legally authorized representative of Owner, compensation to Design/Build Contractor will be computed in one of the following ways:

- a. A pre-established stipulated amount.
- b. Compensation by the hour for time expended at an amount not to exceed () times direct hourly wage for all personnel.
- c. As a pre-established percentage of the cost of the services to be performed.

ARTICLE 19 - BONDS AND INSURANCE

19.1 Bonds. Upon the Effective Date, Design/Build Contractor shall provide security, performance and payment bonds on forms prescribed by Owner and attached as Exhibit D, in accordance with the requirements set forth in the Uniform General Conditions and Supplemental Conditions. The penal sum of the security bond shall be the amount of 5% of the DBBL. The penal sum of the payment and performance bonds shall be equal to the GMP less the Pre-Construction Phase Services Fee. If Design/Build Contractor's GMP Proposal is amended to accommodate phased or staged construction with different GMPs 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.

19.2 Pre-Construction Phase Services Insurance Requirements. Design/Build Contractor shall carry professional liability and errors and omissions insurance, covering the Pre-Construction Phase Services provided under this Agreement, as is acceptable to and approved by Owner. Such insurance shall have minimum policy limits of Five Million Dollars (\$5,000,000) per claim and in the aggregate. The fees for

such insurance will be at the expense of Design/Build Contractor. Design/Build Contractor shall maintain such insurance throughout the course of the Work and for a minimum of one (1) year following Substantial Completion of the Work. A Certificate of Insurance indicating the expiration date of Design/Build Contractor's professional liability insurance is required. No policy providing such insurance shall be cancelled or materially altered or permitted to lapse without thirty (30) days' prior written notice to Owner. If Design/Build Contractor is performing the Pre-Construction Phase 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 Pre-Construction Phase 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 Pre-Construction Phase Services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.

19.3 Construction Phase Services Insurance Requirements. Design/Build Contractor shall carry other insurance policies and coverage referenced in Section 5.2 of the Uniform General Conditions; provided, however, for the Builder's Risk policy:

- 19.3.1 Coverage must not exclude or have a lower sub-limit for Named Windstorm or Flood. Named Windstorm and Flood shall not have a deductible that exceeds \$25,000; and
- 19.3.2 Coverage limit shall be 100% of the sum of General Conditions Costs, Cost of the Work, Construction Contingency (if any), and Construction Phase Fee.
- 19.3.3 The cost of this Builder's Risk coverage will be paid by Design/Build Contractor as part of the General Conditions Costs.

19.4 For All Insurance Required of Design/Build Contractor.

- 19.4.1 All insurance coverage shall be written by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company. Design/Build Contractor shall provide Owner with legally sufficient evidence of all coverage required under this Agreement.
- 19.4.2 No policy may have a deductible (or retention) of more than \$100,000. These representations shall be documented in the Certificates of Insurance provided to Owner. When a retention or deductible exceeds \$25,000, Owner, shall have the right, but not the obligation, to review and request a copy of the Design/Build Contractor's most recent annual report or audited financial statement.
- 19.4.3 Owner reserves the right to review the insurance requirements set forth in this ARTICLE during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as Design/Build Contractor.
- 19.4.4 At any time, Owner shall be entitled upon request, and without expense, to receive copies of all policies and all endorsements to such policies. Owner 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 either of the Parties or the underwriter of any of such policies.
- 19.4.5 Design/Build Contractor shall bear (without claim for or right against Owner or the Project for reimbursement) the cost for all deductibles and actual losses not covered by insurance required under this Agreement.

- 19.4.6 Under no circumstances shall Design/Build Contractor self-insure any portion of the Project; Design/Build Contractor's violation of any portion of this ARTICLE 19, including the prohibition of self-insurance, shall constitute a default by Design/Build Contractor of its obligations under this Agreement and shall empower Owner to terminate this Agreement for cause immediately and/or pursue any other remedy available to Owner.

ARTICLE 20 - PROJECT TERMINATION AND SUSPENSION

20.1 Mutual Right to Terminate. Either Party may terminate this Agreement during the Pre-Construction Phase upon fifteen (15) days' prior 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) day period.

20.2 Termination by Owner. Owner may terminate this Agreement:

20.2.1 During the Pre-Construction Phase upon at least seven (7) days' written notice to Design/Build Contractor in the event that the Project will be temporarily or permanently abandoned.

20.2.2 Upon written notice that Owner has elected, at Owner's sole discretion and option, to terminate this Agreement after the conclusion of the Program Phase, Schematic Design Phase, Design Development Phase, or the Construction Documents Phase of the Pre-Construction Phase.

20.2.3 Upon written notice to Design/Build Contractor for Design/Build Contractor's Material Breach. "**Material Breach**" means (a) Design/Build Contractor's failure or refusal to satisfy a material obligation of Design/Build Contractor under this Agreement, and/or (b) Design/Build Contractor's repeated failure or refusal to satisfy one or more obligations of Design/Build Contractor under this Agreement. For purposes of this Agreement, Material Breach includes Design/Build Contractor's consistent failure to respond timely to Owner's requests, delays in Design/Build Contractor's performance, Design/Build Contractor's submission of Change Proposals and Change Order(s) for work or services that are already part of Design/Build Contractor's obligations under this Agreement, Design/Build Contractor's repeated failure or refusal to submit timely proposals for additional Pre-Construction Phase services and Change Orders as and when required to satisfy Design/Build Contractor's obligations under this Agreement (including achieving Substantial Completion on or before the date of Substantial Completion) and/or failure to submit, timely or otherwise, GMP Proposals within the CCL.

20.2.4 Upon written notice to Design/Build Contractor for Owner's convenience.

20.3 Design/Build Contractor's Obligations on Termination. 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 by this Agreement or as have been prepared by Design/Build Contractor in connection with Design/Build Contractor's responsibilities under this Agreement. Owner may 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. Upon receipt of Owner's notice of termination, Design/Build Contractor shall remove its personnel, agents, contractors, subcontractors and equipment from Owner's property.

20.3.1 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, or other misconduct 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.

- 20.3.2 In the event of termination that is not the fault of Design/Build Contractor, 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 required by the Contract Documents, together with all reports, documents and other materials prepared by Project Architect prior to termination. Upon such payment, Owner shall have no further obligation to Design/Build Contractor.

20.4 Suspension of Project. If Owner suspends or abandons in whole or in part the Project for more than three months, Design/Build Contractor shall be compensated for all services performed prior to receipt of written notice from Owner of such suspension or abandonment, together with Reimbursable Expenses then due, except as otherwise provided under this Agreement. If the Project is resumed after being suspended for more than three months, Design/Build Contractor's compensation for Pre-Construction Phase Services shall be equitably adjusted if, in Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 21 - INDEMNITY

21.1 Bodily Injury and Property Damage. To the fullest extent permitted by law, and as consideration for the terms and conditions of this Agreement, Design/Build Contractor agrees to release, indemnify, protect, defend with counsel approved by Owner, and hold harmless Owner, the University of Houston, and/or any of their respective component institutions, directors, board members, regents, trustees, officers, administrators, agents, employees, licensees, successors and assigns ("**Indemnitees**") from any claims, damages, losses, liabilities, liens, costs and/or expenses, controversies, causes of action, lawsuits, proceedings, injuries, judgments and expenses (including mediation, settlement, attorney fees, and other costs or expenses) (each, a "**Claim**") if the Claim is caused by or results from an act of negligence intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier ("**Damage**") committed by the Design/Build Contractor, its agent, consultant under contract, or another entity over which the Design/Build Contractor exercises control.

- 21.1.1 Notwithstanding the foregoing provisions of Section 21.1, Design/Build Contractor shall not be obligated to indemnify the Indemnitees from or against a Claim resulting from Owner's negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event Direct/Build Contractor and Owner are found jointly liable by a court of competent jurisdiction, liability for the Claim will be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the Parties under Texas law.

21.2 Intellectual Property. Design/Build Contractor shall protect and indemnify Owner from and against all Claims arising from infringement or alleged infringement of any patent, trademark or copyright existing under the laws of the United States or the State of Texas, arising by or out of any of the work performed hereunder or the use by Design/Build Contractor, or by Owner at the direction of Design/Build Contractor, of any article or material including, but not limited to, CAD or BIM files (collectively, "**Electronic Files**"), provided that upon becoming aware of a suit or threat of suit for patent, trademark or copyright infringement, Owner shall promptly notify Design/Build Contractor and

Design/Build Contractor shall be given full opportunity to negotiate a settlement. Design/Build Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Design/Build Contractor and shall be entitled, in connection with any such litigation, to be represented by counsel at Owner's expense.

21.3 Survival. The indemnities contained herein shall survive Final Completion and/or the termination of this Agreement.

ARTICLE 22 - WARRANTIES

22.1 Basis. 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 expertise and special and unique abilities to provide the services set forth in this Agreement. Design/Build Contractor accepts the relationship of trust and confidence established between it and Owner by this Agreement. Design/Build Contractor covenants with Owner to use its best efforts, skill, judgment and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the usual and customary standards of Design/Build Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. If Design/Build Contractor fails to comply with Design/Build Contractor's Standard of Care, Design/Build Contractor's responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, Design/Build Contractor hereby agrees to be responsible for the full cost of correcting Design/Build Contractor's Work and Services, those of its consultants, and those of any others who have acted in reliance thereon.

22.2 Warranties.

22.2.1 Design/Build Contractor warrants, represents, covenants and agrees that (a) all of the services to be performed by Design/Build Contractor, including its agents, representatives and consultants, pursuant to this Agreement will be of the customary and usual standards of care, skill, diligence and professional competence and quality which prevail among similar businesses and organizations of comparable experience, size, knowledge and skill engaged in providing similar services under the same or similar circumstances and involving projects such as the Project, and (b) the materials and equipment provided under this Agreement will be of good quality and new unless otherwise required or permitted by this Agreement, that the construction will be free from faults and defects and that the construction will conform to the requirements of the Contract Documents. Design/Build Contractor shall be responsible for correcting Work that does not comply with the Contract Documents at Design/Build Contractor's sole expense, unless Owner specifically agrees in writing to accept the Work as-is. Further, Design/Build Contractor warrants to Owner the sufficiency and completeness of all drawings, specifications and other information furnished or provided by or on behalf of Design/Build Contractor will be free from material errors and omissions.

22.2.2 Design/Build Contractor warrants, represents, covenants, and agrees that all persons connected with Design/Build Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

22.2.3 Design/Build Contractor warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Design/Build Contractor (by Owner or any other party) which it regards in its opinion as

unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from Design/Build Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless Design/Build Contractor advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Design/Build Contractor to proceed in accordance with the data as originally given.

22.2.4 Design/Build Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

22.2.5 Design/Build Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

22.2.6 Design/Build Contractor warrants, represents, and agrees that individual executing this Agreement on behalf of Design/Build Contractor has been duly authorized to act for and bind Design/Build Contractor.

22.3 Certification of No Asbestos Containing Materials or Work. Further to the provisions of Section 13.7 of the Uniform General Conditions:

22.3.1 Design/Build Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

22.3.2 Design/Build Contractor's certification shall delivered to Owner at Substantial Completion.

22.3.3 Design/Build Contractor shall take whatever measures it reasonably deems necessary to insure that all employees and Subcontractors (including suppliers and fabricators), and their assigns, comply with the requirements of this section.

22.3.4 Each Subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project with each of its/his/her invoice.

22.3.5 Design/Build Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

22.4 No Waiver. Design/Build Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Design/Build Contractor be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Design/Build Contractor's skill and knowledge in performing the services required hereunder.

ARTICLE 23 - RECORD RETENTION; OWNER AUDIT RIGHTS

23.1 Audit Records. Design/Build Contractor shall keep full and detailed records and accounts of all pertinent information related to this Agreement and the Project in accordance with Generally Accepted Accounting Principles ("GAAP") and exercise such cost controls as may be necessary for proper financial management under this Agreement. The accounting and control systems must be satisfactory to Owner. Owner and its representatives (including but not limited to third-party auditing consultants, if any) will be afforded reasonable access, at reasonable times, to all records establishing the actual cost of the Project (collectively, "**Audit Records**"), including but not limited to: Design/Build Contractor's accounting records, time sheets, payroll burden calculations, Insurance Documents (defined below), bond cost

documentation and other bond information, invoices, bills, Reimbursable Expenses and expense reports, Additional Services reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, Record Drawings, receipts, subcontracts (including Design/Build Contractor's contract with Project Architect), purchase orders, vouchers, memoranda, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets correspondence, Change Order files (including documentation), general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, any other supporting evidence necessary to substantiate charges related to this Agreement and other records, drawings or data relating to the services rendered in accordance with this Agreement. Audit Records must be kept with respect to all Work, including Design/Build Contractor self-performed work, even if Owner agrees to pay a lump sum for a portion of the Work. Design/Build Contractor shall preserve Audit Records for a period of four (4) years after Final Payment or abandonment of the Project, or for such longer period as may be required by law or directed in writing by Owner.

23.1.1 ***"Insurance Documents"*** means and includes insurance policies, insurance contracts and third party insurer or insurance agent invoices for the specific coverages and insurance amounts required of Contractor in this Agreement. If this Agreement permits Contractor to obtain and maintain certain coverages under blanket policies, "Insurance Documents" additionally includes the method of allocation and all figures used to calculate the portion allocated to the Project. For example, if Contractor maintains a blanket automobile policy and this Agreement permits Contractor to use that blanket coverage to satisfy its insurance obligations for the Project, then Contractor must provide (a) third party invoices for the total cost of the blanket coverage, (b) the total number of rolling stock covered under the blanket coverage, and (c) the total number of rolling stock items serving the Project at any one time. Likewise, if Contractor maintains a blanket general liability policy and this Agreement permits Contractor to use that blanket coverage to satisfy its insurance obligations for the Project, then Contractor must provide (a) third party invoices for the total cost of the blanket coverage, (b) third party insurer's or insurance agent's statement for the basis for calculating the annual premium (whether labor costs, gross receipts, or other amount), (c) the amount, for each coverage year, of the basis used to calculate the premium, and (d) the amount the Project contributes to the basis. Although these examples address two specific types of insurance coverage, they are meant to illustrate the requirement of comprehensive and meaningful record-keeping and disclosure, and not to limit the requirement to these two specific types of insurance coverage.

23.2 **Inspection; Audit.** The Audit Records (hard copy, as well as computer readable data if it can be made available) will be opened to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent Owner deems necessary. Such audits may require inspection and copying from time-to-time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character. Such records subject to audit will also include those records necessary to evaluate and verify direct costs (including overhead allocations) as they may apply to costs associated with this Agreement.

23.2.1 Owner's agent or its authorized representative will have reasonable access at reasonable times to Design/Build Contractor's facilities, and will be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, may contact subcontractors or other vendors related to the Project, will have access to all necessary records and be provided adequate and appropriate work space in order to conduct audits in compliance with this **ARTICLE 23**, and will be provided support from Design/Build Contractor's staff as reasonably required.

23.2.2 In the event Design/Build Contractor does not fully comply with the requirements of this ARTICLE 23, Design/Build Contractor will be responsible for the reasonable actual costs and fees (including attorneys' fees) incurred by Owner in attempting to conduct its audit(s) and otherwise enforcing its rights under this ARTICLE 23.

23.2.3 If any audit discloses overcharges by Design/Build Contractor to Owner that are (i) proven in the reasonable discretion of Owner and (ii) in excess of one half of one percent (0.5%) of the total Cost of the Work, then the reasonable actual cost of Owner's audit will be reimbursed to Owner by Design/Build Contractor within thirty (30) days after receiving Owner's written notice. Any adjustments and/or records due to the overcharges will be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of Owner's findings to Design/Build Contractor. Owner may deduct such reimbursement amounts from any money due or that becomes due Design/Build Contractor.

23.3 Subcontracts. Design/Build Contractor shall provide Owner with an executed copy of any subcontracts (with Subcontractors (including Project Architect), or other vendors of services, supplies or materials) including Change Orders or other contracts and/or any document required under this Agreement entered into in furtherance of the Project, upon Owner's request, and shall require all Subcontractors to do the same. Design/Build Contractor shall require all Subcontractors to permit Owner to audit their books and records for the purpose of determining compliance with progress payments, invoicing and conformance with the Contract Documents and specifications. A provision in a contract between Subcontractor and Design/Build Contractor attempting to undermine or override this provision shall constitute a default by Design/Build Contractor under this Agreement.

ARTICLE 24 - OTHER TERMS AND CONDITIONS

24.1 Limitation of Liability. Except for the obligation of Owner to pay Design/Build Contractor certain fees, costs, and expenses to the extent expressly set forth in 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. Interest on any award against Owner in an adjudication for breach of an express provision of this Agreement shall accrue at the Prime Rate not to exceed ten percent (10%) per annum. "**Prime Rate**" means the per annum interest rate publicly announced by a federally insured in the state of Texas bank selected by Owner as such bank's prime or base rate. 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 or of the components comprising The University of Houston 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.

24.2 Site Observation Requirements. Project Architect and its related consultants shall inspect the Project site at intervals appropriate to the type and stage of construction progress but at least once each week during the entire Construction Phase to observe the progress and quality of the Work. Project Architect and its related consultants shall provide Owner and Design/Build Contractor with field reports and photographs of the weekly inspection within one (1) week of each visit. Design/Build Contractor's Construction project manager shall provide written responses to the field report observations within one (1) week after the field reports are issued. In addition, each consultant shall visit the site at least three (3) times each month to observe construction activities related to the consultant's discipline.

24.3 Progress Meetings. Design/Build Contractor shall conduct at least one (1) Progress Meeting each week, unless waived by Owner's Designated Representative in writing.

24.4 Assignment. This Agreement is a personal service contract for the services of Design/Build Contractor, and neither Design/Build Contractor's interest in this Agreement (including, but not limited to

Design/Build Contractor's fees due hereunder), nor Design/Build Contractor's duties hereunder may be assigned or delegated to a third party.

24.5 Statutory Certifications. By signing this Agreement, Design/Build Contractor certifies as follows:

24.5.1 "Under Section 231.006, Texas Family Code, Design/Build Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

24.5.2 "Under Section 2155.004, Texas Government Code, Design/Build Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

24.6 Dispute Resolution. Disputes arising from this Agreement will be handled pursuant to Article 15 of the Uniform General Conditions.

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

24.8 Governing Law and Venue. This Agreement will be governed by the laws of the State of Texas without reference to its conflicts of law provisions. Venue for any suits arising from this Agreement will be in a court of competent jurisdiction in Harris County, Texas.

24.9 Waivers. No delay or omission by either Party in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party of any provision of this Agreement or the Contract Documents will impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants, conditions or agreements of this Agreement or any of the Contract Documents to be performed by the other party will not be construed to be a waiver of any subsequent breach of this Agreement or the Contract Documents or of any other covenant, condition or agreement contained in this Agreement or the Contract Documents.

24.10 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party.

24.11 Binding. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective permitted assigns and successors.

24.12 Appointment. Design/Build Contractor shall act only upon instructions from Owner's Designated Representative unless Owner advises Design/Build Contractor otherwise in writing.

24.13 Severability. If any provision of this Agreement is for any reason held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision of this Agreement and this Agreement will be construed as if such invalid or unenforceable provision had not been included herein.

24.14 New Laws. Owner and Design/Build Contractor agree that if there is a change in any laws, rules or regulations affecting the Project and enacted after the Effective Date of this Agreement, the Parties will enter into good faith negotiations to renegotiate the affected terms of this Agreement.

24.15 Notices. Any notice required or permitted to be given under this Agreement must be in writing and may be served by depositing same with the United States Postal Service, addressed to the party to be notified, postage prepaid and in registered or certified form, with return receipt requested; by hand delivery by reputable courier; or by deposit with Federal Express or other reputable overnight courier for overnight delivery. Notice given as required herein will be effective on the date actually received at the address to which such notice was sent, or if delivery is refused or not accepted, such notice shall be

effective on the date of such refusal or failure to accept delivery. For purposes of notice, the addresses of the Parties will be as follows or to such other address that the Parties may designate in writing.

If to Owner: Executive Director

4211 Elgin
Houston, Texas 77204

with a copy to: General Counsel, UHS
University of Houston
311 E. Cullen Building
Houston, Texas 77204-2028

If to Design/Build
Contractor:

with a copy to:

24.16 Exhibits. The exhibits listed below the Table of Contents (on page iv above) are incorporated by reference as part of this Agreement.

24.17 Registration of Sex Offenders. Design/Build Contractor shall require any individual on Owner's property in satisfaction of Design/Build Contractor's obligations under this Agreement to register with University of Houston Department of Public Safety within seven (7) days of beginning work on Owner's property in accordance with *Texas Code of Criminal Procedure* Article 62.153 if such individual (a) is required to register as sex offenders with local law enforcement authorities in accordance with Chapter 62 of the *Texas Code of Criminal Procedure*, and (b) will be on Owner's property for fourteen (14) or more consecutive days or for more than thirty (30) days in any calendar year.

[signatures commence on following page]

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

Corporations/LLC's: Attest:

Corporate Secretary

Other business forms: Witness:

By: _____

Name: _____

Title: _____

Date of Signature: _____

UNIVERSITY OF HOUSTON SYSTEM

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

Note: Modification of this document requires approval of the UH Office of General Counsel.

EXHIBIT A

GUARANTEED MAXIMUM PRICE PROPOSAL WITH GUIDELINES FOR THE PREPARATION OF THE GMP

EXHIBIT A-1 BASE GUARANTEED MAXIMUM PRICE PROPOSAL

We hereby submit to the University of Houston System pursuant to ARTICLE 4 of the Design/Build Agreement by and between the University of Houston System ("Owner") and _____ ("Design/Build Contractor"), dated _____ (the "Agreement"), a Guaranteed Maximum Price for _____ ("Project"), University of Houston System Project No. _____ based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. **Cost of the Work:** A Not-to-Exceed amount \$ _____
for the reimbursable Cost of the Work.

Provide detailed breakdown by Project element, including any allowance(s) and scheduled value, in the form of the Standard Schedule of Values – Parts I and II (attached).

2. **Construction Contingency:** Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2. \$ _____

3. **General Conditions:** Total, not-to-exceed amount for General Conditions items. \$ _____

Provide itemized breakdown in the form of Exhibit E to the Agreement.

4. **Construction Phase Fee:** The product of the Construction Phase Fee Percentage (%) \$ _____
times the Cost of the Work (item 1, above).

Unexpended balances shall revert to Owner.

TOTAL: \$ _____

This figure shall be the Guaranteed Maximum Price (GMP) that we hereby guarantee to Owner. Attached is a breakdown showing the dollar amount allocated to each item, all of which totals the GMP amount, and a general description of the Project with items included and excluded in the GMP pursuant to the Agreement.

EXHIBIT A-2
APPROVED AND ACCEPTED ALTERNATES (if Applicable)

1. **Cost of the Work:** A Not-to-Exceed amount for the reimbursable Cost of the Work. \$ _____

Provide detailed breakdown by Project element, including any allowance(s) and scheduled value, in the form of the Standard Schedule of Values – Parts I and II (attached).

2. **Construction Contingency:** Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2. \$ _____

3. **General Conditions:** Total, not-to-exceed amount for General Conditions items. \$ _____

Provide itemized breakdown in the form of Exhibit E to the Agreement.

4. **Construction Phase Fee:** The product of the Construction Phase Fee Percentage (%) times the Cost of the Work (item 1, above). \$ _____

Unexpended balances shall revert to Owner.

TOTAL:

\$ _____

This figure shall be the Guaranteed Maximum Price (GMP) that we hereby guarantee to Owner. Attached is a breakdown showing the dollar amount allocated to each item, all of which totals the GMP amount, and a general description of the Project with items included and excluded in the GMP pursuant to the Agreement.

EXHIBIT A-3
GUARANTEED MAXIMUM PRICE PROPOSAL
(Base Proposal with Approved and Accepted Alternates)

1. **Cost of the Work:** A Not-to-Exceed amount for the reimbursable Cost of the Work. \$ _____

Provide detailed breakdown by Project element, including any allowance(s) and scheduled value, in the form of the Standard Schedule of Values – Parts I and II (attached).

2. **Construction Contingency:** Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2. \$ _____

3. **General Conditions:** Total, not-to-exceed amount for General Conditions items. \$ _____

Provide itemized breakdown in the form of Exhibit E to the Agreement.

4. **Construction Phase Fee:** The product of the Construction Phase Fee Percentage (%) times the Cost of the Work (item 1, above). \$ _____

Unexpended balances shall revert to Owner.

TOTAL:

\$ _____

This figure shall be the Guaranteed Maximum Price (GMP) that we hereby guarantee to Owner. Attached is a breakdown showing the dollar amount allocated to each item, all of which totals the GMP amount, and a general description of the Project with items included and excluded in the GMP pursuant to the Agreement.

Witness:

By: _____

Name: _____

Title: _____

Date: _____

DESIGN/ BUILD CONTRACTOR

By: _____

Name: _____

Title: _____

Date of Signature: _____

Content Approved:

**THE UNIVERSITY OF HOUSTON
SYSTEM**

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: Principal Project Manager

Date: _____

By: _____

Name: _____

Title: Executive Director

Date: _____

By: _____

Name: _____

Title: Senior VC/VP

Administration and Finance

Date: _____

By: _____

Name: _____

Title: Chancellor/President

Date: _____

NOTE: When invoicing, please refer to Contract No. _____ and Account No. _____ .

Modification of this form requires approval of OGC.

EXHIBIT A-4
GUIDELINES FOR THE PREPARATION OF GUARANTEED MAXIMUM PRICE PROPOSAL

The GMP Proposal must be transmitted under a Project-specific transmittal letter that identifies the Project Team for Design/Build Contractor. The Proposal must be bound, dated and contain the following items, with the contents numbered sequentially:

Table of Contents

Tab 1 GMP Summary – brief general summary of scope of work, alternates, etc.

- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (e.g. right-of-way issues)
- State the anticipated Notice to Proceed date and Substantial Completion date

Tab 2 List of documents (project manual(s), drawings by sheet number & date)

Tab 3 Qualifications

- Qualifications and Assumptions – a summary of all qualifications and assumptions included in the Guaranteed Maximum Price
- Exclusions – a summary of all exclusions included in the specification listing, plus any exclusions not related to the specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable
- Contingency Breakdown

Tab 4 Guaranteed Maximum Price Proposal Cost Breakdown:

- Exhibit A - Guaranteed Maximum Price Proposal (form as attached to the Agreement).
- Design/Build Contractor shall provide a detailed initial Estimated Construction Cost using standard estimating industry practices, utilizing the most recently issued Construction Specifications Institute (CSI) Master-Format, with additional breakdown to the second level of each division or such additional level of detail as may be required by the FP&C Project Manager.
- Design/Build Contractor shall provide an initial GMP Proposal line item cost breakdown for all anticipated bid package strategies {BPS} included in Cost of the Work, including all self-performed work not associated with General Conditions. The breakdown shall be shown on the Standard Schedule of Values Format (shown below).
- Design/Build Contractor shall provide a cost breakdown, including unit prices, for all items included the Approved General Conditions.

Tab 5 Work Progress Schedule

- This schedule shall be a computer generated CPM Schedule developed in Microsoft Project 2007 software. It shall be presented in bar chart form and contain detailed activities for all events and milestones included in Part I Pre-Construction Phase Services, including permitting and the development of trade packages.

- Additionally, the schedule shall include detailed, logic driven activities for all Part II Construction Phase activities scheduled to commence during the first 90 days following acceptance of the GMP.
- The remainder of the construction activities, those commencing after the first 90 days, shall be included in this schedule but may be summarized by trade and may have longer durations than the “detailed” activities mentioned above.
- All paths in the schedule must lead to a milestone activity for Substantial Completion. This milestone shall be logic driven and shall indicate completion within approximately 90% of the contract construction period. (Total Float shall be no less than 10% of the project duration.)
- The Summary Level Schedule shall be provided in hard copy form in the notebook and also in a diskette format attached in the notebook.

Tab 6 Historically Underutilized Business Plan

- HUB Plan.
- Design/Build Contractor shall update and resubmit the HUB Plan upon final receipt, acceptance and evaluation of all subcontractor bids.

STANDARD SCHEDULE OF VALUES FORMAT

The Schedule of Values, in the format below, will be submitted twice prior to commencement of construction of the Project: first, with the GMP Proposal; and second, at buyout. When submitted with the GMP Proposal, columns A through C will be completed. When submitted at buyout, columns A through E will be completed.

A Schedule of Values, in the format below, will additionally be submitted to Owner with each Pay Application, which must be made on AIA Document G702, Application and Certification for Payment, and AIA Document G703 Continuation Sheet(s).

<u>A</u> CSI Division / Section	<u>B</u> CSI Description of Work / Specification Section	<u>C</u> Line Item Value from Initial GMP	<u>D</u> Actual Line Item Contract Amount at Buyout	<u>E</u> Delta (GMP to Actual)	<u>F</u> Notes
Division 01	General Requirements				
Division 02	Existing Conditions				
Division 03	Concrete				
Division 04	Masonry				
Division 05	Metals				
Division 06	Woods, Plastics & Composites				
Division 07	Thermal & Moisture Protection				
Division 08	Openings				
Division 09	Finishes				
09 20 00	Plaster and Gypsum Board				EXAMPLE
09 20 00	Ceilings				EXAMPLE
Division 10	Specialties				
Division 11	Equipment				
Division 12	Furnishings				
Division 13	Special Construction				
Division 14	Conveying Equipment				
Division 21	Fire Suppression				
Division 22	Plumbing				

<u>A</u> CSI Division / Section	<u>B</u> CSI Description of Work / Specification Section	<u>C</u> Line Item Value from Initial GMP	<u>D</u> Actual Line Item Contract Amount at Buyout	<u>E</u> Delta (GMP to Actual)	<u>F</u> Notes
Division 23	Heating, Ventilating & Air Conditioning				
Division 25	Integrated Automation				
Division 26	Electrical				
Division 27	Communications				
Division 28	Electronic Safety & Security				
Division 31	Earthwork				
Division 32	Exterior Improvements				
Division 33	Utilities				
Division 34	Transportation				
Division 35	Waterway & Marine Construction				
Division 40	Process Integration				
Division 41	Material Processing & Handling Equipment				
Division 42	Process Heating, Cooling & Drying Equipment				
Division 43	Process Gas & Liquid Handling, Purification & Storage Equipment				
Division 44	Pollution Control Equipment				
Division 45	Industry-Specific Manufacturing Equipment				
Division 46	Water and Wastewater Equipment				
Division 48	Electrical Power Generation				
Schedule of Values Total					

Schedule of Values Total (from above)	
Construction Contingency	
SUBTOTAL	
SUBTOTAL multiplied by Construction Phase Fee (____%)	
General Conditions Costs	
<u>TOTAL:</u>	

EXHIBIT B
OWNER'S MILESTONE SCHEDULE

[SEE ATTACHED]

EXHIBIT C

DESIGN/BUILD CONTRACTOR'S PERSONNEL AND MONTHLY SALARY RATES

Project No. & Name: _____

The following Monthly Salary Rate (MSR) shall identify the hourly rate prior to execution of the Agreement, and shall be confirmed for use throughout Construction Phase Services 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. The rates below are estimates and subject to the terms of the Agreement, including Section 15.2.1. Any additional employer contributions not identified below shall be included in and paid from the Construction Phase Fee pursuant to ARTICLE 17 of the Agreement.

Employee		Estimated Employer's Monthly Contributions						Monthly Salary Rate
Name and Title	Estimated Monthly Direct Salary Expense	Federal & State Unemployment (Approx. 1%)	Social Security & Medicare (7.65%)	Worker's Compensation (\$0 for ROCIP)	Health & Insurance	Pension / 401(k)	Vacation / Holiday	
1.	\$	\$	\$	\$	\$	\$	\$	\$
2.	\$	\$	\$	\$	\$	\$	\$	\$
3.	\$	\$	\$	\$	\$	\$	\$	\$
4.	\$	\$	\$	\$	\$	\$	\$	\$
5.	\$	\$	\$	\$	\$	\$	\$	\$
6.	\$	\$	\$	\$	\$	\$	\$	\$
7.	\$	\$	\$	\$	\$	\$	\$	\$
8.	\$	\$	\$	\$	\$	\$	\$	\$
9.	\$	\$	\$	\$	\$	\$	\$	\$
10.	\$	\$	\$	\$	\$	\$	\$	\$

Design/Build Contractor hereby certifies, to the best of its knowledge, that the above referenced salary information is accurate.

Design/Build Contractor signature: _____
(same individual who signs agreement)

EXHIBIT D
BOND FORMS

Security Bond No. _____

SECURITY BOND

THE STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS; That we,

_____, a
_____, with a primary office address of
_____, in _____ County,
_____, ("**Principal**") and _____
a _____ State of _____ ("**Surety**"), are held and firmly bound unto

THE UNIVERSITY OF HOUSTON SYSTEM ("**Owner**"), in the penal sum of
_____ Dollars

(\$ _____) in lawful money of the United States or Five Percent (5%) of the
Design/Build Budget Limitation for the design and construction of
_____ (the "**Project**"), to be paid in
Harris County, Texas for the payment of which sum well and truly be made, we bind ourselves, our heirs,
executors, administrators and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall execute the
Guaranteed Maximum Price proposal and deliver payment and performance bonds to Owner as required by
the contract documents for the Project with good and sufficient surety for the faithful performance of the
contract for the construction of the Project (the "**Contract**") and for the prompt payment of labor and
materials furnished in the prosecution thereof, then this obligation shall be null and void, otherwise Principal
and Surety will pay Owner the difference in money between the amount of the Guaranteed Maximum Price
Proposal of the said Principal and the amount for which Owner 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.

PROVIDED FURTHER, that if any legal action be filed upon this bond, venue shall lie in Harris County,
State of Texas, and that the said surety, for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the Contract or to the work to be performed hereunder
or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract
or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be deemed an original, and this the _____ day of _____, A.D. 20 _____. [*Date of Bond must not be prior to date of Contract*]

ATTEST:

Principal

(Principal) Secretary

(SEAL)

BY _____

(Address)

(Address)

ATTEST:

Surety

(Surety) Secretary

(SEAL)

BY: _____

Address

Witness as to Surety

(Address)

NOTE: If contractor is Partnership, all partners should execute bond.

The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number for the Texas Department of Insurance at 1-800-252-3439.

Payment Bond No. _____

PAYMENT BOND

THE STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS; That we _____
[full, correct legal name of Contractor], a _____ [type
of entity and state of formation] of _____ [address] hereinafter
called Principal and _____ State
of _____, hereinafter called the Surety, are held and firmly bound unto THE
UNIVERSITY OF HOUSTON SYSTEM, hereinafter called Owner, in the penal sum of _____
Dollars (\$ _____) in lawful money of the United States, to be paid
in Harris County, Texas for the payment of which sum well and truly be made, we bind ourselves, our heirs,
executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain
contract with the Owner dated the _____ day of _____, A.D. 20____ (the "Contract"), a copy of
which is hereto attached and made a part hereof for the design and construction of:

(herein called the "work").

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make
payment to all beneficiaries as defined by Chapter 2253 and The Texas Government Code who have properly
perfected claim and have supplied labor and materials in the prosecution of the work provided for in said
Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all beneficiaries supplying labor and materials
in the prosecution of the work provided for in said Contract, and all such beneficiaries shall have a direct right
of action under the bond as provided in Chapter 2253 of the Texas Government Code.

PROVIDED FURTHER, that if any legal action be filed upon this bond, venue shall lie in Harris County,
State of Texas, and that the said surety, for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the Contract or to the work to be performed hereunder
or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract
or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and Principal shall abridge the right of
any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be deemed an original, and this the _____ day of _____, A.D. 20 _____.

ATTEST:

Principal

BY _____

(Principal) Secretary

(SEAL)

(Address)

(Address)

ATTEST:

Surety

BY _____

(Surety) Secretary

(SEAL)

Address

Witness as to Surety

(Address)

NOTE: If contractor is Partnership, all partners should execute bond.

The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number for the Texas Department of Insurance at 1-800-252-3439.

Performance Bond No. _____

PERFORMANCE BOND

THE STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS; That we _____
[full, correct legal name of Contractor], a _____ [type
of entity and state of formation] of _____ [address] hereinafter
called Principal and _____ State
of _____, hereinafter called the Surety, are held and firmly bound unto THE
UNIVERSITY OF HOUSTON SYSTEM, hereinafter called Owner, in the penal sum of
\$ _____ in lawful money of the United States, to be paid in Harris County, Texas
for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators
and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain
contract with Owner dated the _____ day of _____, A.D. 20____, a copy of
which is hereto attached and made a part hereof for the design and construction of:

(herein called the "work")

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform the services in accordance with
the Contract Documents during the original term thereof, and any extensions thereof which may be granted
by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred
with respect to such services under such contract, and shall fully indemnify and save harmless the Owner
from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay
the Owner all outlay and expense which the Owner may incur in making good any default, then this
obligation shall be void; otherwise to remain in full force and effect.

PROVIDE FURTHER, that if any legal action be filed upon this bond, venue shall lie **in Harris County**,
State of Texas, and that the said surety, for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the contract or to the Construction Phase Services to
be performed hereunder or the specifications accompanying the same shall in any way affect its obligation on
this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the
terms of the contract or to the Construction Phase Services or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be
deemed an original, this the _____ day of _____, A.D., 20_____.

ATTEST:

Principal

(Principal) Secretary

BY: _____

(SEAL)

(Address)

Witness as to Principal

Surety

(Address)

BY
Attorney-in-Fact

ATTEST:

(Surety) Secretary

(Address)

(SEAL)

Witness as to Surety

(Address)

NOTE: If contractor is Partnership, all partners should execute bond.

The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number for the Texas Department of Insurance at 1-800-252-3439.

EXHIBIT E

APPROVED GENERAL CONDITIONS LINE ITEMS AND COST BREAKDOWN

Project Management:	
Superintendent(s)	
Safety Manager	
CPM Scheduler	
Quality Assurance / Quality Control	
Project Manager(s)	
Project Executive	
Field Office Engineer	
Field Office Support Staff	
Project Expeditor	
Assistant Superintendent(s)	
Project Management Subtotal	
Bonds and Insurance (excluding any for Subcontractors):	
Builder's Risk Insurance	
General Liability Insurance	
Other General Project Insurance	
Security, Payment & Performance Bonds	
Bonds and Insurance Subtotal	
Site Conditions:	
Temporary Power Consumption (Offices)	
Temporary Power Consumption (General Site Use)	
Temporary Water and Sewer Consumption	
Temporary Water Hookup, Distribution & Meters	
Temporary Electrical Hookup, Distribution & Meters	
Temporary Telephone & Network System Installation	
Temporary Telephone & Internet Consumption Fees	
Temporary Fire Protection	
Temporary Heating & Cooling	
Temporary Fencing	
Temporary Covered Walkways	
SWPPP Measures	
Temporary Entries and Truck Washes	
Street Cleaning (by G.C.)	
Traffic Control Measures	
Traffic Control Maintenance	
Temporary Barricades & Signage	
Temporary Roads & Walkways (install & maintenance)	
Temporary Lighting	
Temporary Partitions & Covered Floor Openings	
Temporary Toilets/Sanitary Measures	
Temporary Laydown (prep and restoration)	
Security System/Watchman	

Pre-construction Photo Documentation	
Progress Photos	
Temporary Protection (in-place work/adjacent structures)	
Temporary Weather Protection/Enclosures	
Trash Chutes	
Dumpsters (site and field offices)	
Site Conditions Subtotal	
Field Offices & Construction Supplies:	
Field Offices & Furnishings	
Job/Office Drayage	
Field Office Maintenance and Cleaning	
Storage Trailers	
Small Tools & Consumables	
Mobilization & Demobilization	
Monthly Cell Phone Expenses	
Job Site Communications (radios, chargers, etc.)	
Final Clean (general site, windows/glass, etc.)	
Job Office Supplies	
Job Site Computers, Copiers, Fax, Servers, etc.	
Postage & Shipping Expenses	
Project Sign	
Drinking Water & Supplies (site and offices)	
Incidental Construction Equipment, Fuel & Drayage	
Materials Handling	
Document Imaging	
Parking Logistics	
Parking Permits	
Printing Costs	
Reproduction Costs	
As-built & Record Document Preparation	
Partnering Costs	
Project Milestone Event Costs	
Employee I.D./Badging/Background Checks	
Safety Expenses	
PPE for Staff & Visitors	
First Aid	
Fall Protection (staff)	
Safety Program Administration & Training	
Safety Incentives	
Drug Testing	
Safety Signage	
Field Offices & Construction Supplies Subtotal	
<u>GENERAL CONDITIONS TOTAL:</u>	

EXHIBIT F

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

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

Proposed Steps:

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

- **30% CD Constructability Review Comments to Design/Build Team**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements
- **50% CD Constructability Review Comments to Design/Build Team**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements
- **95% CD Constructability Review Comments to Design/Build Team**
- **Constructability Discussions with Design/Build Team**
- **Document On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**

EXHIBIT G

ADDITIONAL SERVICES PROPOSAL

Requisition Number:

Project Number:

Project Name:

Campus:

Date: _____

To:

Gentlemen:

Please refer to the Agreement dated _____, between the University of Houston 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 that are defined in the Agreement shall have the same meanings when used in this letter.

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

(Description of Services)

2. Design/Build Contractor agrees to perform the Additional 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 (\$ _____) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Services, but which reimbursement for expenses will not exceed _____ Dollars (\$ _____).

3. Design/Build Contractor will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) 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 at the space provided for this purpose and by inserting the date upon which Design/Build Contractor is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,
DESIGN/BUILD CONTRACTOR

By: _____
Name: _____
Title: _____

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

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Design/Build Contractor is authorized to commence performance of the Additional Services described in Paragraph 1 above.

OWNER

By: _____
Name: _____
Title: _____

PART I: PRE-CONSTRUCTION PHASE SERVICES

ORIGINAL PRE-CONSTRUCTION PHASE FEE (\$_____)

) PREVIOUS ADDITIONS (\$_____)

PREVIOUS DEDUCTIONS (\$_____)

NET BALANCE (\$_____)

THIS (Addition) (Deduction): (\$_____)

ADJUSTED PRE-CONSTRUCTION PHASE FEE (\$_____)

ORIGINAL REIMBURSABLE EXPENSES (\$_____)

) PREVIOUS APPLICATION(S) (\$_____)

BALANCE (\$_____)

THIS APPLICATION: (\$_____)

ADJUSTED REIMBURSABLE EXPENSES BALANCE (\$_____)

xc: Contractor
Director
Project Manager
IDF File

EXHIBIT H

PROJECT ARCHITECT'S PERSONNEL, TITLES AND DSE RATES

Personnel Title/Position	DSE Hourly Rate	Multiplier	Hourly Billing Rate
--------------------------	-----------------	------------	---------------------

Identify all staff

Architect shall complete this information and must state the DSE hourly rate

EXHIBIT I

CALCULATIONS AND DEFINITIONS OF BUILDING AREAS

Part 1 – General

1.1 Overview

- A. The Texas Higher Education Coordinating Board (THECB) requires higher educational institutions to maintain and report building and room inventories for campus facilities. To comply with the annual reporting requirements of THECB, the University of Houston System requires all design consultants to measure and calculate space usage utilizing the procedures of the THECB Facilities Inventory Procedures Manual as described below.
- B. As part of the UH CADD Standards Manual, Project Architect will be provided a pre-defined room attribute block to utilize on all AutoCAD floor plans. The attribute block also contains a link to the associated room polyline that will be used to measure each individual space.
- C. Project Architect shall submit an estimate of the gross and assignable areas with the Schematic Design Phase submission, and shall submit calculations for the Project gross area and assignable area with the Design Development Phase and the Construction Document Phase submissions. Project Architect shall submit to Owner the calculations in both a bound report format and AutoCAD files for each floor containing polylines and completed room attribute blocks.
- D. Project Architect shall design the Project so that the assignable to gross square foot ratio for the Project exceeds 60% to the maximum extent possible.

Part 2 – Design Criteria

2.1 Gross Area

- A. Gross area of a building: The sum of floor areas of a building included within the exterior walls for all stories or areas that house floor surfaces including attics, basements, sub-basements, penthouses, mechanical rooms, etc.

These are areas with six-foot six inch clear headroom or areas with lower ceilings that are usable for storage or other purposes.

- B. Basis for building measurement: Gross area is computed by physically measuring or scaling measurements from the outside faces of exterior walls, disregarding cornices, pilasters, buttresses, etc., which extend beyond the wall faces.

Gross area is measured to the nearest whole foot.

- C. Gross area does not include: Open, unroofed courts even if surrounded by the building; parking lots; playing fields; light wells, or portions of an upper floor eliminated by rooms or lobbies that rise above single-floor ceiling height.

2.2 Assignable Area (Assignable Square Feet-ASF)

- A. The sum of all areas within the interior walls of rooms on all floors of a building assigned to or available for assignment to an occupant or use, excluding unassigned space. This is also referred to as net-assignable square-feet (NASF).

- B. Basis for measurement: Assignable area is measured from the inside faces of surfaces that form the boundaries of the designated areas. Exclude areas having less than a six-foot six-inch clearing ceiling height.
- C. Measured in terms of assignable square feet (ASF). Assignable Area= Sum of area designated by the Ten Assignable Major Room Use Categories=Gross Area-Nonassignable Area-Structural Area.
- D. Description: Included should be space subdivisions of the ten major room use categories for assignable space-classrooms, labs, offices, study facilities, special use, general use, support, health care, residential and unassigned area that are used to accomplish the institution's mission.
- E. Limitations: Deductions should not be made for necessary building columns and projections. Areas defined below under Building Service Area, Circulation Area, Mechanical Area, and Structural Areas should not be included.

2.3 Nonassignable Area

- A. Definition: Unassignable Area of a Building which is the sum of space within a building not assigned to directly support programs. Includes the Building Service Area, Mechanical Area.
- B. Basis for measurement: Nonassignable Area is measured from the inside faces of surfaces that form the boundaries of the designated areas. Excludes areas having less than six-foot six-inch clear ceiling height.
- C. Measured in terms of area: Nonassignable Area=Sum of the Area Designated by Three Nonassignable Room Use Categories.
- D. Description: Included should be space subdivisions of the three nonassignable room use Categories-building service, circulation mechanical that are used to support the Building's general operation.
- E. Limitations: Deductions should not be made for necessary building columns and projections. Areas defined as assignable should not be included.

2.4 Building Service Area

- A. Definition: Space used for the protection, care, and maintenance of a building, including restrooms that are accessible to the public.
- B. Basis for measurement: Building service area is computed by measuring from the inside faces of surfaces that form boundaries of the designated areas. Exclude areas having less than six-foot six-inch clear ceiling height.
- C. Description: Included should be janitor closets or similarly small cleanup spaces, maintenance material storage areas, trash rooms exclusively devoted to the storage of non-hazardous waste created by the building occupants as a whole.
- D. Limitations: Deductions should not be made for necessary building columns and minor projections. Areas defined as central physical plant shop areas, or special storage or

maintenance rooms, such as linen closets and housekeeping rooms in residence halls, are Assignable Areas and should not be included. Does not include private toilets.

2.5 Circulation Area

- A. Definition: Non-assignable hallway or stairwell space.
- B. Basis for measurement: Circulation area is computed by measuring from the inside faces of surfaces that form the boundaries of the designated areas. Exclude areas having less than six-foot six-inch clear ceiling height.
- C. Description: Included should be, but is not limited to, public corridors, fire towers, elevator lobbies, tunnels, bridges, and each floor's footprint of elevator shafts, escalators, and stairways. Receiving areas, such as loading docks should be treated as circulation space.

Any part of a loading dock that is not covered is to be excluded from both circulation area and the gross building area. A loading dock, which is also used for central storage, should be regarded as assignable area.

Also included are corridors whether walled or not, provided they are within the outside face-lines of the buildings to the extent of the roof drop line.

- D. Limitations: Deductions should not be made for necessary building columns and minor projections. When determining corridor areas, only spaces required for public access should be included.

Restricted access private circulation aisles used only for circulation within an organizational unit's suite of rooms, auditoria or other working areas should not be included.

2.6 Mechanical Area

- A. Definition: A portion of the facility's space that is designed to house mechanical equipment, utility services, and shaft areas.
- B. Basis for measurement: Mechanical area is measured from the inside faces of surfaces that form the boundaries of the designated areas. Exclude areas having less than six-foot six-inch clear ceiling height.
- C. Description: Included should be mechanical areas such as central utility plants, boiler rooms, mechanical and electrical equipment rooms, fuel rooms, meter and communications closets and each floor's footprint of air ducts, pipe shafts, mechanical service shafts, service shuts and stacks.
- D. Limitations: Deductions should not be made for necessary building columns and projections. Areas designated as private toilets are not included.

2.7 Net Usable Area

- A. Definition: The sum of assignable area and nonassignable area.
- B. Basis for measurement: Net usable area is computed by summing the assignable areas and the nonassignable area.

- C. Measured in terms of net usable square feet (NUSF). Net Usable Area = Assignable Area + Nonassignable Area
- D. Description: Included should be space subdivisions of the town assignable major room use categories and the three nonassignable space categories.
- E. Limitations: Deductions should not be made for necessary building columns and projections. Areas defined as structural should not be included.

2.8 Structural Area

- A. Definition: Sum of all areas on all floors of a building that cannot be occupied or put to use because of structural building features.
- B. Basis for measurement: Structural area should be construed to mean that portion of the gross area which cannot be occupied or put to use because of the presence of structural features of the building. It is determined by calculating the difference between the measured gross area and the measured net usable area.
- C. Measured in terms of area: Structural Area = Gross Area – Net Usable Area.
- D. Description: Examples of building features normally classified as structural areas include exterior walls, fire walls, permanent partitions, unusable areas in attics or basements, or comparable portions of a building with ceiling height restrictions, as well as unexcavated basement areas.

Part 3 – THECB Room Classification Types

100 Series - Classroom Facilities

110 Classroom (Student Station Capacity Required)
115 Classroom Service

200 Series - Laboratory Facilities

210 Class Laboratory (Student Station Capacity Required)
215 Class Laboratory Service
220 Special Class Laboratory (Student Station Capacity Required)
225 Special Class Laboratory Service
230 Individual Study Laboratory
235 Individual Study Laboratory Service
250 Research/Non-Class Laboratory
255 Research/Non-Class Laboratory Service

300 Series - Office Facilities

310 Office 315 Office Service
350 Conference Room (Student Station Capacity Required)
355 Conference Room Service

400 Series - Study Facilities

410 Reading/Study Room (Student Station Capacity Required)
420 Stack
430 Open-Stack Study Room (Student Station Capacity Required)
440 Processing Room
455 Study Service

500 Series - Special Use Facilities

510 Armory
515 Armory Service
520 Athletic or Physical Education
523 Athletic Facilities Spectator Seating
525 Athletic or Physical Education Service
530 Media Production
535 Media Production Service
540 Clinic (Non-Health Professions)
545 Clinic Service (Non-Health Professions)
550 Demonstration
555 Demonstration Service
560 Field Building
570 Animal Quarters

575 Animal Quarters Service
580 Greenhouse
585 Greenhouse Service
590 Other

600 Series - General Use Facilities

610 Assembly (Student Station Capacity Required)
615 Assembly Service
620 Exhibition
625 Exhibition Service
630 Food Facility
635 Food Facility Service
640 Day Care
645 Day Care Service
650 Lounge
655 Lounge Service
660 Merchandising
665 Merchandising Service
670 Recreation
675 Recreation Service
680 Meeting Room (Student Station Capacity Required)
685 Meeting Room Service
690 Locker Room

700 Series - Supporting Facilities

710 Central Computer/Telecommunications
715 Central Computer/Tele. Service
720 Shop
725 Shop Service
730 Central Storage
735 Central Storage Service
740 Vehicle Storage Facility
745 Vehicle Storage Facility Service
750 Central Food Store
755 Central Food Store Service
760 Hazardous Materials
765 Hazardous Materials Service
770 Central Support
775 Central Support Service

800 Series - Health Care Facilities

810 Patient Bedroom
815 Patient Bedroom Service
820 Patient Bath
830 Nurse Station
835 Nurse Station Service
840 Surgery

845 Surgery Service
850 Treatment/Examination
855 Treatment/Examination Service
860 Diagnostic Support Laboratory
865 Diagnostic Support Laboratory Service
870 Health Care Supplies
880 Public Waiting
890 Staff On-Call Facility
895 Staff On-Call Facility Service

900 Series - Residential Facilities

910 Sleep/Study without Toilet/Bath
919 Toilet/Bath
920 Sleep/Study with Toilet/Bath
935 Sleep/Study Service
950 Apartment
955 Apartment Service
970 House

Unclassified Areas

050 Inactive Area
060 Alteration or Conversion Area
070 Unfinished Area

Non-Assignable Areas

M10 Men's Public Rest Rooms
U10 Unisex Restroom
W10 Women's Public Rest Rooms

WWW Circulation Area

W01 Bridge/Tunnel
W02 Elevator
W03 Escalator
W04 Loading Dock
W06 Public Corridor
W07 Stairway

XXX Building Service Area

X01 Custodial Supply Closet
X02 Janitor Room
X03 Public Rest Room
X04 Trash Room

YYY Mechanical Area

Y01 Central Utility Plant
Y02 Fuel Room
Y03 Shaft
Y04 Trash Room
ZZZ Structural Area

EXHIBIT J
PROJECT-SPECIFIC BIM REQUIREMENTS