

**AGREEMENT
BETWEEN OWNER AND DESIGN-BUILD FIRM**

This Agreement is made as of _____, 20____ (the “Effective Date”), by and between

The Owner:

The Board of Regents of The University of Texas System
c/o U. T. System Office of Capital Projects
210 West 7th Street
Austin, Texas 78701

and

The Design-Build Firm:

Texas Tax Account No.:

For the following **Project:**

Project Number:

Contract Number:

Project Architect / Engineer:

UGC Version: 2013

Owner Provided Insurance: Owner Controlled Insurance Program (OCIP) and Owner-Provided Builder’s Risk Insurance (OBR): YES / NO (Editor’s Note: Answer yes or no)

All CIP ((Capital Improvement Program) projects, select YES per UTS 199. For non-CIP projects and CIP projects that were approved for exemption from OCIP/OBR per UTS 199, select NO and refer to Article 17 “NON-OCIP/OBR OPTION.”

Building Information Modeling: YES / NO (Editor’s Note: Answer yes or no)

This project utilizes the BIM process for generating and managing building data. Refer to Exhibit M for requirements.

The Owner and the Design-Build Firm agree as follows:

This form of agreement for Design/Build project delivery has been prepared by the Office of General Counsel for the University of Texas System for use on U.T. System projects. The legal terms of this agreement should not be altered without the approval of the Office of General Counsel.

Use this form for all U.T. System Design/Build projects after September 1, 2024.

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ARTICLE 1 SCOPE OF WORK

The Design-Build Firm has overall responsibility for and shall provide complete Pre-Construction Phase Services and Construction Phase Services and furnish all design services, materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of:
- a. This Agreement and all of its exhibits and attachments listed, contained or referenced in this Agreement;
 - b. The Uniform General Conditions for University of Texas System Building Construction Contracts (UGC);
 - c. Special Conditions and Owner Specifications;
 - d. All Addenda issued prior to the Effective Date of this Agreement;
 - e. The Guaranteed Maximum Price Proposal when accepted by the Owner as executed by the parties;
 - f. All Change Orders issued after the Effective Date of this Agreement;
 - g. The Drawings and Specifications developed by Design-Build Firm and accepted by Owner;
 - h. The Drawings and Specifications or any other documents developed or prepared by Owner's independent consultants, if any, that are included in the Guaranteed Maximum Price Proposal;
 - i. All Additional Services Proposals when accepted by the Owner;
 - j. The HUB Subcontracting Plan for Design Phase Services; and
 - k. The HUB Subcontracting Plan for Construction Phase Services when accepted by the Owner;
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Design-Build Firm and supersede all prior negotiations, representations or agreements, written or oral.
- 2.3 The term "Design-Build Firm" shall be interchangeable with the terms "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions for University of Texas System Building Construction Contracts and as follows.

3.1 "**Construction Cost Limitation**" or "CCL" means the maximum monetary amount payable to the Design-Build Firm for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and the Design-Build Firm's Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the Design-Build Firm's Pre-Construction Phase Fee, or Owner's Construction Contingency or Owner's Special Cash Allowance.

3.2 "**Construction Services**" means the implementation and execution of the construction work required by the Contract Documents. The construction phase of the Project may be divided into different stages, each with different start and completion dates.

3.3 **“Contract Sum”** means the total amount of all compensation payable to the Design-Build Firm for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Services Fees 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 Design-Build Firm without reimbursement by Owner.

3.4 **“Design-Build Firm”** means the legal entity employed by the Owner for the purpose of designing and constructing the Project in accordance with this Agreement. Refer to Article 1.

3.5 **“Design Consultant”** means any licensed professionals or firms, other than the Project Architect/Engineer, engaged by Owner as independent consultants for the Project Improvements.

3.6 **“Design Services”** means all professional services required to fulfill the Pre-Construction Phase and Additional design obligations of this Agreement, including, but not limited to, Owner’s Project Requirements, Basis of Design, Programming, Schematic Design, Design Development and Construction Documents.

3.7 **“Direct Construction Cost”** means the sum of the amounts that the Design-Build Firm actually and necessarily incurs for General Conditions Costs, Cost of the Work and Design-Build Firm’s Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Services Fees or Construction Phase Fees.

3.8 **“Direct Salary Expense”** or **“DSE”** means the actual gross salary, expressed on an hourly wage basis, of Design-Build Firm’s and Project Architect/Engineer’s employees and consultants directly engaged on the Project. For DSE purposes, Design-Build Firm’s employees include, but is not limited to, project managers, officers, principals, project engineers, BIM managers / VDC engineers, project safety personnel, quality control staff, project schedulers, commissioning engineers, cost estimators, superintendents, or other salaried staff that are directly attributable to and necessary for the Project. For DSE purposes, Project Architect/Engineer’s employees includes, but is not limited to, architects, officers, principals, engineers, designers, job captains, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services that are directly attributable to and necessary for the Project.

3.9 **“Estimated Construction Cost”** means the total cost of all elements of the project, including, without limitation, all alternates, allowances and contingencies, designed and specified by the Design-Build Firm. The Estimated Construction Cost shall include, at current market rates with a reasonable allowance for overhead, profit and price escalation, the cost of labor and materials furnished by the Owner and any equipment which has been shown in the plans, specified, and specially provided for by the Design-Build Firm. Estimated Construction Cost does not include Design Phase Fees. Estimated Construction Cost does not include the cost of the land, rights-of-way, or any costs that are the responsibility of the Owner.

3.10 **“General Conditions Costs”** means costs incurred and minor work performed on the jobsite by the Design-Build Firm without the need for competitive bids/proposals. The allowable General Conditions items are further described in the Agreement and limited by attached exhibit.

3.11 **“Guaranteed Maximum Price”** or **“GMP”** means the amount proposed by the Design-Build Firm and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Design-Build Firm’s Construction Phase Fee, the General Conditions Costs, the Cost of the Work, Design-Build Firm’s Construction Contingency amount, and the Owner’s Construction Contingency amount and Owner’s Special Cash Allowance.

3.12 **“Monthly Salary Rate”** means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Design-Build Firm’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment seeking reimbursement for that person. The Monthly Salary Rate is for convenience only and any payments made for Design-Build Firm’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Design-Build Firm for services performed for the Project.

3.13 **“Preliminary Project Cost”** or **“PPC”** means the total estimated cost of the entire Project, including design, construction, and other associated costs and services which is established prior to the commencement of design.

3.14 **“Project Architect/Engineer”** means the professional architect or engineer employed by the Design-Build Firm to perform all or part of the Design Services and the Construction Contract Administration Services in accordance with the Contract as part of the Design/Build Team. The Project Architect/Engineer and its professional consultants must be qualified to perform the Design Services and the Construction Contract Administration Services and be licensed in the State of Texas in their respective professions.

3.15 **“Project Team”** means the Owner, Design-Build Firm, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.

3.16 **“Standards and Standard Specifications”** means the design and construction requirements and standards of The University of Texas System, its respective institutions and various building and life safety codes as specified in the Owner’s Design Guidelines which are incorporated by reference.

3.17 **“Subcontractor”** means a person or entity who has an agreement with the Design-Build Firm to perform any portion of the Work. The term Subcontractor does not include the Project Architect/Engineer or any person or entity hired directly by the Owner.

3.18 **“Total Project Cost”** or **“TPC”** means the total budget established for the Project by the Board of Regents or the Chancellor of The University of Texas System at the end of the design development phase (subject to subsequent modification by Owner), which includes but is not limited to professional services costs, Design-Build Firm’s costs, the costs of the General Conditions items, furniture, fixtures and equipment costs, landscaping costs, moving costs, and other miscellaneous costs.

3.19 **“Work”** means the provision of all services, labor, materials, supplies, and equipment that are required of the Design-Build Firm to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

3.20 **“Worker Wage Rate”** means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage Rate Form required by the Construction Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. Any payments made for Design-Build Firm’s personnel are subject to audit

to determine the actual cost of the wages and allowable employer contributions incurred by the Design-Build Firm for services performed for the Project.

3.21 **“Value Engineering”** (VE) means a study or series of studies documenting the relative monetary values of various materials and construction techniques, including the initial cost, maintenance cost, energy usage, replacement cost, and life expectancy of the materials, equipment or systems under consideration.

3.22 **“Value Engineering Plus”** (VE Plus) means a proprietary software program and the process used by the Design-Build Firm including the Architect/Engineer on this project to document, track values, and report the baseline facility and related systems as compared to all other major alternative components and systems considered during design for possible inclusion in this project indicating potential for savings in initial cost, total cost of ownership or reduced schedule impacts.

3.23 **“Self-Performed Work”** means any division of Design-Build Firm, or any separate contractor or subcontractor that is partially owned or wholly owned by the Design-Build Firm or any of their employees or employee’s relatives will be considered a related party entity

ARTICLE 4 DESIGN-BUILD FIRM’S GENERAL RESPONSIBILITIES

4.1 Design-Build Firm shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. Design-Build Firm agrees to perform these services using its best efforts, skills, judgments and abilities.

4.2 Design-Build Firm shall coordinate with the Project Architect/Engineer and endeavor to further the interests of the Owner and the Project. Design-Build Firm shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.3 Within seven (7) days of receipt of the Notice to Proceed with Pre-Construction Phase Services, the Design-Build Firm shall submit for the Owner’s review and acceptance a CPM Milestone Schedule in accordance with the Project Planning and Scheduling requirements of the Owner’s Specifications. The CPM Milestone Schedule shall encompass the entire Project duration, including performance of both the Pre-Construction Phase Services and the Construction Phase Services with sufficient total Project float to allow for a minimum of Construction Phase float as specified.

4.4 The CPM Milestone Schedule for the Pre-Construction Phase of the Project shall include at least 10 workdays or other reasonable amounts of time as agreed to by the Owner for the Owner’s review and approval of design drawings and specifications and for approval of authorities having jurisdiction over the Project.

4.5 Upon acceptance of the CPM Milestone Schedule, it shall become the baseline for evaluating performance of the Project and Design-Build Firm shall monitor the progress of the Project in relation to the CPM Milestone Schedule and provide the Owner with at least monthly updates and status reports as outlined in the Owner’s Specifications. The time periods established in the CPM Milestone Schedule for the Pre-Construction Phase and the Construction Phase, and the overall duration of the Project shall not be changed without written consent from the Owner. Modifications to the CPM Milestone Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with the Owner’s Specifications.

4.6 Design-Build Firm shall designate a representative authorized to act on the Design-Build Firm's behalf with respect to the Project.

4.7 Design-Build Firm shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project and implement such procedures.

4.8 Design-Build Firm shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

4.9 Fast Track/Multiple Completion Times. If the Owner elects to "fast-track" or develop the Project in multiple stages/phases, Design-Build Firm shall organize and perform its services as appropriate to each stage/phase. Each stage/phase of the Project may have a unique schedule for completion and a specific Construction Cost Limitation and specific GMP, at Owner's discretion.

4.10 Design-Build Firm shall attend and participate in Owner's "Partnering" Program for all phases of the Project.

4.11 Design-Build Firm shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them for Pre-Construction Services and for Construction Services and A/E Design and Construction Administration Services. Design-Build Firm shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Design-Build Firm shall not add, remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Design-Build Firm shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Design-Build Firm shall promptly update and resubmit Exhibit "F", Design-Build Firm's Personnel and Monthly Salary Rates form, and Exhibit "G" Architect/Engineer Personnel Titles and Hourly Rates indicating the list of persons by name and title and consultants if they change during the Project. Design-Build Firm's employees and other personnel that it assigns to the project shall be identified on the Schedule of Values by name and title.

4.12 The Owner's Policy on the Utilization of Historically Underutilized Businesses ("Policy") is described in an attached exhibit. Design-Build Firm, as a provision of the Agreement, must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plans submitted for Pre-Construction Phase and Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by the Design-Build Firm without the written approval of Owner in accordance with the Policy.

4.13 Design-Build Firm's Responsibility for and Contracts with its Architect, Other Consultants, and Contractors.

4.13.1 The Design-Build Firm shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Project Architect/Engineer, Consultants, Contractors, Subcontractors, and Subconsultants, and their agents and employees, and other persons or entities performing portions of the Work on behalf of the Design-Builder.

4.13.2 When Applicable Law requires that services be performed by licensed professionals, the Design-Build Firm shall provide those services through qualified, licensed professionals.

4.13.3 All Consultants engaged by the Design-Build Firm (including the Project Architect/Engineer) for the Project and all First Tier Subconsultants retained by the Project Architect/Engineer shall be engaged, and at all times shall operate, under a professional services or consulting agreement which

must specifically give the Owner the right, but not the obligation, to enforce such agreements as a third-party beneficiary. Design-Build Firm shall administer such agreements and shall deliver to Owner any and all notices of default.

- 4.13.4 All Consultants retained by the Design-Build Firm and all First Tier Subconsultants retained by the Project Architect/Engineer not previously approved by the Owner are subject to the Owner's written approval on the basis of qualifications and personnel committed to the Project which approval shall not be unreasonably withheld. Any substitutions of such Consultants and First-Tier Subconsultants are subject to the Owner's written approval, which approval shall not be unreasonably withheld.
- 4.14 Independent Contractor
- 4.14.1 In performing its obligations hereunder, Design-Build Firm shall be deemed an independent contractor and not an agent or employee of Owner. Nothing contained in this Agreement shall be deemed or construed to (1) make Design-Build Firm the agent, servant, or employee of the Owner or (2) create any partnership, joint venture, or other association between Owner and Design-Build Firm. Design-Build Firm is not authorized to enter into contracts or agreements on behalf of Owner or to otherwise create obligations of Owner to third parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the Owner or the Owner Related Parties.
- 4.14.2 Notwithstanding the foregoing, **Design-Build Firm acknowledges and agrees that Owner is a third-party beneficiary of Design-Build Firm's contractual agreements with its Project Architect/Engineer and Consultants for professional services furnished in connection with this Project. And with its Subcontractors for the performance of Construction Services. Owner may, subject to applicable law, exercise its rights against the Project Architect/Engineer and any such Consultant, or Subcontractor to recover directly any damages resulting from their errors, omissions, negligent acts or breaches of the Contract.** All contracts with the Project Architect/Engineer and any such Consultant or Subcontractor must expressly provide that the Owner is a third-party beneficiary, and that the Owner may, but is not obligated to, enforce such contracts as a third-party beneficiary, to the extent allowed by Applicable Law.

ARTICLE 5 PRE-CONSTRUCTION PHASE

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Design-Build Firm is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. The Design-Build Firm shall perform the following Pre-Construction Phase Services.

5.1 PRE-CONSTRUCTION SERVICES

5.1.1 General Coordination

5.1.1.1 The Design-Build Firm's Pre-Construction Phase Services team, including the Project Architect/Engineer, shall attend Project Team meetings with the Owner and the Owner's representatives at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

5.1.1.2 Provide a preliminary evaluation of the Owner's Design Criteria and the Construction Cost Limitation, each in terms of the other.

5.1.1.3 Review and understand the standards and requirements in Owner's Specifications and Standards and perform all services in accordance with those standards and requirements.

5.1.1.4 Visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.

5.1.1.5 Participate as a member of the Project Team in the development of the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.

5.1.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Design-Build Firm and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule (as defined below) and the CCL.

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

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

5.1.2 Constructability Program

5.1.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be in accordance with the requirements of the attached exhibit. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

5.1.2.2 Prepare a "Constructability Report" that identifies items that, in the Design-Build Firm's opinion, may negatively impact construction of the Project. The Constructability Report shall 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 shall be updated and submitted to the Owner at least monthly during the Pre-Construction Phase.

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

5.1.3 Budget and Cost Consultation

5.1.3.1 The Design-Build Firm is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

OR:

(EDIT THE OPTIONAL SERVICE):

The Design-Build Firm is responsible for preparing and updating all procurement and construction cost estimates and, in addition, shall provide and employ an independent specialized construction cost estimation firm to prepare additional corresponding procurement and construction cost estimates. The Design-Build Firm shall be required to reconcile the two independent cost estimates at each design schedule milestones. The Design-Build Firm shall distribute all cost estimates to the Project Team throughout the duration of the Project.

5.1.3.2 Provide Estimated Construction Cost (ECC) reports at the required stages of completion of Programming, *(Editor's Note: Delete Programming if already complete)* Schematic Design, Design Development, and Construction Document stages of the Project. The Estimated Construction Cost reports for the design development and construction document stages shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications Institute Division 0-49 format for each portion of the Work.

5.1.3.3 Provide continuous cost estimating and consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Design-Build Firm has reason to believe that the most current ECC will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the Schedule.

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

5.1.3.5 Should any ECC exceed or fall significantly below the approved CCL, the Owner and Design-Build Firm shall negotiate changes to the Project requirements, or the CCL as required.

5.1.4 Coordination of Design and Construction Contract Documents

5.1.4.1 Review and coordinate all Documents, Drawings, Specifications, and other Construction Documents as they are developed by the Design-Build Firm's Project Architect/Engineer and the Owner's Consultants during the Programming, Schematic Design, Design Development, and Construction Document design phases of the Project.

5.1.4.2 Consult with Owner and Project Architect/Engineer on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.1.4.3 Advise Owner of any error, inconsistency or omission discovered in the Documents, Drawings, Specifications, and other Construction Documents.

5.1.4.4 Advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the CCL.

5.1.4.5 Review the Construction Documents for compliance with all applicable laws, rules, codes and regulations and with University of Texas System requirements.

5.1.5 Construction Planning and Bid Package Strategy

5.1.5.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

5.1.5.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB contractor participation, and other constraints.

5.1.5.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

5.1.5.4 Develop a bid/proposal package strategy in coordination with the Project Architect that addresses the entire scope of Work for each phase and stage of the Project. In developing the bid/proposal package strategy, the Design-Build Firm shall identify all bid/proposal packages on which the Design-Build Firm intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with the Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and the Owner.

5.1.5.5 Assist the Owner, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

5.1.5.6 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

5.1.5.7 Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

5.1.5.8 Design-Build Firm shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

5.1.5.9 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations that minimize adverse effects of labor shortages.

5.1.5.10 Furniture, Fixtures and Equipment. Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Owner as may be required to meet the Schedule.

5.1.6 Obtaining Bids/Proposals for the Work

5.1.6.1 Design-Build Firm shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Design-Build Firm shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

5.1.6.2 Schedule and conduct pre-bid conferences with interested bidders/proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

5.1.6.3 Design-Build Firm 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. Based on the selection criteria included in the request for proposals, Design-Build Firm shall recommend to the Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Design-Build Firm may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

5.1.6.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Owner. Upon Owner's concurrence in the final terms of the subcontract, Design-Build Firm shall enter into a written subcontract for the subcontract work and provide a copy to the Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

5.1.6.5 If Design-Build Firm reviews, evaluates, and recommends to Owner a bid/proposal from a trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Design-Build Firm by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Design-Build Firm incurs because of Owner's requirement that the other bid/proposal be accepted.

5.1.6.6 Design-Build Firm may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Design-Build Firm must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. The Owner will determine whether the Design-Build Firm's bid/proposal provides the best value for Owner, which determination is final. Design-Build Firm must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Design-Build Firm shall account for self-performance work in the same manner as it does all other subcontract costs.

5.1.6.7 For scope of work bid packages typically performed by subcontractors, the Design-Build Firm may propose to self-perform such work which the Design-Build Firm identifies and documents their intention in their bid/proposal strategy and for which Design-Build Firm submits a self-performed work proposal directly to the Owner at least twenty-four (24) hours prior to receiving similar proposals from other parties for that exact same scope of work. The Owner will determine whether the Design-Build Firm's proposal provides the best value for the Owner and Owner's decision shall be final and not subject to appeal.

- 5.1.6.7.1 If the Design-Build Firm provides at least three (3) additional proposals from other qualified trade contractors for the exact same scope of work the Owner at its discretion may award the self-performed work as lump sum to the Design-Build Firm. In the absence of sufficient competition for the exact same scope of work the Owner at its discretion may award the self-performed work to the Design-Build Firm based on cost-plus fee (Not to Exceed 7.5%) subject to an agreed upon guaranteed maximum price for the self-performed work.
- 5.1.6.7.2 Any subcontract for self-performed work will provide for payment relative to the progress of the work up to a total amount equal to the lump sum proposal if three (3) or more additional proposals are provided as indicated above, or relative to the progress of the work up to the actual Cost of the Work (as defined in this Agreement) plus fee in the event the self-performed work is awarded as a not-to-exceed cost-plus fee maximum amount.
- 5.1.6.7.3 All terms and provisions of any subcontract for self-performed work will be consistent with the terms and conditions of this Agreement. All buyout savings within and under any such subcontract for “self-performed work” awarded as a not-to-exceed cost-plus fee or lump sum under this contract provision shall be documented and reported to the Owner monthly and be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement.
- 5.1.6.8 Design-Build Firm shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Design-Build Firm shall not use any Subcontractor to which Owner has a reasonable objection. Design-Build Firm shall not be required to subcontract with any Subcontractor to which it has a reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner’s written consent, which shall not be unreasonably withheld.
- 5.1.6.9 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Design-Build Firm may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

5.1.7 Safety

5.1.7.1 In accordance with Owner’s Uniform General Conditions for University of Texas System Building Construction Contracts, Design-Build Firm is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of an Owner Controlled Insurance Program, if any.

5.1.7.2 Design-Build Firm shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-Build Firm shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner Controlled Insurance Program in connection with the Work shall not lessen or reduce the Design-Build Firm’s safety responsibilities.

5.2 DESIGN SERVICES

5.2.1 General Responsibilities

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

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

5.2.1.3 Design-Build Firm shall be solely responsible for all obligations to the Project Architect/Engineer and shall pay for the services of the Project Architect/Engineer and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Project Architect/Engineer and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Architect/Engineer or other design professionals not hired directly by the Owner.

5.2.1.4 The Design-Build Firm shall be responsible for managing the Design Services to ensure that the Project, as designed, can be constructed for an amount that is within Construction Cost Limitation and will achieve the energy and operational savings required by the Contract. The obligation to design the Project to achieve the Program objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the Construction Cost Limitation or the Program during the design phase shall be mutually agreed upon with the Owner and shall be considered normal to that process.

The Design-Build Firm shall submit the names of all proposed consultants for Design Services, including the Project Architect/Engineer and any of its consultants, for approval by the Owner, which approval shall not be unreasonably withheld. The Design-Build Firm shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such consultant. All such contracts shall provide that the consultants are bound to Design-Build Firm in the same manner and to the same extent as Design-Build Firm is bound to Owner.

5.2.1.5 The Design Services shall incorporate current technology as appropriate to the stated mission of the institution and the programmed functional activities that is compatible with any existing facility and acceptable to the Owner.

5.2.1.6 All Design Services for the Project shall be provided in accordance with the Owner's Design Guidelines, Design Criteria and the Campus Master Plan and Campus Master Plan Guidelines, which are incorporated herein by reference, and any other criteria applicable to the facility program and the needs of the institution.

5.2.1.7 The Design-Build Firm warrants to Owner the sufficiency and completeness of all Design Services performed and that all drawings, specifications, and other information furnished or provided by

Design-Build Firm shall be free from material errors and omissions. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Build Firm from any duty, responsibility or liability for such services, it being understood that Owner is relying upon Design-Build Firm's skill and knowledge in performing the Design Phase Services.

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

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

5.2.1.10 At each stage of the Design Services, Design-Build Firm shall provide the following services as appropriate: *(Editor's Note – Amend services as appropriate for the scope, scale and location of the project. The Basic Services should be identified as all-inclusive, when possible, based upon known or given parameters needed for the project type. Contact UT System Office of Capital Projects for additional guidance.)*

- Architectural Services, including:
 - Owner's Project Requirements
 - Programming / Visioning Services
 - Basis of Design
 - Building Envelope Consulting Services
 - Conveying Systems Consulting Services
 - Acoustical Design
 - Code, Wayfinding and Building Signage
- Landscape Architectural Services
- Civil Engineering Services, including:
 - Texas Pollutant Discharge Elimination Systems
 - Traffic Control Planning
- Structural Engineering Services
- Mechanical Engineering Services, including:
 - Building Automation / Controls
- Electrical Engineering Services
- Plumbing Engineering Services
- Life Safety Engineering Consulting Services including:
 - Fire Alarm and Fire Protection Design Services
 - NFPA Compliance Review, Inspection and Testing
- Construction Cost Estimating
- Scheduling Services
- Audio Visual / Data & Telecommunications Design Services

- Security System Design Services
- LEED, Sustainability & Energy Conservation Services
- Wind, Exhaust Re-Entrainment, Emissions Control Studies
- Commissioning
- Commissioning Coordination
- Building Information Modeling (BIM) *(optional)*

5.2.1.11 DESIGN AND CONSTRUCTION STANDARDS. The Owner has specific design and construction standards for this Project but will consider effective alternatives to meet these requirements. Design-Build Firm and its consultants shall offer creative solutions and propose cost effective responses to meet the Owner's goals and satisfy the requirements of this project. These efforts shall be documented in the VE log referred to here-in.

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

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

5.2.1.14 LEED CERTIFICATION. The Design-Build Firm shall provide all design, administration, and construction services necessary for securing LEED *(Editor's Note: Include if a LEED Project and identify certification level (Certified, Bronze, Silver, Gold, Platinum))* XXXXX Certification or better under the most current version LEED-NC unless specified otherwise by the Owner. Services shall include, but not be limited to, attending a pre-design workshop where the LEED rating system will be reviewed and LEED points targeted, reviewing a LEED Certification Plan, monitoring the LEED Certification process, attending and leading design review meetings required to achieve LEED Certification, reviewing LEED specifications in the Contract Documents, reviewing a LEED Certification Report detailing the LEED rating the project achieved, participating in the Owner's technical review process and reviewing comments made during the reviews, working with the Project Architect/Engineer to establish procedures and processes to maximize LEED points obtained during building construction, and coordinating project closeout services including collection and assembly of record documents and other necessary materials required for LEED Certification.

5.2.1.15 COMMISSIONING SERVICES. The Design-Build Firm shall employ a formally credentialed (UW, BCA, AEE, ACG, or ASHRAE or other Cx credentials as approved by the Owner) individual to act as the project's commissioning coordinator to provide commissioning expertise through each project phase required of this Agreement. The commissioning coordinator shall keep the Owner current on all Cx work efforts and will provide review input related to Project objectives, methods, and concepts of commissioning in conformance with the Commissioning Implementation Program and specification 01 91 00 General Commissioning Requirements included as part of this Agreement.

5.2.1.16 COMMISSIONING COORDINATION. In addition to the commissioning responsibilities required of the Design-Build Firm defined elsewhere in this Agreement and its attachments, the Owner may elect to employ a Commissioning Consultant/Agent to provide commissioning expertise during Design and Construction Administration Phases. The Commissioning Consultant/Agent will provide review input

related project objectives, methods and concepts of commissioning. The Design-Build Firm shall coordinate with the Owner's third-party Consultant/Agent throughout each project phase.

5.2.1.17 DAYLIGHTING DESIGN. The Design-Build Firm and its consultants shall take advantage of daylight and views throughout select areas of the building while minimizing glare and heat gain. The design shall be produced by the Project Architect/Engineer and shall include maximizing energy savings, increasing user comfort and productivity, maintaining aesthetics and views, and integrating with other systems for an optimized building. The Project Architect/Engineer shall create a daylight model with sensor locations for study of daylight performance in various areas and levels of the building with dedicated study for private offices, public and educational spaces to examine the effects of any proposed sun shading devices or techniques. The daylighting design study shall be presented to the Owner for review no later than 50% DD and again at 100% DD.

5.2.1.18 VALUE ENGINEERING. The Design-Build Firm and its consultants shall use true Value Engineering (VE) techniques as appropriate to maintain the programmatic and functional integrity of the design while identifying opportunities to drive costs lower, appropriate to the program and current construction technologies. VE decisions which result in lower initial costs or lower maintenance costs shall be documented and maintained in a VE log showing expected savings. This log shall also capture potential savings when any substitutions are requested by any party for specified materials, products or equipment which result in savings or other bona fide benefit to the project. Log shall be kept current during all phases of design and construction and Owner shall be kept current on this effort.

5.2.1.19 COST CONTAINMENT. The Owner is sensitive to the cost of this Project and is relying upon the Design-Build Firm and its consultants to focus on encouraging creative design concepts, construction technologies and operational/maintenance philosophies which drive lower costs, both in terms of first cost as well as from a total cost of ownership perspective.

5.2.1.20 ALTERNATES. The Design-Build Firm and its consultants through each phase of design shall design alternates equaling to no less than *(Editor's note, identify a value i.e. 5% or 10%) XX%* of the Project's Construction Cost Limitation.

5.2.1.21 TEXAS HIGHER EDUCATION COORDINATING BOARD SUBMISSION (THECB). The Design-Build Firm shall assist the Owner with the Texas Higher Education Coordinating Board (THECB) submission. Such assistance shall include (i) the preparation of a listing of the rooms, room type and usage codes, and square footages in the Project, and (ii) the preparation of Project cost information, in accordance with THECB Guidelines. This information shall be provided to the Owner at the completion of the Design Development Phase or other time as determined by the Owner. The listing of rooms, room type and usage codes, and square footages shall then be updated to reflect any changes occurring during construction and provided to the Owner at Substantial Completion. The Design-Build Firm shall provide this updated information on the "Project Scope Summary Questionnaire Form" which is included herein by reference.

5.2.1.22 LIFE CYCLE COST ANALYSIS (LCCA). During the Schematic Design and no later than 50% Design Development the Design-Build Firm and its consultants shall complete the LCCA required by Appendix Q of the Owner's Design Guidelines and present those to the Owner showing the results of the analysis supporting the recommended solution for incorporation into the 100% Design Development documents.

5.2.1.23 LIFE SAFETY ENGINEERING CONSULTANT. The Design-Build Firm shall employ a qualified Fire Protection and Life Safety Engineering Consultant experienced in the design and third-party

certification of building fire alarm systems in accordance with NFPA 72 and Title 28, Part 1, Chapter 34. Subchapter F. of the Texas Administrative Code (Fire Alarm Rules). The Life Safety Consultant's services shall include, without limitation, (1) preparing fire alarm system design plans and specifications, (2). performing third party certification as outlined in attached Exhibit titled "Life Safety Engineering Consultant Fire Alarm Testing and Acceptance Procedures". (3) participating in the Owner's technical review process and responding to comments made during the reviews. The third-party consultant must be an independent business entity from that of the fire alarm and fire protection installation subcontractor.

5.2.1.24 TPDES CONSULTANT. Design-Build Firm shall employ a qualified Consultant (the "TPDES Consultant"), experienced in the Texas Pollutant Discharge Elimination System (TPDES) requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "BMPs"), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Project Architect/Engineer or other subcontractors under this Contract, (2) preparing of Storm Water Pollution Prevention Plans (SWPPPs) and, as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (3) the drafting of technical specifications governing the Design-Build Firm's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites ("General Permit") No. TXR 150000 and governing the Design-Build Firm's recommended courses of action under BMPs. The TPDES Consultant shall insure that the storm water pollution prevention plan has been prepared for the site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The University of Texas component on which the site is located. The TPDES Consultant, through the Design-Build Firm, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Design-Build Firm's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to ensure that the Design-Build Firm of each project can comply with TPDES requirements and BMPs. DESIGN-BUILD FIRM SHALL INDEMNIFY AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO AN ACT OR OMISSION OF DESIGN-BUILD FIRM, ARCHITECT OR ITS CONSULTANTS.

5.2.1.25 REGISTERED ACCESSIBILITY SPECIALIST. The Design-Build Firm shall employ an independent contract provider under contract with TDLR to include the Preliminary Plan Review no later than 100% DD and Final Plan Review prior to issuance of any documents for construction and Field Inspections during construction of placed work to coincide with the pre-final inspections. These services are related to the provisions of the Texas Architectural Barriers Act (Article 9102, T.C.S.).

5.2.1.26 AUDIO VISUAL / DATA AND TELECOMMUNICATIONS CONSULTANT SERVICES. The Design-Build Firm shall employ a Consultant or Consultants to provide expertise in audio visual / data and telecommunications systems design for each design phase and inspection during construction. The consultant shall also have experience in the design of digital gaming environments.

5.2.1.27 **SECURITY CONSULTANT SERVICES.** The Design-Build Firm shall employ a Security Consultant to provide expertise in security design for each design phase and inspection during construction.

5.2.1.28 **BUILDING ENVELOPE CONSULTANT SERVICES.** The Design-Build Firm shall employ a building envelope Consultant during the Design Development and Construction Document Phase. Consultant shall focus on design of the overall building envelope including roofs, curtain wall / glass and glazing systems, flashing assemblies, vertical wall components, systems and assemblies, vapor barriers and retarders, sealants, above and below grade waterproofing systems and juxtaposition of each envelope system or component within the proposed construction. Other responsibilities include review and development of building envelope specifications as well as recommendation of acceptable testing laboratories, field testing requirements, acceptable manufacturers, fabricators and installers; review and comment on the design and detailing by others.

5.2.1.29 **CONVEYING SYSTEMS CONSULTING SERVICES.** The Design-Build Firm shall employ a conveying system Consultant during the Design Development and Construction Document Phase. The Consultant shall investigate and make recommendations on the number and type of elevators, escalators or any other conveying system required for the project. Services shall also include full coordination with campus operations for creation of specifications and design criteria that meets campus service requirements and the requirements of Texas Department of Licensing and Regulation.

5.2.1.30 **BUILDING MAINTENANCE STRATEGY (BMS).** The Design-Build Firm and its consultants shall develop and present to the Owner in a series of meetings at no later than 50% DD, the proposed criteria, design, and specifications required to maintain the Project. The BMS shall demonstrate clear means of access for reasonably and safely maintaining, removing and replacement of equipment and systems regardless of location. The BMS shall address removal and replacement of major MEP systems without demolition of the building's interior walls, ceilings, doors or its exterior envelope. The BMS shall address components such as light fixtures, speakers, projection equipment, fire alarm strobes, pull stations, emergency off, electrical disconnects, electrical switch gear, serviceable terminations, motors, drives, governors, grounding systems, generators, pumps, gaskets, gauges, fans, bearings, tanks, filters, strainers, valves, drains, clean outs, siphons, coils, air handling units, elevator equipment, sprinkler heads, pre-action systems, VAV boxes, louvers, dampers, actuators, overhead doors, insect screens, etc. The BMS shall address all roofing systems and their replacement as well as roofing components including lighting protection systems, scuppers, drains, fall arrest, fall restraint, fall protection, ladders, and suspended maintenance equipment. The BMS shall also address exterior features such as manholes, cisterns, grease traps, water retention systems, landscaping, light posts, security lighting and pest deterrent systems. The BMS shall also demonstrate equipment staging (especially that required for servicing the roof and faces of the building) loading dock operations, vehicle access, size, maneuvering and turning radius. In addition to the building codes and standards required of the project the BMS shall also demonstrate compliance with current OSHA standards / regulations applicable to the scope proposed.

5.2.1.31 **OWNER'S PROJECT REQUIREMENTS (OPR).** Before proceeding with Project Programming, Design-Build Firm and its consultants shall prepare and submit to the Owner for approval a comprehensive OPR. The OPR is intended to supplement and inform traditional Facility Programming effort to define goals, expectations, and functional needs to better address evolving requirements for energy efficiency, sustainability, environmental quality, safety, security, commissioning, maintenance, and long-term cost of ownership. The OPR is also intended to facilitate confirmation that the completed Project fulfills the established criteria. Working with the Owner the Design-Build Firm and its consultants shall develop and lead a series of collaborative workshops and surveys to gather input and build consensus of key stakeholders for development of the OPR. All workshops shall be led by the Project Architect / Engineer responsible for the design of the project. The OPR may be modified and updated by the Design-Build Firm and its consultants as objectives and criteria are further refined in the subsequent Basis of Design and

Programming efforts. The anticipated services and deliverables under the are summarized in attached Exhibit, the Owner's Project Requirements template. The Design-Build Firm and its consultants shall plan to meet with representatives of the Owner and stakeholders as required during the development of the OPR and shall revise the OPR as necessary to achieve approval of the Owner.

5.2.1.32 PROGRAMMING / VISIONING SERVICES. Before proceeding into the Schematic Design Phase, the Design-Build Firm and its entire consultant team including the Project Architect, Landscape Architect, Structural Engineer, Mechanical Engineer, Plumbing Engineer, Electrical Engineer, Civil Engineer, (*Editor's Note: Include or Delete consultants as appropriate for the anticipated needs of the project: Audio/Visual, Data/Telecommunications and Security Consultants, Life Safety Consultant Laboratory Design Consultant, Hazardous Material Abatement Consultant, Commissioning Consultant and Constructability Contractors*), or other consultants required of this project, working with the Owner shall prepare a comprehensive Facility Program for the Project. This Facility Program shall be prepared in accordance with the Owner's Facilities Programming Guidelines which are hereby incorporated herein by reference. The anticipated services and deliverables under the responsibility of the Project Architect/Engineer are summarized in an attached Exhibit, the Anticipated Programming Deliverables. The Project Architect/Engineer shall plan to meet with representatives of the Owner as required during the development of the Facility Program and shall revise the Program as necessary to achieve approval of the Owner.

5.2.1.33 OWNER'S BASIS OF DESIGN (BOD). The Design-Build Firm and its consultants no later than the completion of Programming, each stage of the Design Services, and at Substantial Completion of the project, shall prepare, review and update a Basis of Design document using the Owner's template Exhibit attached to this agreement, that records the general business expectations, performance criteria and special requirements as they relate to space, site, and technical design elements, using both narrative descriptions and lists of individual items that support the design process documenting the primary thought processes and assumptions behind design decisions that are made. Reviews shall occur in conjunction with the design reviews of the project listed in Article 25.3. The Design-Build Firm and its consultants shall prepare and update the final version of the Basis of Design Document within 30 days following final Substantial Completion.

5.2.1.34 WIND / EXHAUST RE-ENTRAINMENT / EMISSIONS CONTROL ANALYSIS SERVICES. The Design-Build Firm shall employ a Wind Study Consultant to identify adverse or undesirable wind and wind pressure conditions created by the Project's proposed design and location. Consultant's studies shall also investigate the potential for undesirable re-entrainment levels from any existing or proposed exhausts and existing or proposed sensitive receptors (i.e., air intakes, entries, windows, outdoor spaces, etc.) using dispersion modeling. Findings from each study should include mitigative solutions in the form of design recommendations for incorporation into the Project. Design recommendations shall ensure applicable air quality standards and odor thresholds are met at all sensitive receptor locations. Studies shall also include detailed dispersion modeling to optimize the minimum discharge velocity and flow rate for the building exhausts to achieve long-term energy savings.

5.2.1.35 FURNITURE PLANNING, DESIGN and PURCHASING SERVICES. The Design-Build Firm shall employ a Texas Board of Architectural Examiners Registered Interior Designer to provide expertise in furniture planning and design services for the project. The Interior Designer shall also be capable of assisting the Owner in advertising, bidding and award of furniture vendor contracts as well as the coordination and oversight of furniture installation.

5.2.1.36 LIGHTING CONSULTANT SERVICES. The Design-Build Firm shall employ a "Specialized Architectural Lighting Design Consulting Service" for services above and beyond the "basic electrical engineering services" provided in the standard design guidelines which are deemed basic "illumination

engineering”. Consultant will provide professional services that focus not only on quantitative aspects of lighting but rather the many qualitative aspects as well. Consultant will use light to integrate with and shape spaces, aid in wayfinding, support special events, and create a cohesive visual environment that supports the mission of the project and university. Scope is limited to selected highly “visible” interior and exterior portions of the project that are critical to the success of the program and the image of the building. Scope should include; lighting presentation with Owner for discussion on current lighting standards and future lighting technologies, graphic narrative visually describing the lighting design intent; presentation(s) with owner for discussion on selection and maintenance; meeting(s) with CMAR to review scope of lighting and controls; specification of all lighting and lighting maintenance/services equipment, three (3) equal fixtures for all; production of lighting details in coordination with final architectural details; substitution request reviews for VE items; response to contractor field Questions; in-field fixture aiming and review of installation; and response to Commissioning Agents’ questions on specialty controls.

5.2.1.37 SIGNAGE. The Design-Build Firm shall employ a Consultant with expertise in designing building, wayfinding, and code required signage per the Owner’s requirements.

5.2.1.38 Design-Build Firm shall not proceed to any subsequent stage of Design Services until Owner has authorized Design-Build Firm to proceed in writing, except at the Design-Build Firm’s sole financial risk.

5.2.2 Pre-Design Stage

5.2.2.1 The Design-Build Firm shall provide a preliminary evaluation of the Owner’s Design Criteria and the Construction Cost Limitation, each in terms of the other.

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

5.2.2.3 The Design-Build Firm shall review laws, regulations, statutes, and codes applicable to the design and construction of the Project and advise the Owner if any program requirement may cause a violation of such requirements.

5.2.2.4 Before proceeding to the Schematic Design Stage, the Design-Build Firm shall obtain Owner’s written approval of the Facility Program and the preliminary construction cost estimate and written authorization to proceed.

5.2.3 Schematic Design Stage

Based on the approved pre-design documents and any adjustments to the Program or Construction Cost Limitation authorized by the Owner, the Design-Build Firm shall develop sufficient alternative approaches to design and construction of the Project and review them with the Owner. The Design-Build Firm shall prepare Schematic Design documents, and a preliminary construction cost estimate and submit them to the Owner for approval. The construction cost estimate shall affirm adherence to the Construction Cost Limitation.

5.2.3.1 The Design-Build Firm shall furnish and deliver to the Owner the number of complete printed sets of Schematic Design documents as required.

5.2.3.2 Before proceeding to the Design Development Stage, the Design-Build Firm shall obtain Owner's written authorization to proceed and the Owner's approval of the preliminary construction cost estimate.

5.2.4 Design Development Stage

5.2.4.1 Based on the approved Schematic Design documents and any adjustments to the Program or Construction Cost Limitation authorized by the Owner, the Design-Build Firm shall prepare Design Development documents, and a detailed construction cost estimate and submit them to the Owner for approval. The Design Development Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The detailed construction cost estimate shall confirm adherence to the Construction Cost Limitation

5.2.4.2 The Design-Build Firm shall furnish and deliver to the Owner the number of complete printed sets of Design Development documents as required.

5.2.4.3 The Design-Build Firm shall as a Basic Service prepare Board of Regents presentation materials for the Owner's use in Design Development Approval. The presentation materials shall be produced as electronic files suitable for insertion into a Microsoft Power Point presentation. Presentation slides shall accurately reflect the Project conditions and be 8K (7680 x 4320 pixels) or greater color renderings as follows:

- Project map location in the context of the regional area
- Project map location in the campus context
- Project Site and Roof Plans
- Four (4) detailed exterior perspective elevations as determined by the Owner.
- Two (2) detailed interior perspective elevations as determined by the Owner.
- Key project metrics including costs, ASF and GSF, milestones and schedule durations.

5.2.4.4 Before proceeding into the Construction Document Stage, the Design-Build Firm shall obtain Owner's written approval of the Design Development Documents and the mutually established Construction Cost Limitation and any sub-Construction Cost Limitations and the Guaranteed Maximum Price.

5.2.5 Construction Documents Stage

5.2.5.1 Based on the approved Design Development Documents and any further adjustments to the Program, the Construction Cost Limitation or the Project Construction Cost as authorized by the Owner, the Design-Build Firm shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the Owner for approval. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the approved Project Construction Cost.

5.2.5.2 The Construction Documents shall be consistent in all material respects with Design-Build Firm's prior design proposals to Owner and with the approved Guaranteed Maximum Price proposal.

5.2.5.3 The Design-Build Firm shall advise the Owner regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.

The Design-Build Firm shall assist and advise the Owner in connection with the Owner's responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.

5.2.5.4 Following Owner's approval of the Construction Documents, Design-Build Firm shall not be entitled to any adjustment in the approved Project Construction Cost except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project that are ordered by Owner in writing in accordance with the Uniform General Conditions for University of Texas System Building Construction Contracts.

5.2.6 Project Documents and Electronic Files

5.2.6.1 The Design-Build Firm, at its sole expense, shall provide the Owner all Project deliverables required by and in conformance with Article 25.

5.2.6.1.1 Electronic deliverables shall be provided to the Owner on solid state disk drives or other media or forms of access as determined by the Owner as follows:

5.2.6.1.1.1 Specifications and reports shall be provided to the Owner in bookmarked, searchable .pdf and editable MS Word (.doc) format.

5.2.6.1.1.2 Drawings shall be provided to the Owner in bookmarked, searchable .pdf, and the latest version of AutoCAD (.dwg.) and include font libraries and xrefs.

5.2.6.1.1.3 Spreadsheets shall be provided to the Owner in bookmarked, searchable .pdf and editable MS Excel (.xlsx) format.

5.2.6.1.1.4 Building Information Model(s), energy models, thermal models, fluid dynamic models, heat trace models, mapping models, daylighting models, smoke models or any other models or simulation models used to produce the Project's design shall be provided to the Owner in their native formats unless another format is requested otherwise by the Owner.

5.2.6.1.2 The Design-Build Firm shall not be relieved of responsibility when files are delivered if the files do not meet established requirements or are defective.

5.2.6.1.3 The Design-Build Firm shall verify all databases for correctness prior to submitting data files.

5.2.6.1.4 The Design Build Firm and its consultants shall utilize a CADD drawing-layering standard comparable to the current AIA standard and shall review proposed standard with the Owner for acceptance prior to commencing drawing preparation.

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

5.2.6.3 Design-Build Firm shall identify to Owner in writing anything in Design-Build Firm's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements,

procedures, requests for action, and other data supplied to Design-Build Firm (by Owner or any other party) that Design-Build Firm regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Design-Build Firm shall be solely responsible for the use of such documents or data unless Design-Build Firm advises Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instruct the Design-Build Firm in writing to proceed in accordance with the documents or data as originally given.

5.2.6.4 The Design-Build Firm shall pay all costs for plans, specifications and other design and construction documents used by the Design-Build Firm and its consultants and subcontractors, and all documents produced for review by the Owner, except for changes generated solely by Owner.

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

5.2.7 Additional Design Services

5.2.7.1 Additional Design Services shall be provided by the Design-Build Firm and paid for in accordance with this Agreement by the Owner if authorized in writing by the Owner. Prior to commencing any Additional Design Service, Design-Build Firm shall submit to the Owner an Additional Services Proposal in a form acceptable to the Owner. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Design Services, the basis upon which Design-Build Firm believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Services. Design-Build Firm shall proceed with the Additional Design Service only after written acceptance by Owner of the Additional Services Proposal.

5.2.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Design-Build Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement. *(EDITOR'S NOTE – Amend this list as appropriate for the project scope. Contact UT System Office of Capital Projects for additional assistance)*

5.2.7.3 The following services, if requested by the Owner, are Additional Design Services:

- a. Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project.
- b. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- c. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- d. Providing services to make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by the Owner.
- e. Providing coordination of Work performed by Owner's separate Contractors or by the Owner's own forces.
- f. Providing services in connection with the Work of separate consultants retained by the Owner.
- g. Providing services for planning tenant or rental spaces.

- h. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or due to Changes approved by the Owner
- i. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.
- j. Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, except as necessary and appropriate for the performance of the Design Phase Services required in connection with construction performed by the Owner.
- k. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the Design-Build Firm or a Subcontractor.
- l. Providing services after final payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract.
- m. Preparing to serve or serving as an expert witness at the request of the Owner in connection with any public hearing, arbitration proceeding or legal proceeding.
- n. Providing any other services not otherwise customarily furnished in accordance with generally accepted architectural or engineering practice.
- o. Providing a Hazardous Material Abatement Consultant to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through the Program, Schematic Design, Design Development, Construction Document and Construction Service Phases of the Project. The Hazardous Material Abatement Consultant shall be selected on the basis of competence and qualifications pursuant to *Texas Education Code* section 51.780(f)(1). Consultant shall review Owner provided surveys, make recommendations regarding the need for additional surveys, develop design and cost alternatives for hazardous material abatement, prepare plans and specifications to include abatement in the general construction scope of work, provide a licensed individual to monitor hazardous material removal as required by State and EPA guidelines, and prepare a final abatement report. Design-Build Firm shall provide the Owner with a written itemized cost proposal to provide Hazardous Material Abatement Consulting services, including coordination of the Design-Build Firm. Hazardous Materials Abatement insurance shall be provided by the Design-Build Firm and coverage for this service will not be included in any Owner provided insurance program.
- p. Providing a Commissioning Consultant to provide commissioning expertise through the Program, Schematic Design, Design Development, Construction Document and Construction Services Phases of the Project. The Commissioning Consultant shall review input related Project objectives, methods and concepts of commissioning.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

6.1 The Pre-Construction Phase Fee is the total compensation payable to the Design-Build Firm for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner. The Pre-Construction Phase Fee shall be a lump sum amount based on the CCL established in this Agreement.

6.2 Except as specifically allowed in paragraph 6.4, the Design-Build Firm shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

6.3 Costs associated with the following items are specifically, but not exclusively, in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; fees and other payments to the Project Architect/Engineer, its consultants and other professional service providers hired by the Design-Build Firm to perform the Design Services; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

6.4 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. If the CCL is changed materially before acceptance of the GMP Proposal, the Pre-Construction Phase Fee shall be adjusted in proportion to the change in the CCL. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

6.5 For Additional Pre-Construction Phase Services that are approved in advance and in writing by the Owner, Design-Build Firm shall be entitled to additional compensation computed as a:

6.5.1 A pre-established lump sum amount; or

6.5.2 The hourly cost of Design-Build Firm's employee's or consultants who actually perform the Additional Services based on the employee's Direct Salary Expense rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

6.5.3 As otherwise agreed to by the parties in advance of performing the Additional Pre-Construction Phase Services.

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, Design-Build Firm shall prepare and submit a Guaranteed Maximum Price ("GMP") Proposal to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner in the attached exhibits. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Design-Build Firm shall not withdraw its Guaranteed Maximum Price Proposal for ninety calendar (90) days following submission to the Owner.

7.2 The Design-Build Firm shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Design-Build Firm in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Design-Build Firm's estimated General Conditions Costs and estimated Costs of the Work organized by trade; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.

7.4 The Guaranteed Maximum Price Proposal shall allow for all changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.5 The GMP Proposal may include a Design-Build Firm's Contingency amount as allowed under Direct Construction Cost.

7.6 Included with its GMP Proposal, Design-Build Firm shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

7.7 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

7.8 In submitting the GMP Proposal, the Design-Build Firm represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excluded in writing by the Owner. Upon Owner's acceptance of the GMP Proposal, the Design-Build Firm shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP. Any costs that exceed the GMP shall be borne solely by the Design-Build Firm without reimbursement by the Owner. Design-Build Firm is responsible for all design, including incidental designing/detailing as required by the Specifications for shop drawing purposes, except for design provided by Owner's independent Design Consultants, if any.

7.9 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, the Design-Build Firm shall submit for the Owner's acceptance a schedule for the performance of Construction Phase Services as specified. The Construction Phase Schedule shall include at least 10 workdays or other reasonable periods of time as agreed to by the Owner for the Owner's review and acceptance of design drawings and submissions and for approval of authorities having jurisdiction over the Project. Upon acceptance of a Guaranteed Maximum Sum Proposal by the Owner, the Construction Phase Schedule shall not be modified except for good cause as approved by the Owner at the Owner's sole option and discretion.

7.10 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

7.11 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Design-Build Firm. Upon acceptance by the Owner of the GMP Proposal in writing, both parties

shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Owner and the Design-Build Firm. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.

7.12 Following Owner acceptance of the GMP Proposal, Design-Build Firm shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Design-Build Firm and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

7.13 The Design-Build Firm shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.14 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Design-Build Firm has received bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work. In proposing a lump sum amount, the Design-Build Firm shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

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

7.15 The Design-Build Firm shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price proposal and shall report this information to the Owner monthly with Design-Build Firm's recommendation for selection of a bid/proposal for each subcontracting package.

ARTICLE 8 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Design-Build Firm shall not incur any subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Design-Build Firm shall perform the following Construction Phase Services.

8.1 General Responsibilities

8.1.1 Construct the Work in strict accordance with the Construction Documents and as required by the Uniform General Conditions and Owner's Specifications within the time required by the Project Schedule approved by Owner.

8.1.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to perform construction administration, coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

8.1.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Design-Build Firm in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

8.1.4 Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.

8.1.5 In addition to attending Owner's regularly scheduled Project progress meetings, Design-Build Firm shall schedule, direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Design-Build Firm shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

8.1.6 Coordinate delivery and installation of Owner-procured material and equipment.

8.1.7 In accordance with Owner's Standard Uniform General Conditions for University of Texas System Building Construction Contracts, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

8.1.8 Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist Owner or Project Architect/Engineer in obtaining all approvals required from authorities having jurisdiction over the Project.

8.1.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

8.1.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Design-Build Firm shall keep the Owner informed of the progress and quality of the Work.

8.1.11 Design-Build Firm shall promptly correct any defective Work at Design-Build Firm's sole expense, unless the Owner specifically agrees to accept the Work.

8.1.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the

Construction Documents. The Design-Build Firm shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

8.1.13 In accordance with the Uniform General Conditions for University of Texas System Building Construction Contracts regarding Record Documents and the Owner's Project Closeout Specification, the Design-Build Firm shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

8.2 Construction Contract Administration

8.2.1 The Design-Build Firm, through the Project Architect/Engineer, shall furnish the following Contract Administration Services during the Construction Phase. Fees for these services are included in the Design-Build Firm's Construction Phase Fee.

The Project Architect/Engineer shall assist in the administration of the Contract for Construction as set forth below and in the project manual and the current edition of the Owner's A/E Design Guidelines and Owner's Design Criteria.

8.2.2 The Project Architect/Engineer, and their related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Project Architect/Engineer shall observe the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in the Work.

8.2.3 In addition to site visits for general inspection and observation, the Project Architect/Engineer shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Project Architect/Engineer shall provide written reports of all site visits to the Owner and the Design-Build Firm within three working days.

8.2.4 The Design-Build Firm shall establish and maintain a numbering and tracking system for all project records, including changes, requests for information, submittals, and supplementary instructions shall provide updated records at each Owner's meeting and when requested.

8.2.5 The Design-Build Firm shall administer all regular progress and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within seven days. The Project Architect/Engineer shall attend the Design-Build Firm's regularly scheduled planning meetings.

8.2.6 The Design-Build Firm shall prepare an agenda for and conduct job conferences for attendance by representatives of the Design-Build Contractor, major Trade Contractors and Subcontractors, the Project Architect/Engineers and Owner and prepare and distribute minutes of the meetings and a construction status report.

8.2.7 The Project Architect/Engineer's certification of Design-Build Firm's Application for Payment shall constitute a representation by the Project Architect/Engineer to the Owner, based on the Project Architect/Engineer's observations at the site as provided in this Agreement and on the data comprising the Design-Build Firm's Application for Payment that the Work has progressed to the point indicated; that, to the best of the Project Architect/Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. However, the certification of a Design-Build Firm's Application for Payment shall not be a representation that the Project Architect/Engineer has made any

examination to ascertain how and for what purpose the Design-Build Firm has used the moneys paid on account of the Contract Sum.

8.2.8 The Project Architect/Engineer, with the approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Architect/Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design-Build Contractor and shall render written recommendations to the Owner within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.

8.2.9 The Project Architect/Engineer shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Project Architect/Engineer's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Project Architect's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents.

8.2.10 The Project Architect/Engineer shall review and approve or take other appropriate action upon the Design-Build Firm's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents and shall respond to Design-Build Contractor's inquiries and questions and provide such supplemental information as appropriate. One copy of each submittal, shop drawing, product data, etc., shall be provided to the Owner.

8.2.11 The Project Architect/Engineer shall assist the Owner in the review of the Design-Build Firm's requests for change orders and pricing thereof.

8.2.12 The Project Architect/Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the Project Architect/Engineer shall review the cost and time estimate and recommend to the Owner whether the proposal is appropriate. The Project Architect/Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change.

8.2.13 All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

8.2.14 The Project Architect/Engineer shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Pre-Final Inspections to determine the Dates of Substantial Completion, and Final Acceptance. The Project Architect/Engineer shall also participate in the Owner's final walk thru inspection one year after Final Completion.

8.2.15 The Project Architect/Engineer shall review, for conformance with the Contract Documents, Design-Build Firm's submission of guarantees and warranties.

8.2.16 The Project Architect/Engineer shall assist the Owner in checking as-built drawings, documents and deliverables during the Work in association with certifying progress payments and shall review final as-built documents for completeness and compliance with Contract requirements.

8.2.17 The Project Architect/Engineer shall prepare and administer the construction punch list until all punch list items have been resolved to the Owner's satisfaction.

8.2.18 The Project Architect/Engineer shall review Design-Build Firm's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Design-Build Firm for conformance with the requirements of the construction documents.

ARTICLE 9 OWNER'S RESPONSIBILITIES

9.1 The Owner will provide the Design Criteria Package for the Project pursuant to *Texas Education Code* section 51.780(a)(3).

9.2 The Owner will provide a preliminary Design/Build budget and schedule for the Project. The budget will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner. The schedule will set forth the Owner's plan for milestone dates and completion of the Project.

9.3 The Owner will designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative shall examine the documents submitted by the Design-Build Firm and shall render decisions pertaining thereto.

9.4 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, hazardous materials surveys, laboratory testing, environmental or other special consultants to develop such additional information as may be necessary for the design of the project. The Design-Build Firm shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.

9.5 The Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as specified to be performed by the Owner in the Construction Documents.

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

9.7 The Owner shall examine the design documents submitted by the Design-Build Firm and provide comments concerning corrections or amendments to such documents in writing to the Design-Build Firm. The Owner may obtain independent review of the design documents by its own Design Consultant. The Owner may require the Design-Build Firm to halt production during design review.

9.8 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Design-Build Firm's services and of the Work.

9.9 The Owner may designate one or more Construction Inspectors of its own who shall be given access to the Work as requested or needed. The provision of such Inspectors by Owner shall not reduce or lessen in any respect Design-Build Firm's responsibilities for the Work. Design-Build Firm shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by Design-Build Firm, and for constructing the Project in strict accordance with the Contract Documents.

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

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

10.1 Design drawings, specifications, and other documents furnished by the Design-Build Firm or Project Architect/Engineer are instruments of service and shall remain their property whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies and CADD copies, of the drawings, specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. Design-Build Firm and Project Architect/Engineer hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use the drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose regardless of whether their services for the Project are completed, modified or terminated. This license shall survive the termination of this Agreement. If this Agreement is terminated, Design-Build Firm and Project Architect/Engineer hereby expressly consent to the employment by Owner of a substitute architect/engineer to complete the Design Services under this Agreement, with the substitute architect/engineer having all the rights and privileges of the original Project Architect/Engineer.

10.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design-Build Firm's or Project Architect/Engineer's rights.

ARTICLE 11 TIME

11.1 Unless otherwise approved, the Owner and the Design-Build Firm shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

11.2 Time limits stated in the Contract Documents are of the essence of this Agreement. The Design-Build Firm shall be responsible for schedule development, updating and reporting throughout the entire Project, including Pre-Construction Phase Services and Construction Phase Services. The Design-Build Firm shall comply in all regards with requirements set forth in the Owner's Project Planning and Scheduling Specifications.

ARTICLE 12 PAYMENTS

12.1 General Requirements

12.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost

estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Design-Build Firm's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

12.1.2 Pre-Construction Phase expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment. Allowable expenses are limited to the reimbursable amounts described Article 24, Compensation.

12.1.3 Retainage as specified in the Uniform General Conditions for University of Texas System Building Construction Contracts will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work, General Conditions, and the Design-Build Firm's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

12.1.4 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Design-Build Firm is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

12.1.5 This Agreement is subject to the assessment of liquidated damages against Design-Build Firm. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Design-Build Firm.

12.1.6 Owner shall have the right to withhold from payments due Design-Build Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-Build Firm or any Subcontractor or failure of Design-Build Firm or any Subcontractor to perform their obligations under this Agreement.

12.1.7 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment, to Design-Build Firm under any of the following circumstances:

12.1.7.1 Design-Build Firm persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;

12.1.7.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, Owner shall pay for those services performed in accordance with the Construction Documents;

12.1.7.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

12.1.7.4 Design-Build Firm is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors, or other third parties used in connection with any services or materials for which Owner has made payment to Design-Build Firm;

12.1.7.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;

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

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

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

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

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

12.2 Pre-Construction Phase Payments

12.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Design-Build Firm's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the schedule in Article 24, Compensation.

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

12.3 Construction Phase Payments

12.3.1 Payments for Construction Phase Services shall be made as provided for in the Uniform General Conditions for University of Texas System Building Construction Contracts and the Owner's Specifications. All payment requests shall be submitted on an Application for Payment with a schedule of values approved by the Owner and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of the Design-Build Firm's Application for Payment. Failure to submit "HUB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment Application will cause rejection of the application by the Owner and its return to the Design-Build Firm.

12.3.2 The Design-Build Firm's Construction Phase Fee and Architect/Engineers' Construction Contract Administration Fee shall each be shown as separate line items on the Schedule of Values. Payment of the Design-Build Firm's Construction Phase Fee and the and Architect/Engineers' Construction Contract

Administration Fee shall be made with each Application for Payment in a proportion so as to not exceed the percentage completion of the Cost of the Work of the Project.

12.3.3 For General Conditions Costs, Design-Build Firm's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

12.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been completed and shall not exceed the total value of the subcontract amount.

12.3.5 Design-Build Firm's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit that, to the best of Design-Build Firm information, knowledge and belief, the release includes and covers all materials and services over which Design-Build Firm has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Design-Build Firm may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Design-Build Firm shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

12.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Design-Build Firm and has been audited and verified by Owner or Owner's representatives.

12.3.7 Nothing contained herein shall require the Owner to pay the Design-Build Firm an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Design-Build Firm. The total amount of all Construction Phase payments to the Design-Build Firm shall not exceed the actual verified Direct Construction Cost for the Project plus the Design-Build Firm's Construction Phase Fee.

12.3.8 The acceptance by Design-Build Firm or Design-Build Firm's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Design-Build Firm, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Design-Build Firm as unsettled at the time of the Request for Final Payment.

ARTICLE 13 DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that the Design-Build Firm actually and necessarily incurs constructing the Work in strict compliance with the Construction Documents. Direct

Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted. References in the Uniform General Conditions for University of Texas System Building Construction Contracts to adjustments in “cost” or “costs” mean the Direct Construction Cost.

13.1 General Conditions Costs

13.1.1 Design-Build Firm is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project plus thirty (30) calendar days. Design-Build Firm is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner.

13.1.2 Allowable General Conditions items are identified below and further detailed in the attached Exhibit. These items shall be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the schedule of values. Items not specifically included below or in the exhibit will not be allowed as a General Condition costs.

13.1.2.1 Personnel Costs. The actual Worker Wage Rate for Design-Build Firm’s hourly employees and the Monthly Salary Rate of Design-Build Firm’s salaried personnel who are identified to the Owner in advance and in writing but only for the time stationed at the Project site with the Owner’s prior consent. The Project Executives and Manager’s Monthly Salary Rate may be included in the General Conditions Costs only when those individuals are on site directly managing the Project. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Design-Build Firm for services performed for the Project.

13.1.2.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Design-Build Firm’s jobsite office if incurred at the Project site and directly and solely in support of the Work.

13.1.2.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Design-Build Firm, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

13.1.2.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Design-Build Firm, provided they are included in the list of allowable General Condition Line Items and Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Design-Build Firm, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the “Rental Rate Blue Book for Construction Mobilization Costs” published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

- 13.1.2.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Design-Build Firm shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.
- 13.1.2.6 Permit and inspection fees that are not subject to exemption.
- 13.1.2.7 Premiums for insurance and bonds to the extent directly attributable to this Project. Premiums for subcontractor bonds and/or subcontractor default insurance purchased for subcontractor work are excluded from General Conditions costs.
- 13.1.2.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

13.2 Cost of the Work

13.2.1 Design-Build Firm is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Design-Build Firm is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization.

13.2.2 Cost of the Work includes the following:

13.2.2.1 Costs of materials and equipment purchased directly by the Design-Build Firm and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the Uniform General Conditions for University of Texas System Building Construction Contracts.

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

13.2.2.3 Payments made to Subcontractors and their vendors or suppliers by Design-Build Firm for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers, however, the cost of subcontractor payment and performance bonds, if any, are specifically excluded from the Cost of the Work.

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

13.2.2.5 Testing fees pursuant to the Uniform General Conditions for University of Texas System Building Construction Contracts.

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

13.2.2.7 Costs associated with any subcontractor default insurance program (sometimes referred to as SUBGUARD) provided or required by the Design-Build Firm ARE EXPLICITLY EXCLUDED from the Cost of the Work.

13.3 Design-Build Firm's Contingency

13.3.1 The Guaranteed Maximum Price Proposal may include a Design-Build Firm's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

13.3.2 Any re-allocation of funds from the Design-Build Firm's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use the Design-Build Firm's Contingency, the Design-Build Firm shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

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

13.3.4 As the Construction Documents are finalized and the Buyout of the Work progresses the Design-Build Firm's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in the Design-Build Firm's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

ARTICLE 14 CONSTRUCTION PHASE FEE

The Design-Build Firm's Construction Phase Fee is the maximum amount payable to the Design-Build Firm for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Owner elsewhere in the Agreement. References in the Uniform General Conditions for University of Texas System Building Construction Contracts to Design-Build Firm's "overhead" and "profit" mean the Design-Build Firm's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items.

14.1 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 of the Design-Build Firm.

14.2 Salaries of Design-Build Firm's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

14.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the Design-Build Firm's personnel; and travel, per diem and subsistence expense of Design-Build Firm, its officers or employees except as specifically allowed under General Conditions.

14.4 In the event that the Design-Build Firm elects to provide or require participation in a subcontractor default insurance program (sometimes referred to as SUBGUARD), the entire cost of the insurance program and all costs related to the administration of the program shall be included in the Construction Phase Fee.

14.5 All costs associated with payment and performance bonds obtained from trade contractors or subcontractors, including subcontractors' bonds for change orders to subcontracts and the cost of any subcontractor bonds for minor work that might be included in the general conditions.

14.6 All costs associated with Construction Contract Administration Services including those provided by the Project Architect/Engineer or other consultants.

14.7 Any financial costs incurred by the Design-Build Firm including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

14.8 Any legal, accounting, professional or other similar costs incurred by the Design-Build Firm, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

14.9 Any Federal and/or State income and franchise taxes paid by Design-Build Firm. Any fines, penalties, sanctions or other levies assessed by any governmental body against Design-Build Firm.

14.10 Any cost arising out of a breach of this Contract or the fault, failure or negligence of Design-Build Firm, its Subcontractors, its Project Architects/Engineers or any person or entity for whom they may be liable. These costs include, without limitation: design errors and omissions, costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Design-Build Firm's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

14.11 The cost of all insurance deductibles payable by the Design-Build Firm and costs due to the failure of Design-Build Firm or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

14.12 All costs that would cause the Guaranteed Maximum Price to be exceeded, other than costs attributable to change orders which increase the contract amount. For change order work which increases the contract amount, other than Guarantee Maximum Price Change Orders, overhead and profit shall be determined in accordance with the "Changes" section of the Uniform and Supplementary General Conditions.

14.13 All costs not specifically identified as an element of the Direct Construction Cost.

ARTICLE 15 CONTRACT SAVINGS, ALLOWANCES, REBATES AND REFUNDS

15.1 If the allowable, final, verified, audited amount of the cost of General Conditions, Cost of the Work, Allowance items and Design-Build Firm's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. When buyout

of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

15.2 Items to be provided for through Owner's Special Cash Allowances shall be clearly identified in the Construction Documents and the Guaranteed Maximum Price proposal. The Cost of the Work included in the Owner's Cash Allowances shall be determined in accordance with the Uniform General Conditions for University of Texas System Building Construction Contracts. Any claim by the Design-Build Firm for an adjustment to an Owner's Cash Allowance amount included in the Guaranteed Maximum Price based on the cost of Allowance work shall be made within a reasonable time after the issuance of the Construction Documents for the Owner's Cash Allowance items. The Design-Build Firm shall not be entitled to any increase in its Construction Phase Fee for increases to Owner's Cash Allowance amounts that were initially based on estimates provided by the Design-Build Firm. Owner shall be entitled to retain 100% of the balance of any unused Owner's Cash Allowance amount.

15.3 The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the Design-Build Firm:

15.3.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, Design-Build Firm shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the Design-Build Firm or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the Owner's account.

15.3.2 Discounts earned by the Design-Build Firm through advance or prompt payments funded by the Owner. The Design-Build Firm shall obtain all possible trade and time discounts on bills for material furnished and shall pay bills within the highest discount periods. The Design-Build Firm shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

15.3.3 Rebates, discounts, or commissions obtained by the Design-Build Firm from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

15.3.4 Deposits made by Owner and forfeited due to the fault of the Design-Build Firm.

15.3.5 Balances remaining on any Allowances, the Design-Build Firm's Contingency, or any other identified contract savings.

15.4 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that Design-Build Firm may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

15.5 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

ARTICLE 16

PRE-EXISTING CONDITIONS; DESIGN ERRORS AND OMISSIONS

16.1 The Design-Build Firm acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project site, and it has thoroughly investigated those conditions. The results of Design-Build Firm's investigation have been considered in establishing the Guaranteed Maximum Price of the Work. Therefore, Design-Build Firm shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Design Phase Services or for Construction Phase Services arising from Project conditions that Design-Build Firm discovered or, in the exercise of reasonable care, should have discovered in Design-Build Firm's investigation.

16.2 Before proceeding with the Work, the Design-Build Firm shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Design-Build Firm is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Build Firm or its Project Architect/Engineer. Design-Build Firm shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

ARTICLE 17

BONDS AND INSURANCE

17.1. **Security Bond:** upon execution of this Agreement, Design-Build Firm shall provide a security bond on the form provided by the Owner in the amount of 5% of the Guaranteed Maximum Price. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds. Editor's Note: If a Security Bond is determined to not be necessary for the Project a letter from the Design-Build Firm's Surety is required for Agreement execution indicating the available bonding capacity for the "Design-Build Firms Budget Limit"

17.2. **Payment and Performance Bonds:** upon acceptance by the Owner of a Guaranteed Maximum Price Proposal, Design-Build Firm shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the Uniform General Conditions for University of Texas System Building Construction Contracts and Texas Higher Education Code 51.780. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3. **A/E and Design Services Insurance:** The Design-Build Firm, consistent with its status as an independent contractor, will carry and will cause its Architect/Engineer and its sub consultants to also carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the minimum limits of coverage described below. The costs of such insurance will be at the expense of the Design-Build Firm and its consultants.

17.3.1. Professional Liability Insurance (errors and omissions), acceptable to and approved by the Owner, with a limit of no less than:

\$1,000,000 each claim/\$2,000,000 aggregate for projects with total project cost less than \$10,000,000.

\$2,000,000 each claim/\$2,000,000 aggregate for projects with total project costs between \$10,000,000 and \$50,000,000.

\$5,000,000 each claim/\$5,000,000 aggregate for projects with total project cost between \$50,000,000 and \$100,000,000.

\$10,000,000 each claim/\$10,000,000 aggregate for projects with total project cost greater than \$100,000,000.

For consultants, Professional Liability Insurance (errors and omissions) limits shall be not less than \$1,000,000 each claim/\$2,000,000 aggregate

Such insurance shall provide coverage for claims arising out of an error, omission, or negligent act in the performance of professional services by or on behalf of Design-Build Firm. Coverage shall not be limited to bodily injury and property damage but shall also include economic loss. Policy shall not include pollution, mold, or asbestos exclusions. Claims-made coverage is acceptable, if the retroactive date on the policy predates the date that professional services are first performed under this contract. The policy must provide for the reporting of circumstances that may give rise to a claim. The policy must be continuously renewed for at least five (5) years following project completion. If coverage is allowed to lapse or the retroactive date on the policy is advanced, then Design-Build Firm or consultant shall purchase an extended reporting period of five (5) years, or the longest extended reporting period commercially available.

17.3.2. If any services are performed on Owner's premises, Design-Build Firm will carry and cause its consultants to carry the following additional insurance. The Design-Build Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the performance of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation

Statutory Limits

Employer's Liability

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

Commercial General Liability

\$1,000,000 each occurrence
\$2,000,000 aggregate

The required Commercial General Liability policy will be issued on a form that insures liability for bodily injury (including death), property damage, and personal and advertising injury assumed under the terms of this Agreement.

Business Auto Liability

Single Limit \$1,000,000 each occurrence

* If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

17.3.3. Evidence of all required insurance shall be provided on a Texas Department of Insurance approved certificate form (Acord Form is a Texas Department of Insurance pre-approved form) verifying the existence of all insurance after the execution and delivery of this Agreement and

prior to the performance of any services by Design-Build Firm under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate verifying the continued existence of all required insurance no later than 30 days after each annual insurance policy renewal. All insurance policies, except for worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insured for activities arising out of this contract on an ISO (CG 20 10 0704) or equivalent form. Workers compensation insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The University of Texas System, The University of Texas System and University. Commercial General Liability and Business Auto Liability insurance policies will be endorsed to provide primary and non-contributory coverage.

17.3.4. The Design-Build Firm shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Design-Build Firm fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Design-Build Firm.

17.3.5. The 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 their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Design-Build Firm.

17.3.6. The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Design-Build Firm and not covered by insurance shall be paid by the Design-Build Firm.

17.3.7. The cost of premiums for any additional insurance coverage, subcontractor default insurance programs or subcontractor payment and performance bonds, desired by the Design-Build Firm in excess of that required by this Agreement, Section 00 73 16 Project Insurance Requirements specification, the Uniform General Conditions for University of Texas System Building Construction Contracts, or the Contract Documents shall be borne solely by the Design-Build Firm out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.4. Owner Provided Insurance and Insurance Requirements for Design-Build Firm and Subcontractors; The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) and Owner's Builder's Risk Insurance (OBR) for the Construction Phase. Refer to Section 00 73 16 Project Insurance Requirements specification for program details and insurance requirements for the Design-Build Firm and Subcontractors.

17.4.1. The Owner's OCIP and OBR do not provide coverages during the Pre-Construction Phase.

17.4.2. Design-Build Firm's GMP Proposal shall exclude the cost of premiums for insurance coverage provided through the OCIP and OBR. The GMP Proposal shall only include the cost of premiums of all other insurance required by the Contract Documents.

17.4.3. The cost of premiums for any additional insurance coverage desired by the Design-Build Firm in excess of that required by this Agreement, the Section 00 73 16 Project Insurance Requirement specification, the Uniform General Conditions for University of Texas System Building Construction Contracts, or the Contract Documents shall be borne solely by the Design-Build Firm out of its fee.

17.4.4. Design-Build Firm shall include required OCIP and OBR insurance information in trade packages and indicate on proposal forms the insurance that proposers are to include and exclude in their proposals.

17.4.5. During construction, Owner may audit the Design-Build Firm's and Subcontractors' labor hours and certified payroll reports to determine actual insurance costs.

*(EDITOR'S NOTE: NON-OCIP/OBR OPTION - **FOR PROJECTS WHERE THE OWNER IS NOT PROVIDING OCIP/OBR INSURANCE COVERAGE**, UTILIZE THE FOLLOWING 17.4 LANGUAGE AND DELETE THE PRECEDING SECTION 17.4 LANGUAGE ABOVE. IN ADDITION, REMOVE 00 73 16 FROM THE FRONT END DOCUMENTS. FOR PROJECTS NOT ON THE CIP (CAPITAL IMPROVEMENT PROGRAM), REMOVE 01 23 35 FROM THE FRONT END DOCUMENTS. FOR CIP PROJECTS WITH AN EXCEPTION PER UTS 199, REFER TO THE EXCEPTION APPROVAL MEMO RE: 01 23 35.)*

17.4. Design-Build Firm Provided Insurance;

17.4.1. The Design-Build Firm, consistent with its status as an independent contractor, will carry and will cause its consultants and contractors to also carry, insurance coverages as described in the Uniform General Conditions for University of Texas System Building Construction Contracts and Owner's Special Conditions.

17.4.2. Design-Build Firm shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance stated in Sections 17.3 and 17.4 has been reviewed and accepted by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Design-Build Firm.

17.4.3. Prior to Notice to Proceed for Construction, Design-Build Firm to provide evidence of the required Builder's Risk Insurance, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate proposal package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

ARTICLE 18 DISPUTE RESOLUTION

18.1 All disputes against the Owner that arise from this Agreement, or the Project shall be resolved in accordance with the procedures and limitations of *Texas Government Code* Chapter 2260 and Article 15 of the Uniform General Conditions for University of Texas System Building Construction Contracts. The Owner designates the Assistant Vice Chancellor for Facilities Planning and Construction as its officer for examining, negotiating and resolving claims and counterclaims under Chapter 2260.

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

19.1 This Agreement may be terminated during Design Phase Services by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such fifteen (15) day period.

19.2 This agreement may be terminated by the Owner during Design Phase Services upon at least three (3) days written notice to the Design-Build Firm if the Project is to be temporarily or permanently abandoned.

19.3 At its sole discretion and option, the Owner may terminate this Agreement after the conclusion of the Pre-Design Stage, Schematic Design Stage, Design Development Stage, or the Construction Documents Stage of the Pre-Construction Phase or any time prior to acceptance of a Guaranteed Maximum Price Proposal.

19.4 In the event of termination that is not the fault of the Design-Build Firm, the Design-Build Firm shall be entitled to compensation for all services performed to the termination date together with Reimbursable Expenses then due provided, however, Design-Build Firm has delivered to Owner such statements, accounts, reports and other materials as required by below together with all reports, documents and other materials prepared by Project Architect/Engineer prior to termination. Upon such payment, Owner shall have no further obligation to the Design-Build Firm.

19.5 Termination of this Agreement shall not relieve Design-Build Firm or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Design-Build Firm. In the event of a termination, Design-Build Firm hereby consents to employment by Owner of a substitute Design-Build Firm to complete the services under this Agreement, with the substitute Design-Build Firm having all rights and privileges of the original Design-Build Firm of the Project.

19.6 As of the date of any termination of this Agreement, Design-Build Firm shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Design-Build Firm in connection with Design-Build Firm's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

19.7 If the Project is suspended or abandoned in whole or in part for more than three months, the Design-Build Firm shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Design-Build Firm's compensation for Pre-Construction Phase Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 20 INDEMNITY

20.1 SEE ARTICLE 3 OF THE UNIFORM GENERAL CONDITIONS FOR UNIVERSITY OF TEXAS SYSTEM BUILDING CONSTRUCTION CONTRACTS FOR DESIGN-BUILD FIRM'S GENERAL INDEMNIFICATION OBLIGATIONS.

ARTICLE 21 SPECIAL WARRANTIES

21.1 Owner and Design-Build Firm agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Build Firm's represented expertise and ability to provide design/build services. Design-Build Firm agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

21.2 The Design-Build Firm represents and agrees that it will perform its services in accordance with the usual and customary standards of Design-Build Firm's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Design-Build Firm agrees to bear the full cost of correcting Design-Build Firm's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

21.3 The Design-Build Firm's duties shall not be diminished by any approval by Owner, nor shall the Design-Build Firm be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Design-Build Firm's skill and knowledge in performing the services required hereunder.

21.4 The Design-Build Firm represents and agrees that all persons connected with the Design-Build Firm directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project, if registration and/or licensing is required.

21.5 The Design-Build Firm represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Design-Build Firm (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

21.6 The Design-Build Firm represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

21.7 Design-Build Firm represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

21.8 Design-Build Firm represents and agrees that the individual executing this Agreement on behalf of Design-Build Firm has been duly authorized to act for and to bind Design-Build Firm to its terms.

21.9 Except for the obligation of Owner to pay Design-Build Firm certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Design-Build Firm or to anyone claiming through or under Design-Build Firm by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design-Build Firm, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, The University of Texas System, or of the components comprising The University of Texas System, or anyone claiming under Owner has or shall have any personal liability to Design-Build Firm or to anyone claiming through or under Design-Build Firm by reason of the execution or performance of this Agreement.

ARTICLE 22 ASBESTOS HEALTH PROTECTION

22.1 In accordance with the Uniform General Conditions the Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The

Design-Build Firm shall take whatever measures it deems necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

22.2 The Design-Build Firm shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

22.3 The Design-Build Firm shall ensure compliance with the following acts from its employees, suppliers, fabricators, material men, subcontractors, or their assigns:

22.3.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7))

22.3.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos

22.3.3 Texas Asbestos Health Protection Rules (TAHRP) Texas Administration Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection

22.4 The Design-Build Firm shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

22.5 From Notice to Proceed with Construction until Final Completion the Design-Build Firm shall maintain an always accessible, real time, stand alone, indexed and word searchable portable document format (PDF) for all material safety data sheets (MSDS) / safety data sheets (SDS) for all materials used in the construction of the project and shall provide access to and copies of the documents when requested by the Owner.

22.6 At Substantial Completion the Design-Build Firm shall provide a notarized statement from all subcontractors that no asbestos containing building materials (ACBM) has been used, provided, installed, furnished, added to, or left on the Project.

22.7 The Design-Build Firm shall retain an appropriately licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer in accordance with Texas Administration Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility. 296.191 (d) (6) (A) to perform an AHERA sample survey of the project or (B) to compile and review any on-site surveys and or all material safety data sheets (MSDS) / safety data sheets (SDS) of all materials used in the construction or renovation of the Project and finding no asbestos in any of those materials, prepare a signed written certification that states the following:

For renovation: I, [Name], Licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer) (license #*****TX),

a) have personally conducted the on-site survey

b) have reviewed the previously produced on-site surveys (dated and produced by)

- c) have reviewed all the Material Safety Data Sheets (MSDSs) and or Safety Data Sheets (SDS) of all the materials permanently installed in the current renovation and none of the products indicate that they include Asbestos-Containing Materials (ACBM) and therefore in my professional opinion, the building materials used in this renovation do not contain asbestos. This certification, together with copies of the MSDSs (or SDSs), may be used as an asbestos survey as described in Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility.

For new construction: I, [Name], Licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer) (license #*****TX),

- a) have personally conducted the on-site survey
- b) have reviewed the previously produced on-site surveys (dated and produced by)
- c) have reviewed all the Material Safety Data Sheets (MSDSs) and or Safety Data Sheets (SDS) of all the materials permanently installed in the new construction project and none of the products included in the construction indicate that they include Asbestos-Containing Materials (ACBM) and therefore in my professional opinion all parts of the building do not contain asbestos. This certification, together with copies of the MSDSs (or SDSs), may be used as an asbestos survey as described in Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility.

The submission of this 3rd party certification to the Owner of non-asbestos containing materials is a requirement to achieve substantial completion.

22.7 At Final Completion the Design-Build Firm shall provide a notarized certification to the Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than the Design-Build Firm's application for Final Payment.

ARTICLE 23 MISCELLANEOUS PROVISIONS

23.1 Assignment. This Agreement is a personal service contract for the services of Design-Build Firm, and Design-Build Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

23.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of

Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

23.3 Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Design-Build Firm 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.

23.4 Franchise Tax Certification. A corporate or limited liability company Design-Build Firm 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 the corporation or limited liability company 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.

23.5 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Design-Build Firm agrees that any payments owing to Design-Build Firm under this Agreement may be applied directly toward any debt or delinquency that Design-Build Firm owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

23.6 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Design-Build Firm and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Build Firm and Owner.

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

23.8 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

23.9 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

23.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

23.11 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Design-Build Firm a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Design-Build Firm shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

23.12 Records. Records of Design-Build Firm's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall

be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Design-Build Firm in writing.

23.13 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Design-Build Firm or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

23.14 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected, and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

23.15 Illegal Dumping. The Design-Build Firm shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

23.16 By signature hereon, Design-Build Firm certifies that no member of the Board of Regents of The University of Texas System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

23.18 Ethics Matters; No Financial Interest. Design-Build Firm and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Design-Build Firm nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Design-Build Firm represents and warrants that no previously undisclosed member of the The U.T. System Board of Regents, The U.T. System chancellor, any U.T. institution president nor any executive officer of U.T. System or any of its institutions has a financial interest, direct or indirect, in the transaction that is the subject of this Agreement.

23.19 By signature hereon, Design-Build Firm agrees that this project will utilize the Owner Controlled Insurance Program (OCIP) and will bind all contractors and subcontractors to participate in the program. The Design-Build Firm acknowledges that it has received and reviewed information required to be provided about the OCIP program at least ten (10) days before entering into this contract and will provide this information to all contractors and subcontractors at least ten (10) days before entering into a contract with them.

23.20 179 D Benefit Allocation. Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Design-Build Firm

If the Owner and the Internal Revenue Service (IRS) determine that the Design-Build Firm is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Design-Build Firm could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Design-Build Firm hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project

Architect/Engineer. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Design-Build Firm fees or both.

Owner reserves the right to retain a third-party consultant (the “Consultant”) to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

Design-Build Firm agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

23.21 Disclosure of Interested Parties. By signature hereon, Design-Build Firm certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Design-Build Firm.

23.22 Contractor Certification regarding Boycotting Israel. To the extent required by Chapter 2270, *Texas Government Code*, Design-Build Firm certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

23.23 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Design-Build Firm certifies Design-Build Firm is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Design-Build Firm acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

23.24 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Design-Build Firm certifies that it complies with the requirement that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States.

23.25 Design-Build Firm Verification Regarding Discrimination Against Firearm Entities or Trade Associations. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), Design-Build Firm verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Design-Build Firm acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. [Note: This provision does not apply to: (1) contracts below \$100,000; (2) contracts with a sole-source provider; and (3) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than 10 full time employees. This provision should not be included in a contract if the University did not receive any bids from a company that is able to provide the written verification required above.

23.26 Certification Required by Texas Governor Executive Order GA-48. Pursuant to [Executive Order GA-48 of the Governor of Texas effective November 19, 2024](#), Contractor certifies that it and, if applicable, any of its holding companies or subsidiaries, is not:

- a. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
- b. Listed in Section 1260H of the 2021 NDAA; or
- c. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or

- d. Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

[NOTE: Executive Order GA 48 states that a public institution of higher education cannot enter into a new contract, contract extension, or contract renewal for a good or service with any company that meets any of the above-listed criteria. However, if the public institution of higher education can sufficiently demonstrate that (a) the good or service is necessary for the institution of higher education to fulfill a core function that directly benefits Texans and (b) the good or service can only be provided by an entity that meets one of the above-listed criteria, then the public institution of higher education may enter into a new contract, contract renewal, or contract extension with such an entity for no more than one year from November 19, 2024, and never thereafter.]

ARTICLE 24 COMPENSATION

24.1 Construction Cost Limitation

The anticipated Construction Cost Limitation for the Project at the time this Agreement was executed is:

_____ Dollars (\$ _____)

24.2 Guaranteed Maximum Price

The anticipated Guaranteed Maximum Price for the Project at the time this Agreement was executed is:

_____ Dollars (\$ _____)

24.3 Pre-Construction Phase Fee

24.3.1 For Pre-Construction Phase Services, Owner shall pay Design-Build Firm a Pre-Construction Phase Fee in accordance with the following schedule:

Pre-Design Stage (5%)	\$ _____
Schematic Design Stage (10%)	\$ _____
Design Development Stage (20%)	\$ _____
GMP Development Stage (20%)	\$ _____
Construction Documents Stage (40%)	\$ _____
Bid Proposal Stage (5%)	\$ _____
Total	\$ _____

24.3.2 The Pre-Construction Phase Services fee includes a fee for the Project Architect/Engineer's Design Services in the amount of \$ _____.

24.4 Construction Phase Fee

24.4.1 For Construction Phase Services, Owner shall pay Design-Build Firm a stipulated Construction Phase Fee equal to _____percent (_____) of the Guaranteed Maximum Price for the Project.

24.4.2 Based on the anticipated GMP established at the time of this Agreement, the Construction Phase Fee would be the total stipulated amount of:

_____. Dollars (\$_____).

24.4.3 The Construction Phase Fee includes a fee for Construction Contract Administration Services including those services provided by the Project Architect / Engineer or other consultants in the amount of:

_____. Dollars (\$_____).

24.4.4 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 24.3.1 to the amount of the increase in the GMP. For change order work which increase the contract amount, other than Guarantee Maximum Price Change Orders, overhead and profit costs shall be determined in accordance with the "Changes" section of the Uniform General and Supplementary Conditions.

24.4.5 The percentage rate established in paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Director for Project Management, Office of Capital Projects.

24.5 Limitation on General Condition Costs

24.5.1 The maximum allowable amount of General Conditions Costs payable to the Design-Build Firm during the Construction Phase of the Project shall not exceed

_____percent (_____) of the Guaranteed Maximum Price for the Project.

24.5.2 Based on the anticipated GMP established at the time of this Agreement, the maximum allowable amount of General Conditions Costs would be the total amount of:

_____. Dollars (\$_____).

24.5.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase the maximum allowable amount of General Conditions Costs shall be equitably adjusted by applying the percentage established in paragraph 24.4.1 to the amount of the increase in the GMP. For change order work which increases the contract amount, other than Guarantee Maximum Price Change Orders, overhead and profit costs shall be determined in accordance with the "Changes" section of the Uniform General and Supplementary Conditions.

24.5.4 The percentage rate established in paragraph 24.4.1 of this Agreement for calculation of the maximum allowable amount of General Conditions Costs cannot be increased except with the express written approval of the Director for Project Management, Office of Capital Projects.

24.6 Additional Design Services Fee

24.6.1 For Additional Design Services of the Project Architect/Engineer, its consultants or any other person performing Additional Design Services that are approved in advance by the Owner, the Additional Design Services Fee shall be established by one of the following methods:

- a. On an hourly basis for time expended at an amount not to exceed 3.0 times the Direct Salary Expense for each person directly involved in performing the services
- b. An agreed percentage of the Final Construction Cost of the Work resulting from the service being provided; or
- c. A pre-established lump sum amount.
- d. In the absence of an agreement between the Owner and the Design-Build Firm the Project Architect or Engineer, the fees for Additional Services shall be calculated on an hourly basis.

24.6.2 For Additional Design Services approved in advance by the Owner, the Design-Build Firm shall be entitled to a maximum ten percent (10%) markup on the established Additional Design Services Fees that are billed to the Design-Build Firm. The Project Architect/Engineer is not entitled to any markup on services provided by its consultants except as that markup is paid out of Design-Build Firm's allowed markup.

24.7 Reimbursable Expenses

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

24.7.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project for design phase services.

24.7.1.2 Professional models and renderings related to building design as requested by the Owner unless indicated elsewhere in this Agreement as a Basic Service.

24.7.1.3 When expressly directed and approved in advance by the Owner, reproductions, printing, binding, collating and handling of reports, drawings, specifications, and associated shipping and mailing, or other project-related work product, other than that used solely in-house for Project Team and its consultants or for project progress/review meetings.

24.7.1.4 Expense of any additional insurance coverage or limits, requested by the Owner in, addition to the coverage required by the contract.

24.7.1.5 Travel from Texas to out of state locations:

Lodging: Actual cost of lodging, not to exceed 140% of the “Out of State Meals and Lodging Rates”, established by the Texas Comptroller of Public Accounts. (Website <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php>), plus city and state taxes.

Meals: Limited to the meal per diem established by the Texas Comptroller of Public Accounts. Meal per diem will only be paid on trips involving overnight travel.

24.7.1.6 Travel to Texas from out of state locations:

Lodging: Actual cost of lodging, not to exceed 140% of the current State of Texas per diem rate, plus city and state taxes.

Meals: Limited to the meal per diem established by the Texas Comptroller of Public Accounts. Meal per diem will only be paid on trips involving overnight travel.

24.7.1.7 Automobile Expenses Related to Out-of-State Travel: Actual auto rental for moderate size category, related auto insurance, gasoline, parking and taxi service. Costs include applicable taxes.

24.7.1.8 Airline Travel: Actual coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7 days of departure, without the prior approval of the Owner, may be limited.

24.7.1.9 Unless expressly directed and approved in writing by the Owner, amounts exceeding the above stipulated limitations will not be subject to reimbursement.

24.7.2 Unless expressly directed, and approved in advance, by the Owner, transportation and living expenses incurred within the State of Texas, for firms whose principal address is within the State of Texas, will not be subject to reimbursement.

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

24.7.4 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursables identified in 24.6.1.1 through 24.6.1.3 above. A mark-up shall not be paid on lodging, meals or travel expenses. Design-Build Firm employees and other personnel and Project Architect/Engineer and its employees and design sub-consultants shall submit receipts for all reimbursable expenses along with any reimbursement request.

ARTICLE 25 OTHER TERMS AND CONDITIONS

25.1 Time of Completion

25.1.1 The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is:

_____, 20____.

25.1.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal.

25.1.3 The Design-Build Firm shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the Guaranteed Maximum Price Proposal, subject to time extensions granted by Change Order.

25.1.4 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION AND THE GUARANTEED MAXIMUM PRICE PROPOSAL ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT. The Owner may elect, at its option, to stage or “fast-track” portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate substantial completion date and a separate liquidated damages amount.

25.2 Liquidated Damages

25.2.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of:

_____ Dollars per day (\$) _____/day)

from any money due or that becomes due the Design-Build Firm, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion.

25.2.2 The parties stipulate and agree that calculating Owner’s actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

25.3 Document Deliverables.

In addition to the deliverables required elsewhere in this Agreement and of the Project Documents the Design / Build Firm at its sole expense shall provide to the Owner:

25.3.1 **Design Document Review Sets, Issue for Construction Sets and Estimated Construction Cost Reports.** All electronic files / documents used to produce the Project’s design, printed document sets, and estimated construction cost reports at each of the following stages and percent complete as part of the Design-Build Firm’s Pre-Construction Services. *(Editor’s Note: identify quantity of printed documents sets, typically 3 of either)*

Stage	Percent Completion	Number of Printed Sets	
Programming	50% and 100%	_____	_____
Schematic Design:	50% and 100%	_____ Half “C” size	_____ Full “E” size
Design Development	50% and 100%	_____ Half “C” size	_____ Full “E” size
Construction Documents	50%, 75%, 100%	_____ Half “C” size	_____ Full “E” size
Issue for Construction	100%	_____ Half “C” size	_____ Full “E” size

A construction cost estimate is not required for professionally sealed IFC sets.

25.3.2 **Space Planning Documents.** Between one month and three months prior to Substantial Completion or at other time as determined by the Owner as necessary to occupy the project, Design-Build Firm shall provide a complete current up to date electronic set of the architectural floor plan

drawings with room names, room numbers, and room square footages indicated. Room names, Room numbers, and square footage shall be linked to data fields using appropriate attributes for text and number fields.

25.3.3 As-Built Telecommunication Drawings and Telecommunication Port Logs. Between one month and three months prior to Substantial Completion or at other time as determined by the Owner as necessary to occupy the project, Design-Build Firm shall provide a complete current up to date electronic and 2 bound “E” size sets of the as-built Telecommunication Drawings and Telecommunication Port Logs for the Owner’s use in coordinating selection and procurement of telephone/data equipment.

25.3.4 Interim Record Drawings and Specifications. As a requirement for acceptance of Substantial Completion, Design-Build Firm shall provide two (2) bound “E” size sets of the complete current up to date As-Built Drawings and Specifications. These documents shall be labeled “Interim Record Drawings and Specifications” and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final Design-Build Firm produced As-Built Drawings and Specifications are provided to the Project Architect/Engineer to prepare the final “Record Drawings” and “Record Specifications”.

25.3.5 Record Documents. The Project Architect/Engineer of record shall revise the drawings and specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Design-Build Firm on the As-Built Drawings and Specifications maintained at the job site. The Project Architect/Engineer shall label the revised drawings and specifications as “Record Drawings” and “Record Specifications” and shall submit copies via the Design-Build Firm to the Owner for record purposes, per the requirements outlined in Article 5. Submit as part of Final Completion.

25.4 Notices

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner: [Owner’s Project Manager]

With Copies to: [Name]
Organization
Street Address
City, TX Zip Code

If to Design-Build Firm: [Name]
[Company Name]
[Street Address]
[City, State, Zip]

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

25.5 Party Representatives

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

[Name]
[Title]
Organization
Address
City, TX Zip Code

25.5.2 The Design-Build Firm's designated representative authorized to act on the Design-Build Firm's behalf and bind the Design-Build Firm with respect to the Project is:

[Name]
[Title]

25.5.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 4.8.

25.6 **Site Observation Requirements.** The Project Architect/Engineer, and their related consultants, shall inspect the Project site at intervals appropriate to the type and stage of construction progress but at least X times each month during the entire Construction Phase to observe the progress and quality of the Work. In addition, each consultant shall visit the site at least X time each month to observe construction activities related to the consultant's discipline.

25.7 **Job Conferences.** The Design-Build Firm shall conduct a minimum of X job conferences each month.

25.8 **Partnering.** For the benefit of all parties, as a part of Basic Services, the Design-Build Firm and his entire consultant team shall attend X () full day Partnering session(s) in _____, _____; the first at the beginning of the Pre-Construction Phase and the second at the beginning of the Construction Phase.

ARTICLE 26 EXHIBITS

The following exhibits are incorporated by reference as part of this Agreement and the Contract:

Exhibit A	Uniform General Conditions for University of Texas System Building Construction Contracts
Exhibit B	Owner's Standards and Front End Specifications
Exhibit C	Allowable General Conditions Line Items
Exhibit D	Guaranteed Maximum Price Proposal Form
Attachment 1 to Exhibit D	Guidelines for the Preparation of the GMP
Attachment 2 to Exhibit D	Payment and Performance Bonds
Exhibit E	Security Bond
Exhibit F	D/B's Personnel and Monthly Salary Rates

Exhibit G	Project Architect’s Personnel, Titles and Hourly DSE Rates
Exhibit H	Policy on Utilization, Historically Underutilized Businesses
Exhibit I	HUB Subcontracting Plan for Pre-Construction Phase Services
Exhibit J	Additional Services Proposal
Exhibit K	Amendments When Using Building Information Modeling <i>(optional)</i>
Exhibit L	Project Scope Summary Questionnaire
Exhibit M	Life Safety Engineering Consultant FATAP
Exhibit N	Owner’s Design Guidelines
Exhibit O	Owner’s GMP Process Meeting
Exhibit P	Owner’s Project Requirements Template
Exhibit Q	Owner’s Basis of Design Template
Exhibit R	Owner’s Space Tracking Matrix
Exhibit S	Hazardous Material Abatement General Scope of Work
Exhibit T	Mockup Design and Construction
Exhibit U	Form 295
Exhibit V	Commissioning Implementation Program
Exhibit W	Constructability Implementation Program

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

DESIGN-BUILD FIRM

By: _____
 (original signature)
 Name:
 Title:

 Date: _____

CONTENT APPROVED:
(Supervising Construction Procurement Officer)

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

By: _____
 (original signature)

By: _____
 (original signature)

Name:
Title:

Name:
Title:

Date: _____

EXHIBIT A
(Exhibit A is included herein by reference)

**UNIFORM GENERAL CONDITIONS FOR UNIVERSITY OF TEXAS SYSTEM BUILDING
CONSTRUCTION CONTRACTS**

EXHIBIT B
(Exhibit B is included herein by reference)

OWNER’S STANDARDS and FRONT END SPECIFICATIONS

- | | |
|---|---------------------|
| 1. Owner’s Special Conditions with Attachments | |
| a. Attachment “A” – Prevailing Wage Rate Determination | |
| b. Attachment “B” – Project Sign Layout | |
| 2. Project Insurance Requirements (OCIP and Builder’s Risk) | Section 00 73 16 |
| 3. Project Administration Requirements | Section 01 31 00 |
| 4. Project Planning and Scheduling | Section 01 32 00 |
| 5. Project Safety Requirements | Section 01 35 23 |
| 6. Project Quality Control | Section 01 45 00 |
| 7. Temporary Storm Water Pollution Controls | Section 01 57 23 |
| 8. Project Closeout Procedures | Section 01 77 00 |
| 9. General Commissioning Requirements | Section 01 91 00 |
| 10. Cast Bronze Dedicatory Building Plaque | Section 10 14 16.11 |

OWNER’S TECHNICAL SPECIFICATIONS (current)

The Design-Build Firm and its consultants shall download these specifications for use on the Project.

<https://apps.utsystem.edu/engineeringspecs/Display.aspx>

(Editor’s note: Insert links to any campus specifications or standards, DELETE if NOT USED)

CAMPUS SPECIFIC STANDARDS AND SPECIFICATIONS (current)

The Design-Build Firm and its consultants shall download these standards and specifications for use on the Project.

EXHIBIT C
ALLOWABLE GENERAL CONDITION LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)	CPM Scheduler
Project Executive	Superintendent(s)
Office Engineer(s)	Project Manager(s)
Project Expeditor(s)	Project Support Staff
Assistant Superintendent(s)	Out-of-State Project Specific Travel*

Bonds and Insurance

Builder's Risk Insurance (except for Owner provided Builder's Risk)
General Liability Insurance (except for OCIP)
Payment and Performance Bonds (not trade contractors or subcontractor bonds)
Other Project Insurance as Required by Contract (not subcontractor default insurance program costs)

Temporary Project Utilities

Dumpsters	Project Water
Project Electricity	Temporary Toilets
Monthly Telephone / Internet Service	Temporary Fire Protection
Street Rental and Barricades	Telephone / Internet System Installation
Fencing and Covered Walkways	
Temporary Water Distribution and Meters	
Temporary Electrical Distribution and Meters	
Site Erosion Control (BMP) and Project Entrance(s)	

Field Offices & Office Supplies

Partnering Costs	First Aid Supplies
Job Photos/Videos	Reproduction Services
Project Specific Signage	Monthly Office Supplies
Postage/Special Shipping	Remote Parking Expenses
Project/As-Built Drawings	Project Reference Manuals
Project Milestone Event(s)*	Security System/Watchman
Move-In/Out and Office Setup	Safety Material and Equipment
Employee Identification System	Drinking Water and Accessories
Small Tools and Storage Trailers	Office Clean-Up/Janitorial Services
Monthly Office Trailer Rental Costs	
Mobilization and Demobilization (Equipment Only)	

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

EXHIBIT D
GUARANTEED MAXIMUM PRICE PROPOSAL

The Construction Manager hereby submits to The Board of Regents of The University of Texas System for the use and benefit of The University of Texas _____

[DB -Insert Institution Name]

pursuant to the provisions of Article VII of the Agreement by and between The Board of Regents of The University of Texas System for the use and benefit of The University of Texas

_____ and _____ dated _____

[DB- Insert Institution Name]

[DB- Insert Design Build Contractor Name]

_____, 20__ (the "Agreement"), a Guaranteed Maximum Price (GMP)

[DB- Insert Month and Day]

for the _____,

[DB - Insert Project Name and Stage, Institution Name, State, City]

project number _____ - _____ (as defined in the Agreement), based on the Contract Documents

[DB- Insert Project No.]

(as defined by the Agreement) developed for the Project, as follows:

1. A not-to exceed amount for the Cost of the Work pursuant to the Agreement: \$ _____
2. A not-to exceed amount for the General Conditions pursuant to the Agreement: \$ _____
3. A not-to exceed amount for the Construction Manager's Contingency pursuant to the Agreement: \$ _____
4. A lump sum amount for the Construction Phase Fee pursuant to the Agreement: \$ _____
5. Owner's Special Cash Allowance provided by the Owner: \$ _____
6. Owner's Construction Contingency provided by the Owner. This is a lump sum amount from which changes are to be paid in accordance with the Uniform General Conditions for University of Texas System Building Construction Contracts. Any unused amount will be deducted from the Guaranteed Maximum Price by Change Order: \$ _____
7. TOTAL OF GMP LINE ITEMS 1 THROUGH 6: \$ _____

This figure shall be the Guaranteed Maximum Price (GMP), which we hereby guarantee to the Owner.

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE

(Continuation of Exhibit D)

CONTENT APPROVED:

Office of Capital Projects

Reviewed and Approved – OCP Project
Management:

By: _____
(Original Signature)

By: _____
(Original Signature)

Name: Stephen Harris
Title: Assistant Vice Chancellor, Office of
Capital Projects

[Design/Build Firm]

By: _____

Name: _____
[Print or Type]

Title: _____

Date of Signature: _____

ATTACHMENT 1 TO EXHIBIT D
GUIDELINES FOR THE PREPARATION OF THE
GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS:

Refer to Article 7 of the Agreement. The provisions of the GMP are defined here and other related requirements are included throughout the Agreement. In the event of irreconcilable conflict between the GMP Proposal and the Agreement, the interpretation that provides for the higher quality of material and/or workmanship shall prevail.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Agreement. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner, In general, proposed revisions or modifications to the language, terms or conditions of the Agreement will not be accepted.

2. PRE SUBMITTAL REQUIREMENTS:

- A. Scope Definition: Prior to GMP submittal, the Design-Build Firm shall thoroughly review the GMP construction document package with the Owner and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted. Refer to the section “PDRI For Buildings” which is an attachment to the Agreement for additional guidelines. The PDRI checklist must be completed at this time.
- B. Schedule: The anticipated Notice to Proceed and Substantial Completion dates for Construction shall be coordinated and approved by the Owner.
- C. Value Engineering: Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the “final acceptance” of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by the Owner prior to GMP submittal.
- D. Pre-submittal Conference: The Design-Build Firm shall schedule a conference with the Project Manager no later than six (6) weeks prior to submitting the initial draft of the GMP to the Owner. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. The Design-Build Firm shall obtain a copy of the “Owner’s Standard Schedule of Values Format” from the Owner’s Project Manager. Additionally, a review of acceptable “General Condition” items, as defined in the Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The Campus, the Owner’s Engineers, the Project Manager, and the Owner’s Controls Department shall provide review comments. The Design-Build Firm shall consolidate all responses to those groups into TAB 10 of the document. Each Owner comment shall have a corresponding answer directly below the original comment. A reply to each Owner comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS.

The GMP Proposal shall be submitted at the phase specified by the Owner. The GMP Proposal shall be submitted in the format described below. Proposals substantially deviating from the organization’s format will be returned to the Design-Build Firm for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the Design-Build Firm and may not extend the construction duration or substantial completion date.

5. MULTIPLE GMP’S:

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

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be submitted electronically in a format acceptable to the Owner and bound in 3-ring notebook or spiral notebook (**8 1/2” x 11” paper only**) and entitled “Guaranteed Maximum Price Proposal”. Below it the following items shall be shown:

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

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

All pages within each tab shall be numbered.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

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

TAB 1 – Guaranteed Maximum Price Proposal (Exhibit D)

- Refer to the GMP Proposal document attached to this Exhibit. Type in the cost amounts and sign, attest, date and seal the form.

- In addition to the bound notebooks, provide two (2) loose original executed copies. (Do not bind into spiral notebooks.)
- Do not alter any language from the original document without prior approval from the Contract Manager.
- Do not electronically alter the document.
- Each line-item cost must exactly match the corresponding cost summary shown on the TAB 6 GMP Proposal Cost Breakdown.
- Provide a Corporate Resolution or Articles of Organization, stating individual's authorization to execute contracts on behalf of the corporation, for any individual signing the GMP, who is not the President or CEO of the firm.

TAB 2 - Executive Project Summary

- State any amended services or scope changes included in the Proposal.
- Provide a brief project summary defining the scope of work associated with the construction phase of work included in this GMP Proposal.
- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
- State the anticipated Notice to Proceed date and Substantial Completion date.

TAB 3 - Project Team

- **Organization chart and Listing of Team Members;** List the various teams and the team members, in graphic and written form, for including names, titles, job responsibilities/duties, and contact information. Identify the Project Safety Specialist and their duties. If Project Safety Specialist has changed from the individual approved in the RFQ, please identify the change in a statement on a separate page.
- Identify all consultants.

TAB 4 - List of Documents

- **Drawings Index** – Drawings shall be organized by listing each sheet number, sheet title and current revision date.
- **Specification Index:**
 - Provide a detailed listing of each specification section required by the Owner as identified in the Agreement (see the Exhibit for “Owner’s Specifications”)
 - Provide a detailed listing of all other spec sections describing the project.
 - Specifications shall be organized by CSI Division format listing each specification section number, title and current revision date.

TAB 5 - Qualifications and Value Engineering

- **Qualifications:** A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB 4.
- **Exclusions:** A summary of exclusions organized by drawing sheet number or by specification section.
- **Substitutions:** A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB 4. Organize by specification section.

- **Value Engineering Recommendations:** List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition, identify those VE items not currently accepted. State if the price is good for a limited time period.
- **Alternates List:** Provide a matrix and state the amount of each alternate. Provide a separate column and state if the alternate price is included in GMP cost or not. Provide a separate column and provide the last date in which the price is good in the event the alternate is not currently included in the GMP price.

TAB 6 - GMP Proposal Cost Breakdown

- **SOV Breakdown:** Provide an Estimated Construction Cost breakdown on the Owner's Standard **Schedule of Values** Format for Cost of the Work based on anticipated subcontracts organized by CSI Division format, General Conditions per exhibit, DB Contractor's Contingency, Construction Phase Fee, any Owner's Special Cash Allowance and/or Owner's Construction Contingency as identified by the Owner.

The U.T. System Schedule of Values - Contractor's Estimate Continuation Sheet (8 1/2" x 11" Sheet ONLY)															
OFPC Project No.:								Project Address:							
OFPC Project Name:								Application For Payment Number:							
CM-RDB Name:								Application Period: From _____ To _____							
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	
CSI Section / Work Breakdown Structure	Description of Work / Subcontractor Name / Specification Section	Initial Proposed Line Item Value	Actual Subcontract Amount at Budget	Contingency Allocation	Delta (Proposed to Actual)	Subcontract, Purchase Order or Vendor No.	Detailed Breakdown of Contract Line Items	Total Amount Previously Requested & Percent		Current Application		Total Amount Completed To Date & Percent		Balance to Finish, Including Retainage	
		C'	C'	C'	C - D + E		D'	M'	N'	M - I	K / H	I + K	M / H	H - (M x 95%)	
Preconstruction (Part I) Services															
	Programming	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Schematic Design	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Design Development	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Contract Documents	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Bidding	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Owner's Special Cash Allowance	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
	Preconstruction (Part I) Services Subtotal	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	N/A
Construction (Part II) Services															
	General Conditions (Breakdown per Exhibit I)														
	Project Management	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Bonds & Insurance	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Temporary Utilities	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Field Office & Construction Supplies	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	General Conditions Subtotal	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Cost of Work														
	Sitework	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Concrete	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Masonry	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Metals	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Woods & Plastics	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Thermal & Moisture Protection	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Doors & Windows	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Finishes	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Specialties	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Equipment	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Furnishings	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Special Construction	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Conveying Systems	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Mechanical	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Electrical	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Cost of Work Subtotal	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Contractor's Contingency	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Construction Phase Fee	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Owner's Special Cash Allowance	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Owner's Construction Contingency	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Construction (Part II - GMP) Services Subtotal	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-
	Contract (Part I + Part II Services) Total	\$ -	\$ -	\$ -	\$ -	N/A	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	\$ -	-

(An electronic copy is available upon request)

- **General Conditions Cost Breakdown:** the Design-Build Firm shall provide, on a separate page, a detailed cost breakdown for all **Allowable General Condition** Line Items by quantity, unit cost and duration. General Condition breakdown shall include line items for each type of insurance coverage (including builders' risk if provided) and auto.
- **D/B's Detailed Cost Breakdown:** this can be provided on the D/B's own format.
- **Exhibit F:** the Design-Build Firm shall include an updated Exhibit F, "D/B's Personnel and Monthly Salary Rates" identifying any new staff or rate modifications. Exhibit F shall identify *every staff member shown on the general conditions* cost breakdown.
- **Builder's Risk Insurance Coverage:** on a separate page state whether the builder's risk insurance is provided by the Owner.

- **Owner's ROCIP program:** on a separate page state whether this GMP includes provisions to incorporate the Owner's ROCIP program. (this affects your provided insurance coverages).
- **D/B's Contingency:** state the basis in which the D/B's Contingency was established or show a breakdown of major items anticipated to be funded by the contingency.
- **Owner's Special Cash Allowance:** Provide a breakdown of the Owner's Special Cash Allowance showing the major items anticipated to be included in this cost. The Owner's Project Manager should help provide this detail.

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically in a format acceptable to the Owner and as a Gantt Chart Report within the GMP Proposal showing the Activity ID, Activity Description, Original Duration, Early Start, Early Finish, Total Float, Late Start and Late Finish column titles.
- Summary Schedule Requirements
 - The schedule shall comply with the requirements of Owner's Specification Section 01150 and shall form the basis for the "Detail" schedule, which shall be submitted within sixty (60) days following Notice to Proceed for Construction Services.
 - The schedule shall be a computer-generated CPM schedule developed in Primavera Project Planner software.
 - The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones included in Pre-construction Services
 - The schedule shall at a minimum include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first 90 days) may be summarized by trades and may have longer durations than the "detailed" activities mentioned above.
- Total Float
 - The total float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion). i.e. - All paths in the schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately 90% of the time allowed by contract for the Owner established Substantial Completion Date.

TAB 8 - Bid/Proposal Package Strategy

- The Design-Build Firm shall provide a written Bid/Proposal Package Strategy for procuring subcontracts including self-performance work (other than General Conditions) as described in Owner's Specification Section 01210.

TAB 9 - Historically Underutilized Business Plan

- Complete the attachments required by exhibit of the Agreement.
- For all first and second tier subcontractors currently under contract or anticipated to be contracted with, provide completed Attachments C, D, and E.
- A completed HUB Subcontracting Plan shall be delivered to Owner at the time of final subcontracting buyout.

TAB 10 - Responses to Review Comments

- For resubmitted GMP Proposals, include all review comments provided by the Owner regarding the GMP or GMP re-submittal.
- For each submittal the Design-Build Firm shall provide a written response below each original comment, stating the appropriate response to the issue and include that documentation in this section. **A re-submittal may not be forwarded to Owner without responses to the previous review comments and included under this TAB 10.**
- **Any proposed deviations from the provisions or processes described in the Agreement, contained in this Proposal, shall be approved in writing by the Owner and included herein.**

ATTACHMENT 2 TO EXHIBIT D
PAYMENT AND PERFORMANCE BONDS

(Included herein by reference. Actual Bonds shall be drafted by Owner and executed **after** the execution of the GMP Proposal)

EXHIBIT E

SECURITY BOND

Surety Bond No. _____

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____ §

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

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

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

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

(SEAL)

Principal

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

By: _____

(Typed Name and Title)

(Typed Name and Title)

EXHIBIT F
DB'S PERSONNEL AND MONTHLY SALARY RATES
PRE-CONSTRUCTION AND CONSTRUCTION PHASE SERVICES

Owner's Project No. & Name: _____ - _____

[DB - Insert Project No.][DB - Insert Project Name]

The following Monthly Salary Rate (MSR) shall identify the estimated billable rate prior to execution of the Agreement for use throughout the Pre-Construction Services Phase and shall be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Owner's Standard Schedule of Values Format for all salaried General Conditions type personnel pursuant to the Agreement. Salaried personnel performing Construction Phase Services as Part of General Conditions must be physically located at the Project site. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Article 14 of the Agreement.

Employee		Estimated Employer's Monthly Contributions						Monthly Salary Rate
Name and Title	Estimated Monthly Direct Salary Expense	Federal & State Unemployment (Less Than 1%)	Social Security & Medicare (Less Than 7.65%)	Worker's Compensation (\$0 for ROCIP)	Health & Insurance	Pension / 401(k)	Vacation / Holiday	
1.	\$	\$	\$	\$	\$	\$	\$	\$
2.	\$	\$	\$	\$	\$	\$	\$	\$
3.	\$	\$	\$	\$	\$	\$	\$	\$
4.	\$	\$	\$	\$	\$	\$	\$	\$
5.	\$	\$	\$	\$	\$	\$	\$	\$
6.	\$	\$	\$	\$	\$	\$	\$	\$
7.	\$	\$	\$	\$	\$	\$	\$	\$
8.	\$	\$	\$	\$	\$	\$	\$	\$
9.	\$	\$	\$	\$	\$	\$	\$	\$
10.	\$	\$	\$	\$	\$	\$	\$	\$
11.	\$	\$	\$	\$	\$	\$	\$	\$
12.	\$	\$	\$	\$	\$	\$	\$	\$

Design-Build Firm shall certify, to the best of its knowledge, that the above referenced salary information is accurate.

DB signature: _____ (same individual who signs agreement)

EXHIBIT G

PROJECT ARCHITECT/ENGINEER PERSONNEL TITLES AND HOURLY RATES

Architect /Engineer DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to the Project. Any multiplier applied to such DSE shall be for the purpose of covering such fringe benefits, expense, and profit.

Architect/Engineer to complete this information, examples below:

Exhibit G Matrix

Job Title/Position	Direct Salary Expense (DSE)	Multiplier (Max 3.0)	Billable Hourly Rate

Required to be inclusive of all subconsultants to include a multiplier justification which will not be included in the Exhibit G.:

Multiplier Justification Example

Job Title/Position	Base Year 20__-20__								
	DSE	Overhead	G&A	Benefits	Total Burden	Profit	Total OH&P	Hourly Rate	Multiplier Resultant

EXHIBIT H

**POLICY ON UTILIZATION
HISTORICALLY UNDERUTILIZED BUSINESSES**

Included by reference.

EXHIBIT I

HUB SUBCONTRACTING PLAN FOR PRE-CONSTRUCTION SERVICES

(Submit the HUB Plan, Good Faith Effort and HUB Business Letter of Intent with the executed Agreement, for the A/E consultants.

Submit the HUB Plan, Good Faith Effort and HUB Business Letter of Intent within 30 days, after GMP acceptance by Owner, for all remaining consultants and subcontractors.)

EXHIBIT J

**ADDITIONAL SERVICES PROPOSAL and
OTHER COMPENSATION CHANGES TO THE PRE-CONSTRUCTION PHASE SERVICES**

Requisition Number _____

CIP Project Number: _____

Project Name: _____

Campus: _____

Date: _____

To: PM _____

(Design-Build Firm

Gentlemen:

Refer to the Agreement dated _____, 20 between
_____ (“Owner”) and the undersigned (“Design-Build Firm”) as amended to the date
hereof (such agreement as so modified and amended being hereafter called the “Agreement”) pursuant to which
Design-Build Firm is to perform certain services. The terms which are defined in the Agreement shall have the same
meanings when used in this letter.

Owner has requested the performance of the services described below which Design-Build Firm deems to be
Additional Services.

(Description of Services.)

Design-Build Firm agrees to perform the Additional Services described above subject to and in accordance
with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement
but which will not exceed _____ Dollars (\$ _____) and for reimbursement of
expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional
Services, but which reimbursement for expenses will not exceed _____ Dollars (\$ _____).

Design-Build Firm will perform the services in accordance with any schedule attached hereto (attach schedule
if applicable), but in any event not later than _____ (_____) days after Design-Build Firm is authorized
to proceed.

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

Sincerely yours,

DESIGN-BUILD FIRM

By: _____

Name: _____
Title: _____

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

Office of Capital Projects
The University of Texas System

By: _____
Name: _____
Title: _____

PRE-CONSTRUCTION PHASE SERVICES FEE

ORIGINAL CONTRACT FEE AMOUNT \$ _____

PREVIOUS ADDITIONS \$ _____

PREVIOUS DEDUCTIONS \$ _____

NET BALANCE CONTRACT FEE AMOUNT \$ _____

THIS (Addition) (Deduction): \$ _____

ADJUSTED CONTRACT AMOUNT \$ _____

xc:	D/B Firm	D/B Firm Accounting
	Owner Accounting	Owner central file
	Owner	Design-Build Firm Contract Manager

(Editor's Note: Include if performing a BIM project requiring BIM Services)

EXHIBIT K

AMENDMENTS TO THE AGREEMENT BETWEEN OWNER AND DESIGN-BUILD FIRM WHEN USING BUILDING INFORMATION MODELING (BIM)

The Building Information Modeling process is a fundamental part of the Agreement, the Design-Build Firm acknowledges and accepts that the Owner intends to construct the Project using the BIM process and its associated requirements defined herein. Therefore, the Owner and the Design-Build Firm hereby agree that the terms of the preceding Agreement are supplemented and/or modified as indicated below.

The following terms of the preceding Agreements are amended by incorporating the new paragraphs for their counterparts in their entirety. For clarity purposes only, all new contract language is indicated by underlining and some articles are renumbered. Existing contract language that is unchanged by the amendment is shown in standard type face.

2.1g. The DESIGN BIM, Drawings, Specifications, details and other documents developed by Design-Build Firm to describe the Project and accepted by Owner.

2.1h. The DESIGN BIM, Drawings and Specifications developed or prepared by Owner's independent consultants, if any, that are included in the Guaranteed Maximum Price Proposal.

3.01 **"Building Information Modeling"** (BIM) means the process of generating and managing building data using 3D, real-time, dynamic building modeling software resulting in a BIM which is a digital representation of physical and functional characteristics of a facility encompassing building geometry, spatial relationships and quantities and properties of building components and systems.

DESIGN BIM is produced by the Design-Build Firm via the Project Architect/Engineer of Record or the Owner's other consultants. The DESIGN BIM is to be used by the Design-Build Firm to further understand the scope, complexities, quantities, constructability, and cost of the of the Project. In addition to the Construction Documents the DESIGN BIM shall be used by the Design-Build Firm to assist in procurement of sub-contractors/trades. The DESIGN BIM does not supersede the Project Architect's/Engineer's Construction Documents. The DESIGN BIM may be used as appropriate as a starting point for the Design-Build Firm to produce a CONSTRUCTION BIM. The Design-Build Firm shall consult with Project Architect/Engineer of Record regarding static components in the DESIGN BIM the must be reflected accurately in the CONSTRUCTION BIM.

CONSTRUCTION BIM is produced by the Design-Build Firm and or subcontractors hired to construct the Project. The CONSTRUCTION BIM shall include all major trades (structure, building envelope, mechanical, electrical, plumbing, life safety systems, conveying systems, audio/visual systems, interior partition/walls, doors, ceilings, casework/millwork) and any additional trades determined necessary by the Owner and or the Design-Build Firm. The CONSTRUCTION BIM shall be based upon the Work, coordination of Work, sequencing of Work, coordination of sub-contractors/trades and suppliers, safety, quality control, inspections, commissioning, means and methods of the Design-Build Firm / sub-contractors / trades and their work forces, and the actual products and materials to be used in the construction of the project. The CONSTRUCTION BIM shall be used to produce the Project's Shop Drawings to clearly and concisely represent the actual Work including layout, location, orientation, material quantities, components, assemblies, adjacencies and interface / integration with and or connection to other building construction systems, components and assemblies. The Design / Build Contractor's production of the CONSTRUCTION BIM does not imply the Design-Build Firm has assumed the roles and responsibilities of the Project Architect/Engineer of Record nor does it alleviate the Design-Build Firm from any other provisions or requirements of this Agreement. The Design-Build Firm must work continuously and collaboratively with the Project Architect/Engineer of Record who is ultimately responsible for the design of the Project. The Design-Build Firm shall at all times provide the Project Architect/Engineer of Record and the Owner access to and copies of its BIM including the BIM performed by sub-contractors/trades, at no additional cost regardless of level progress or development to view the BIM (BCP), answer RFI's, develop, analyze or produce change proposals/orders, supplemental instructions and addenda, prepare for and

perform inspections, testing and commissioning, or to coordinate work efforts by the Owner's consultants and 3rd party contractors.

3.19 **“Work”** means the provision of all services, labor, materials, supplies, and equipment that are required of the Design-Build Firm to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown in the DESIGN BIM, the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

4.13 The Design-Build Firm shall design and construct the Project using BIM authoring software, specifically Autodesk Revit. All phases of design and construction shall use Revit compatible model files and clash detection sessions shall use the latest version of Autodesk NavisWorks Manager. All electronic files produced by the Design-Build Firm and its consultants and subcontractors shall comply with Industry Foundation Class (IFC) file format. BIM shall be utilized to produce all design reviews and presentations (Schematic, Design Development and Final Construction Documents).

4.14 The Design-Build Firm shall utilize BIM based design processes to produce model(s) for the Project including but not limited to all building envelope components, structure, walls, ceilings, doors, openings, furnishings, fixed/built in equipment, mechanical, electrical, low voltage, plumbing equipment/distribution systems, conveying systems, utilities, grades, flat work, roads, and drives.

4.15 Within the first 90 days of award of this Agreement the Design-Build Firm shall develop and present to the Owner for review and comment a BIM Execution and Coordination Protocol Plan (BECPP). The BECPP shall be well organized to ensure that the processes and procedures of all parties are well understood, defined, aligned, and coordinated. The BECP shall include a table of contents and definitions of key terms and outline all key points, objectives, roles, general responsibilities, model management responsibilities, platform standards, procedures, and protocols between its various consultants and subcontractors. The BECPP shall include a comprehensive detailed matrix showing which party is responsible for performing which specific BIM functions and activities. The BECPP shall clearly and concisely identify the extent of participation, the level of detail, model quality control and tolerance each consultant and subcontractor will be responsible for developing in the model(s) for each deliverable required of the Project. The BECPP shall address reoccurring distribution and transfer of information at defined intervals in all design and construction phases between each of its subcontractors, consultants or other consultants or parties retained by the Owner. The BECPP shall demonstrate how subcontractors will be given direction regarding their project specific scope and requirements including model element scope by trade, coordination requirements between trades / sub-contractors, BIM shop drawings, clash detection meetings, and conflict correction responsibilities.

4.16 Design-Build Firm shall provide a BIM coordinator and each major subcontractor shall participate in weekly clash detection sessions led by BIM coordinator to which the Owner may attend and participate at its option. Each trade shall coordinate and resolve all such conflicts and clashes outside the weekly clash detection sessions before the next meeting.

4.17 Design-Build Firm shall require each trade/subcontractor to use BIM coordination process to eliminate potential conflicts and bear the cost to relocate if failure to coordinate and results in unresolved field conflicts during installation.

4.18 Design-Build Firm shall require each trade/subcontractor to develop Shop Drawings in a format compatible with Revit, and readable by NavisWorks Manager.

4.19 As part of deliverables due at substantial completion, Design-Build Firm shall provide to Owner all coordinated updated BIM, including as-built model shop drawings, and a record model(s) reflecting as-built conditions for each trade.

5.1.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Design-Build Firm and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed DESIGN BIM or the Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule (as defined below) and the CCL.

5.1.2.2 Prepare a "Constructability Report" that identifies items that, in the Design-Build Firm's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of the BIM Model, Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase.

5.1.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the DESIGN BIM, the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Owner and updated at least monthly during the Pre-Construction Phase.

5.1.4.1 Review and coordinate all DESIGN BIM, Drawings, Specifications, and other Construction Documents as they are developed by the Design Build Firm's Project Architect/Engineer and the Owner's Consultants during the Programming, Schematic Design, Design Development, and Construction Documents design phases of the Project.

5.1.4.3 Advise Owner of any error, inconsistency or omission discovered in the DESIGN BIM, , Documents, Drawings, Specifications, and other Construction Documents.

5.1.5.3 Review the DESIGN BIM and Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

7.4 The Guaranteed Maximum Price Proposal shall allow for all changes and refinements in the DESIGN BIM, Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.6 Included with its GMP Proposal, Design-Build Firm shall provide the DESIGN BIM plus two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

10.1 The DESIGN and CONSTRUCTION BIM, design drawings, specifications, and other documents furnished by the Design-Build Firm or Project Architect/Engineer are instruments of service and shall remain their property whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies, BIM and CADD copies, of the drawings, specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. Design-Build Firm and Project Architect/Engineer hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use the DESIGN and CONSTRUCTION BIM, drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose regardless of whether their services for the Project are completed, modified or terminated. This license shall survive the termination of this Agreement. If this Agreement is terminated, Design-Build Firm and Project Architect/Engineer hereby expressly consent to the employment by Owner

of a substitute architect/engineer to complete the Design Services under this Agreement, with the substitute architect having all of the rights and privileges of the original Project Architect/Engineer.

16.2 Before proceeding with the Work, the Design-Build Firm shall review the DESIGN BIM, drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Design-Build Firm is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Build Firm or its Project Architect/Engineer. Design-Build Firm shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

25.3.4 **Interim Record Building Information Model, Drawings and Specifications**

As a requirement for acceptance of Substantial Completion, Design-Build Firm shall provide a coordinated updated As-Built BIM and reproduce two (2) copies of the current As-Built Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled “Interim Record BIM, Drawings and Specifications”, and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final Design-Build Firm produced As-Built Drawings and Specifications are provided to the Project Architect/Engineer to prepare the final “RECORD BIM”, “Record Drawings” and “Record Specifications”.

25.3.1 **Record Documents.** The Project Architect/Engineer of record shall revise the BIM, drawings and specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Design-Build Firm on the As-Built BIM, Drawings and Specifications maintained at the job site. The Project Architect/Engineer shall label the revised BIM, drawings and specifications as “RECORD BIM”, “Record Drawings” and “Record Specifications” and shall submit copies via the Design-Build Firm to the Owner for record purposes, per the requirements outlined in Article 5. Submit as part of Final Completion.

EXHIBIT L

Project Scope Summary Questionnaire Form

Owner requires that the Design-Build Firm via the Project Architect/Engineer of record for each University of Texas System project complete this summary based on the original contract documents to facilitate the development of the Owner's construction cost database. The database will assist future reports, estimates and presentations to the Texas Higher Education Coordinating Board and R.S. Means. Please note, not all items will have an exact answer, nor will every assembly total 100%. Please provide a response, based on your best interpretations of the contract documents, to **ALL** items listed. If you have questions concerning the assemblies identified, please contact a Project Controls Specialist - Cost at (512) 499-4600.

Project No. & Title _____ - _____

Project Stage Title _____

	New	Renovated
Gross Square Feet (Not including basement)	_____	_____
Assignable Square Feet (Not including basement)	_____	_____
Number of Rooms	_____	
Number of Stories At Grade & Above	_____	
Average Story Height At Grade & Above (ft)	_____	
Number of Basement Levels & Gross Square Feet	_____	
Building Perimeter (Lft.)*	_____	
Type of Foundation *	_____	
Primary Superstructure System *	_____	
Primary Exterior Closure & Percent *	_____	_____
Secondary*	_____	_____
Percentage of Exterior Glass / Glazing	_____	
Primary Roofing System *	_____	
Primary Interior Partition Construction & Percent *	_____	_____
Secondary *	_____	_____
Number of Doors (A pair of doors equals two doors)	_____	
Primary Interior Flooring & Percent *	_____	_____
Secondary *	_____	_____
Primary Interior Ceiling Construction & Percent *	_____	_____
Secondary *	_____	_____
Type of Conveying System & Number of Units *	_____	
Number of Plumbing Fixtures Installed	_____	
Building HVAC CFM Requirements	_____	

* Refer to Page 2 for definitions & lists.

Project Scope Summary Instructions, Definitions & Lists - EXHIBIT L cont.

Please use the definitions and lists below to complete the questions on the Exhibit L. If a project does not have an assembly (i.e.: basement) then insert "None" into the appropriate blank. If a project has an existing assembly that is modified or repaired then insert "Modify" or "Repair", however, if a project scope does not modify or repair an existing assembly then insert "Existing" into the appropriate blank.

Gross Square Foot: The total floor space in a building (not including the basement) from the exterior skin at grade and above.

Assignable Square Foot: The net floor space in a building (not including the basement) measured from the inside surface of exterior walls and excluding interior walls and partitions, mechanical equipment rooms, lavatories, janitorial closets, elevators, stairways, major circulation corridors, aisles and elevator lobbies.

Building Perimeter: The total length measured (linear feet) around the building enclosure at, or near, the ground floor.

Building Types as Reported to THECB by Assignable Square Feet

070 - Unfinished Area	110 - Classroom	210 - Class Laboratory
220 - Special Class Laboratory	230 - Individual Study Laboratory	250 - Non-Class Laboratory (R&D)
310 - Office	350 - Conference Room	410 - Reading/Study Room (Small)
420 - Stack (Large Library)	430 - Open-Stack Reading Room	440 - Processing Room
520 - Athletic/Physical Education	523 - Athletic/Facilities Spectating	530 - Audio/Visual, Radio, TV Facilities
540 - Clinic (Examination Rooms)	550 - Demonstration Facilities	610 - Assembly/Theater
620 - Exhibition (Museum)	630 - Food Facilities (Cafeteria)	650 - Lounge
660 - Merchandising Facilities (Retail)	670 - Recreation	680 - Meeting Room (Non-Class/Office)
720 - Shop (Repair & Maintenance)	730 - Storage	740 - Vehicle Storage Facility
810 - Patient Bedroom	820 - Patient Bath	830 - Nurses Station
840 - Surgery	850 - Health Care Treatment	860 - Health Care Laboratory
870 - Health Care Supplies	880 - Health Care Public Waiting	895 - Health Care Service
910 - Sleep/Study w/out Toilet/Bath	920 - Sleep Study w/ Toilet/Bath	950 - Apartment

Foundation

Cast-in-Place Concrete Walls	Grade Beam / Slab on Grade	Grade Beam / SOG - Post Tension
Spread Footings	Piers / Piles / Caissons	

Superstructure

Bearing Walls	Concrete Foundation w/ Steel Frame	Precast Concrete
Reinforced Concrete / Post Tension	Tilt-Up Concrete Panels	Wood

Exterior Closure

Aluminum Siding w/ Metal or Wood Stud Back-up		Decorative Concrete Block
Double-Glazed Plate-Glass Panel	Dryvit / EIFS	Exposed Precast Concrete Panels
Exposed Cast-in-Place Concrete	Face Brick w/ CMU Back-up	Face Brick w/ Metal Stud Back-up
Galvanized Steel Siding	Glass & Metal Curtain Wall	Natural Stone w/ CMU Back-up
Modified 3" Precast Panel w/ 6" Metal Stud Back-up		Natural Stone w/ Metal Stud Back-up
Painted Concrete Block	Plaster on w/ Metal or Wood Stud Back-up	Porcelain Tile w/ Metal Stud Back-up
Stucco on CMU Back-up	Tilt-up Concrete Panels	Wood Siding w/ Wood Stud Back-up

Roofing System

Built-up	Clay Tile	Cold Applied
Elastomeric / Single-ply Membrane	Modified Bitumen	Pre-Formed Metal
Prepared Roll	Shingle (Asphalt / Wood)	

Interior Partition Construction (not including basement)

CMU	Painted CMU	Painted Drywall w/ Metal Stud
Painted Drywall w/ Wood Stud	Wallpapered Drywall w/ Metal Stud	Wallpapered Drywall w/ Wood Stud

Interior Flooring (not including basement)

Ardex / Concrete Topping	Carpet (Glued or Padded)	Ceramic / Porcelain Tile
Exposed / Sealed Concrete	Granite / Marble	Limestone
Painted Concrete	Seamless Epoxy	Terrazzo
VCT	Vinyl	Wood

Interior Ceiling Construction (not including basement)

Acoustical Lay-in	Acoustical Drop Panel	Drywall
Exposed Concrete / Metal Decking	Exposed Painted Concrete / Decking	Plaster
Sprayed-on Exposed Concrete	Wood	

Conveying System

Hydraulic Elevators	Geared Traction Elevator	Escalator
---------------------	--------------------------	-----------

EXHIBIT M
LIFE SAFETY ENGINEERING CONSULTANT
(Exhibit M is included herein by reference)

EXHIBIT N
OWNER’S DESIGN GUIDELINES
(Exhibit N is included herein by reference)

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Appendix B. Civil Engineering Criteria
Appendix C. Codes and Standards
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Appendix O. Audio Visual Technologies
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Appendix S. Security Systems Criteria
Appendix T. Transportation (Elevator Systems Criteria)

CONSTRUCTABILTIY GUIDELINES

FACILITIES PROGAMMING GUIDELINES

- a. Attachment “A” Anticipated Programming Deliverables

FACILITIES PROGRAMMING GUIDELINES ATTACHMENT “A”
ANTICIPATED PROGRAMMING DELIVERABLES

The Design-Build Firm via the Project Architect/Engineer shall be responsible for coordinating and compiling all the programming materials in the form of a manual (with exhibits as required); in the chapter sequence established in the applicable Facilities Programming Guidelines. The lead party responsible for generating the materials will be as follows:

<u>Work Area from Guidelines</u>	<u>Lead Responsibility</u>
Programming Schedule	Project Architect
Ch. 1: Sign-Off Sheet	Owner (form provided by Project Architect)
Ch. 2: Executive Summary	Project Architect
Ch. 3: Project Goals	
Institution’s Mission Statement	
and Objectives	Owner
Compliance with Institution’s	
Strategic Plan	Owner
Compliance with Institution’s	
Campus Master Plan	Owner
Functional Programs Curricula	
Descriptions and Projections	Owner
Project Need	Owner
Project Objectives	Project Architect/Owner
Compliance with Coordinating	
Board Space Model	Project Architect/Owner
Ch. 4: Space & Adjacency Requirements	Project Architect
Ch. 5: Supporting Requirements	Project Architect
Ch. 6: Existing Site Studies	Project Architect (except as follows)
Topographic Survey	Owner
Geotechnical Survey	Owner
Ch. 7: Existing Facilities Studies	Project Architect
Ch. 8: Design Parameters	Project Architect
Ch. 9: Preliminary Project Cost	Project Architect
Ch. 10: Project Schedule	Project Architect
Ch. 11: Implementation Approach	Owner
Ch. 12: Information Specific to	
This Institution	Owner
Ch. 13: Selection a Delivery Method	Owner/ Project Architect

EXHIBIT O
OWNER'S GMP PROCESS MEETING
(Exhibit O is included herein by reference)

EXHIBIT P
OWNER'S PROJECT REQUIREMENTS TEMPLATE
(Exhibit P is included herein by reference)

EXHIBIT Q
OWNER'S BASIS OF DESIGN TEMPLATE
(Exhibit Q is included herein by reference)

EXHIBIT R
OWNER'S SPACE TRACKING MATRIX
(Exhibit R is included herein by reference)

EXHIBIT S
HAZARDOUS MATERIAL ABATEMENT GENERAL SCOPE OF WORK

1. Review and Assessment
Review previous survey results and conduct an inspection of the facilities in order to collect the required number of samples of suspect material. Determine the extent, condition, and approximate quantities of lead and asbestos containing materials.
2. Technical Specifications
Develop the technical plans and specifications for the abatement phases of the Project for Owner's review and approval. Meet with appropriate personnel to discuss the plans and specifications along with the abatement process.
3. Provide a final copy of approved technical plans and specifications.
4. Abatement Monitoring
Collect and analyze background air, dust and soil samples prior to the commencement of abatement work.
5. For abatement work which requires the use of enclosures:
 - A. Pre-abatement inspection to approve enclosure and authorize abatement to begin.
 - B. Conduct a full time or periodic inspection as directed by Certified Industrial Hygienist (CIH).
 - C. Collect and analyze area samples (inside and outside) enclosure as directed by CIH.
 - D. Conduct a clearance inspection and collect and analyze air, dust and soil samples at conclusion of abatement work to "release" Design-Build Firm from that area.

EXHIBIT T

MOCKUP DESIGN and CONSTRUCTION

1. The Design-Build Firm's Project Architect/Engineer (A/E) shall design an architectural mock-up, constructed by the Design-Build Firm, that includes the following elements (*as applicable*):

- a. Limestone Veneer (and/or other stone veneers)
- b. Brick Veneer
- c. Window Systems
- d. Metal Panels
- e. Roofing System (including any soffits, copings, parapets, or overhangs)
- f. Waterproofing
- g. Insulation
- h. Structural Exterior Wall (i.e. CMU backup wall)
- i. Flashing, sealant joints, weeps
- j. All major intersections with particular emphasis on those where material changes occur including methods and conditions of attachment, closure, laps, and transitions between materials.

2. The process of designing, constructing, and reviewing the exterior envelope system mock-up should proceed as follows:

- a. The scope, design, budget, and schedule for the exterior envelope system mock-up should be discussed and agreed upon between the Design-Build Firm and its consultants, Owner, Owner's consultants (e.g. Envelope/exterior skin), Institution and User Representatives prior to completion of Design Development *and approval of the Guaranteed Maximum Price*.
- b. The A/E shall finalize details for construction of the exterior envelope system mock-up in the Construction Documents, so that the mock-up work can be bought-out during the subcontractor proposal process.
- c. The A/E should use actual details from the Construction Documents for the design of the mock-up so that the mock-up is fully representative of the final product.
 - i. Often the scale of the mock-up is reduced from the actual design, however, opening sizes that match modules of specified systems should be considered to allow installation of complete assemblies and to avoid custom work that would apply only to the erection of the mock-up.
- d. The Design-Build Firm and its consultants including the A/E shall review the mock-up for completion and expected quality prior to the review with Owner and other Campus stakeholders.
- e. The Design-Build Firm and its consultants shall review all quality control procedures used to achieve the approved mock-up results. The QC procedures should be reviewed by the A/E and Owner with their quality control requirements incorporated. (Examples may include A/E and Owner observations.) The Design-Build Firm and its consultants shall provide this document to the Owner for record. The procedures shall be followed on the final material installations on the project to assist the Design-Build Firm and its consultants in achieving the same quality results as those of the approved mock-up.

EXHIBIT U
INSTRUCTIONS TO THE DESIGN BUILD FIRM
FOR THE EXECUTION OF THE CERTIFICATE OF INTERESTED PARTIES FORM
1295
(VENDOR DISCLOSURE INFORMATION HB1295)

Effective January 1, 2016, UT Systems must comply with the “Disclosure of Interested Parties” requirements mandated by HB 1295, as implemented by the Texas Ethics Commission. Vendors may be unaware of these requirements and successful implementation may require education by reviewing the requirements and processes fully described on the **Texas Ethics Commission website**.

Disclosure Requirements

- Before UT System may execute certain contracts, the Business Entity (“Vendor” or in this case “*Design-Build Firm*”) with which UT System is contracting must submit FORM 1295 (copy attached) to the UT System *at the same time the Vendor submits the signed contract to the institution for countersignature of the contract*. “Business Entity” is defined as an entity (other than a governmental entity or state agency) through which business is conducted, regardless of whether the entity is for-profit or nonprofit.
- This requirement applies to contracts (including contract renewals and extensions)].
-

Automated Disclosure Process

The Texas Ethics Commission will provide an automated electronic disclosure process that both the Vendor and UT System will use to comply with the disclosure requirements. Access to the electronic disclosure process will be posted at <https://www.ethics.state.tx.us/tec/1295-Info.htm> and which currently contains a link to FORM 1295.

Disclosure Procedure

Step 1: Vendor completes FORM 1295 in electronic format on the Texas Ethics Commission website.

Step 2: Upon receipt of a completed disclosure, Texas Ethics Commission issues a Certification of Filing to the Vendor, and the Vendor downloads, signs and notarizes FORM 1295.

Step 3: Vendor submits, along with the fully executed contracts, the signed and notarized FORM 1295, along with the Certification of Filing, to the CPC contracting department.

Step 4: *Not later than the 30th day after the date the contract has been signed by all parties*, CPC will notify the Texas Ethics Commission (*in electronic format*) of the receipt of (1) FORM 1295, and (2) the Certification of Filing.

Step 5: *Not later than the 7th business day after receipt of the above notice*, Texas Ethics Commission makes the disclosure available to the public by posting the disclosure on its website.

Contents of the “CERTIFICATE OF INTERESTED PARTIES” Disclosure Form and Where to Find the Correct Information on the Contract For its Completion.

FORM 1295 requires Vendors to provide the following information:

1. Name of Business Entity; *Use your **firm name exactly as shown on the cover page of the Agreement**. Deviations will invalidate the Form 1295.*
2. Address of Business Entity place of business; *Your firm’s address should be the **exact same address** shown on the cover page of the Agreement.*
3. Name of governmental entity would be the exact same name shown on the cover page of the

Agreement for the Owner, typically that would be “The Board of Regents of The University of Texas System, c/o The University of Texas at Austin”.

4. Identification number used by the governmental agency to track or to identify the contract. *this information is all shown on the cover page of the agreement. State 1) the Project Number, 2) the Name of the Project exactly as shown and 3) the Contract Number*

5. Description of goods or services provided under the contract; *State “Design Services for Owner’s Facilities” for AE contracts.*

6. Name, address and nature of interested parties (Controlling Interest and/or Intermediary); *This is the vendor’s information to be provided regarding business interest – read the guidelines on the website for more specific information which you must provide.*

7. If none, a representation that there are no Interested Parties; *The vendor will check this box if applicable to their firm.*

8. Signature of authorized representative of Business Entity; and

9. Acknowledgement by a Notary Public.

The following definitions may be helpful regarding the AE’s responsibility for proper completion of FORM 1295.

Definitions:

“**Business Entity**” means an entity (*other than a governmental entity or state agency*) through which business is conducted with UT System, *regardless of whether the entity is a for-profit or nonprofit entity.*

“**Certificate of Filing**” means the disclosure acknowledgement issued by the Texas Ethics Commission to the filing Business Entity.

“**Controlling Interest**” means (1) an ownership interest or participating interest in a Business Entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a Business Entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a Business Entity that has more than four officers.

“**Interested Party**” means (1) a person who has a Controlling Interest in a Business Entity with whom a UT System contracts. or (2) a person who actively participates in facilitating the contract or negotiating the terms of the contract with the UT System, including a broker, intermediary, adviser, or attorney for the Business Entity.

“**Intermediary**” means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the Business Entity who:

(1) Receives compensation from the Business Entity for the person’s participation.

(2) Communicates directly with the UT System on behalf of the Business Entity regarding the contract; and

(3) Is not an employee of the Business Entity.

Helpful Links

Section 2252.908, *Government Code (“Disclosure of Interested Parties” Statute)*

1 Texas Administration Code Sections 46.1 through 46.3 (*“Disclosure of Interested Parties” Regulations*)

Rule 10501, Sections 3.1.1 and 3.1.2 of the Board of Regents *Rules and Regulations*
Texas Ethics Commission “Disclosure of Interested Parties” Web Page
Form 1295, Certificate of Interested Parties

EXAMPLE FORM

CERTIFICATE OF INTERESTED PARTIES**FORM 1295****OFFICE USE ONLY**

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____,
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

Signature of authorized agent of contracting business entity (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

EXHIBIT V
COMMISSIONING IMPLEMENTATION PROGRAM

Purpose and General Responsibilities

This document outlines requirements that must be met during design and construction phase to assure the Owner that all commissioning requirements are met and that facilities are operating at optimum performance levels according to building-program established parameters. The underlying objective is to deliver to the Owner a fully functional facility that operates in accordance with the design intent.

The primary participants involved with the project's commissioning are:

- Owner
- Institution (INST) which maintains and operates the Project at its completion.
- Architect (A) and Engineer (E) responsible for the design of the Project in accordance with the Design-Build Firm agreement with the Owner.
- Design-Build Firm including the Test Engineer (TE) / Commissioning Coordinator responsible for the construction of the project in compliance with Specification Section 01 91 00 General Commissioning Requirements.
- Commissioning Agent (CA)
- Testing Adjusting and Balance Firm (T&B)

All design criteria and operational parameters must be thoroughly considered by the primary participants during the schematic and design development phases, and final agreements documented at the end of the design development phase. Deviations from design criteria and operational parameters accepted during the contract document and bidding phases must be recorded at the end of bidding and included as a supplement to the document produced at the end of the design development phase. These two documents must be bound together with the original functional and technical programs to be a permanent reference regarding the design and operating criteria for the facility; to be used during commissioning and for reference throughout the life of the facility.

During the Implementation Phase and Design Phase, the Commissioning Agent (CA), working with Owner and in cooperation with the Test & Balance Team (T&B), Architect (A) and MEP Engineer (E) responsible for the design of the Project will develop the general specifications for the bid documents to define the Design-Build Firm's (TE) responsibilities for the commissioning activities.

During the construction phase, the CA working through Owner, T&B and the Institution and in cooperation with the Design-Build Firm will coordinate and oversee the commissioning activities.

The Design-Build Firm shall prepare detailed commissioning plans as defined in the specifications developed by the Architect and Engineer for the Project equipment and systems for approval by the CA.

The Design-Build Firm shall organize and conduct demonstration tests of the equipment and systems under the observation of the CA, Owner, Institution, T&B and institution operations personnel. To support the Design-Build Firm's responsibility, the Design-Build Firm shall employ a Test Engineer (TE) to prepare and conduct the commissioning activities of the Design-Build Firm. The TE shall work in close contact with Owner, T&B and CA.

Scope of Services Matrix

This list is not all inclusive nor is it limited to any items referred to or implied in other parts of the Agreement or normally provided under the Conditions of the agreement.

Implementation Phase	A	E	CA	TE	Owner	INST.	T&B
Investigate, develop and understand Owner's current policies and procedures	X	X	X				
Make and offer suggestions for improvement for Owner's review	X	X	X	X			
Design Phase Activities	A	E	CA	TE	Owner	INST.	T&B
Review Schematic Design	X	X			X	X	
Review Design Development Documents	X	X	X	X	X	X	X
Develop commissioning plan	X	X	X	X	X	X	
Review Construction Documents	X	X	X	X	X	X	X
Develop commissioning specifications	X	X					
Develop or organize design intent/criteria documents	X	X					
Identify the scope of the proposed commissioning process.	X	X					
Provide outline specifications for commissioning.					X		
Documentation of Design Criteria and Assumptions	X	X					

Construction Phase

Activities	A	E	CA	TE	Owner	INST.	T&B
Prepare project specific plan	X	X					
Approve Plan					X		X
Attend pre-construction, planning and construction meetings	X	X	X	X	X		X
Develop schedule of milestones for accomplishing commissioning plan				X			
Review/Update Commissioning Plan	X	X	X	X	X		X
Develop submittal and shop drawing format	X	X		X	X		
Prepare submittals and shop drawings				X			
Review equipment, system and control submittals for compliance with commissioning goals	X	X	X	X	X	X	X
Review project status with Owner	X	X		X	X		X
Witness initial start-up of equipment			X	X	X		X
Prepare demonstration test program with functional test procedures and document results	X	X	X	X			
Prepare training program Observers				X	X	X	
Execute demonstration (functional) test Observers				X	X	X	X
Organize O&M Manuals				X			
Organize and execute training program Observers				X	X	X	X
Develop balancing agenda and schedule Observers				X		X	X
Review test and balance program		X		X	X	X	X
Building envelope pressure test			X	X			X
Elevator testing				X			
Perform test and balance				X			X
Review test and balance reports		X	X	X	X	X	X
Review Design-Build Firm as-builts		X	X		X	X	X
Develop preventative maintenance program for this			X	X	X		X
Prepare final commissioning report				X			
Construction Observation	X	X	X		X		X
Pre-final and final inspection	X	X	X	X	X	X	X

Documentation of Design Criteria and Assumptions for Consultants

General Construction Areas

- Occupancy, usage, and schedule assumptions, all seasons.
- Building envelope assumptions and calculations.
- Floor load assumptions.
- Vibration assumptions and calculations.
- Noise criteria and acoustic assumptions and calculations.
- Fire and life safety considerations.
- Fire zoning rationale.
- Life safety operation modes and sequences.

Mechanical Areas

- State Energy Code Compliance
- Indoor and outdoor design conditions, all seasons.
- Indoor “heat to” temperatures, general and specific.
- Indoor “cool to” temperatures, general and specific.
- Indoor humidity, general and specific.
- Air quality criteria.
- Air distribution zoning rationale.
- Ventilation requirements and calculations.
- Heating and cooling load calculations.
- Energy conservation intentions and calculations.
- Occupied and unoccupied operating modes, all seasons.
- Life safety operating modes.
- For individual systems, sequences of operation, setpoints, and dead-bands.
- For interactive systems, sequences of operations.
- Equipment sizing criteria and calculations.
- U-Value Calculations on Various Exposures

Electrical Areas

- State Energy Code Compliance
- Lighting requirements and calculations.
- Fire and life safety considerations.
- Fire alarm zoning rationale.
- Equipment load assumptions and calculations.
- Occupied and unoccupied operating modes, all seasons.
- Life safety operating modes.
- For interactive systems, sequences of operations.
- Equipment sizing criteria and calculations.

Documentation of design criteria shall occur after consultants and Owner have completely agreed upon all system operating philosophies. Documentation shall include one-line diagrams depicting operations at various design conditions; including fluid flow rates, temperatures, and pressures as necessary to comprehend intended operation.

In arriving at this level of documentation, members of the consulting team shall meet with Owner to fully brainstorm the functional operation of all systems and the building as a whole. This activity must try to anticipate not only normal operation but also predictable extremes to assure the design concept and intended equipment will meet all functional requirements.

Publish functional and technical programs, amendments thereto, design criteria assumptions, design intent, et al, in an appropriately bound (three ring binders with sequential numbered and dated pages) document for retention by the Owner for use by others as future alterations and revisions are imposed upon the original facility.

Contract Document and Bidding Phase Requirements for Consultants

The *Guide Specifications* which shall be included in the contract specifications as appropriate to the specifics of the project. Generally, not all of the sections are all applicable to all projects; so various sections would be omitted accordingly.

Include with the contract documents (on the drawings; NOT in the specifications) all one-line diagrams and sequence of operations discussions necessary to fully identify how all systems are intended to operate during all design conditions.

Specify Design-Build Firm participation requirements for equipment and system testing before and during commissioning. See *Guide Specifications*.

Specify Design-Build Firm responsibilities during commissioning regarding coordination of prime and subcontractor responsibilities in response to requirements of the Commissioning Agent engaged by the Owner. See *Guide Specifications*.

Specify Design-Build Firm requirements for the O&M manual, the definition of substantial completion, and requirements for final acceptance.

Specify contract requirements for training of operations and maintenance staff; both on site and at special schools, as necessary.

When the bidding phase has been completed, publish all amendments to the functional and technical programs, design criteria, and design intent which have evolved during the contract document and bidding phases and include with the documentation published at the end of the design development phase.

Construction Phase Requirements for Design-Build Firm

The Design-Build Firm shall pretest (without commissioning agent witnessing) and then formally test, in the presence of the commissioning agent and Owner, all equipment provided to verify that each component can meet the operating levels indicated on the nameplate or related performance documents. Similarly, a variety of piping and ductwork pressure and leakage tests are required by codes or the contract specifications. Design-Build Firm responsibilities shall include:

- Obtaining manufacturer's equipment start-up procedures.
- Developing the start-up, testing, and commissioning plan.
- Submitting the start-up, testing, and commissioning plan for review and acceptance.
- Scheduling testing and commissioning; integrate into construction schedule.

Developing the O&M manual.

The Design-Build Firm shall arrange and pay all costs for training of operations and maintenance staff; both on site and at special schools, as specified.

Upon completion of commissioning, and approval by the Owner, the Design-Build Firm shall develop a comprehensive commissioning document; confirming and/or assisting the consultants with revising one-line diagrams, set points, sequences of operation, et al. This document shall match the O&M manuals. Three copies shall be delivered to the Owner. Together, they will be lifetime operations reference for the facility.

Commissioning Agent Requirements

The Commissioning Agent (if engaged during design phases) shall assist the Owner during the contract document and bidding phases by reviewing the work of the consultants to assure that documentation requirements are being fully met as required.

The Commissioning Agent shall review the contract documents to assure that documents arrangement is in accordance with requirements indicated in the Owner's Project Delivery Guideline Document Requirements. The mechanical and electrical consultants are required to group, within each discipline drawing set, all one-line type systems operation diagram and equipment and apparatus schedules and tables onto special drawing sheets designed only for such information. The tabulations are to follow the format guidelines included in *Owner's Technical Specifications* which not only presents the design and equipment size data but also provides space to record operational and set-up data after commissioning has been completed. (As new tabular requirements emerge, the Owner will develop and publish format preferences accordingly.)

The Commissioning Agent shall review and approve the equipment testing and system commissioning plan and schedule, which will also be reviewed with the Owner.

Consultant Requirements During Commissioning

The Consultant and subconsultants may be required to assist the Commissioning Agent during the Commissioning process. It is assumed that if the contract documents are complete and self-explanatory, Consultant and subconsultant participation in the commissioning process will be minimal. Conversely, if the contract documents are weak, Consultant and subconsultant participation will increase. Well prepared contract documents are to everybody's advantage. The prime Consultant will be required to coordinate the participation of all sub-consultants, which must occur as required and scheduled by the Commissioning Agent.

Scheduling Commissioning

Integrating commissioning into the construction schedule is critical to the success of the project. The Design-Build Firm must be required to include specific commissioning activities throughout the entire construction period, starting as soon as equipment and components can be made available for commissioning. Doing so facilitates the Design-Build Firm's and subcontractors' awareness of inter-related sub-completion requirements which otherwise are often overlooked. Not only must such comprehensive schedules be prepared but they must be reviewed and updated weekly to ensure that all affected parties are maintaining appropriate progress.

Test Procedures

The second most critical requirement for the prime and subcontractors is development of the comprehensive test procedures for equipment and systems based on the operating criteria, test parameters, and acceptable results required. Many Contractors have not had experience in this area. That is why the preference is to

require a test engineer—someone who specializes (or has had experience) in development of test procedures.

The University will make all of this material available to consultants and Design-Build Firm for reference during design and construction. Doing so will help to reduce the time required for such development for the specific project, develop more consistent testing/commissioning among projects, and gradually improve the quality of the testing/commissioning program.

EXHIBIT W

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- Implement a rigorous constructability program following the Owner's Constructability Manual.
- Identify and document project cost and schedule savings (targeted cost savings: 5% of construction costs)

Proposed Steps:

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

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

DATE	REVISION LOG	INITIALS
SEPT 13, 2024	New Issuance	ems/scn
12/26/2024	Add Miscellaneous Provisions Section 23.26 Certification Required by Texas Governor Executive Order GA-48 effective November 19, 2024	ems