

CONSTRUCTION MANAGER-AT-RISK-AGREEMENT
BETWEEN
THE
UNIVERSITY OF HOUSTON SYSTEM
AND
CONSTRUCTIONMANAGER

CONTRACT NO. _____

PROJECT NO. _____

This Construction Manager-at-Risk Agreement (this “*Agreement*”) is entered into effective as of the date of last signature set forth below (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,

Name:

Address:

Phone:

Fax:

(“*Construction Manager*”) (also sometimes referred to as “*Party*” individually or, collectively with Owner, “*Parties*”) a [_____] authorized to do business in the State of Texas, for the following project (the “*Project*”):

Name:

Address:

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EXHIBITS

- Exhibit A GMP Proposal with Guidelines for the Preparation of the GMP
- Exhibit B Owner’s Milestone Schedule
- Exhibit C Staff/Personnel Monthly Salary Rates
- Exhibit D Approved General Conditions Line Items
- Exhibit E Constructability Implementation Program

ARTICLE 1 – SCOPE OF WORK

1.1 Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase Services and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with Owner's requirements and the terms of the Contract Documents. Implicit in the scope of work is Construction Manager's undertaking to provide advice, management and assistance to Owner in the design and planning stages of the Project as well as during construction of improvements with a specific emphasis of maintaining the Project within Owner's budgetary expectations. Owner will rely on Construction Manager's advice and will understand Construction Manager's silence to constitute its representation that any proposal to which Construction Manager does not comment is satisfactory for Owner's purposes without amendment.

ARTICLE 2 – CONTRACT DOCUMENTS

2.1 Contract Documents. The Contract Documents form the entire and integrated contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral. The terms, "Contractor" and "General Contractor" in the UGC and SGC shall be understood to refer to Construction Manager. 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 exhibits and attachments listed, contained or referenced in this Agreement;
- 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 Campus Design Guidelines and Standards in effect on the Effective Date. The Campus Design Guidelines and Standards 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 Construction Specifications in effect on the Effective Date. The Master Construction Specifications are located online at <http://www.uh.edu/plantops/departments/fpc/master-specs/index.php>;
- 2.1.7 The Guaranteed Maximum Price Agreement;
- 2.1.8 All Change Orders, CCEAs, and written orders for minor change in the Work issued after the Effective Date;
- 2.1.9 The Drawings and Specifications developed by the Project Architect to describe the Project and accepted by Owner; and
- 2.1.10 The Drawings and Specifications developed or prepared by Owner or Owner's independent consultants, and accepted by Owner, if any; and
- 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 Construction

Manager's Response(s) to Owner's Request for Proposal and/or Request for Qualifications including, but not limited to, Construction Manager'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 General Conditions ("SGC").

Additional Services: as set forth in Section 7.7.

Applicable Laws: all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

Application for Payment: each application for reimbursement submitted by Construction Manager to Owner for payment of construction services rendered by Construction Manager pursuant to this Agreement.

Change Order Fee Percentage: _____ %.

Completion Date: as defined in Section 5.1.

Constructability Report: as defined in Section 7.3.2.

Construction Contingency: an amount specified in **the GMP Agreement** 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 (each, a "**CCEA**").

Construction Cost Limitation: the maximum amount payable to Construction Manager for all Construction Phase Services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The Construction Cost Limitation includes, without limitation, the Direct Construction Cost and the Construction Phase Fee. The Construction Cost Limitation may be adjusted by the parties for changes in the scope of the Project before or after the acceptance of a GMP Proposal. The Construction Cost Limitation does not include the Pre-Construction Phase Fee. The Construction Cost Limitation for the Project is:

_____ DOLLARS
AND 00CENTS (\$ _____).

Construction Documents: the Drawings and Specifications, and other documents prepared by Design Consultants, and any drawings, specifications and other documents prepared by any other consultants retained by Owner for the Project that describe the Work to be executed by Construction Manager.

Construction Manager's Designated Representative: as set forth in Section 6.2.

Construction Phase: the implementation and execution of the construction work required by the Contract Documents. The Construction Phase may be divided into different stages each with different dates for implementation and completion (each a “**Stage**”).

Construction Phase Fee: Construction Manager’s overhead and profit on the Construction Phase of the Project. The Construction Phase Fee is calculated by 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) 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) 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 16.1.1.

Construction Phase Fee Percentage: _____ %.

Construction Phase Schedule: a detailed schedule for the performance of the Construction Phase Services.

Construction Phase Services: the coordination, implementation and execution of the Work required by this Agreement and as further described in ARTICLE 9.

Contract Time: as defined in the UGC.

Contract Sum means the total amount of all compensation payable to the Construction Manager for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.

Cost Guide: as defined in Section 4.5.5.

Cost of the Work: those costs described in Section 15.1.

Critical Path Milestone Schedule (or “**CPM Milestone Schedule**”): as defined in Section 5.4.

Design Consultant: licensed professional or firm employing such licensed professional, engaged by Owner as independent consultants for design of all or a portion of the Project improvements and to prepare the Drawings and Specifications. The Project Architect is a Design Consultant. More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)

Direct Construction Cost: the sum of the amounts that Construction Manager actually and necessarily incurs constructing the Project during the Construction Phase and includes General Conditions Cost, Cost of the Work and any Construction Contingency applied to either. Direct Construction Cost does not include the Pre-Construction Phase Fee or the Construction Phase Fee. References to “cost” or “costs” in the UGC and/or the SGC are to be read as references to Direct Construction Cost.

Drawings and Specifications: the drawings, specifications, details and other documents (including building information models) developed by Project Architect to describe the Project and accepted by Owner.

Excusable Delay: as defined in the UGC.

Final Completion: the date on which the Construction Phase Services are complete in accordance with the Contract Documents.

General Conditions: those items listed in **Exhibit D** in accordance with *Texas Education Code* §51.776(7). The definition of General Conditions shall include any amendment, revision or modification to *Texas Education Code* §51.776.

General Conditions Cost: the costs incurred by Construction Manager for General Conditions. Notwithstanding any additional General Conditions Cost approved and accepted in writing by Owner, the maximum General Conditions Cost payable to Construction Manager will be set out in the GMP Agreement.

GMP or **Guaranteed Maximum Price:** the amount proposed by Construction Manager 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, the General Conditions Cost, the Cost of the Work, and any Construction Contingency.

GMP Agreement: the Guaranteed Maximum Price Proposal once signed and dated by Owner. **MP Proposal:** Construction Manager’s GMP proposal in the form attached hereto as **Exhibit A** or such other form as Owner may

designate. The GMP Proposal, which 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.

Liquidated Damages Amount: 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 (\$ _____)

Monthly Salary Rate: the amount expressly approved by Owner in writing for calculation of the amount Construction Manager may charge to the Project (as General Conditions Costs) in Applications for Payment throughout the Construction Phase to account for the services of Construction Manager's salaried personnel assigned to the Project. The Monthly Salary Rate is not a billing rate; it is the actual cost to Construction Manager for its employee's service. The Monthly Salary Rate for each salaried Construction Manager 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 Construction Manager's personnel are subject to audit to determine the actual costs of the wages and allowable employer contributions incurred by Construction Manager for services performed for the Project.

Owner's Designated Representative: in accordance with the UGC, Owner designates the individual below to serve as Owner's Designated Representative for the Project until such time as Owner designates another individual in writing, which designation shall be effective upon delivery to Construction Manager.

Pre-Construction Phase: the programming, schematic design, design development, construction documents, and bidding phases.

Pre-Construction Phase Fee: the amount of _____ DOLLARS AND 00 CENTS (\$ _____) paid to Construction Manager for the performance of Pre- Construction Phase Services in accordance with Section 17.1.

Pre-Construction Phase Services: as set forth in ARTICLE 7.

Program: Owner's comprehensive facility program for the Project.

Progress Meetings: meetings held among Construction Manager, Project Architect, Owner and Owner's Designated Representative.

Project Architect: the Design Consultant designated and retained by Owner to prepare the Construction Documents and satisfy the obligations of the Architect/Engineer under the UGC and SGC. The Project Architect is _____.

Project Construction Estimate: Construction Manager's good faith estimate of all costs relating to the site preparation for and construction of the improvements and facilities constituting the Project. The Project Construction Estimate does not include any costs or expenses incurred prior to the Construction Phase such as Pre-Construction Phase Services, the Pre-Construction Phase Fee, and Owner's design costs. The Project Construction Estimate shall itemize all components and identify for each component the estimated cost, and shall be updated and distributed as required in accordance with Section 7.4.1.

Project Team: Owner, Construction Manager, Project Architect, Subcontractors, any separate contractors employed by Owner, 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.

Record Drawings: the final Drawings prepared by Project Architect and marked to reflect 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.

Standard of Care: as defined in Section 6.1.

Standard Specifications: the construction and design requirements and standards of the University of Houston Office of System Facilities Planning and Construction ("**FPC**"), and various building and life safety codes as specified by FPC which are hereby incorporated by reference.

Substantial Completion: further to the definition contained in the UGC, the Parties agree that the date for Substantial Completion shall be fixed in and by Owner's Notice to Proceed with Construction.

Value Engineering: as defined in Section 4.1.1.

Warranty: Construction Manager's warranty in accordance with Article 13 of the UGC.

Work: the provision of all services, labor, materials, supplies, and equipment that are 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 Construction Phase Services and any Additional Services. The term "reasonably inferable" takes into consideration the understanding of the Parties hereto that not every detail will be shown in the Contract Documents. Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price due to the absence of any detail or specification Construction Manager may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by Owner. Notwithstanding the above, Construction Manager shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

ARTICLE 4 - GUARANTEED MAXIMUM PRICE; SAVINGS

4.1 Guaranteed Maximum Price Proposal. Construction Manager shall prepare and submit a Guaranteed Maximum Price Proposal to Owner by _____% completion of Design Development. 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 the contained at **Exhibit A**, which is provided as an example only.

4.1.1 In developing the GMP Proposal, Construction Manager 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. Construction Manager 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 will include a Construction Contingency for costs arising out of the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope, and the Guaranteed Maximum Price Proposal shall include a Construction Contingency line item sufficient to allow for costs arising out of such development and completion which do 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, Construction Manager 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, Construction Manager 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 Construction Manager (with the right to cease negotiations at any time and reject the proposal), or increase the Construction Cost Limitation. Construction Manager 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, Construction Manager 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, Construction Manager 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 Construction Manager 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 Construction Manager's 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 Construction Manager 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 Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package. The buyout report shall clearly identify, as a separate line item, Construction Manager's estimated costs for any work remaining to be procured for each subcontracting package. Upon receipt of Owner's written consent, Construction Manager may use the savings identified in Owner's written consent 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.

4.1.9 Notwithstanding anything to the contrary herein, Construction Manager 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 Direct Construction Cost of the Project 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, Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

4.2.2 Construction Contingency shall not be used for Contractor rework, unforeseen conditions that Construction Manager could have foreseen with the exercise of the 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 As the Construction Documents are finalized and the buyout of the Work progresses, the Construction Contingency amount may only be reduced by mutual agreement of Owner and Contractor. Any balance in the Construction Contingency 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 of the cost of constructing the indicated improvements, and include labor, material, shipping and storage costs. The costs included in the Allowances shall be determined in accordance with the UGC and SGC except that any claim by Construction Manager 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, Construction Manager 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. Construction Manager shall maintain a detailed log of Construction Contingency and allowance expenditures and shall submit the log for review by Owner and the 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, deducted from any Application for Payment, or refunded to Owner if realized, discovered or received after Final Payment:

4.5.1 The savings, if any between the GMP and the sum of the actual Cost of the Work plus General Conditions Cost plus the Construction Phase Fee.

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 Construction Contingency, allowances 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 Construction Manager 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 Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Construction Manager shall use its best efforts to obtain the highest price in respect of such sales. 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, Construction Manager, 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 latest edition published by the Associated General Contractors of America (AGC) (the "*Cost Guide*") or www.equipmentwatch.com, whichever rate is higher.

4.5.6 If Owner makes funds available to Construction Manager, discounts earned by Construction Manager through advance or prompt payments. Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to Owner.

4.5.7 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 Construction Manager.

4.5.8 Rebates, discounts, refunds, or commissions allowed to and collected by Construction Manager (a) on bond premiums, insurance premiums and sales taxes and (b) from Subcontractors.

4.5.9 All refunds, returns, or credits received for return of materials.

4.5.10 Deposits made by Owner and not returned to Owner due to the fault of Construction Manager with respect to the Project or in connection with any other agreement between Owner and Construction Manager. Should Construction Manager not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due Construction Manager.

4.5.11 If the actual cost of any item comprising the 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.

4.5.12 100% of any savings, other than those specifically listed above, identified by cost review or audit, at any time, whether before or after Final Payment.

4.6 Change Orders. The Parties will modify the scope of Work and the Contract Time by Change Order only. Any deductive Change Order will identify as a line item the reduction in the scope of Work and its associated reduction in the Cost of the Work and its associated dollar amount, and will credit against the GMP not only the identified Cost of the Work amount but also the following resultant cost reductions, each itemized as a component of the Deductive Change Order: (a) the reduction to the Construction Phase Fee resulting from the change (calculated by multiplying the amount of the deduction from the Cost of the Work indicated in the Change Order by the Construction Phase Fee Percentage), and (b) the reduction to the insurance and bond premiums. Likewise, any unused Construction Contingency balance will be credited against the GMP with the resultant reduction in Construction Phase Fee (calculated by multiplying the amount of the balance of Construction Contingency by the Construction Phase Fee Percentage). Further, each use of the Construction Contingency shall acknowledge that the Construction Phase Fee has already been applied and will not be charged again.

ARTICLE 5 - TIME AND SCHEDULING

5.1 Substantial Completion. Construction Manager shall achieve Substantial Completion of the Work on the date identified for Substantial Completion in Owner's Notice to Proceed with Pre-Construction Phase Services ("**Completion Date**"). The Completion Date may only be extended by Change Order. Construction Manager 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), and the project specifications, Construction Manager 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 Construction Manager 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 Construction Manager, 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, Construction Manager shall submit for Owner's review and acceptance a CPM Milestone Schedule.

5.3.3 Construction Manager 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, Construction Manager shall submit for Owner's review and acceptance a detailed baseline schedule (the "**Baseline Schedule**").

5.3.5 Construction Manager 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 Construction Manager 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, Construction Manager 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. Construction Manager 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, Construction Manager 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, Construction Manager 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 Construction Cost Limitation (if the total Project GMP is not then established).

5.8 Float. Construction Manager 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.

5.9 Time is of the Essence. Time limits stated in the Contract Documents are of the essence in this Agreement.

ARTICLE 6 - CONSTRUCTION MANAGER'S GENERAL OBLIGATIONS

6.1 Overview. In addition to the requirements of Section 3.3 of the UGC, Construction Manager shall perform the Basic Services using its best efforts, skills, judgments and abilities (the "**Standard of Care**"). Construction Manager shall collaborate and cooperate with Project Architect and any other Design Consultant to further the interests of Owner and the Project, provide (or cause to be provided) and pay for all 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, and complete the Project in an expeditious and economical manner consistent with the interests of Owner and within the Contract Time.

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

6.2 Construction Manager's Designated Representative. Construction Manager shall designate Construction Manager's Designated Representative to act on Construction Manager'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. Construction Manager's Designated Representative shall be

responsible for the day-to-day management of the Project from Pre- Construction Phase Services through Final Completion. Construction Manager's Designated Representative will be Owner's primary contact and must be available as required for the benefit of the Project and Owner. Construction Manager shall not replace the Construction Manager's Designated Representative without Owner's prior written approval, such approval not to be unreasonably withheld.

6.3 Design Comments. Construction Manager shall promptly review all drawings (including building information models), specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Construction Manager (by Owner or any other party) in connection with the Project and promptly advise Owner in writing of any errors or omissions or of any other matter that Construction Manager considers unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished.

6.4 Communications. Construction Manager 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. Construction Manager 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 Construction Manager's regularly scheduled meetings.

6.5 Records; Tracking. Construction Manager 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, Construction Manager shall submit to Owner detailed monthly progress reports that include a description of the Project status, a summary update of the Work by Construction Specifications Institute (CSI) division, photographs, updated and current schedules and logs, and any other information necessary to convey the progress of the Work.

6.6 Utilization of Historically Underutilized Businesses. Further to Article 4 of the Uniform General Conditions, Construction Manager shall not make any changes to the HUB Subcontracting Plan without Owner's prior written approval. Construction Manager shall comply with the requirements of the HUB policy and adhere to the HUB subcontracting plans previously submitted to Owner. No changes to the HUB subcontracting plans can be made by Construction Manager without Owner's prior written approval.

6.7 Safety; Condition of Project Site and Ancillary Areas. Further to the relevant provisions of the Contract Documents, including (by way of example and not of limitation) the UGC and the SGC, Construction Manager'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. Construction Manager 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 Construction Manager's responsibilities under this Agreement. Owner-provided Subcontractors shall be responsible for their safety precautions and the safety programs of their employees, agents and independent contractors.

6.8 Non-Conforming Work. Upon discovering that any portion of the Work is non-conforming, damaged or defective, Construction Manager shall promptly correct such condition at no additional 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, or Additional Services.

ARTICLE 7 - PRE-CONSTRUCTION PHASE SERVICES

7.1 General Scope. During the Pre-Construction Phase, Construction Manager serves as Owner's consultant and advisor with respect to concept, design, constructability and budget. 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. Construction Manager 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, Construction Manager warrants, represents, covenants, agrees and acknowledges the following:

- 7.1.1 That Construction Manager has evaluated Owner's design criteria in conjunction with the GMP Proposal.

- 7.1.2 That Construction Manager 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 Construction Manager has reviewed the survey and environmental reports, and all other reports and investigations provided by Owner or obtained by or on behalf of Construction Manager 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 Construction Manager has reviewed all Applicable Laws relevant 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 Construction Manager 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 Construction Manager is sufficiently familiar with Owner's conceptual layout, massing, blocking and stacking and guarantees adherence to all design requirements and objectives.

7.2 General Coordination.

- 7.2.1 Participate as a member of the Project Team in developing the Program if requested by Owner.
- 7.2.2 Attend regular meetings with other members of the Project Team during the development of the design and provide recommendations and information to the Project Team regarding site usage and site improvements, building systems and equipment, and methods of delivery of materials, systems, and equipment, 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 Construction Manager 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 requirements and assignments of responsibilities are included in the proposed drawings and specifications and other Contract Documents, and any other matters necessary to accomplish the Project in accordance with the CPM Milestone Schedule and Project Construction Estimate, the Construction Cost Limitation, and/or the GMP, as applicable.
- 7.2.3 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

7.3 Constructability Program.

- 7.3.1 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 E**.

7.3.2 Prepare a “**Constructability Report**” identifying items that, in Construction Manager’s opinion, may negatively impact construction and/or cost 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.

7.3.3 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.

7.4 Budget and Cost Consultation.

7.4.1 Prepare and update all procurement reports and the Project Construction Estimate and deliver to Owner the Project Construction Estimate upon: completion of the program/conceptual design phase (if requested by Owner); upon completion of the schematic design phase; upon completion of the design development phase; when the Construction Documents are approximately 50% complete, and immediately prior to the release of each bid package.

7.4.1.1 The design development phase and construction documents phase Project Construction Estimate updates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit in Construction Specifications Institute Division 49 Master- Format for each portion of the Work.

7.4.1.2 At the completion of each successive phase, update and refine a comparison of actual and projected costs to the Project Construction Estimate, and in the event such actual and projected costs exceed the original Project Construction Estimate, develop and implement reasonable strategies to be approved by Owner to reduce the costs projected to be incurred during all phases of the Project.

7.4.2 Provide throughout the duration of the Project updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team immediately if at any time Construction Manager has reason to believe that Project Construction Estimate will exceed the GMP, and recommend reasonable strategies for bringing the Project in line with the GMP.

7.4.3 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.

7.5 Coordination of Design and Construction Documents. Review the Drawings and Specifications, and other Construction Documents as they are developed during the schematic design, design development, and construction document design phases for compliance with all Applicable Laws and with Owner requirements, including the Campus Design Guidelines and Standards and Standard Specifications and the required format, and:

7.5.1 consult with Owner and Project Architect on the selection of materials, equipment, component systems and types of construction used on the Project. Construction Manager shall advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements and construction coordination.

7.5.2 immediately advise Owner of any error, inconsistency, omission, or noncompliance and recommend solutions;

7.5.3 coordinate with Owner and Project Architect to ensure that the Construction Documents comply with all applicable State of Texas and the University of Houston System procurement requirements;

7.5.4 suggest and advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the GMP; and

7.5.5 assist in development of any necessary or advisable special conditions of the Construction Documents for Owner’s approval.

7.6 Construction Planning and Bid Package Strategy.

7.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Construction Manager 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, Construction Manager shall issue requests for technical proposals to qualified sources, receive proposals and assist in their evaluation.

7.6.2 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.

7.6.3 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, and 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.

7.6.4 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for all phases or Stages of the Work. Construction Manager shall make recommendations that minimize adverse effects of labor shortages.

7.6.5 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, Construction Manager shall identify all bid/proposal packages on which Construction Manager intends to submit a self-performance bid/proposal. The bid/proposal package strategy and the packages on which Construction Manager 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. All personnel assigned by Construction Manager to the Project and Subcontractors retained by Construction Manager for the Project must be selected in accordance with this Agreement.

7.6.6 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.

7.6.7 Refine, implement and monitor HUB subcontracting plans to promote equal employment opportunity in the provision of goods and services to Owner for the Project. Construction Manager shall deliver to Owner prior to executing subcontracts a proposed HUB Subcontracting Plan upon identification, and assuming Owner's acceptance, of each Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work.

7.6.8 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.

7.6.9 Consult with and make recommendations to Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate Owner's purchase and installation of such items with Owner as may be required to meet the schedule.

7.6.10 Obtain building permits and special permits for permanent improvements as required by Applicable Laws or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals

required from authorities having jurisdiction over the Project.

7.6.11 The Construction Manager, 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 Construction Manager'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, Project Architect's 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 Construction Manager complies with TPDES requirements and BMPs. CONSTRUCTION MANAGER SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("**TCEQ**") TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS, BEST MANAGEMENT PRACTICES (AS DEFINED BY THE TCEQ), THIS PARAGRAPH OF THIS AGREEMENT OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO AN ACT OR OMISSION OF CONSTRUCTION MANAGER or a Subcontractor. For purposes of this paragraph, "**General Permit**" means the TCEQ General Permit for Storm Water Discharges From Construction Sites No. TXR 150000, "**SWPPP**" means stormwater pollution prevention plan, and "**TPDES**" means Texas pollutant discharge elimination system.

7.7 Additional Services. Prior to commencing any Additional Service, Construction Manager shall prepare and deliver to Owner a proposal describing in detail the nature and scope of the Additional Services, the basis upon which Construction Manager believes such services constitute Additional Services, the maximum amount of fees for performance of the Additional Services and a proposed schedule for performance of the Additional Service. Construction Manager shall proceed with the Additional Service only after Owner has approved and delivered to Construction Manager a fully executed Additional Services Requisition on Owner's then-standard form. Any Additional Service performed or undertaken by Construction Manager without or prior to Owner's execution of an Additional Services Requisition shall be at Construction Manager's sole risk and cost.

ARTICLE 8 - BIDDING PHASE

8.1 Obtaining Bids/Proposals for the Work. Construction Manager 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 Construction Manager shall publicly advertise and solicit competitive sealed bids/proposals for the performance of all major elements of the Work other than General Conditions from trade contractors and/or suppliers or materials or labor 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. Construction Manager shall notify Owner in advance in writing of the date it will receive the bids/proposals.

8.1.2 Construction Manager 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 Construction Manager 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, Construction Manager shall recommend to Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

8.1.4 Subcontracts may be for a lump sum or a GMP as determined by Owner on a case-by-case basis to provide the greatest benefit to Owner. Upon Owner's concurrence in the final financial terms of the subcontract, Construction Manager shall enter into a written subcontract for the subcontract work and provide a copy to Owner. Construction Manager shall post all bids/proposals on Construction Manager's website (unless an alternative is agreed to by Owner in writing) after award of the

subcontract or within seven (7) days after the date of final selection, whichever is later.

8.1.5 If Construction Manager 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 Construction Manager by a change in price, time, or GMP for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

8.2 Self-Performance. Construction Manager may seek to self-perform portions of the Work. If Construction Manager intends to perform any of the Work other than General Conditions, it shall notify Owner in writing in advance and the Parties shall proceed in accordance with *Texas Education Code* §51.782. Construction Manager must submit a GMP Proposal as a sealed bid (conforming in all respects with Owner's requirements, including but not limited to those set forth in the SGC) to Owner prior to the deadline for third parties to submit bids for that portion of the Work. If Owner determines that Construction Manager's bid provides the best value for Owner, Owner will accept the self-performed work GMP Proposal and return it to Construction. Self-performed work shall be subject to audit in accordance with ARTICLE 22 and all savings, whether discovered by Construction Manager or by audit, are the sole and exclusive property of Owner.

8.3 Identification of Subcontractors. Construction Manager 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. Construction Manager shall not use any subcontractor to which Owner has a reasonable objection. Construction Manager 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 Construction Manager is 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, Construction Manager 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.

ARTICLE 9- CONSTRUCTION PHASE SERVICES

9.1 General. During the Construction Phase, Construction Manager shall construct the Work in strict accordance with the Contract Documents and Construction Documents within the time required by the schedule approved by Owner. In accordance with the UGC and SGC, Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents. The Construction Phase will commence upon the date specified in Owner's Notice to Proceed with Construction Phase Services issued after Owner's approval of the Guaranteed Maximum Price, and will continue until Final Completion. Pre-Construction Phase Services may overlap Construction Phase Services.

9.2 Project Control. Construction Manager shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work. Construction Manager shall promptly correct any defective or non-conforming Work at Construction Manager's sole expense and without cost to Owner.

9.3 Subcontractors. Construction Manager shall award and enter into, as the equivalent of a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project in accordance with the requirements of Section 8.1. Construction Manager shall self-perform only General Conditions and any Work awarded to Construction Manager in accordance with the requirements of Section 8.2. Owner reserves the right to perform and to award separate contracts for portions of the Work.

9.3.1 Construction Manager shall monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain Substantial Completion not later than the date for Substantial Completion and at a cost not to exceed the GMP.

9.3.2 Construction Manager shall inspect the Work of Subcontractors to ensure conformance with the

Contract Documents.

9.3.3 Construction Manager shall provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

9.3.4 Construction Manager shall submit to Owner all documents substantiating payments to qualifying HUBs in a format designated by Owner.

9.3.5 In accordance with the requirements of the UGC, Construction Manager's contracts with Subcontractors shall be consistent with and bind the Subcontractors to the terms and conditions of the Contract Documents including this Agreement.

9.4 Personnel. Construction Manager shall identify to Owner the employees and other personnel it will assign to the Project, including their Monthly Salary Rate. Construction Manager shall not remove or replace the persons or entities assigned by Construction Manager to the Project except with Owner's prior written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project, or contract with, any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update the list of persons and consultants if they change during the course of the Project. Construction Manager shall:

9.4.1 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. At a minimum, Construction Manager's On-Site personnel shall include a project manager, project superintendent, project engineer, and appropriate administrative support personnel.

9.4.2 Maintain strict enforcement of State of Texas prevailing wage laws in accordance with the UGC and SGC.

9.4.3 Assist Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at Owner's request in order to meet the Schedule, without, however, assuming direct responsibility for the work of these consultants.

9.5 Coordination. Construction Manager shall:

9.5.1 In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.

9.5.2 Expedite and coordinate delivery and installation of Owner-procured material and equipment.

9.6 Meetings. Construction Manager shall:

9.6.1 Schedule, direct and attend regular Project Team meetings as required to maintain Project progress. At each Progress Meeting, Construction Manager shall distribute a meeting agenda setting forth the list of critical activities that require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting not later than three (3) days after each such meeting.

9.6.2 Prepare an agenda for and conduct Job Conferences for attendance by representatives of Construction Manager, major trade contractors and Subcontractors, Project Architect, and FP&C, and prepare and distribute minutes of each such meeting with a construction status report not later than three (3) days after each such meeting.

9.7 Cost Control. Construction Manager shall:

9.7.1 Maintain Audit Records as required by ARTICLE 22.

9.7.2 Prepare and administer, and provide to Owner, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change proposals, change order listings and change orders, and budget cost summary reports as required by Owner.

9.7.3 Construction Manager shall promptly identify all variances between estimated costs and actual costs, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event, no more than five (5) business days after acquiring such information.

9.8 Changes. Construction Manager shall develop and implement a system acceptable to Owner for the preparation, review and processing of Change Proposals, Construction Contingency and allowance expenditure authorizations, Change Orders, and requests for information, in accordance with the UGC and SGC.

ARTICLE 10 - DOCUMENTS, SHOP DRAWINGS, AND SUBMISSIONS

10.1 Design Intent. Project Architect shall be the interpreter of the design intent of the Construction Documents, subject to the terms and conditions of the agreement between Project Architect and Owner, provided, however, Construction Manager shall request such interpretations from Project Architect, with Owner's consent, from time to time in order to facilitate Construction Manager's accomplishment of its duties under this Agreement. In the event Construction Manager believes the interpretation of Project Architect is not reasonably inferable from the design documents and/or not in conformance with industry standards and said interpretation increases the cost of and/or extends the construction schedule for the Project, then Construction Manager may request dispute resolution in accordance with the UGC.

10.2 Construction Manager's Role. Construction Manager shall:

10.2.1 In collaboration with the other members of the Project Team, establish and implement procedures for expediting the processing and Project Architect's approval of shop drawings and other submissions in accordance with the Project specifications.

10.2.2 Receive from the Subcontractors and review all shop drawings and other submissions for conformance with the Contract Documents, and coordinate such submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

10.2.3 Record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractors' Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with the UGC and SGC, and deliver the daily logs to Owner no less frequently than weekly for the immediately preceding week.

10.2.4 Maintain at the Project site and make available to Owner, updated records of Subcontracts, drawings, a current set of record Drawings and Specifications, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (prepared by the entities conducting inspections), testing laboratory procedures (prepared by the testing laboratories), contract changes, time extensions, progress payment data, Final Acceptance procedures, and instructions from Owner.

10.2.5 Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees. Construction Manager shall maintain and deliver the documents required by, and in the form stated in, the UGC and SGC describing all changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

ARTICLE 11 - OWNERSHIP AND USE OF DOCUMENTS

11.1 Documents. The Construction Documents are instruments of service and shall remain the property of their authors whether the Project for which they are made is executed or not. Construction Manager shall be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents shall be returned to their respective authors or suitably accounted for. Construction Manager and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. Construction Manager and its Subcontractors shall not use the Construction Documents on any other projects.

11.2 Required Disclosures. Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish Project Architect's or other author's rights.

ARTICLE 12 - OWNER'S RESPONSIBILITIES

12.1 Owner's Designated Representative will facilitate and coordinate Owner's Project issues with Construction Manager, and examine the documents submitted by Construction Manager and render decisions on behalf of Owner. Owner's Designated Representative will administer this Agreement on behalf of Owner, including final determination of fees and costs earned by Construction Manager as well as any offsets against such fees and costs permitted by this Agreement or any other Contract Document.

12.2 If none is identified in ARTICLE 3, Owner will designate a Design Consultant to serve as Project Architect for the Project in accordance with *Texas Education Code* §51.782, and will cooperate timely in providing information to the other members of the Project Team regarding its requirements for the Project.

12.3 Owner's Designated Representative will examine the documents submitted by Construction Manager 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 Specifications, Owner shall give prompt written notice of such fault, defect, or non-conformance to Construction Manager.

12.4 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 Construction Manager's responsibilities for the Work.

12.5 Owner, at Owner's cost, will secure the services of surveyors, soils engineers, 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. Construction Manager shall provide Owner with parameters for inclusion in Owner's instructions to such providers.

12.6 Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as necessary during construction; provided, however, that Construction Manager shall pay for any tests required by special or unique construction procedures proposed by Construction Manager. 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 Construction Manager.

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

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 Construction Manager's services and of the Work.

ARTICLE 13 - PAYMENTS

13.1 Construction Manager's Obligations. Construction Manager 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 Construction Manager 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 Construction Manager's overhead and profit) shall not exceed the unpaid balance of the GMP (less Retainage on Work previously completed).

13.2.1 The Construction Phase Fee must be shown as a separate line item on the Schedule of Values. In determining the percentage of completion, Construction Manager 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 allowable expense by Construction Manager. Payment of Construction Manager'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, Construction Manager 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 UGC and which Owner or Owner's Designated Representative deem necessary to support the amount requested.

13.3.2 For General Conditions Costs, Construction Manager'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 Construction Manager's payment applications by the Design Consultant, Owner will independently review Construction Manager's payment applications and make a determination as to the amount properly payable to Construction Manager. Construction Manager shall submit its payment applications to Owner by the last day of each month. Provided that Construction Manager's payment applications are submitted by the last day of each month and approved by Owner, Owner shall pay Construction Manager 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 such Subcontractors 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 Construction Manager's required services for each stage of development of the Construction Documents. Construction Manager's statement of services for the Pre-Construction Phase must itemize the services performed during that payment period.

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 will be made monthly upon presentation of Construction Manager'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. Construction Manager 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 of this Agreement and other amounts to which Owner is entitled by way of setoff or recovery, if any, shall be deducted from any amounts due Construction Manager.

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

13.5.3.1 Construction Manager 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 Construction Manager's payment request has insufficient documentation (including, by way of example and not of limitation, Project Architect's certification to Owner that the Work has progressed to the point indicated in Construction Manager'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 Construction Manager 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 Construction Manager;

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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager a minimum of seven (7) calendar days' written notice of specific defects or defaults and opportunity to cure same, and on Construction Manager'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 Construction Manager's Construction Phase Fee. Retainage will not be withheld from the Pre-Construction Phase Services Fee.

13.7 Final Payment. Construction Manager's request for Final Payment must not be made until all Work is completed, all requirements of the Contract Documents have been satisfied, and Construction Manager 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 Construction Manager's information or knowledge, the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed, subject only to the Final Payment by Owner. Alternatively, Construction Manager may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Construction Manager 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 Construction Manager 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 Construction Manager will not exceed the GMP (as it may be adjusted or modified by duly authorized Change Order), as verified by Owner or Owner's representative from Construction Manager's final accounting, plus (a) the Pre-Construction Fee, and (b) payments for Additional Services, as certified for payment in accordance with this Agreement. If any payments made to Construction Manager exceed that which is due and owing pursuant to this Agreement, then Construction Manager shall promptly refund such excess to Owner. Owner will perform its audit of Construction Manager's final accounting in accordance with this Agreement and Chapter 2251 of the *Texas Government Code*.

13.7.2 The acceptance by Construction Manager or Construction Manager'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 Construction Manager or Construction Manager'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 Construction Manager 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 Construction Manager 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 Construction Manager.

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 Construction Manager 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 22, Owner and its representatives (including but not limited to third-party auditing consultants, if any) may verify and audit the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the pertinent books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Project site; and (5) other reasonable action.

ARTICLE 14 - GENERAL CONDITIONS

14.1 General Conditions Costs. Construction Manager is entitled to receive reimbursement, up to the maximum amount set forth for General Conditions Costs in the GMP Agreement, for the actual cost of the allowable General Conditions items (as set forth on **Exhibit D**) actually incurred during the period commencing the calendar day after Construction Manager's receipt of Owner's Notice to Proceed with Construction through Final Completion. Construction Manager 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 Construction Manager, and subject to the limitation of the GMP Agreement. Items not specifically listed in Section 14.2 and itemized or in **Exhibit D** will not be allowed as General Condition costs. Any rebates or other reductions in cost realized on the Project, regardless of time, are savings and will be delivered to Owner or applied as a credit to the Project in accordance with Sections 4.5.8 and 4.6. The Parties acknowledge that as of the Effective Date **Exhibit D** only includes pricing for the specific General Conditions items required in the cost and delivery proposal component of Owner's Request for Proposals No. _____. Pricing for the remaining General Conditions items shall be finalized and incorporated through the GMP Agreement.

14.2 General Conditions Items. General Conditions Costs include:

14.2.1 Personnel Costs. The actual wage rate for Construction Manager's hourly employees and the Monthly Salary Rate of Construction Manager'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 the Texas county where the Project is located as of the Effective Date will apply unless Owner notifies Construction Manager otherwise in writing. The Construction Manager 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 Construction Manager for services performed for the Project.

14.2.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Project site and directly and solely in support of the Work.

14.2.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, if such items are included in the list of allowable General Condition line items and are fully consumed in the construction of the Project. 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 Cost Guide or www.equipmentwatch.com, whichever rate is higher.

14.2.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily

owned by construction workers), supplied to the Project site by Construction Manager, 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 Construction Manager, 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. The aggregate rental cost of any item charged to Owner may not exceed eighty percent (80%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds eighty percent (80%) of the purchase Price, Construction Manager shall purchase the item 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.

14.2.5 Permit and inspection fees that are not subject to Owner's exemption.

14.2.6 Commercially reasonable premiums actually paid by Construction Manager to third party insurers and sureties for insurance and bonds to the extent directly attributable to this Project. Expressly excluded from reimbursement is allocation of Construction Manager's 'risk management department, 'insurance program' and similar costs, which are Construction Manager's overhead and therefore not Cost of the Work, or General Conditions Costs.

14.2.7 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 15 - COST OF THE WORK

15.1 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 UGC and SGC to adjustments in "cost" or "costs" refer to the Cost of the Work. Construction Manager is not entitled to reimbursement for any Cost of the Work incurred before receipt of Owner's Notice to Proceed with Construction. Cost of the Work includes:

15.1.1 Payments made to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts.

15.1.2 Construction Manager's self-performed work, other than General Conditions, in accordance with the terms of this Agreement.

15.1.3 Governmental sales and use taxes directly attributable to the Work and not subject to exemption.

15.1.4 Permit and inspection fees not subject to Owner's exemption as an agency of the state of Texas.

15.1.5 Testing fees pursuant to the UGC and SGC except as otherwise set forth elsewhere in this Agreement.

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

15.1.7 Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Construction Manager.

15.2 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:

15.2.1 Costs resulting from the failure to perform or the bankruptcy or insolvency of any Subcontractor.

15.2.2 Legal and administrative costs.

15.2.3 Except as otherwise authorized by this Agreement, travel and subsistence expenses of Construction Manager, its officers or employees incurred while traveling between the Project and Construction Manager's principal or branch offices, and any transportation and living expenses incurred within the metropolitan area of the Project.

- 15.2.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from act(s) or omission(s) of Construction Manager, a Design Consultant, any subcontractor, and/or any Consultant (including their respective employees, agents, officers and representatives.
- 15.2.5 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules thereof, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.
- 15.2.6 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- 15.2.7 Any and all costs that should be billed as General Conditions (such as, by way of example and not of limitation, personnel wages, salaries, and benefits) or that should be paid from the Construction Phase Fee.
- 15.2.8 Costs related to Construction Manager's indemnification obligations under this Agreement.
- 15.2.9 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- 15.2.10 Costs incurred by Construction Manager in connection with the Warranty.
- 15.2.11 Any cost arising out of a breach of this Agreement or the fault or negligence of Construction Manager, 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 provided or furnished by Construction Manager, and failure to coordinate the Pre-Construction Phase Services provided or furnished by Construction Manager when such costs exceed the GMP.
- 15.2.12 Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Construction Phase Services within the Contract Time unless such failure is caused directly and solely by the action or inaction of Owner.
- 15.2.13 Any actual increase in cost arising out of the failure of Construction Manager to (a) timely review and/or comment on the drawings and specifications 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 Construction Manager has provided Owner with written notice of the delay, (b) identify problems, miscalculations or clashes in the Construction Documents, or (c) to bring to the attention of Project Architect or other Design Consultant conditions at the Project site that have not been adequately represented and planned for in the Construction Documents. If Owner and Construction Manager cannot agree on the amount of such increase in costs, the amount shall be determined as set forth under Article 15 of the UGC.
- 15.2.14 Costs of Construction Manager's architects, engineers, and other entities and personnel performing Pre-Construction Phase Services.
- 15.2.15 Costs associated with any subcontractor default insurance program (sometimes referred to as "SUBGUARD") provided or required by the Construction Manager.
- 15.2.16 Any and all costs not specifically authorized in this Agreement.

ARTICLE 16 - CONSTRUCTION PHASE FEE

16.1 Construction Phase Fee. The Construction Phase Fee shall cover, to the extent attributable to this Project, Construction Manager's profit, general overhead and all expenses in connection with maintaining and operating Construction Manager's main office and any branch or field offices, other than the Project site office, the costs of which is a General Conditions Cost. References in the UGC and SGC to Construction Manager's "overhead" and "profit" mean Construction Manager's Construction Phase Fee.

16.1.1 The Construction Phase Fee will be adjusted in proportion to any change in the Cost of the Work or Construction Contingency. For example, in the event of a deductive Change Order the Construction Phase Fee will be reduced in accordance with Section 4.6.

16.2 Items to be paid from the 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 the Construction Phase Fee:

- 16.2.1 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.
- 16.2.2 Salaries of Construction Manager'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.
- 16.2.3 Compensation, including salaries, of persons employed in the main or branch offices of Construction Manager whose time is devoted to the general conduct of Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
- 16.2.4 Overhead or general expenses of any kind unless specifically addressed otherwise herein. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of Construction Manager's personnel; travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions; and bonuses or commissions for any of Construction Manager's employees, agents, representatives, and officers.
- 16.2.5 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems relating to accounting in Construction Manager's office and at the site, except as otherwise specifically set forth herein.
- 16.2.6 Interest on Construction Manager's capital or on money borrowed by Construction Manager, including the capital employed by Construction Manager in the performance of the Work.
- 16.2.7 Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.
- 16.2.8 Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.
- 16.2.9 Legal, accounting, or other similar professional services provided by or to Construction Manager, 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.
- 16.2.10 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Milestone Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.
- 16.2.11 The cost of any and all insurance deductibles payable by Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

ARTICLE 17 – COMPENSATION

17.1 Pre-Construction Phase Fee. The Pre-Construction Phase Fee is payable on a monthly basis proportionately to the amount of effort expended by Construction Manager. Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

- 17.1.1 Costs associated with the following items are specifically, but not exclusively, included in the establishment of the Pre-Construction Phase Fee: Profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal and accounting fees; cost of money; taxes; insurance premiums and deductibles; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

17.1.2 The Pre-Construction Phase Fee shall be adjusted:

17.1.2.1 Equitably if the scope of the Pre-Construction Phase Services is changed materially.

17.1.2.2 Proportionately with any changes in the Construction Cost Limitation before the GMP Agreement. There shall be no adjustment in the Pre-Construction Phase Fee following the GMP Agreement.

No adjustment to the Pre-Construction Phase Fee shall be effective unless and until signed by the Parties.

17.2 Construction Phase Fee. The GMP includes the Construction Phase Fee, which is calculated as set forth in Section 16.1. The Construction Phase fee shall be adjusted in accordance with the provisions of this Agreement such as, by way of example and not of limitation, as required pursuant to Section 4.6 in connection with a deductive Change Order.

ARTICLE 18 - BONDS & INSURANCE

18.1 Security, Payment and Performance Bonds. Construction Manager shall provide security, performance and payment bonds on forms prescribed by Owner in accordance with the requirements set forth in the UGC and SGC. The penal sum of the security bond is an amount equal to five percent (5%) of the Construction Cost Limitation. The penal sum of the payment and performance bonds shall be equal to the GMP. If the GMP Agreement provides for, or is amended to accommodate, Staged construction with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each Stage based on the cumulative total value of all GMPs in effect.

18.2 Insurance Coverage Requirements. Construction Manager shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Construction Manager hereunder. Construction Manager shall carry the following insurance in addition to the insurance policies and coverage referenced in Section 5.2 of the UGCs.

18.2.1 [IF CONSTRUCTION MANAGER IS REQUIRED TO PROVIDE POLLUTION COVERAGE] Contractor's Pollution Legal Liability insurance at a limit of not less than [\$1,000,000 per occurrence/aggregate; \$2,000,000 per occurrence/ aggregate; or \$5,000,000 per occurrence/aggregate], with a minimum of three years' Discover (tail) reporting period and a retroactive date that equals or precedes the Effective Date of this Agreement or Contractor's performance hereunder; and

18.2.2 [IF CONTRACTOR IS REQUIRED TO PROVIDE BUILDER'S RISK COVERAGE] Builder's Risk policy where coverage must not exclude or have a lower sub-limit for Named Windstorm or Flood than the full value of the cost of the Work; and

18.2.3 [IF UMBRELLA LIABILITY COVERAGE IS REQUIRED] "Umbrella" liability insurance in an amount not less than \$_____.

18.2.4 The coverages required under this Agreement are part of the General Conditions.

18.3 For All Insurance Required of Construction Manager.

18.3.1 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. Construction Manager shall provide Owner with legally sufficient evidence of all coverage required under this Agreement. Under no circumstances shall Construction Manager self-insure any portion of the Project; Construction Manager's violation of any portion of this ARTICLE 18, including the prohibition of self-insurance, shall constitute a default by Construction Manager 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.

18.3.2 No policy may have a deductible (or retention) 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 Construction Manager's most recent annual report or audited financial statement.

18.3.3 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 and/or Construction Manager.

18.3.4 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.

18.3.5 Construction Manager shall bear the cost for all deductibles and actual losses not covered by insurance required under this Agreement.

18.4 Construction Manager's Controlled Insurance Program. [IF THE CONSTRUCTION MANAGER WILL HAVE A CCIP] Construction Manager may secure commercial general liability insurance (which may or may not also include worker's compensation insurance) under a Contractor Controlled Insurance Program ("CCIP"), provided Owner, in its sole discretion, determines that such coverage meets or exceeds the coverage requirements hereunder and is a cost-effective alternative to conventional coverage.

18.4.1 If a CCIP is implemented, Construction Manager and all subcontractors (of every tier) will be required to participate, except as otherwise agreed by Owner. Further, if a CCIP is implemented, each subcontractor shall be responsible for notifying any lower tier subordinate contractors that a CCIP is being utilized for the Project and for supplying all requested information available to such subcontractor. Each subcontractor shall submit each bid without the cost for such insurance. For bids obtained prior to the implementation of the CCIP, each subcontractor shall separately itemize the cost for such coverage which shall be deducted from the subcontract price in the event a CCIP is timely implemented. Construction Manager shall have the responsibility for reviewing any such itemization for accuracy.

18.4.2 Construction Manager and all subcontractors, including all subordinate subcontractors, shall carry and maintain general liability and workers compensation coverage for offsite activities and such other coverages consistent with the respective requirements set forth in Section 5.2 of the UGC. In addition, those insurance requirements set forth in Section 5.2 of the UGC shall, where applicable, apply to the insurance coverage under the CCIP, including, but not limited to the requirement that Construction Manager and each such enrolled subcontractor and subordinate subcontractor must provide evidence of insurance as outlined above.

18.4.3 Owner shall be a Named Insured or Additional Named Insured with regard to any implemented CCIP coverage on such endorsement form acceptable to Owner. Those parties required to be named as Additional Insureds under the Insurance Requirements set forth above or to be indemnified by Construction Manager under the Agreement or the UGC shall be added as Additional Insureds with regard to any CCIP coverage implemented.

18.4.4 Owner shall have the right to review and must approve the CCIP policy, program, and manuals prior to implementation.

18.4.5 Notwithstanding the "umbrella" minimum limits set forth above, the umbrella / excess annual limits of the CCIP shall not be less than \$50,000,000.00, until completion of the Project, with no "shared limits" (i.e., limits must be dedicated to the Project).

18.4.6 The CCIP shall provide for completed operations coverage for 10 years following Substantial Completion of the entire Work with the minimum umbrella / excess annual limits for completed operations of not less than \$20,000,000.00, with no "shared limits" (i.e., limits must be dedicated to the Project).

18.4.7 CCIP shall not contain a "cross-suits exclusion" (which excludes coverage for claims brought by one insured against another insured under the policy) or a "no damage to Project exclusion."

18.4.8 All CCIP deductibles shall be the responsibility of Construction Manager (at no cost to Owner).

18.5 For All Insurance Required of Owner: [IF THE UNIVERSITY WILL PROVIDE BUILDER'S RISK COVERAGE AND THE PROJECT WILL BE ADDED TO THE UNIVERSITY'S MASTERS BUILDER RISK POLICY]

18.5.1 Builder's Risk Insurance. Prior to commencement of the Work, Owner shall obtain and thereafter at all times during the performance of the Work (through Substantial Completion) maintain, "All Risk" ("Special Causes of Loss") Builder's Risk Insurance insuring the interest of the Owner and the interests of

Construction Manager and Subcontractors (of every tier), but only to the extent of their financial interest in the Work, including coverage against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, for earthquake, theft, vandalism, malicious mischief, windstorm, collapse, boiler and machinery/mechanical breakdown, testing and startup, and terrorism, written on a replacement cost basis in an amount not less than the Contract Sum of the contract (including subcontracts) formed by the Agreement and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work, in transit to the Site of the Work, or are temporarily located or stored off the Site of the Work for the purpose of repair, adjustment or storage at the risk of one of the insured parties. At Owner's option, such coverage shall also cover temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, delay in opening / delay in start-up benefitting Owner, and reasonable compensation for the services and expenses of the Project Architect and such other professionals required as a result of such insured loss ("Soft Costs"). This Section 14.4.1, inclusive of all sections therein, shall supersede the insurance requirements specific to Builder's Risk set forth in Section 5.2.2.1.5 of the UGCs.

- *Deductibles.* Deductibles for any loss under the Builder's Risk shall be borne by the Construction Manager up to \$100,000 per loss at no cost to Owner, to the extent Construction Manager or its Subcontractors caused or are responsible for such loss; otherwise, Owner shall pay the deductible.
- *Storage and In-Transit Limits.* Except as otherwise agreed to by Owner and Contractor, sub-limits for losses arising from materials, supplies and equipment in transit or in storage off the Site of the Work shall be \$5,000,000.00.
- *Flood Perils.* Builders' Risk shall include coverage for flood perils
- *Waiver of Subrogation.* Owner and Construction Manager waive all rights against each other and their consultants, subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance required to be obtained by the Contract Documents, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Construction Manager, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from their separate contractors, subcontractors, and sub-subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- *Tools and Equipment Floater Insurance.* Construction Manager and its Subcontractors shall be responsible for securing whatever fire and extended coverage each such party may deem necessary for protection against loss of owned, rented, or borrowed capital equipment and tools, including, but not limited to, any tools owned by mechanics, and any tools, equipment, scaffolding, hoists, machinery, trailers, and similar items owned, rented, or borrowed by Construction Manager or its Subcontractors, respectively. Owner shall have no liability with respect to such equipment and tools. Failure of Construction Manager or other insured parties to secure such insurance or to maintain adequate levels of coverage shall not obligate Owner or its agents and employees for any losses on owned, rented, or borrowed equipment.
- *Adjusting Loss.* Any insured property loss or claim of loss shall be adjusted by Owner, and any settlement payments shall be made payable to Owner as trustee for the insured, as their interests may appear, subject to the requirements set forth herein. Owner shall pay Project Architect and Construction Manager their just shares of insurance proceeds received by Owner, and by appropriate agreements Project Architect and Construction Manager shall make payments to their

consultants and Subcontractors in similar manner. Any such payment shall be conditioned upon receipt of a release from Construction Manager with regard to insurance proceeds received in such form acceptable to Owner. Prior to settlement of an insured loss, Owner shall notify Construction Manager of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. Construction Manager shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If Construction Manager does not object, Owner shall settle the loss and Construction Manager shall be bound by the settlement and allocation. Upon receipt, Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or Owner does not terminate the Contract for convenience, Owner and Construction Manager shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If Construction Manager timely objects to either the terms of the proposed settlement or the allocation of the proceeds, Owner may proceed to settle the insured loss, and any dispute between Owner and Construction Manager arising out of the settlement or allocation of the proceeds shall be resolved by such dispute resolution procedures authorized by the Contract Documents. Pending resolution of any dispute, Owner may issue a Unilateral Change Order for the reconstruction of the damaged or destroyed Work.

- *Cooperation and Assistance.* In connection with the Owner's placing and maintaining such property insurance coverage, Construction Manager shall furnish such project-related information required by Owner's insurance carrier(s) in a timely manner, when requested by Owner or its insurance broker or carrier(s). Construction Manager shall comply with requirements in the applicable insurance policies and with recommendations from Owner and its insurance carrier(s) with regard to the protection of the Work from loss.

18.5.2 Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. Owner waives all rights of action against Construction Manager for loss of use of Owner's property, including consequential losses, due to fire or other hazards however caused.

ARTICLE 19 - PROJECT TERMINATION AND SUSPENSION

19.1 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.

19.2 Termination by Owner. Owner may terminate this Agreement:

19.2.1 Upon at least seven (7) days' written notice to Construction Manager in the event that the Project will be temporarily or permanently abandoned.

19.2.2 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.

19.2.3 Upon written notice to Construction Manager for Construction Manager's Material Breach. "**Material Breach**" means (a) Construction Manager's failure or refusal to satisfy a material obligation of Construction Manager under this Agreement, and/or (b) Construction Manager's repeated failure or refusal to satisfy one or more obligations of Construction Manager under this Agreement. For purposes of this Agreement, Material Breach includes Construction Manager's consistent failure to respond timely to Owner's requests, delays in Construction Manager's performance, Construction Manager's submission of Change Proposals and Change Order(s) for work or services that are already part of Construction Manager's obligations under this Agreement, Construction Manger's repeated failure or refusal to submit timely proposals for additional Pre-Construction Phase services, Change Proposals and Change Orders as and when required to satisfy Construction Manager'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.

19.2.4 Upon written notice to Construction Manager for Owner's convenience.

19.3 Construction Manager's Obligations on Termination. As of the date of any termination of this Agreement, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required by this Agreement or as have been prepared by Construction Manager in connection with Construction Manager'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, Construction Manager shall remove its personnel, agents, contractors, subcontractors and equipment from Owner's property.

19.3.1 Termination of this Agreement shall not relieve Construction Manager 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 such parties. In the event of a termination, Construction Manager hereby consents to Owner's right to retain a substitute construction manager to complete the services under this Agreement, with the substitute construction manager having all rights and privileges of the original Construction Manager.

19.3.2 In the event of termination that is not the fault of Construction Manager, Construction Manager shall be entitled to compensation for all services performed to the termination date, provided, however, Construction Manager 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 Construction Manager.

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

ARTICLE 20 - INDEMNITY

20.1 Bodily Injury and Property Damage. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS CONSIDERATION FOR THE TERMS AND CONDITIONS OF THIS AGREEMENT, CONSTRUCTION MANAGER 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: (1) IS RELATED TO BODILY INJURY, SICKNESS, DISEASE, DEATH OR LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING ANY LOSS OF USE RESULTING THEREFROM (COLLECTIVELY, "**DAMAGE**"); AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY OF THE FOLLOWING: (A) A NEGLIGENT ACT OR OMISSION BY CONSTRUCTION MANAGER, ITS SUBCONTRACTOR, OR ANY OTHER PARTY FOR WHOSE ACTS THEY MAY BE LIABLE (EACH, AN "**INDEMNIFYING PARTY**"); OR (B) THE REFUSAL OR FAILURE TO COMPLY WITH ANY OBLIGATION IN THE AGREEMENT BY AN INDEMNIFYING PARTY; OR (C) VIOLATION OF APPLICABLE LAWS(S) BY AN INDEMNIFYING PARTY.

20.1.1 Notwithstanding the foregoing provisions of Section 20.1, Construction Manager shall not be obligated to indemnify the Indemnified Parties 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 Construction Manager 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.

20.2 Intellectual Property. CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER 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 AND SUBJECT TO THE STATUTORY OBLIGATIONS OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT CONSTRUCTION MANAGER'S EXPENSE.

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

ARTICLE 21 – WARRANTIES & STATE CONTRACTING REQUIREMENTS

21.1 Basis. Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's expertise and special and unique abilities to provide the services set forth in this Agreement. Construction Manager accepts the relationship of trust and confidence established between it and Owner by this Agreement. Construction Manager 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 high standards of Construction Manager's profession or business and in compliance with all Applicable Laws.

If Construction Manager fails to comply with the Standard of Care, Construction Manager's responsibilities under this Agreement or Applicable Laws, Construction Manager hereby agrees to be responsible for the full cost of correcting Construction Manager's Work and Services, those of its consultants, and those of any others who have acted in reliance thereon.

21.2 Warranties.

21.2.1 Construction Manager warrants, represents, covenants and agrees that (a) all of the services to be performed by Construction Manager, including its agents, representatives and consultants, pursuant to this Agreement will be of the highest 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 in major United States urban areas 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. Construction Manager shall be responsible for correcting Work that does not comply with the Contract Documents at Construction Manager's sole expense, unless Owner specifically agrees in writing to accept the Work as-is. Further, Construction Manager warrants to Owner the sufficiency and completeness of all drawings, specifications and other information furnished or provided by or on behalf of Construction Manager and that such items will be free from material errors and omissions.

21.2.2 Construction Manager warrants, represents, covenants, and agrees that all persons connected with Construction Manager 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.

21.2.3 Construction Manager 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 Construction Manager (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 Construction Manager's responsibilities or obligations hereunder in a case where such document or data is furnished unless Construction Manager 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 Construction Manager to proceed in accordance with the data as originally given.

21.2.4 Construction Manager warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

21.2.5 Construction Manager 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.

21.2.6 Construction Manager warrants, represents, and agrees that individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

21.2.7 Construction Manager warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in Construction Manager's Pre-Construction Phase Services as soon as Construction Manager becomes aware of such defects or is notified of such defects. Should Construction Manager refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work or otherwise becoming aware of such defects, then Owner shall be entitled to make good such defective services at the expense of Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective Services that Owner may have at law or in equity. Construction Manager's obligations with respect to Construction Phase Services are set forth in the UGC and SGC and elsewhere as may be noted.

21.2.8 Construction Manager warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement and perform its obligations herein, and the individual executing the Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

21.2.9 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Construction Manager is bound, or any agreement by which Construction Manager is bound or to the best of Construction Manager's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Construction Manager.

21.3 Certification of No Asbestos Containing Materials or Work. Further to the provisions of Section 13.7 of the UGC:

21.3.1 Construction Manager 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.

21.3.2 Construction Manager's final certification shall be delivered to Owner at Substantial Completion.

21.3.3 Construction Manager 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.

21.3.4 Each Subcontractor shall provide a notarized statement that no Asbestos Containing Building Materials (ACBM) has been used, provided, or left on this Project with each of its/his/her invoice.

21.3.5 Construction Manager shall provide to the extent deemed necessary for compliance by the

- State, data sheets and/or labels as proof of compliance.
- 21.4 No Waiver. Construction Manager's duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Construction Manager be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Construction Manager's skill and knowledge in performing the services required hereunder.
- 21.5 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Construction Manager agrees that any payments owing to Construction Manager under this Agreement may be applied directly toward any debt or delinquency that Construction Manager owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 21.6 Ethics Matters. Construction Manager and its employees, agents, representatives and subcontractors have read and understand Owner's Conflicts of Interest Policy available at <http://www.uhsystem.edu/compliance-ethics/docs/sam/02/2a9.pdf> State of Texas Standards of Conduct and Conflict of Interest Provisions available at <https://statutes.capitol.texas.gov/Docs/GV/pdf/GV.572.pdf>, and applicable state ethics laws and rules available. Neither Construction Manager nor its employees, agents, representatives or subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy, provisions described by State of Texas Standards of Conduct and Conflict of Interest Provisions, or applicable state ethics laws or rules.
- 21.7 Registration of Sex Offenders. Construction Manager shall require any individual on Owner's property in satisfaction of Construction Manager'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* Chapter 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 14 or more consecutive days or for more than 30 days in any calendar year.
- 21.8 Certifications.
- 21.8.1 *Family Code Child Support Certification.* Pursuant to Section 231.006, *Texas Family Code*, Construction Manager certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 21.8.2 *Franchise Tax Certification.* If Construction Manager is a corporate or limited liability company, Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 21.8.3 *Eligibility Certification.* Pursuant to Section 2155.004, *Texas Government Code*, Construction Manager certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 21.8.4 *Certification regarding Business with Certain Countries and Organizations.* Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Construction Manager certifies Construction Manager is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Construction Manager acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 21.8.5 *Certification regarding Boycotting Israel.* Pursuant to Chapter 2270, *Texas Government Code*, Construction Manager certifies that, if applicable, Construction Manager (a) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Construction Manager acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate. This provision does not apply to: (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

21.8.6 *Certification regarding Boycotting Energy Companies.* Pursuant to Chapter 2274, *Texas Government Code*. If applicable, Construction Manager verifies (a) it does not boycott energy companies and (b) it will not boycott energy companies during the term of this Agreement. Construction Manager acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. This provision does not apply to (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

21.8.7 *Certification regarding Discrimination against Firearm Entities or Trade Associations.* Pursuant to Chapter 2274, *Texas Government Code*, Construction Manager verifies (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Construction Manager acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. This provision does not apply to: (i) contracts below \$100,000; (2) contracts with a sole-source provider; or (iii) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than ten (10) full time employees.

21.8.8 *Financial Interest.* Construction Manager certifies that no member of the Owner's Board of Regents, or executive officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

21.8.9 *Texas Public Information Act.* Owner strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to the disclosure of public information under Chapter 552 of the Texas Government, also referred to as the Texas Public Information Act. In accordance with Section 552.002 of the Texas Public Information Act and Section 2252.907 of the Texas Government Code, Construction Manager will make any information created or exchanged with Owner pursuant to this Agreement (and not otherwise exempt from disclosure from the Texas Public Information Act) available in a format reasonably requested by Owner that is accessible to the public.

If the value of this Agreement is over \$1,000,000, then in accordance with Section 552.372 of the Texas Government Code Construction Manager agrees to (a) preserve all "contracting information" (as defined in Section 552.003 of the Texas Government Code) related to the Agreement, as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (b) 16.1.1.2 provide to Owner any contracting information related to the Agreement that is in the custody or possession of Design/Build Contractor on request of Owner no later than ten (10) business days after receiving such request from Owner; and on completion of the Agreement, either: provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Design/Build Contractor or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

Furthermore, Construction Manager Agrees that the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and Construction Manager agrees that the Agreement can be terminated if Construction Manager knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 22 - RECORD RETENTION; OWNER AUDIT RIGHTS

22.1 Audit Records. Construction Manager 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: Construction Manager's accounting records, time sheets, payroll burden calculations, Insurance Documents (as defined below), bond cost documentation and other bond information, invoices, bills, and expense reports, Additional Services reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, as-built Drawings, receipts, Subcontracts (including all modifications, revisions and amendments), 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 Construction Manager self-performed work, even if Owner agrees to pay a lump sum for a portion of the Work. Construction Manager 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.

22.1.1 “**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 Construction Manager in this Agreement. If this Agreement permits Construction Manager 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 Construction Manager maintains a blanket automobile policy and this Agreement permits Construction Manager to use that blanket coverage to satisfy its insurance obligations for the Project, then Construction Manager 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 Construction Manager maintains a blanket general liability policy and this Agreement permits Construction Manager to use that blanket coverage to satisfy its insurance obligations for the Project, then Construction Manager 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.

22.2 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.

22.2.1 Owner’s agent or its authorized representative will have reasonable access at reasonable times to Construction Manager’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, and will be provided support from Construction Manager’s staff as reasonably required.

22.2.2 In the event Construction Manager does not fully comply with the requirements of this ARTICLE 22, Construction Manager 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 22.

22.2.3 If any audit discloses overcharges by Construction Manager to Owner that are (i) proven in the reasonable discretion of Owner and (ii) in excess of one half of one percent (.5%) of the total Cost of the Work, then the reasonable actual cost of Owner’s audit will be reimbursed to Owner by Construction Manager 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 Construction Manager. Owner may deduct such reimbursement amounts from any money due or that becomes due Construction Manager.

22.3 Subcontracts. Construction Manager shall provide Owner with an executed copy of any subcontracts (with Subcontractors, 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. Construction Manager 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 Construction Manager attempting to undermine or override this provision shall constitute a default by Construction Manager under this Agreement.

ARTICLE 23 - OTHER TERMS AND CONDITIONS

23.1 Limitation of Liability. Except for the obligation of Owner to pay Construction Manager certain fees, costs, and expenses to the extent expressly set forth in this Agreement, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager 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 bank in the state of Texas selected by Owner as such bank’s prime or base rate. Notwithstanding any obligation or liability of Owner to Construction Manager, 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 Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

23.2 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 Construction Manager with field reports and photographs of the weekly inspection within three (3) days of each visit. Construction Manager’s project manager shall provide written responses to the field report observations within one (1) week after the field reports are issued.

23.3 Progress Meetings. Construction Manager shall conduct at least one (1) Progress Meeting each week, unless waived by Owner’s Designated Representative in writing.

23.4 Assignment. This Agreement is a personal service contract for the services of Construction Manager, and neither Construction Manager’s interest in this Agreement (including, but not limited to Construction Manager’s fees due hereunder), nor Construction Manager’s duties hereunder may be assigned or delegated to a third party.

23.5 Dispute Resolution. Disputes arising from this Agreement will be handled pursuant to Article 15 of the UGC.

23.6 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.

23.7 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.

23.8 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.

23.9 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.

23.10 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.

23.11 Appointment. Construction Manager shall act only upon instructions from Owner’s Designated Representative unless Owner advises Construction Manager otherwise in writing.

23.12 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.

23.13 New Laws. Owner and Construction Manager 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.

23.14 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: Assistant Vice Chancellor

4211 Elgin
Houston, Texas 77204

with a copy to: General Counsel
University of Houston System
4302 University Drive
311 E. Cullen Building
Houston, Texas 77204-2028

If to Construction Manager:

with a copy to:

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

[SIGNATURE PAGE FOLLOWS]

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

CONSTRUCTION MANAGER:

By: _____

Date: _____

Federal Tax ID No.

ATTEST:

By: _____

Date: _____

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:

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 Construction Manager-at-Risk Agreement by and between the University of Houston System (“Owner”) and _____ (“Construction Manager”), dated _____ (the “Agreement”), a Guaranteed Maximum Price for _____ (“Project”), 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 (attached).

2. **Construction Contingency:** Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2 of the Agreement.

3. **Construction Phase Fee:** The product of the Construction Phase Fee Percentage (_____ %) times the Cost of the Work (item 1, above) plus the Construction Contingency (item 2, above).

4. **General Conditions:** Total, not-to-exceed amount for General Conditions items.

An itemized breakdown in Owner’s current form is attached.

Unexpended balances shall revert to Owner as Savings.

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 (attached).

2. **Construction Contingency**: Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2 of the Agreement.
3. **Construction Phase Fee**: The product of the Construction Phase Fee Percentage (_____ %) times the Cost of the Work (item 1, above) plus the Construction Contingency (item 2, above).
4. **General Conditions**: Total, not-to-exceed amount for General Conditions items.

An itemized breakdown in Owner's current form is attached.

Unexpended balances shall revert to Owner as Savings.

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 (attached).

2. **Construction Contingency:** Total, not-to-exceed amount to be utilized in accordance with Sections 4.1.2 and 4.2 of the Agreement.
3. **Construction Phase Fee:** The product of the Construction Phase Fee Percentage (_____ %) times the Cost of the Work (item 1, above) plus the Construction Contingency (item 2, above).
4. **General Conditions:** Total, not-to-exceed amount for General Conditions items.

An itemized breakdown in Owner's current form is attached.

Unexpended balances shall revert to Owner as Savings.

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:

CONSTRUCTION MANAGER

By:

Name:

By:

Title:

Name:

Date:

Title:

Date of Signature:

Content Approved:

THE UNIVERSITY OF HOUSTON SYSTEM

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

By:

By:

Name:

Name:

Title:

Title: Senior VC/VP

Date:

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 Construction Manager. 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
- Construction Contingency Breakdown

Tab 4 Guaranteed Maximum Price Proposal Cost Breakdown:

- Exhibit A - Guaranteed Maximum Price Proposal (form as attached to the Agreement).
- Construction Manager shall provide a detailed initial Estimated Construction Cost (defined as the amount calculated by the Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the EEC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager's Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner 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.
- Construction Manager 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).
- Construction Manager 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 Milestone Schedule developed in Microsoft Project 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.
- Construction Manager 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				

<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 11	Equipment				
Division 12	Furnishings				
Division 13	Special Construction				
Division 14	Conveying Equipment				
Division 21	Fire Suppression				
Division 22	Plumbing				
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				

<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 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)

Design Start [date]

Construction Start [date]

Substantial Completion [date]

EXHIBIT C

**CONSTRUCTION MANAGER’S PERSONNEL, STAFF, SUBCONSULTANTS AND DUTIES
HOURLY 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 14.2.1. Any additional employer contributions not identified below shall be included in and paid from the Construction Phase Fee pursuant to ARTICLE 16 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.	\$	\$	\$	\$	\$	\$	\$	\$

Construction Manager hereby certifies, to the best of its knowledge after due investigation, that the above referenced salary information is accurate.

Construction Manager signature: _____
(same individual who signs agreement)

EXHIBIT D

APPROVED GENERAL CONDITIONS LINE ITEMS AND COST BREAKDOWN

Project Management:	
Superintendent(s)	
Safety Manager	
CPM Milestone Scheduler	
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 Fee's	
Temporary Fire Protection	
Temporary Heating & Cooling	
Temporary Fencing	
Temporary Covered Walkways	
SWPPP Measures	
Temporary Entry's 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 Cost	
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 E

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- 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 by CM Team**
 - Establishment of project constructability procedures, including procedures for documenting savings
- **Meeting to Review Schematic Design Constructability Comments**
 - 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 by CM Team**
 - follow-up discussions on front-end, high-priority concepts
 - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Constructability Review Meeting**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design elements; consider life-cycle cost effect
- **50% CD Constructability Review Comments by CM Team**
 - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
 - recommend alternative design suggestions for consideration and document potential savings
 - conduct Value Engineering investigations into selected high-cost design element
- **95% CD Constructability Review Comments by CM Team**
- **Constructability Discussions with CM Team**
- **Documents On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**