

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

**CONTRACT NO.** \_\_\_\_\_

**PROJECT NO.** \_\_\_\_\_

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This Construction Management-at-Risk Agreement (“*Agreement*”) is entered into effective as of \_\_\_\_\_, \_\_\_\_\_ (“*Contract Date*”), by and between the **University of Houston System** (“*Owner*”)

and

**[Contractor Info]**

(“*Construction Manager*”) (also sometimes referred to as “*Party*” individually or, collectively with Owner, “*Parties*”)

for the following project: **[PROJECT NAME AND LOCATION]** (the “*Project*”).

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## ARTICLE 1 - DEFINITIONS; INTERPRETIVE

### 1.1 Definitions.

***Additional Services:*** as set forth in Section 5.7.

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

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

***Construction Cost Limitation:*** the sum of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$XXXXXXXX), being the maximum amount payable to Construction Manager for all Construction Phase Services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The Construction Cost Limitation includes, without limitation, the General Conditions Cost, the Cost of the Work, the Construction Phase Fee and the Construction Manger's Contingency. The Construction Cost Limitation may be adjusted by the parties for changes in the scope of the Project before or after the acceptance of a GMP Proposal. The Construction Cost Limitation does not include the Pre-Construction Phase Fee.

***Construction Documents:*** drawings, specifications and other documents prepared by Project Architect, its consultants, or other consultants retained by Owner for the Project that describe the Work to be executed by Construction Manager.

***Construction Manager's Designated Representative:*** as set forth in Section 4.2.

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

***Construction Phase Fee:*** the maximum amount, calculated as a percentage (\_\_\_% for purposes of this Agreement) of the Cost of the Work in accordance with **Exhibit C**, payable to Construction Manager for any cost incurred or profit expectation from performance of the Work that is not specifically identified as eligible for reimbursement by Owner elsewhere in the Contract Documents.

***Construction Phase Services:*** the coordination, implementation and execution of the Work required by this Agreement and as further defined in ARTICLE 6.

***Contract Documents:***

1. this Agreement and all exhibits and attachments listed, contained or referenced in this Agreement, including the State of Texas 2005 Uniform General Conditions for Construction Contracts ("***UGC***"), the University of Houston Supplemental General Conditions and Special Conditions of Construction ("***SGC***");
2. the Drawings and Specifications, and details and other documents developed by Design Consultant for the Project or any portion thereof and all documents required and/or referenced therein,
3. the GMP Agreement,
4. any Change Orders,
5. the HUB Subcontracting Plan, and
6. any and all addenda to the foregoing issued prior to the Effective Date.

The Contract Documents form the entire and integrated contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral. The terms, “Contractor” and “General Contractor” in the UGC and SGC shall be understood to refer to Construction Manager.

**Contract Time:** as defined in the UGC; provided, however, Construction Manager shall have \_\_\_ calendar days following Owner’s Notice to Proceed with construction to achieve Substantial Completion and thirty (30) additional calendar days to fully complete the Construction Phase Services.

**Cost of the Work:** those costs described in Section 10.2.

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

**Direct Construction Cost:** the sum of the amounts that Construction Manager actually and necessarily incurs constructing for General Conditions Costs and Cost of the Work during the Construction Phase. Direct Construction Cost does not include the Pre-Construction Phase Fee or the Construction Phase Fee unless specifically noted. References to “cost” or “costs” in the UGC and/or the SGC are to be read as references to Direct Construction Cost.

**Drawings and Specifications:** the drawings, specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner.

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

**General Conditions Cost:** the costs incurred by Construction Manager for General Conditions Work. Notwithstanding any additional General Conditions Cost, the maximum General Conditions Cost payable to Construction Manager will be set out in the GMP Agreement.

**General Conditions Work:** on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials. *Texas Education Code* §51.776(7). The definition of General Conditions Work shall include any amendment, revision or modification to *Texas Education Code* §51.776, and the items listed and described in **Exhibit I**.

**GMP or Guaranteed Maximum Price:** the amount proposed by Construction Manager and accepted by Owner as the maximum cost to Owner for the completion of the Project in accordance with the Contract Documents. The GMP includes the Construction Phase Fee, the General Conditions Cost, the Cost of the Work, and any Construction Contingency.

**GMP Agreement:** the Guaranteed Maximum Price Proposal once signed and dated by Owner.

**GMP Proposal:** Construction Manager’s GMP proposal in the form attached hereto as **Exhibit C** or such other form as Owner may designate, submitted to Owner for Owner’s approval at approximately the \_\_\_% completion of the Construction Documents, or such other time as the Parties may agree upon when the Drawings and Specifications are sufficiently complete. The GMP Proposal shall be prepared with Project Architect’s assistance, will include the qualifications, clarifications, assumptions, exclusions, value engineering and all other requirements identified within **Attachment 1 to Exhibit C**, and will satisfy the requirements of Section 7.1 below.

**HUB Subcontracting Plan:** Construction Manager’s plan to comply with Owner’s Policy on Utilization of Historically Underutilized Business (set forth in **Exhibit H**), previously submitted in response to Owner’s Request for Qualifications.

**Monthly Salary Rate:** the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager’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 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 Construction Manager's personnel are subject to audit to determine the actual costs of the wages and allowable employer contributions incurred by Construction Manager for services performed for the Project.

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

**Pre-Construction Phase Fee:** the amount of \_\_\_\_\_ DOLLARS AND 00 CENTS (\$\_\_\_\_\_) paid to Construction Manager for the performance of Pre-Construction Phase Services in accordance with Section 8.1.

**Pre-Construction Phase Services:** as set forth in ARTICLE 5.

**Preliminary Project Cost:** the total estimated cost of all Project development, including design, construction, and other associated costs, which is established by Owner prior to the commencement of design.

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

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

**Project Construction Estimate:** Construction Manager's good faith estimate of all costs relating to the site preparation for and construction of the improvements and facilities constituting the Project. Among the costs, fees and expenses that are not listed or considered in the Project Construction Estimate are Pre-Construction Phase Services, the Pre-Construction Phase Fee, and Owner's design costs. The Project Construction Estimate shall itemize all components and identify for each component the estimated cost, and shall be updated and distributed as required in accordance with Section 5.4.1.

**Project Team:** Owner, Construction Manager, Design Consultant, Subcontractors, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different phases of the Project.

**Schedule:** as defined and described in Section 3.3.

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

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

**Work:** the provision of all services, labor, materials, supplies, and equipment that are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the Parties hereto that not every detail will be shown in the Contract Documents. Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price due to the absence of any detail or specification Construction Manager may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by

Owner. Notwithstanding the above, Construction Manager shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

1.2 Interpretive.

1.2.1 Capitalized terms used but not defined in this Agreement will have the meanings given in the UGC and SGC.

1.2.2 All references in the UGC and SGC to “contractor” and “general contractor” shall be read and conclusively deemed to refer to Construction Manager for all purposes under this Agreement.

1.2.3 To the extent the terms of this Agreement conflict with the UGC and/or the SGC, the terms of this Agreement will control.

1.2.4 If there is an irreconcilable conflict between or among the various documents that make up the Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

**ARTICLE 2 - SCOPE OF WORK**

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

**ARTICLE 3 - TIME**

3.1 Time is of the Essence. Time limits stated in the Contract Documents are of the essence in this Agreement. Reasonably foreseeable adverse weather conditions will not constitute an Excusable Delay. For purposes of this Agreement, “reasonably foreseeable adverse weather conditions” means weather conditions in keeping with the historical averages listed by the National Oceanic and Atmospheric Administration on its website, [www.noaa.gov](http://www.noaa.gov).

3.2 Liquidated Damages. For each consecutive calendar day after the Completion Date that Construction Manager fails to achieve Substantial Completion and/or Final Completion the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_.00) (or such lesser amount as may be required by law) will be deducted from any money due or that becomes due Construction Manager, not as a penalty but as liquidated damages representing the Parties’ estimate as of the Contract Date of the damages Owner will incur for late completion. The Parties stipulate and agree that the ascertainment of actual damages would be impractical, unduly burdensome, and cause unnecessary delay and that this amount of daily liquidated damages is reasonable.

3.3 Scheduling. Construction Manager will develop a critical path Project schedule (“**Schedule**”) in Owner’s specified format for the other Project Team members’ review and Owner’s approval, that coordinates and integrates Construction Manager’s services, Project Architect’s design, the work of other consultants and suppliers, and Owner’s activities with the anticipated construction schedules for other contractors. In this regard, Construction Manager shall:

3.3.1 Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities and major milestones of the Project, including, without limitation:

3.3.1.1 commencement, milestone and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phasing and Project close-out stages; times of commencement and completion for each Subcontractor;

3.3.1.2 required activity sequences and durations;

3.3.1.3 contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;

3.3.1.4 processing of shop drawings and samples;

3.3.1.5 a recommended schedule for Owner's purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

3.3.1.6 Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, information technology, security, property protection, life-safety systems, integration with central campus monitoring systems and computer technology systems.

3.3.2 Identify a separate phase of the Schedule for each Stage or Phase and each set of bidding documents.

3.3.3 Provide the necessary Schedule control to attain Substantial Completion on or before the date established pursuant to the Contract Documents, so that Owner can occupy and utilize the entire Project facilities on such date.

3.3.4 Create and maintain the Schedule using the latest available version of Owner's specified scheduling software (the license and training for which shall be at Construction Manager's sole expense).

3.3.5 Within seven (7) days of receiving the Notice to Proceed with Construction Phase Services, submit for Owner's review and acceptance a Schedule in accordance with the requirements of Article 9 of the UGC. Construction Manager shall revise the preliminary Schedule as required by the conditions of the Work, but only with the written approval of Owner. Upon Owner's acceptance of the GMP, the Schedule for the Construction Phase will not be modified except for good cause as provided in the Contract Documents. The Schedule must:

3.3.5.1 Encompass the entire Project duration with sufficient total Project float to allow for a minimum of Construction Phase float as specified; and

3.3.5.2 Include reasonable amounts of time for review and approval of design drawings and specifications by Owner and Design Consultant, and for approval of authorities having jurisdiction over the Project.

3.4 Fast Track/Multiple Completion Times. If Owner elects to "fast-track" or develop the Project in multiple Stages, Construction Manager shall organize and perform its services as appropriate to each Stage. Each Stage of the Project may have a unique schedule for completion and a specific GMP, at Owner's discretion. As each Stage, phase or bid package is approved by Owner, Construction Manager shall provide its best estimate of the value of the remaining scope of work that is not bid, whether or not

each phase or bid package is in budget, and if any phase or bid package is not within budget, the steps that will be taken to insure the Project is completed within the GMP.

#### **ARTICLE 4 - CONSTRUCTION MANAGER'S GENERAL OBLIGATIONS**

4.1 Overview. In addition to the requirements of Section 3.3 of the UGC, Construction Manager 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 in compliance with the requirements of the Contract Documents including, but not limited to schedules (ARTICLE 3) and GMP (ARTICLE 7), using its best efforts, skills, judgments and abilities. Except to the extent specifically provided elsewhere in this Agreement, Construction Manager shall collaborate and cooperate with Project Architect and any other Design Consultant to further the interests of Owner and the Project, provide (or cause to be provided) and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, temporary facilities and other facilities and services necessary or reasonably inferable for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated into the Project, and complete the Project in an expeditious and economical manner consistent with the interests of Owner and in accordance with the Schedule.

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

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

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

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

4.5 Records; Tracking. Construction Manager shall establish and maintain a numbering and tracking system for all Project records, including modifications thereto, requests for information, submittals and supplementary instructions and shall provide updated records at each Owner's meeting and when requested. During the Construction Phase, Construction Manager shall submit to Owner detailed monthly progress reports that include a description of the Project status, a summary update of the Work by



Construction Specifications Institute (“*CSI*”) division, photographs, updated and current schedules and logs, and any other information necessary to convey the progress of the Work.

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

4.6.1 If Construction Manager intends to submit a proposal for subcontract work, it shall notify Owner in writing prior to soliciting proposals from potential subcontractors. All Subcontracts shall be awarded in accordance with the applicable provisions of *Texas Education Code* §51.782, as amended. Construction Manager shall deliver at least ten (10) days’ prior written notice to Owner of the identity of each Subcontractor with which it intends to subcontract. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection, except as may be required otherwise by the applicable provisions of *Texas Education Code* §51.782, as amended. Owner shall not be responsible or pay for any Subcontract costs incurred by Construction Manager prior to issuance of Owner’s Notice to Proceed for such Work. In addition to the requirement of UGC Section 3.3.6.2 that Construction Manager deliver to Owner executed copies of Subcontracts promptly after their execution, Construction Manager shall deliver to Owner executed copies of all modifications, revisions and/or amendments to Subcontracts promptly after their execution.

4.6.2 If a proposed but rejected subcontractor was reasonably capable of performing the Work, the GMP Agreement and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change in Subcontractors, and an appropriate Change Order must be issued before commencing the substitute subcontractor’s work.

4.6.3 If a selected Subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, Construction Manager may, in consultation with Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

4.6.4 Further to Article 4 of the UGC, Construction Manager shall not make any changes to the HUB Subcontracting Plan without Owner’s prior written approval. Construction Manager shall comply with the requirements of the HUB Subcontracting Plan. No changes to the HUB Subcontracting Plan can be made by Construction Manager without Owner’s prior written approval.

4.6.5 Should Construction Manager propose the deletion of a HUB classified/certified sub-consultant or Subcontractor firm from its employ, Construction Manager shall substitute a sub-consultant or Subcontractor firm of like classification/certification, and if Construction Manager is unable to substitute a sub-consultant or Subcontractor firm of like classification, Construction Manager shall provide Owner with documentation of its efforts to acquire the services of a HUB replacement firm.

4.6.6 Obtaining Bids/Proposals for the Work.

4.6.6.1 Construction Manager shall publicly advertise and solicit competitive sealed bids/proposals for the performance of all major elements of the Work other than General Conditions work from trade contractors and/or suppliers or materials or labor in the

manner prescribed by Owner. Construction Manager shall notify Owner in advance in writing of the date it will receive the bids/proposals.

4.6.6.2 Construction Manager shall schedule and conduct pre-bid conferences with interested bidders/proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

4.6.6.3 Construction Manager and Owner shall review all trade contractor or subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Criteria for determining the bid/proposal that provides the best value to Owner will be established by the Project Team and included in the request for bids/proposals. Based on the selection criteria, Construction Manager shall recommend to Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

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

4.6.7 Self-Performance. Construction Manager may seek to self-perform portions of the Work. If Construction Manager intends to perform any of the Work, it shall notify Owner in writing in advance and the Parties shall proceed in accordance with *Texas Education Code* §51.782. Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. Owner will determine whether Construction Manager's bid/proposal provides the best value for Owner and Owner's determination is final. Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

4.7 Scheduling. Construction Manager is solely responsible for completion of the Work in accordance with the Contract Documents on or before the date specified in the Schedule.

4.8 Safety; Condition of Project Site and Ancillary Areas. Further to the relevant provisions of the Contract Documents, including (by way of example and not of limitation) Article 7 of the UGC and Sections 9 and 15 of the SGC, Construction Manager's Safety Plan shall include recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities and equipment, materials and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents. The existence of any Owner-controlled insurance programs will not operate to diminish or eliminate Construction Manager's responsibilities under this Agreement. Owner agrees that Owner-provided Subcontractors shall be responsible for their safety precautions and programs of their employees, agents and independent contractors. The requirements of the Contract Documents regarding the condition of the Project site, including (by way of example and not of limitation), Sections 3.3.8, 3.3.11 of the UGC and Section 15 of the SGC, are and shall be deemed General Conditions for all purposes under this Agreement and will be satisfied by Construction Manager as General Conditions Cost.

4.9 Non-Conforming Work. Owner may reject any defective or non-conforming Work on the Project of which Owner becomes aware and Construction Manager shall promptly correct any such defect at Construction Manager's own cost without increasing the GMP, without application of funds from the

Construction Manager Contingency or any Allowance, and at no cost to Owner. Upon discovering that any portion of the Work does not conform with Owner design concept and/or requirements, including the Design Guidelines and Standard Specifications, due to an error or omission in any plans, drawings, specifications and other Construction Document materials prepared or furnished by or on behalf of Construction Manager, Construction Manager shall promptly correct such condition at no additional cost to Owner. If Construction Manager refuses or fails to correct (or improperly corrects) any such condition within a reasonable time after notice, Owner may cause the condition to be corrected and offset the cost of such correction against any monies owed to Construction Manager; provided, however, if no monies are owed Construction Manager at the time the condition is discovered or at the time the condition is corrected by Owner, Construction Manager shall promptly reimburse Owner for all expenses incurred to correct the condition. Construction Manager shall warranty all corrective work, whether performed by or through Construction Manager or by a third party retained by Owner in accordance with the immediately preceding sentence due to Construction Manager's refusal or failure to correct properly any non-conforming work.

## ARTICLE 5 - PRE-CONSTRUCTION PHASE SERVICES

5.1 General Scope. During the Pre-Construction Phase, Construction Manager serves as Owner's consultant and advisor with respect to concept, design, constructability and budget. The Pre-Construction Phase will be deemed to commence upon the date specified in Owner's Notice to Proceed with Pre-Construction Phase Services and will continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager will not be reimbursed for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed with Pre-Construction Phase Services. Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager shall perform the Pre-Construction Phase Services set forth in this ARTICLE 5 in accordance with the Schedule:

### 5.2 General Coordination.

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

5.2.2 Attend regular meetings with other members of the Project Team during the development of the design of the Project to advise them on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment.

5.2.3 Provide recommendations and information to the other members of the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignments of responsibilities are included in the proposed Contract Documents, and any other matters necessary to accomplish the Project in accordance with the Schedule and Project Construction Estimate.

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

### 5.3 Constructability Program

5.3.1 Design, implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program must follow accepted industry practices and be in accordance with the requirements of the attached **Exhibit E**.

5.3.2 Prepare a “Constructability Report” identifying items that, in Construction Manager’s opinion, may negatively impact construction and/or cost of the Project. The Constructability Report must address the overall coordination of Project drawings, specifications and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report must be updated at least monthly during the Pre-Construction Phase.

5.3.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the drawings and specifications for the Project. The decision tracking system must be in a format approved by Owner and must be updated at least monthly during the Pre-Construction Phase.

5.4 Budget and Cost Consultation.

5.4.1 Prepare and deliver to Owner the Project Construction Estimate upon the completion of the program/conceptual design phase, and prepare and deliver to Owner an updated Project Construction Estimate as follows: upon completion of the schematic design phase; upon completion of the design development phase; when the Construction Documents are approximately 50% complete, and immediately prior to the release of each bid package. In addition, Construction Manager shall update the Project Construction Estimate after receipt of subcontractor proposals for bid packages for written approval by Owner, such estimate to include estimating, updating and reporting of all Project construction costs.

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

5.4.1.2 At the completion of the Construction Documents (for any Stage of the Project), update and refine a comparison of actual and projected costs to the Project Construction Estimate, and in the event such actual and projected costs exceed the original Project Construction Estimate, develop and implement reasonable strategies to be approved by Owner to reduce the costs projected to be incurred during all phases of the Project.

5.4.2 Provide throughout the duration of the Project updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team immediately if at any time Construction Manager has knowledge or belief that the previously established Preliminary Project Cost, or Project Construction Estimate, or Schedule will not be met, and make recommendations to the Project Team for corrective action.

5.5 Coordination of Design and Construction Documents.

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

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

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

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

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

5.5.2 Advise Owner and consult with Design Consultants (including Project Architect) on the selection of materials, equipment, component systems and types of construction to be used in the Project. Construction Manager shall advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs and construction coordination.

5.6 Construction Planning and Bid Package Strategy.

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

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

5.6.3 Review the Construction Documents with the Project Team to identify and eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors, and to ensure that they contain adequate provision for all temporary facilities necessary to perform the Work, and provisions for all job site facilities necessary to manage, inspect and supervise construction of the Work.

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

5.6.5 Develop a bid/proposal package strategy in coordination with Project Architect that addresses the entire scope of work for each phase and Stage of the Project. In developing the bid/proposal package strategy, Construction Manager shall identify all bid/proposal packages on which Construction Manager intends to submit a self-performance bid/proposal. The bid/proposal package strategy and the packages on which Construction Manager intends to bid, must be submitted for Owner's review and approval on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of Owner including, but not limited to, the good and workmanlike completion of the Project timely and in accordance with the other requirements of the Contract Documents. All personnel assigned by Construction Manager to the Project and Subcontractors retained by Construction Manager for the Project must be selected in accordance with this Agreement.

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

5.6.7 Refine, implement and monitor HUB subcontracting plans to promote equal employment opportunity in the provision of goods and services to Owner for the Project. Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing and deliver to Owner a HUB Subcontracting Plan at least ten (10) days before entering into a Subcontract.

5.6.8 Advise Owner of any tests to be, or that should be performed in consideration of the intended use of the Project or the characteristics of the Site, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants except as otherwise required in this Agreement.

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

5.6.10 Obtain building permits and special permits for permanent improvements as required by Applicable Law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.

5.7 Additional Services. If authorized in writing by Owner in the form attached hereto as Exhibit D, Construction Manager shall provide Additional Services in accordance with this Section 5.7. Prior to commencing any Additional Service, Construction Manager shall submit to Owner an Additional Services Proposal in a form acceptable to Owner. The Additional Services Proposal must describe in detail the nature and scope of the Additional Services, the basis upon which Construction Manager believes such services constitute Additional Services, the maximum amount of fees for performance of the Additional Services and a proposed schedule for performance of the Additional Service. Construction Manager shall proceed with the Additional Service only after receiving Owner's written acceptance of the Additional Services Proposal. Upon acceptance by Owner, each Additional Services Proposal and the services performed by Construction Manager pursuant to such Additional Services Proposal will be subject to this Agreement.

5.8 Warranties. In addition to the warranties, representations and covenants contained elsewhere in this Agreement, Construction Manager warrants, represents, covenants, agrees and acknowledges:

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

5.8.2 That Construction Manager has visited the Project site to become sufficiently familiar with the existing facilities, systems and conditions to insure that the Project as designed will functionally interface with the existing conditions.

5.8.3 That Construction Manager has reviewed all reports and investigations provided by Owner or obtained by or on behalf of Construction Manager with respect to the Project and the Site (including, by way of example and not of limitation, survey, geotechnical and environmental reports) and is sufficiently familiar with all of the components having or likely to have an impact on the Project to make decisions and render advice to Owner regarding the Project as required in this Agreement.

5.8.4 That Construction Manager has reviewed all laws, codes, ordinances, rules and regulations applicable to the construction of the Project to determine if any Program requirement

may cause a violation of such laws, codes, ordinances, rules and/or regulations and has determined that no such violations will occur.

5.8.5 That Construction Manager has received and reviewed the Program and Contract Documents and represents, warrants and covenants that, at each Stage or phase, the Project will adhere to all requirements of the Program and Contract Documents.

## ARTICLE 6- CONSTRUCTION PHASE SERVICES

6.1 General. During the Construction Phase, Construction Manager shall construct the Work in strict accordance with the Contract Documents and Construction Documents within the time required by the Schedule approved by Owner and as required by Owner's UGC and SGC. The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Construction (or with a portion of the Work specified in such Notice to Proceed) issued by Owner after Owner's approval of the Guaranteed Maximum Price. Pre-Construction Phase Services may overlap Construction Phase Services. In implementation of the responsibilities and duties of Construction Manager for the Construction Phase, Construction Manager shall provide the following services (collectively, the "**Construction Phase Services**"):

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

6.2.1 In accordance with the UGC and SGC, Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

6.3 Subcontractors. Construction Manager shall award and enter into, as the equivalent of a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project in accordance with the requirements of Section 4.6. Construction Manager shall self-perform only General Conditions Work and any Work awarded to Construction Manager in accordance with the requirements of Section 4.6.7. Owner reserves the right to perform and to award separate contracts for portions of the Work.

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

6.3.2 Inspect the Work of Subcontractors to ensure conformance with the Contract Documents without assuming Project Architect's responsibilities.

6.3.3 Provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

6.3.4 Submit to Owner all documents substantiating payments to qualifying HUBs in a format designated by Owner.

6.4 Personnel. Construction Manager shall:

6.4.1 As provided in **Exhibit A**, establish on-Site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, Construction Manager's on-Site personnel shall include a project manager, project superintendent, project engineer, and appropriate administrative support personnel.

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

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

6.5 Coordination. Construction Manager shall:

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

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

6.6 Meetings. Construction Manager shall:

6.6.1 Attend Project progress meetings scheduled by Owner no less often than once per month, and fully advise the Project Team at such meetings as to Project status.

6.6.2 Schedule, direct and attend regular Project Team meetings to discuss jointly such matters as procedures, progress, problems and scheduling. Prior to each meeting, Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. At each Project Team meeting, Construction Manager shall distribute a memorandum setting forth the list of critical activities that require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting.

6.7 Cost Control. Construction Manager shall:

6.7.1 Maintain Audit Records as required by ARTICLE 13.

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

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

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

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



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

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

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

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

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

## ARTICLE 7 - GUARANTEED MAXIMUM PRICE; SAVINGS

7.1 Guaranteed Maximum Price Proposal. If Owner accepts the GMP Proposal, both Parties shall sign the proposal and the Guaranteed Maximum Price, Contract Time and date of Substantial Completion therein shall become part of this Agreement. Based on particular Project requirements and the development of the Project design, Owner, at its sole option and discretion, may specify a different format than that contained at **Exhibit C**, which is provided as an example only. Following Owner's approval of the GMP Proposal, Construction Manager shall monitor the development of the Construction Documents to confirm that, when complete, the documents reflect the appropriate detail describing all qualifications, assumptions, exclusions and value engineering issues contained in the GMP Agreement.

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

7.1.2 In formulating the GMP Proposal, Construction Manager shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable,

except for material changes in scope, and the Guaranteed Maximum Price Proposal shall include a Construction Contingency to allow for costs arising out of such development and completion which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the proposal. The Construction Contingency shall be administered in accordance with Section 10.4 below.

7.1.3 In submitting the GMP Proposal, Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal and the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by Owner in writing. Upon Owner's acceptance of the GMP Proposal, Construction Manager shall not be entitled to any increase in the GMP due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Agreement or the supporting documents used to establish the GMP.

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

7.1.5 Owner, at its sole option and discretion may reject the GMP Proposal, attempt to renegotiate the proposal with Construction Manager (with the right to cease negotiations at any time and reject the proposal), or increase the Project Construction Estimate. Construction Manager shall not withdraw its GMP Proposal for sixty (60) days after Owner's receipt.

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

7.1.7 Construction Manager shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or 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.

7.1.8 Construction Manager shall document the actual Cost of the Work at buyout as compared to the GMP Proposal and shall report this information to Owner at least monthly and with Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package.

7.1.9 Notwithstanding anything to the contrary herein, Construction Manager shall have no liability for delay or liquidated damages if the Parties are unable to reach an agreement on the GMP.

7.2 Direct Construction Costs. If the allowable amount of the cost of Cost of the Work, General Conditions Cost and Construction Contingency (if any) is less than the amount established for each of those line items in the GMP Agreement, the entire difference shall be credited to Owner as savings and the contract amount shall be adjusted accordingly, including associated Construction Phase Fees. When buyout of the Project is at least 85% complete, Owner may recognize any savings achieved to that point by issuing a deductive Change Order for the saved amount.

7.3 Allowances. Specified allowances, if applicable, are preliminary estimates of the cost of constructing the indicated improvements, and include labor and material costs. The costs included in the Allowances shall be determined in accordance with the UGC and SGC except that any claim by Construction Manager for an adjustment to the GMP based on the cost for allowance work shall be made within a reasonable time after the cost of the allowance is known. Prior to expending any specified allowances, Construction Manager shall provide Owner with a detailed breakdown of the costs involved in constructing the improvement, including those costs identified on the Change Proposal form and shall not proceed unless it has previously received an Allowance Expenditure Authorization form countersigned by Owner.

7.4 Documentation. Construction Manager shall maintain a detailed log of contingency and allowance expenditures and shall submit the log for review by Owner and the Design Consultant at each Progress Meeting and otherwise upon Owner's request.

7.5 Savings. Each of the following items shall be credited against the GMP, deducted from any Application for Payment, or refunded to Owner if realized, discovered or received after Final Payment:

7.5.1 The savings, if any between: (i) the GMP; and (ii) the sum of the actual Cost of the Work plus General Conditions, plus the Construction Phase Fee.

7.5.2 The balance remaining, if any, in the "Allowances" after the allowance items have been selected and purchased.

7.5.3 100% of any unexpended contingencies, reimbursables, other allowances and savings resulting from any design or construction changes reducing the scope of the Work, at any time, whether before or after Final Payment.

7.5.4 Any savings realized between the GMP and the buyout price for subcontracting work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Schedule of Values, so long as the total Cost of the Work proposed in the GMP does not increase.

7.5.5 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to Owner, Construction Manager, or to some other party; and any such sale, if made to others than Owner, shall be at fair market price. The fair market value shall be determined by referring to the Contractor's Equipment Cost Guide latest edition published by the Associated General Contractors of America (AGC) ("**Cost Guide**") or [www.equipmentwatch.com](http://www.equipmentwatch.com), whichever rate is higher. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.

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

7.5.7 Reasonable market value as approved by Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by Construction Manager.

7.5.8 Rebates, discounts, or commissions allowed to and collected by Construction Manager from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or, to the extent attributable to this Project, on bond premiums, insurance and sales taxes.

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

7.5.10 If the actual cost of any item comprising the GMP is less than the listed or assumed cost of such item, Owner may recover the savings by reducing the GMP and/or electing to increase the Project scope.

7.5.11 100% of any savings, other than those specifically listed above, identified by cost review or audit, at any time, whether before or after Final Payment.

## ARTICLE 8 - COMPENSATION

8.1 Pre-Construction Phase Fee. The Pre-Construction Phase Fee is payable on a monthly basis proportionately to the amount of effort expended by Construction Manager. Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services. Any Additional Services approved in advance and in writing by Owner and performed by Construction Manager during Pre-Construction Phase will be billed in accordance with the terms contained in such approval; provided, however, Construction Manager agrees that any overhead and profit mark-up for Additional Services shall not exceed ten percent (10%) of the total cost of the Additional Services performed.

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

8.1.2 The Pre-Construction Phase Fee shall be adjusted:

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

8.1.2.2 Proportionately with any change in the Construction Cost Limitation before the GMP Agreement. There shall be no adjustments in the Pre-Construction Phase Fee following the GMP Agreement.

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

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

Construction Manager's "overhead" and "profit" mean Construction Manager's Construction Phase Fee. The Construction Phase Fee is meant to cover the following and all similar items, none of which may be billed or in any other way charged to Owner:

8.2.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives and rewards; company stock options; or any other like expenses.

8.2.2 Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

8.2.3 Compensation, including salaries, of persons employed in the main or branch offices of Construction Manager whose time is devoted to the general conduct of Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.

8.2.4 Overhead or general expenses of any kind unless specifically addressed otherwise herein. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of Construction Manager's personnel; travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions; and bonuses or commissions for any of Construction Manager's employees, agents, representatives, and officers.

8.2.5 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems relating to accounting in Construction Manager's office and at the site, except as otherwise specifically set forth herein.

8.2.6 Interest on Construction Manager's capital or on money borrowed by Construction Manager, including the capital employed by Construction Manager in the performance of the Work.

8.2.7 Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.

8.2.8 Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.

8.2.9 Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.

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

8.2.11 The cost of any and all insurance deductibles payable by Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

8.2.12 Any and all costs that would cause the Guaranteed Maximum Price set forth in the GMP Agreement to be exceeded, other than costs attributable to Change Orders that by the terms of this Agreement increase the Guaranteed Maximum Price.

## ARTICLE 9 - PAYMENTS

9.1 Construction Manager's Obligations. Construction Manager shall promptly pay all bills for labor and material performed and furnished by others in connection with this Agreement.

9.2 Schedule of Values. A Schedule of Values subdividing the Project into its respective parts and which includes values for all items comprising the Project will serve as the basis for monthly progress payments made to Construction Manager throughout the Project. Each Schedule of Values submitted must maintain the originally established value for each work classification line item or Subcontractor and must contain any revisions to costs or cost estimates for each such classification or Subcontractor. The format and tracking method of the original Schedule of Values and of all updates thereto will be subject to the approval of Owner and Owner's Designated Representative. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager's overhead and profit) shall not exceed the unpaid balance of the GMP (less Retainage on Work previously completed).

9.2.1 The Construction Phase Fee must be shown as a separate line item on the Schedule of Values. In determining the percentage of completion, Construction Manager shall use the lesser of the total percentage of the Work actually completed for each classification on the Schedule of Values, or the percentage of the GMP allocable to that item which has been actually incurred and demonstrated as an allowable expense by Construction Manager. Payment of Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

9.3 Applications for Payment. All payment requests must be submitted on an approved form of Application For Payment including required attachments identifying payments to HUBs and to all Subcontractors. Failure to submit the HUB Subcontracting Plan Prime Contractor Progress Assessment Report form ([www.tfc.state.tx.us/communities/facilities/prog/construct/ProgressAssessmentReport.xls](http://www.tfc.state.tx.us/communities/facilities/prog/construct/ProgressAssessmentReport.xls)) with each Application for Payment will result in Owner's rejection of the application.

9.3.1 With each Application for Payment, Construction Manager shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, including certified payrolls, and any and all other evidence required in the UGC and which Owner or Owner's Designated Representative deem necessary to support the amount requested.

9.3.2 For General Conditions Costs, Construction Manager's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or Owner's Designated Representative 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 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.

9.3.3 Notwithstanding the certification of Construction Manager's payment applications by the Design Consultant, Owner will independently review Construction Manager's payment applications and make a determination as to the amount properly payable to Construction Manager. Construction Manager shall submit its payment applications to Owner by the last day

of each month. Provided that Construction Manager's payment applications are submitted by the last day of each month and approved by Owner, Owner shall pay Construction Manager the approved amount in accordance with Chapter 2251 of the *Texas Government Code*.

9.3.4 Payments to Subcontractors included in an Application for Payment will not exceed the percentage of Work allocable to such Subcontractors for each respective Schedule of Values classification which has been actually completed and will not exceed the total value of the subcontract amount.

9.4 Specific Payments.

9.4.1 All Pre-Construction Phase Services must be billed separately from Construction Phase Services. Payments for Pre-Construction Phase Services will be made monthly based on the percentage completion of Construction Manager's required services for each stage of development of the Construction Documents. Construction Manager's statement of services for the Pre-Construction Phase must itemize the services performed during that payment period.

9.4.2 Payments for Construction Phase Services will be made pursuant to the Contract Documents.

9.4.3 Payments for approved Additional Services will be made monthly upon presentation of Construction Manager's statement of services rendered or expenses incurred.

9.5 Offsets; Deductions; Withholding.

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

9.5.2 Amounts assessed as liquidated damages in accordance with Section 3.1 of this Agreement and other amounts to which Owner is entitled by way of setoff or recovery, if any, shall be deducted from any amounts due Construction Manager.

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

9.5.3.1 Construction Manager persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in breach or default under this Agreement;

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

9.5.3.3 Construction Manager's payment request has insufficient documentation (including, by way of example and not of limitation, Project Architect's certification to Owner that the Work has progressed to the point indicated in Construction Manager's payment request and that, to the best of Project Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents) to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

9.5.3.4 Construction Manager is in violation of the Prevailing Wage requirements or has failed to make payments promptly to consultants or other third parties used in

connection with any services for which Owner has made payment to Construction Manager;

9.5.3.5 Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement.

9.5.3.6 Construction Manager persistently fails to meet schedule requirements or Owner, in its good faith judgment, determines that the remaining Work will not be completed within the Contract Time;

9.5.3.7 Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts;

9.5.3.8 Construction Manager fails to obtain, maintain or renew insurance coverage as required by this Agreement;

9.5.3.9 Owner's right to withhold payment is contingent on giving Construction Manager a minimum of seven (7) calendar days' written notice of specific defects or defaults and opportunity to cure same, and on Construction Manager's failure to cure or to take diligent steps to cure within such seven (7) calendar days.

9.6 Retainage. Retainage will be withheld by Owner from the entire amount requested including the Cost of the Work, General Conditions and Construction Manager's Construction Phase Fee. Retainage will not be withheld from the Pre-Construction Phase Services Fee.

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

9.7.1 Owner shall have no obligation to make Final Payment until a final accounting of the Cost of the Work has been submitted by Construction Manager and has been audited and verified by Owner and/or Owner's representatives pursuant to the terms of this Agreement. The aggregate total of payments to Construction Manager will not exceed the GMP (as it may be adjusted pursuant to the terms of this Agreement), as verified by Owner or Owner's representative from Construction Manager's final accounting, plus payments for Additional Services, as certified for payment in accordance with this Agreement. If any payments made to Construction Manager exceed that which is due and owing pursuant to this Agreement, then Construction Manager shall promptly refund such excess to Owner.

9.7.2 The acceptance by Construction Manager or Construction Manager's successors of Final Payment under this Agreement, will constitute a full and complete release of Owner from any and all claims, demands and causes of action whatsoever which Construction Manager or Construction Manager's successors have or may have against Owner under the provisions of this Agreement for payment for the Work except for those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment.



9.8 No Waiver.

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

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

9.9 Audit. As set forth in greater detail in ARTICLE 13, Owner and its representatives (including but not limited to third-party auditing consultants, if any) may verify and audit the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the pertinent books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Project site; and (5) other reasonable action.

### ARTICLE 10 - DIRECT CONSTRUCTION COST

10.1 General Conditions Costs. Construction Manager is entitled to receive reimbursement, up to the maximum amount set forth for General Conditions Costs in the GMP Agreement, for the actual cost of the allowable General Conditions items incurred during the period commencing the calendar day after Construction Manager's receipt of Owner's Notice to Proceed with Construction and expiring on the thirtieth (30<sup>th</sup>) consecutive calendar day after Substantial Completion. Any General Conditions Costs incurred outside of the period set forth, or maximum referenced, in the immediately preceding sentence shall not be reimbursed and shall be at Construction Manager's sole cost and expense. Allowable General Conditions items are identified below and further detailed in the attached **Exhibit I**. These items will be included in the General Conditions cost amount shown as a line item in the GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in **Exhibit I** will not be allowed as General Condition costs. General Conditions Costs include:

10.1.1 Personnel Costs. The actual wage rate for Construction Manager's hourly employees and the Monthly Salary Rate of Construction Manager's salaried personnel who are identified to Owner in advance and in writing but only for the time actually stationed at the Project site with Owner's prior consent. The Parties agree that prevailing wage rates adopted by Harris County, Texas as of the Effective Date will apply unless Owner notifies Construction Manager otherwise in writing. The Construction Manager Project Manager's Monthly Salary Rate may be included in the General Conditions Costs only when the Project Manager is directly managing the Project. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by Construction Manager for services performed for the Project.

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

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

market value will be determined by referring to the Cost Guide or [www.equipmentwatch.com](http://www.equipmentwatch.com), whichever rate is higher.

10.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, provided they are included in the list of allowable General Condition Line Items and Owner has approved the rentals and the rental rates in advance in writing. Rental rates may include transportation, installation and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, must be approved in advance by Owner, will be in accordance with the Cost Guide and will be no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

10.1.5 The aggregate rental cost of any item charged to Owner may not exceed ninety percent (90%) of the purchase price and maintenance cost of the item, and Construction Manager may not recover, in the aggregate, more than one hundred percent (100%) of its rental cost from the owners of all projects for which Construction Manager has rented the item. By way of example, if Construction Manager will use a rented item in three projects, only one of which is for Owner, then Construction Manager may not charge Owner more than one third (1/3) of the rental cost for the item, subject to the ninety percent (90%) limitation set forth in the immediately preceding sentence. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to Owner upon Final Completion of the Work or, at Owner's option, credit Owner with the fair market resale value of the item.

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

10.1.7 Premiums actually incurred by Construction Manager for insurance and bonds to the extent directly attributable to this Project, except as otherwise provided in this Agreement.

10.1.8 Governmental sales and use taxes directly attributable to the approved General Conditions items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner.

10.2 Cost of the Work. Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items, up to the maximum Cost of the Work amount set forth in the GMP Agreement, incurred after receipt of Owner's Notice to Proceed with the Construction Phase Services through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's Notice to Proceed with the Construction Phase Services. Cost of the Work includes:

10.2.1 Payments made to Subcontractors by Construction Manager (a) to pay for bonding costs as deemed appropriate by Construction Manager's risk management program, and (b) for the construction of the Work in accordance with the Contract Documents and the requirements of the Subcontracts. However, should Construction Manager seek reimbursement under any part of this Agreement for insurance to protect against the effects of a default by a Subcontractor, then any costs incurred under clause (a) of this Section 10.2.1 shall not constitute a Cost of the Work and Construction Manager shall pay such costs without reimbursement or contribution from Owner in any way.

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

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

10.2.4 Permit and inspection fees not subject to exemption.

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

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

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

10.2.8 Costs of materials and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the UGC and SGC.

10.3 Not Cost of the Work: The following items are not included in the Cost of the Work and shall not be charged to or paid by Owner:

10.3.1 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor, when such costs exceed the GMP.

10.3.2 Legal and administrative costs to review and negotiate the Contract Documents.

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

10.3.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.

10.3.5 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules thereof, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.

10.3.6 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

10.3.7 Any and all personnel costs, including, without limitation, wages, salaries, and benefits, as defined in the General Conditions and Construction Manager's Construction Phase Fee.

10.3.8 Costs related to Construction Manager's indemnification obligations under this Agreement.

10.3.9 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.

10.3.10 Any cost arising out of a breach of this Agreement or the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, damage to persons or property, errors and omissions with respect to Pre-Construction Services provided or furnished by Construction Manager, and failure to coordinate the Pre-Construction Services provided or furnished by Construction Manager when such costs exceed the GMP.

10.3.11 Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Construction Phase Services within the Contract Time unless such failure is caused directly and solely by the action or inaction of Owner.

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

10.3.13 Costs of Construction Manager's architects, engineers, and other entities and personnel performing Pre-Construction Phase Services.

10.3.14 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.

10.4 Construction Contingency. The GMP Agreement may include a Construction Contingency to cover increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

10.4.1 Any re-allocation of funds from Construction Contingency to cover increases in the Direct Construction Cost must be approved by Owner in advance and in writing. In written requests to use Construction Contingency, Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

10.4.2 Construction Contingency shall not be used for Contractor rework, unforeseen conditions that Construction Manager could have foreseen with the exercise of commercially reasonable diligence, cost increases caused by lack of coordination or communication with Project Architect or trade Subcontractors, or to correct errors or omissions in the Construction Documents.

10.4.3 As the Construction Documents are finalized and the buyout of the Work progresses, Construction Contingency amount may only be reduced by mutual agreement of Owner and Contractor. Any balance in Construction Contingency fund remaining at the end of the Project shall be returned to Owner as savings.

## **ARTICLE 11 - OWNER'S RESPONSIBILITIES**

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

11.2 Owner will designate a Design Consultant to serve as architect for the Project in accordance with *Texas Education Code* §51.782, and will cooperate timely in providing information to the other members of the Project Team regarding its requirements for the Project.

11.3 Owner will provide the Preliminary Project Cost and general schedule for the Project. The Preliminary Project Cost will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of Owner. The general schedule will set forth Owner's plan for milestone dates and completion of the Project.

11.4 Owner's Designated Representative will examine the documents submitted by Construction Manager and may render decisions pertaining to such documents. If Owner has actual knowledge of any

fault or defect in the Project or non-conformance with the Drawings and Specifications, Owner shall give prompt written notice of such fault, defect, or non-conformance to Construction Manager.

11.5 Owner may designate one or more construction inspectors of its own who will be given access to the Work as requested or needed. The provision of such inspectors by Owner will not reduce or lessen in any respect Construction Manager's responsibilities for the Work.

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

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

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

#### **ARTICLE 12 - OWNERSHIP AND USE OF DOCUMENTS**

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

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

#### **ARTICLE 13 - RECORD RETENTION; OWNER AUDIT RIGHTS**

13.1 Audit Records. Construction Manager shall keep full and detailed records and accounts of all pertinent information related to this Agreement and the Project in accordance with Generally Accepted Accounting Principles ("**GAAP**") and exercise such cost controls as may be necessary for proper financial management under this Agreement. The accounting and control systems must be satisfactory to Owner. Owner and its representatives (including but not limited to third-party auditing consultants, if any) will be afforded reasonable access, at reasonable times, to all records establishing the actual cost of the Project (collectively, "**Audit Records**"), including but not limited to: Construction Manager's accounting records, time sheets, payroll burden calculations, insurance rates and the support therefor, insurance contracts, insurance policies, bond cost documentation and other bond information, invoices, bills, and expense reports, Additional Services reports, records, books, foreman's reports, superintendent daily logs, correspondence, instructions, Record Drawings, receipts, Subcontracts (including all modifications, revisions and amendments), purchase orders, vouchers, memoranda, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets correspondence, Change Order files (including documentation), general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, any other supporting evidence necessary to substantiate charges related to this Agreement and other records, drawings or data relating to the services rendered in accordance with this Agreement. Audit Records must be kept with respect to all Work, including Construction Manager self-performed work, even if

Owner agrees to pay a lump sum for a portion of the Work. Construction Manager shall preserve Audit Records for a period of four (4) years after Final Payment or abandonment of the Project, or for such longer period as may be required by law or directed in writing by Owner.

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

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

13.2.2 In the event Construction Manager does not fully comply with the requirements of this ARTICLE 13, Construction Manager will be responsible for the reasonable actual costs and fees (including attorneys' fees) incurred by Owner in attempting to conduct its audit(s) and otherwise enforcing its rights under this ARTICLE 13.

13.2.3 If any audit discloses overcharges by Construction Manager to Owner that are (i) proven in the reasonable discretion of Owner and (ii) in excess of one half of one percent (.5%) of the total Cost of the Work, then the reasonable actual cost of Owner's audit will be reimbursed to Owner by Construction Manager within thirty (30) days after receiving Owner's written notice. Any adjustments and/or records due to the overcharges will be made within a reasonable amount of time (not to exceed thirty (30) days) from presentation of Owner's findings to Construction Manager. Owner may deduct such reimbursement amounts from any money due or that becomes due Construction Manager.

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

## **ARTICLE 14 - INDEMNITY**

14.1 Bodily Injury and Property Damage. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS CONSIDERATION FOR THE TERMS AND CONDITIONS OF THIS AGREEMENT, CONSTRUCTION MANAGER ("**INDEMNITOR**") AGREES TO RELEASE, INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS OWNER, THE UNIVERSITY OF HOUSTON, AND/OR ANY OF THEIR RESPECTIVE COMPONENT INSTITUTIONS, DIRECTORS, BOARD MEMBERS, REGENTS, TRUSTEES, OFFICERS, ADMINISTRATORS, AGENTS, EMPLOYEES, LICENSEES, SUCCESSORS AND ASSIGNS ("**INDEMNITEES**") FROM ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, COSTS AND/OR EXPENSES, CONTROVERSIES, CAUSES OF ACTION, LAWSUITS, PROCEEDINGS, INJURIES, JUDGMENTS AND EXPENSES (INCLUDING MEDIATION,

SETTLEMENT, ATTORNEY FEES, AND OTHER COSTS OR EXPENSES) (EACH, A “**CLAIM**”) IF THE CLAIM: (1) IS RELATED TO BODILY INJURY, SICKNESS, DISEASE, DEATH OR LOSS OR DAMAGE TO REAL OR PERSONAL PROPERTY, INCLUDING ANY LOSS OF USE RESULTING THEREFROM (COLLECTIVELY, “**DAMAGE**”); AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY OF THE FOLLOWING: (A) A NEGLIGENT ACT OR OMISSION BY CONSTRUCTION MANAGER, ITS SUBCONTRACTOR, PROJECT ARCHITECT, OR ANY OTHER PARTY FOR WHOSE ACTS THEY MAY BE LIABLE (EACH, AN “**INDEMNIFYING PARTY**”); OR (B) THE REFUSAL OR FAILURE TO COMPLY WITH ANY OBLIGATION IN THE AGREEMENT BY AN INDEMNIFYING PARTY; OR (C) VIOLATION OF APPLICABLE LAW(S) BY AN INDEMNIFYING PARTY.

14.1.1 Notwithstanding the foregoing provisions of Section 14.1, Construction Manager shall not be obligated to indemnify the Indemnified Parties from or against a Claim resulting from Owner’s negligence when such negligence is the sole and proximate cause of the Damage which is the basis of the Claim. In the event Construction Manager and Owner are found jointly liable by a court of competent jurisdiction, liability for the Claim will be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to Owner under Texas law and without waiving any defenses of the Parties under Texas law.

14.2 Intellectual Property. CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY OWNER FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER’S OR DESIGN CONSULTANT’S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS . IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT OWNER’S EXPENSE.

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

## ARTICLE 15 - WARRANTIES

15.1 Basis. Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager’s expertise and special and unique abilities to provide the services set forth in this Agreement. Construction Manager accepts the relationship of trust and confidence established between it and Owner by this Agreement. Construction Manager covenants with Owner to use its best efforts, skill, judgment and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner’s requirements and procedures, in accordance with the usual and customary high standards of Construction Manager’s profession or business and in compliance with all applicable national, federal, state and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. If Construction Manager fails to comply with the standard of care required herein, Construction Manager’s responsibilities under this Agreement or Applicable Law, Construction Manager hereby agrees to be responsible for the full cost of correcting Construction Manager’s Work and Services, those of its consultants, and those of any others who have acted in reliance thereon.

15.2 Warranties.

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

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

15.2.3 Construction Manager warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Construction Manager (by Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from Construction Manager's responsibilities or obligations hereunder in a case where such document or data is furnished unless Construction Manager advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Construction Manager to proceed in accordance with the data as originally given.

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

15.2.5 Construction Manager warrants, represents, covenants, and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

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

15.2.7 Construction Manager warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability



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

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

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

15.3.1 Construction Manager shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

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

15.3.3 Construction Manager shall take whatever measures it reasonably deems necessary to insure that all employees and Subcontractors (including suppliers and fabricators), and their assigns, comply with the requirements of this section.

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

15.3.5 Construction Manager shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

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

## ARTICLE 16 - BONDS & INSURANCE

16.1 Payment and Performance Bonds. On the Contract Date, Construction Manager shall provide performance and payment bonds on forms prescribed by Owner and attached as **Exhibit F**, in accordance with the requirements set forth in the UGC and SGC. The penal sum of the payment and performance bonds shall be equal to the GMP less the Pre-Construction Phase Fee. If the GMP Agreement provides for, or is amended to accommodate, Staged construction with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each Stage based on the cumulative total value of all GMPs in effect.

16.2 Coverage Requirements. Construction Manager shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in

writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Construction Manager hereunder. Construction Manager shall carry Owner and Contractor's Protective Liability in the full amount of the Cost of the Work as well as the insurance policies and coverage referenced in Section 5.2 of the UGC; *provided*, however, for the Builder's Risk policy, coverage must not exclude or have a lower sub-limit for Named Windstorm or Flood than the full value of the Cost of the Work. The coverages required under this Agreement are part of the General Conditions.

16.3 For All Insurance Required of Construction Manager.

16.3.1 All insurance coverage shall be written by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company. Construction Manager shall provide Owner with legally sufficient evidence of all coverage required under this Agreement. Under no circumstances shall Construction Manager self-insure any portion of the Project; Construction Manager's violation of any portion of this ARTICLE 16, including the prohibition of self-insurance, shall constitute a default by Construction Manager of its obligations under this Agreement and shall empower Owner to terminate this Agreement for cause immediately and/or pursue any other remedy available to Owner.

16.3.2 No policy may have a deductible (or retention) less than \$10,000 or more than \$100,000. These representations shall be documented in the Certificates of Insurance provided to Owner.

16.3.3 Owner reserves the right to review the insurance requirements set forth in this ARTICLE during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or Construction Manager.

16.3.4 At any time, Owner shall be entitled upon request, and without expense, to receive copies of all policies and all endorsements to such policies. Owner may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies.

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

**ARTICLE 17 - PROJECT TERMINATION AND SUSPENSION**

17.1 Mutual Right to Terminate. Either Party may terminate this Agreement during the Pre-Construction Phase upon fifteen (15) days' prior written notice should the other Party fail substantially to perform in accordance with its terms through no fault of the Party initiating the termination, and such failure to perform is not cured within such fifteen (15) day period.

17.2 Termination by Owner.

17.2.1 This Agreement may be terminated by Owner during the Pre-Construction Phase upon at least seven (7) days' written notice to Construction Manager in the event that the Project will be temporarily or permanently abandoned.

17.2.2 At its sole discretion and option, Owner may terminate this Agreement after the conclusion of the program phase, schematic design phase, design development phase, or the construction documents phase of the Pre-Construction Phase.

17.2.3 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, or other misconduct of such parties. In the event of a termination, Construction Manager hereby consents to Owner's right to retain a substitute construction

manager to complete the services under this Agreement, with the substitute construction manager having all rights and privileges of the original Construction Manager.

17.2.4 In the event of termination that is not the fault of Construction Manager, Construction Manager shall be entitled to compensation for all services performed as of the termination date, provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials required by the Contract Documents, together with all reports, documents and other materials prepared by Project Architect prior to termination. Upon such payment, Owner shall have no further obligation to Construction Manager.

17.3 Construction Manager's Obligations on Termination. As of the date of any termination of this Agreement, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required by this Agreement or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities under this Agreement. Owner may use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

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

## ARTICLE 18 - MISCELLANEOUS PROVISIONS

18.1 Limitation of Liability. Except for the obligation of Owner to pay Construction Manager certain fees, costs, and expenses to the extent expressly set forth in this Agreement, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner or of the components comprising The University of Houston System, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

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

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

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

18.5 Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, Construction Manager certifies that the

individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

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

18.7 Sales Tax Certification. By signing this Agreement, the undersigned certifies as follows: “Under Section 2155.004, *Texas Government Code*, Construction Manager certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

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

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

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

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

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

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

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

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

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

If to Owner:                    Executive Director  
   Facilities Planning and Construction  
   University of Houston System  
   4211 Elgin Room 122  
   Houston, Texas 77204  
   Fax: 713-743-5551

with a copy to:                General Counsel, UHS  
   University of Houston  
   311 E. Cullen Building  
   Houston, Texas 77204-2028  
   Fax: 713-743-0948

If to Construction  
Manager:

with a copy to:

18.17 Exhibits. No provision contained in this Agreement may be modified, amended or deleted in an exhibit to this Agreement unless the exhibit refers specifically to the provision (including its Article and Section number), explains how the provision is modified or amended or states that the provision is deleted, and is signed by Owner and Construction Manager. The following exhibits are hereby incorporated by reference for all purposes as if fully set forth herein:

- Exhibit A     Staff/Personnel
- Exhibit B     Milestone Schedule
- Exhibit C     GMP Proposal
  - Attachment 1 to Exhibit C     Guidelines for the Preparation of the GMP
- Exhibit D     Additional Services Requisition
- Exhibit E     Constructability Program
- Exhibit F     Payment and Performance Bonds forms
- Exhibit G     Additional Contract Documents/Specification Sections
  - 1. Uniform General Conditions for Construction Contracts
  - 2. Supplemental General Conditions and Special Conditions for Construction
- Exhibit H     HUB Subcontracting Plan
- Exhibit I     Approved General Conditions Line Items

*[signatures commence on following page]*

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

Corporations/LLC's: Attest:

**CONTRACTOR**

\_\_\_\_\_

By: \_\_\_\_\_

Corporate Secretary

Name: \_\_\_\_\_

Other business forms: Witness:

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

\_\_\_\_\_

Date of Signature: \_\_\_\_\_

Seal:

*[signatures continue on following page]*

**Approved by:**

**University of Houston System**

By: \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_  
Project Manager  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_  
Principal Project Manager  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Spencer Moore  
Executive Director  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Dave Irvin  
Associate Vice Chancellor/  
Associate Vice President  
Plant Operations

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dr. Carl Carlucci  
Vice Chancellor/ Vice President  
Administration and Finance

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dr. Renu Khator  
Chancellor/President

**EXHIBIT A**

**CONSTRUCTION MANAGER'S PERSONNEL, STAFF, SUBCONSULTANTS AND DUTIES  
HOURLY RATES**

**Project No. & Name:** \_\_\_\_\_

*The following Monthly Salary Rate (MSR) shall identify the billable rate prior to execution of the Agreement, and shall be confirmed for use throughout Construction Phase Services for all salaried General Conditions type personnel pursuant to the Agreement. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Section 8.2 of the Agreement.*

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

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

**Construction Manager signature:** \_\_\_\_\_  
*(same individual who signs agreement)*



**EXHIBIT B**  
**MILESTONE SCHEDULE**

**EXHIBIT C**  
**GUARANTEED MAXIMUM PRICE PROPOSAL**

We hereby submit to the University of Houston System at Houston, Texas pursuant to the provisions of ARTICLE 7 of the Construction Management At-Risk Agreement by and between the University of Houston System and \_\_\_\_\_ **Construction Company**, (the “Agreement”), the following Guaranteed Maximum Price for the **Project Name**, the University of Houston System (“Owner”) at Houston, Texas, Project Number (**Number here**), (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement) developed for the Project. The Contract Time shall not exceed \_\_\_ consecutive calendar days following Owner’s Notice to Proceed with Construction.

1. A not-to exceed amount for the reimbursable Cost of the Work provided by the Agreement (exclusive of contingencies for design, bidding, and price escalation:

(provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project)

\$ 00,000,000.00

2. A not-to-exceed amount for General Conditions items provided by Construction Manager pursuant to the Agreement (exclusive of contingencies for design, bidding, and price escalation):

(provide detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project)

\$ 0,000,000.00

3. Total of Construction Manager’s Construction Phase Fees pursuant to the Agreement (\_\_\_%)

\$ 0,000,000.00

4. Total, not-to-exceed amount for Construction Contingency to be utilized in accordance with Sections 7.1.2 and 10.4 of this Agreement

\$ 0,000,000.00

TOTAL OF 1 THROUGH 4

\$ 00,000,000.00

This figure shall be the Guaranteed Maximum Price (GMP) that we hereby guarantee to the Owner. Attached is a breakdown showing the dollar amount allocated to each bidding package; all of which totals the GMP amount.

- Expenditure from Allowance and Construction Contingency amounts shall be only upon approval and written authorization of Owner via the execution of an Allowance Expenditure Authorization (AEA) or a Construction Contingency Expenditure Authorization (CCEA), respectively. Expenditures shall be kept within amounts set forth, unless specific approval and authorization by Owner provides otherwise. Unexpended balances of Allowances and Construction Contingency shall revert to Owner.

GUARANTEED MAXIMUM PRICE BUYOUT/BID PACKAGE STRATEGY COST  
BREAKDOWN

Standard Schedule of Values Format – Part I			
A	B	C	D
CSI Section	Work Breakdown Structure	CSI Description of Work / Subcontractor Name / Specification Section	Initial GMP Proposal Line Item Value
Cost of Work			
		Division 01 - General Requirements	\$ -
		Division 02 - Existing Conditions	\$ -
		Division 03 - Concrete	\$ -
		Division 04 - Masonry	\$ -
		Division 05 - Metals	\$ -
		Division 06 - Woods, Plastics & Composites	\$ -
		Division 07 - Thermal & Moisture Protection	\$ -
		Division 08 - Openings	\$ -
		Division 09 - Finishes	\$ -
		Division 10 - Specialties	\$ -
		Division 11 - Equipment	\$ -
		Division 12 - Furnishings	\$ -
		Division 13 - Special Construction	\$ -
		Division 14 - Conveying Equipment	\$ -
		Division 21 - Fire Suppression	\$ -
		Division 22 - Plumbing	\$ -
		Division 23 - Heating, Ventilating and Air Conditioning	\$ -
		Division 25 - Integrated Automation	\$ -
		Division 26 - Electrical	\$ -
		Division 27 - Communications	\$ -
		Division 28 - Electronic Safety and Security	\$ -
		Division 31 - Earthwork	\$ -
		Division 32 - Exterior Improvements	\$ -
		Division 33 - Utilities	\$ -
		Division 34 - Transportation	\$ -
		Division 35 - Waterway and Marine Construction	\$ -
		Division 40 - Process Integration	\$ -
		Division 41 - Material Processing & Handling Equipment	\$ -

		Division 42 - Process Heating, Cooling, & Drying Equipment	\$ -
		Division 43 - Process Gas and Liquid Handling, Purification & Storage Equipment	\$ -
		Division 44 - Pollution Control Equipment	\$ -
		Division 45 - Industry Specific Manufacturing Equipment	\$ -
		Division 48 - Electrical Power Generation	\$ -
Cost of Work Subtotal			\$ -
General Conditions (Breakdown per Exhibit I)			\$ -
Contractor Contingency			\$ -
Construction Manager Construction Phase Fee			\$ -
<b>Part I Services (GMP) Total</b>			\$ -

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

Corporations/LLC's: Attest:

**CONTRACTOR**

\_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Other business forms: Witness:

Date of Signature: \_\_\_\_\_

\_\_\_\_\_

Seal:

**Approved by:**

**University of Houston System**

By: \_\_\_\_\_ Date \_\_\_\_\_  
[Name]  
Project Manager  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
[Name]  
Principal Project Manager  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Spencer Moore  
Executive Director  
Facilities Planning and Construction

By: \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Dave Irvin  
Associate Vice Chancellor/  
Associate Vice President  
Plant Operations

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dr. Carl Carlucci  
Vice Chancellor/ Vice President  
Administration and Finance

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dr. Renu Khator  
Chancellor/President

**NOTE: When invoicing, please refer to Contract No. WXXXXXX and Project No. PXXXXXX  
Modification of this form requires approval of OGC.**

## ATTACHMENT 1 TO EXHIBIT C

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

The Guaranteed Maximum Price Proposal is developed at the phase specified in Section 7.1 of the Construction Manager-at-Risk Agreement.

The GMP Proposal should be bound and entitled, “Guaranteed Maximum Price Proposals for *PROJECT/PROJECT NO.*,” and must include a date on the cover. Proposal pages must be numbered. Bound inside the proposal, in the order indicated, should be:

- transmittal letter, including confirmation of project team
- table of contents

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

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

Tab 3 Description of Work

- Specification listing – provide a detailed listing of specifications by division and section which describes exclusions, substitutions, modifications, etc. If no changes are proposed for a particular section, insert “as per specifications”
- Qualifications and Assumptions – a summary of all qualifications and assumptions included in the specification listing
- Exclusions – a summary of all exclusions included in the specification listing, plus any exclusions not related to the specifications
- Value Engineering recommendations – if applicable
- Allowance Schedule – if applicable
- Contingency Breakdown

Tab 4 Guaranteed Maximum Price Proposal Cost Breakdown:

- Exhibit C - Guaranteed Maximum Price Proposal (form as attached to the Agreement).

- Construction Manager shall provide a detailed initial Total Project Construction Cost estimate using standard estimating industry practices, utilizing the Construction Specifications Institute (CSI) Master-Format, with additional cost breakdown as required by the FPC Project Manager.
- Construction Manager shall provide an initial GMP Proposal line item cost breakdown for all anticipated bid package strategies {BPS} included in Exhibit C, Item No. 1, Cost of Work, including all self-perform work not associated with General Conditions. The breakdown shall be shown on the Standard Schedule of Values Format – Part I (shown below).
- Construction Manager shall provide a cost breakdown, including unit prices, for all items included in Exhibit C, Item No.2, General Conditions, as defined by Exhibit I, contained within the Agreement.

Standard Schedule of Values Format – Part I			
A	B	C	D
CSI Section	Work Breakdown Structure	CSI Description of Work / Subcontractor Name / Specification Section	Initial GMP Proposal Line Item Value
Cost of Work			
		Division 01 - General Requirements	\$ -
		Division 02 - Existing Conditions	\$ -
		Division 03 - Concrete	\$ -
		Division 04 - Masonry	\$ -
		Division 05 - Metals	\$ -
		Division 06 - Woods, Plastics & Composites	\$ -
		Division 07 - Thermal & Moisture Protection	\$ -
		Division 08 - Openings	\$ -
		Division 09 - Finishes	\$ -
		Division 10 - Specialties	\$ -
		Division 11 - Equipment	\$ -
		Division 12 - Furnishings	\$ -
		Division 13 - Special Construction	\$ -
		Division 14 - Conveying Equipment	\$ -
		Division 21 - Fire Suppression	\$ -
		Division 22 - Plumbing	\$ -
		Division 23 - Heating, Ventilating and Air Conditioning	\$ -



	Division 25 - Integrated Automation	\$ -
	Division 26 - Electrical	\$ -
	Division 27 - Communications	\$ -
	Division 28 - Electronic Safety and Security	\$ -
	Division 31 - Earthwork	\$ -
	Division 32 - Exterior Improvements	\$ -
	Division 33 - Utilities	\$ -
	Division 34 - Transportation	\$ -
	Division 35 - Waterway and Marine Construction	\$ -
	Division 40 - Process Integration	\$ -
	Division 41 - Material Processing & Handling Equipment	\$ -
	Division 42 - Process Heating, Cooling, & Drying Equipment	\$ -
	Division 43 - Process Gas and Liquid Handling, Purification & Storage Equipment	\$ -
	Division 44 - Pollution Control Equipment	\$ -
	Division 45 - Industry Specific Manufacturing Equipment	\$ -
	Division 48 - Electrical Power Generation	\$ -
Cost of Work Subtotal		\$ -
General Conditions (Breakdown per Exhibit I)		\$ -
Contractor Contingency		\$ -
Construction Manager Construction Phase Fee		\$ -
<b>Part I Services (GMP) Total</b>		<b>\$ -</b>

**STANDARD SCHEDULE OF VALUES FORMAT – DURING BUYOUT OF THE GMP**

- The Construction Manager shall provide a detailed actual GMP buyout line item cost breakdown as compared to the initial GMP Standard Schedule of Values Format – Part I. The cost breakdown shall include Owner savings/expenditures for each Cost of Work buyout line item. Refer to the Standard Schedule of Values Format – Part II (shown below).

Standard Schedule of Values Format – Part II						
A	B	C	D	E	F	G
CSI Section	Work Breakdown Structure	CSI Description of Work / Subcontractor Name / Specification Section	Initial GMP Proposal Line Item Value	Actual Contract Amount at Buyout	Delta (GMP to Actual)	Contract / Purchase Order No.
Column Equations				D - E	IF(E=0,0,E-D)	
Cost of Work						
		Division 01 – General Requirements	\$ -	\$ -	\$ -	
		Division 02 – Existing Conditions				
		Division 03 - Concrete	\$ -	\$ -	\$ -	
		Division 04 - Masonry	\$ -			
		Division 05 - Metals	\$ -	\$ -	\$ -	
		Division 06 – Woods, Plastics & Composites	\$ -	\$ -	\$ -	
		Division 07 - Thermal & Moisture Protection	\$ -	\$ -	\$ -	
		Division 08 - Openings	\$ -	\$ -	\$ -	
		Division 09 - Finishes				
09900	Finishes	Subcontract "C" - Painting	\$ -	\$ -	\$ -	<b>Example</b>
		Division 10 - Specialties	\$ -	\$ -	\$ -	
		Division 11 - Equipment	\$ -	\$ -	\$ -	
		Division 12 - Furnishings	\$ -	\$ -	\$ -	
		Division 13 - Special Construction	\$ -	\$ -	\$ -	
		Division 14 - Conveying Equipment	\$ -	\$ -	\$ -	
		Division 21 – Fire Suppression	\$ -	\$ -	\$ -	
		Division 22 - Plumbing	\$ -	\$ -	\$ -	
		Division 23 – Heating, Ventilating & Air Conditioning	\$ -	\$ -	\$ -	
		Division 25 – Integrated Automation	\$ -	\$ -	\$ -	
		Division 26 - Electrical	\$ -	\$ -	\$ -	
		Division 27 - Communications	\$ -	\$ -	\$ -	
		Division 28 – Electronic Safety and Security	\$ -	\$ -	\$ -	
		Division 31 - Earthwork	\$ -	\$ -	\$ -	

		Division 32 – Exterior Improvements	\$ -	\$ -	\$ -	
		Division 33 - Utilities	\$ -	\$ -	\$ -	
		Division 34 - Transportation	\$ -	\$ -	\$ -	
		Division 35 – Waterway and Marine Construction	\$ -	\$ -	\$ -	
		Division 40 – Process Integration	\$ -	\$ -	\$ -	
		Division 41 - Material Processing & Handling Equipment	\$ -	\$ -	\$ -	
		Division 42 – Process Heating, Cooling, & Drying Equipment	\$ -	\$ -	\$ -	
		Division 43 – Process Gas and Liquid Handling, Purification & Storage Equipment	\$ -	\$ -	\$ -	
		Division 44 – Pollution Control Equipment	\$ -	\$ -	\$ -	
		Division 45 – Industry Specific Manufacturing Equipment	\$ -	\$ -	\$ -	
		Division 48 – Electrical Power Generation	\$ -	\$ -	\$ -	
<b>Cost of Work Subtotals</b>						
General Conditions (Breakdown per Exhibit H)			\$ -	\$ -	\$ -	
Contractor Contingency			\$ -	\$ -	\$ -	
Construction Phase Fee			\$ -	\$ -	\$ -	
<b>Part II Services (GMP) Total</b>			\$ -	\$ -	\$ -	

## **STANDARD SCHEDULE OF VALUES FORMAT DURING THE PAY APPLICATION PROCESS**

- For each pay period, the Construction Manager shall provide a detailed line item pay application Schedule of Values utilizing AIA Document G702, Application and Certification for Payment, and AIA Document G703 Continuation Sheet(s). All scheduled values shall be based on the actual GMP buyout Standard Schedule of Values Format – Part II (shown above).

### Tab 5 Master Project Schedule

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

### Tab 6 Historically Underutilized Business Plan

- HUB Plan, Exhibit H
- Determination of Good Faith Effort, Exhibit F
- HUB Letter of Intent

**EXHIBIT D**

**ADDITIONAL SERVICES REQUISITION**

Requisition Number:

Project Number:

Project Name:

Campus:

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

To:

(Date)

(Contractor)

Gentlemen:

Please refer to the Agreement dated \_\_\_\_\_, between the University of Houston System (“Owner”) and the undersigned (“Construction Manager”) as amended to the date hereof (such agreement as so modified and amended being hereafter called the “Agreement”) pursuant to which Construction Manager is to perform certain services. The terms that are defined in the Agreement shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which Construction Manager deems to be Additional Services.

(Description of Services.)

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

3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than \_\_\_\_\_ (\_\_\_\_\_) days after Construction Manager 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 Construction Manager is authorized to commence performance of the Additional Services described in Paragraph 1 above.

Sincerely yours,

CONSTRUCTION MANAGER

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_. Construction Manager is authorized to commence performance of the Additional Services on \_\_\_\_\_, 20 \_\_.

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

OWNER

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**PART I: PRE-CONSTRUCTION PHASE SERVICES**

ORIGINAL CONTRACT AMOUNT (\$ \_\_\_\_\_)

PREVIOUS ADDITIONS (\$ \_\_\_\_\_)

PREVIOUS DEDUCTIONS (\$ \_\_\_\_\_)

NET BALANCE CONTRACT AMOUNT (\$ \_\_\_\_\_)

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

ADJUSTED CONTRACT AMOUNT (\$ \_\_\_\_\_)

Xc: Contractor  
Director  
Project Manager  
IDF File

**EXHIBIT E**  
**CONSTRUCTABILITY IMPLEMENTATION PROGRAM**

**Program Objectives:**

- Identify and document project cost and schedule savings (targeted cost savings: 5% of construction costs)

**Proposed Steps:**

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



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

**EXHIBIT F**

**PAYMENT AND PERFORMANCE BONDS**

Payment Bond No. \_\_\_\_\_

**PAYMENT BOND**

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS; That we (1) \_\_\_\_\_

\_\_\_\_\_ a (2) \_\_\_\_\_

of \_\_\_\_\_ hereinafter called Principal and

(3) \_\_\_\_\_

State of \_\_\_\_\_, hereinafter called the Surety, are held and firmly bound unto THE BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM, hereinafter called Owner, in the penel sum of \_\_\_\_\_ of \_\_\_\_\_ \$ \_\_\_\_\_.

Dollars in lawful money of the United States, to be paid in Harris County, Texas for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with THE BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM, the Owner dated the \_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of: \_\_\_\_\_ (herein called the "work").

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all beneficiaries as defined by Chapter 2253 and The *Texas Government Code* who have properly

perfected claim and have supplied labor and materials in the prosecution of the work provided for in said Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

-----

These footnotes refer to the number in body of contract above:

Date of Bond must not be prior to date of Contract

- (1) Correct name of Contractor
- (2) A corporation, A Partnership or an Individual, as case may be
- (3) Correct name of Surety

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

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

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

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

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary

BY \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety

BY \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

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

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

Performance Bond No. \_\_\_\_\_

**PERFORMANCE BOND**

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS; That we (1) a

(2) \_\_\_\_\_ of  
\_\_\_\_\_ hereinafter called Principal and  
State of \_\_\_\_\_, hereinafter called the Surety, are held and firmly bound unto THE BOARD  
OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM, hereinafter called Owner, in the penal  
sum of \$ \_\_\_\_\_.

Dollars in lawful money of the United States, to be paid in Harris County, Texas for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with \_\_\_\_\_ and THE BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM, as the Owner and express third party beneficiary to the contract dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
(herein called the "work")

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

-----  
These footnotes refer to the number in body of contract above:

Date of Bond must not be prior to date of Contract

- (1) Correct name of Contractor
- (2) A corporation, A Partnership or an Individual, as case may be
- (3) Correct name of Surety

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

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

ATTEST:

\_\_\_\_\_  
Principal

(Principal) Secretary

BY: \_\_\_\_\_

(SEAL)

(Address)

Witness as to Principal

Surety

(Address)

BY  
Attorney-in-Fact

ATTEST:

(Surety) Secretary

(Address)

(SEAL)

Witness as to Surety

(Address)

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

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

## **EXHIBIT G**

### **ADDITIONAL CONTRACT DOCUMENTS/SPECIFICATION SECTIONS**

1. Uniform General Conditions for Building Construction Contracts
2. Supplemental General Conditions and Special Conditions for Construction

**EXHIBIT H**

**HUB SUBCONTRACTING PLAN FOR PART I SERVICES**

*[See attached]*



**EXHIBIT I**

**APPROVED GENERAL CONDITIONS LINE ITEMS**

Project Management

Superintendent(s)	Safety Manager
CPM Scheduler	Project Manager(s)
Project Executive	Field/Office Engineer
Field Office Support Staff	Project Expeditor
Assistant Superintendent(s)	

- Project Manager/Superintendent bonuses/incentives/rewards shall NOT be included in the General Conditions GMP Proposal, but may be included in the Construction Phase Fee.

Bonds and Insurance (excluding any for Subcontractors)

Builder’s Risk Insurance	General Liability Insurance
Payment & Performance Bonds	Other General Project Insurance

Temporary Utilities

Dumpsters	Temporary Toilets
Monthly Water & Sanitary Costs	Monthly Electrical Costs
Temporary Fire Protection	Street Rental & Barricades/Traffic Control
Fencing & Covered Walkways	Monthly Telephone & Internet Costs
Temporary Water Hookup, Distribution & Meters	Temporary Telephone & Network System Installation
Temporary Electrical Hookup, Distribution & Meters	
Site Erosion Control (BMPs) & Project Entrance(s), Temporary Roads & Walkways	
Street Cleaning	Temporary Perimeter Fencing

Field Offices & Construction Supplies

Partnering Costs	First Aid Supplies
Job Photos/Videos	Reference Manuals
Reproduction Services	Monthly Office Supplies
Project Specific Signage	Postage/Special Shipping
Remote Parking Expenses	Project/As-Built Drawings
Security System/Watchman	Move-In/Out & Office Setup
Mobilization & Demobilization	Drinking Water & Accessories
Monthly Cellular Phone & Pager Service	Employee ID System

Small Tools and Storage Trailers

Office Clean-Up/Janitorial Services

Monthly Office Trailer Rental Costs

Fall Protection

Cleaning at Substantial Completion & Final Acceptance

Safety Materials, Equipment, Orientation & Training

Project Milestone Events

Jobsite Trailer Janitorial Service

Fire Extinguishers

Personal Protective Equipment for Staff & Visitors (Trades in COW)

Jobsite Computer & Electronic Equipment

\* All items listed above, are subject to requests for additional information or breakdown.