

UNT SYSTEM™

Strategic Infrastructure, Planning & Construction

DATE: January 23, 2026
TO: Potential Respondents
FROM: Carrie Stoeckert—Construction Contract Expeditor III
SUBJECT: Amendment #2
RFQ752-26-1016CS
UNT Central Utility Plant

1. This Amendment amends the following:

--Replaces Professional Services Agreement with the attached Design-Build Construction Agreement

--Please note this is a Sample draft agreement and may be modified slightly by the UNTS Office of General Counsel.

DESIGN-BUILD CONSTRUCTION AGREEMENT

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DESIGN-BUILD CONSTRUCTION AGREEMENT

This Agreement is made and entered into by **University of North Texas {System or Institution Name}**, ("Owner"), and by **{Design-build Firm Name}** ("Design-build Firm"), duly licensed by the laws of the State of Texas to provide Design-build Services in the State of Texas. The capitalized term "Party" refers to either Owner or Design-build Firm individually and the term "Parties" refers to Owner and Design-build Firm collectively. The effective date ("Effective Date") of this Agreement shall be the date of last signature by the Parties hereto.

ARTICLE 1 PROJECT

- 1.1 Owner desires and intends to construct {Project Name} ("Project"), on the {Campus} , to be completed in accordance with the requirements herein, and generally described as follows:

{General Description of the Project}

- 1.2 The Design-build Firm has overall responsibility for and shall provide complete Preconstruction phase Services and Construction phase Services and furnish all Design Services, materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement. Design-build Firm does hereby agree to perform for and furnish to Owner complete Design Services, Preconstruction and Construction Work, including all reasonably inferable services, studies, investigations, and labor incident to the construction administration and management of construction, for all stages of construction of the Project to be completed in accordance with the requirements set forth herein. The Contract Time and the date by which Substantial Completion shall be achieved will be established when and if Owner accepts Design-build Firm's Guaranteed Maximum Price (GMP) Proposal.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of:
- 2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
 - 2.1.2 The Uniform General Conditions for Construction and Design Contracts for the University of North Texas System ("Uniform General Conditions" or "UGC"), Exhibit A;
 - 2.1.3 Supplementary General Conditions ("SGC") or Special Conditions, if any;
 - 2.1.4 Owner's Specifications;
 - 2.1.5 All Addenda issued prior to the Effective Date of this Agreement;
 - 2.1.6 The Guaranteed Maximum Price ("GMP") Proposal when accepted by Owner and executed by the parties, Sample attached as Exhibit B;
 - 2.1.7 All Change Orders issued after the Effective Date of this Agreement;

- 2.1.8 The Drawings, Specifications, details and other documents developed by Project Design Professional to describe the Project and accepted by Owner;
- 2.1.9 The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by Owner; and
- 2.1.10 The Historically Underutilized Business (HUB) subcontracting plan submitted or amended by Design-build Firm and approved by Owner for this Project;
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Design-build Firm and supersede all prior negotiations, representations or agreements, written or oral.
- 2.3 To the extent the terms of this Agreement conflict with the Uniform General Conditions and/or the Supplemental Conditions, the terms of this Agreement will control.
- 2.4 If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the other Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

ARTICLE 3 DEFINITIONS

- 3.1 Terms, words, and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions.
- 3.2 The following terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the Uniform General Condition, the more specific given in this Agreement shall control.
 - 3.2.1 "Alternate" shall mean the amount stated in the bid to be added or deducted from the amount of the base bid if the corresponding change in the Project scope or alternate materials and/or methods of construction is acceptable.
 - 3.2.2 "Allowance" means allocating construction funds to portions of the Work that cannot be specified with sufficient particularity for competitive bidding at the time of submission and acceptance of the Guaranteed Maximum Price.
 - 3.2.3 "Baseline Schedule"
 - 3.2.3.1 "Preconstruction Baseline Schedule" means the initial time schedule prepared by Design-build Firm which contain the services and activities of Owner, Design-build Firm, Design Professional, other consultants/suppliers and the requirements of governmental entities. The Preconstruction Baseline Schedule shall include the start date for construction, Substantial Completion date and Final Completion date for construction.
 - 3.2.3.2 "Construction Baseline Schedule" means the initial time schedule prepared by Design-build Firm for Owner's information and acceptance that conveys Design-build Firm's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by the Design Professional and Owner), durations and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule shall clearly demonstrate the Longest Path of activities, critical activities durations, and necessary predecessor conditions that drive the end date of the schedule. The accepted Construction Baseline Schedule shall not change.

- 3.2.4 "Building Information Modeling" ("BIM") means the process of generating and managing building data using building modeling software resulting in a BIM Model which is a digital representation of physical and functional characteristics of a facility.
- 3.2.5 "Construction Cost Limitation" ("CCL") means the maximum monetary amount payable to Design-build Firm for all Construction Services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Services Fee and Owner approved Contingencies. The CCL may be adjusted by the parties for changes in the scope of the Project before or after Owner's acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Design-build Firm's Preconstruction Services Fee or Owner's Special Cash Allowance.
- 3.2.6 "Construction Documents" (CD) means the documentation prepared by Design Professional to be used by Design-build Firm in the construction of the Project, to estimate the cost of the Project, and to secure bids for constructing the Project. The Construction Documents shall include drawings, specifications, general conditions, supplementary general conditions, special conditions, information to bidders, bid proposal(s), and addenda developed to set forth in detail all aspects of design, function and construction. Construction Documents shall also include design development documents and cover page, site amenity plan and details, finish plan (door and window schedule, flooring and wall finishes), interior elevations (millwork, specialty, restrooms), life safety plan, A.D.A./TDLR general notes, reflective ceiling plan (with lighting locations), power plan, electric riser diagram, electrical site plan, MEP performance details, gas plan, plumbing and waste vent diagram, plumbing riser diagram, pier diagram, framing plan, roof framing plan specific structural connections details (foundation and framing).
- 3.2.7 "Construction Services Fee" means the fee paid to the Design-build Firm in full consideration of Design-build Firm's services during the Construction Services phase of this Agreement
- 3.2.8 "Construction Services" means the coordination, implementation, and execution of the construction Work required by the Contract Documents.
- 3.2.9 "Contingencies" means, collectively, the following:
- 3.2.9.1 "Design Contingency" means an amount to allow for continued development and completion of the Drawings and Specifications which are not reasonably inferable except for material changes in scope. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown. Upon issuance of one hundred percent (100%) Construction Documents, any unused Design Contingency shall be added to Owner's Contingency.
 - 3.2.9.2 "Construction Contingency" means an amount included in the GMP Amendment to cover any shortfalls in the scope of work as it was known at the time of the GMP Proposal execution.
 - 3.2.9.3 "Owner's Contingency" means an amount determined by Owner in Owner's sole discretion included in the GMP Amendment for the exclusive use of Owner.
- 3.2.10 "Contract Sum" means the total amount of all compensation payable to Design-build Firm for the Project and shall not exceed the sum total amount of the Preconstruction phase fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Design-build Firm without reimbursement by Owner.

- 3.2.11 "Design Professional" means licensed professional(s) or firms employing such licensed professionals, engaged by Design-build Firm for design of all or a portion of the Project and to prepare Drawings and Specifications for the construction of the Project. More than one such professional may be employed by Design-build Firm and all such professionals or firms, regardless of number, are referred to in the singular herein.
- 3.2.12 "Design Services" means all professional services required to fulfill the Pre-Construction phase requirements and any additional design obligations of this Agreement, including, but not limited to, programming, schematic design, design development, and Construction Documents development.
- 3.2.13 "Direct Construction Cost" means the sum of the amounts that Design-build Firm actually and necessarily incurs for General Requirements, General Conditions, and Cost of the Work during the Construction as allowed by this Agreement. Direct Construction Cost does not include Preconstruction phase fees or Construction Services fees.
- 3.2.14 "General Conditions" means those items included in Texas Education Code § 51.776(7), as amended. General Conditions shall include all cost line items included on Design-build Firm's itemized breakdown in the GMP Amendment and shall be subject to the General Conditions limit.
- 3.2.15 "Guaranteed Maximum Price" ("GMP") means the amount proposed by Design-build Firm and accepted by Owner as the maximum cost to Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Design-build Firm's Construction Services fee, Direct Construction Cost, and Contingencies.
- 3.2.16 "Longest Path" means the sequence of directly related activities that comprise the longest continuous chain of activities from the start of the first activity to the finish of the last activity. Each activity in the Longest Path is critical and directly related in that it prevents its successor from being scheduled earlier than it is. For this Project, "Longest Path" shall also include Ten Percent (10%) Total Float and Weather Days.
- 3.2.17 "Monthly Salary Rate" means the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Services to account for the services of Design-build Firm's salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Design-build Firm's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by Design-build Firm for services performed for the Project.
- 3.2.18 "Owner, Architect and Contractor meeting" ("OAC meeting") means regularly scheduled meetings between Owner, Design Professional and Contractor.
- 3.2.19 "Owner's Buyout Savings" means Project Buyout Savings controlled by Owner once the Project is thirty percent (30%) complete as documented on the Schedule of Values ("SOV").
- 3.2.20 "Owner's Specifications" means the construction and contract administration requirements and standards detailed in Owner's Specifications.
- 3.2.21 "Preconstruction Services" means the participation, documentation, and execution of Design-build Firm's Preconstruction Services deliverables as required by the Contract Documents.
- 3.2.22 "Program of Requirements" means Owner's initial description of the Project scope, preliminary Construction Cost Limitation, Design Schedule, criteria for design objectives,

characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment.

- 3.2.23 "Project Buyout Savings" means the difference between the Design-build Firm's subcontracted cost of the work and the GMP Proposal.
- 3.2.24 "Project Team" means Owner and its consultants, and Design-build Firm, and any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.2.25 "Self-Perform" includes Design-build Firm, any division of Design-build Firm, any separate entity that is wholly or partially owned by Design-build Firm, or any of their employees or persons related to employees within the second degree of consanguinity or affinity.
- 3.2.26 "Subcontractor" means a person or entity who has an agreement with Design-build Firm to perform any portion of the Work. The term Subcontractor does not include any person or entity hired directly by Owner.
- 3.2.27 "Total Float" shall refer to the number of days all activities on the Longest Path can be delayed without delaying the Substantial Completion Date.
- 3.2.28 "Value Engineering" means a systematic method to improve the value of goods or products and services by using an examination of function. Value can therefore be increased by either improving the function or reducing the cost. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.
- 3.2.29 "Work" means the provision of all services, labor, materials, supplies, and equipment that are required of Design-build Firm to complete the Project in strict accordance with the requirements of the Contract and Construction Documents. Work includes, but is not limited to, Design Services, Preconstruction Services, Construction Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.
- 3.2.30 "Work Progress Schedule" ("WPS") means the continually updated time schedule prepared and monitored by the Design-build Firm that coordinates and integrates activities of the Project, including Design-build Firm's services, Design Professional's services, the work of other consultants, suppliers, and Owner's activities with the anticipated construction schedules for other contractors. The WPS accurately indicates all necessary and appropriate revisions including a Longest Path impact analysis and percentage of work complete and incomplete, as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.
- 3.2.31 "Worker Wage Rate" ("WWR") means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established by the United States Department of Labor in accordance with the Davis-Bacon Act, as amended. The specified wage rates are minimum rates only. All payments for non-salaried personnel working on the Project are subject to audit to determine actual cost of the wages and allowable employer contributions incurred by employer for services performed for the Project.

ARTICLE 4
DESIGN-BUILD FIRM'S GENERAL RESPONSIBILITIES

- 4.1 Design-build Firm shall furnish all services specifically allocated to it by the Contract Documents and use Design-build Firm's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents for the completion of the Project. Owner hereby designates and appoints Design-build Firm and authorizes Design-build Firm to so act in connection with the scope of Work and services set forth and described in this Agreement. Neither Design-build Firm nor any of its agents or employees shall bind or act on behalf of or in the name of Owner unless expressly and explicitly provided in this Agreement and authorized in writing by Owner's Representative.
- 4.2 Design-build Firm shall be responsible for the supervision and coordination of the Work, including the design, construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.
- 4.3 Design-build Firm shall furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.
- 4.4 Design-build Firm shall perform Work only within locations allowed by the Contract Documents, laws, and applicable permits.
- 4.5 Design-build Firm shall provide competent supervision for the performance of the Work. Before commencing the Work, Design-build Firm shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Design-build Firm shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent or project manager shall not perform in that capacity thereafter at the Site.
- 4.6 Owner and Design-build Firm agree and acknowledge that Owner is entering into this Agreement in reliance on Design-build Firm's special and unique abilities with respect to the services and the obligations of this Agreement. Design-build Firm accepts the relationship of trust and confidence established between it and Owner by this Agreement. Design-build Firm shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Design-build Firm's profession or business and in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, orders, local utility companies requirements, and with those of any other body having jurisdiction. Design-build Firm shall have no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Work required hereunder.
- 4.7 Services to be performed by Design-build Firm under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in the same or similar locale, under the same or similar circumstances and involving a project such as the Project
- 4.8 Design-build Firm shall call to Owner's attention anything of any nature in any Drawings, Specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Design-build Firm (by Owner or any other party) which it regards in its opinion as unsuitable, improper, inaccurate, or would constitute a discrepancy, error, omission, or inconsistency in the Drawings or Specifications in connection with the purposes for which such document or data is furnished.

- 4.9 Design-build Firm shall coordinate services and provide cost information to the Project Team and Owner at all stages of the design. It is Design-build Firm's responsibility to keep the design within the Project CCL.
- 4.10 Design-build Firm's duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Design-build Firm be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Design-build Firm's skill and knowledge in performing the services required hereunder.
- 4.11 Design-build Firm shall permit only fit and skilled persons to perform the Work. Persons connected with Design-build Firm directly in charge of its services must be duly registered and/or licensed under applicable laws, rules, and regulations of any authority having jurisdiction.
- 4.12 Design-build Firm shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Design-build Firm shall immediately reassign the person upon receipt of Owner's written notice to do so.
- 4.13 Design-build Firm shall be responsible to Owner for acts or omissions of persons or entities performing portions of the Work for or on behalf of Design-build Firm or any of its Subcontractors.
- 4.14 Design-build Firm agrees that: (a) if 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; or (b) 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. The individual executing this Agreement on behalf of Design-build Firm has been duly authorized to act for and bind Design-build Firm.
- 4.15 Neither the execution and delivery of this Agreement by Design-build Firm nor the performance of its obligations hereunder will result in the violation of: (a) any provision (1) if a corporation, of its articles of incorporation or bylaws, (2) if a limited liability company, of its articles of organization or regulations, or (3) if a partnership, by any partnership agreement by which Design-build Firm is bound; (b) any agreement by which Design-build Firm is bound; or (c) to the best of Design-build Firm's knowledge and belief, any order or decree of any court or governmental instrumentality relating to Design-build Firm.
- 4.16 Design-build Firm shall comply with the HUB program as defined by Tex. Gov't Code, Chapter 2161. Failure to comply with the HUB program may constitute a material breach of this Contract, as determined by Owner's sole discretion.
- 4.17 Design-build Firm has provided a HUB Subcontracting Approach in Design-build Firm's Response to Owner's RFP. Design-build Firm agrees to comply with the established HUB Subcontracting Approach and shall make no changes to the HUB Subcontracting Approach without the prior written approval of Owner.
- 4.18 Design-build Firm will work with the Business Support Services HUB Coordinator to develop the HUB Subcontracting Plan (HSP). The HSP will be due at the time the GMP Proposal is presented to Owner for approval. Because construction may be phased or staged, it may not be possible for Design-build Firm to determine HUB participation for all projected Work until the scope of Work is defined. Accordingly, Design-build Firm shall amend the HSP and submit to Owner's HUB Coordinator documentation for each phase, stage, or bid package. Further details concerning the HSP are located within the UGCs.
- 4.19 General Responsibilities for Design Services

- 4.19.1 Design-build Firm shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the Owner's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and to bind the Design-build Firm in all matters related to Design Services. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.
- 4.19.2 Design-build Firm acknowledges that it has received from Owner a copy of Owner's Criteria. Design-build Firm further acknowledges that Owner's Criteria is intended to give an indication of design intent, including information about components and equipment required.
- 4.19.3 Design-build Firm shall engage the services of a Design Professional and other qualified professionals as required for performance of the Design Services. Design-build Firm certifies that the Design Professional and all other professional service providers have been or will be selected on the basis of competence and qualifications pursuant to Texas Education Code, Section 51.780(f)(1). Design-build Firm shall not perform any architectural or engineering service directly unless Design-build Firm is licensed in Texas to perform such services. Throughout the course of this Agreement, Design Professional must be professionally licensed in the State of Texas.
- 4.19.4 All Design Services shall be provided in accordance with Owner's design guidelines, design criteria, campus master plan (incorporated herein by reference), as well as all other requirements contained in the Contract Documents and all "Legal Requirements" (which term includes not only all laws, ordinances, rules and regulations or governmental authorities, but also includes the rules and regulations of all utility companies providing utility services to the Project).
- 4.19.5 Design-build Firm shall be solely responsible for all obligations to Design Professional and shall pay for the services of Design Professional and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Design Professional and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Design Professional or other design professionals not hired directly by the Owner.
- 4.19.6 Design-build Firm warrants to Owner the sufficiency and completeness of all Design Services performed and to be performed, and that all Drawings, Specifications, and other information furnished or provided by Design-build Firm shall be free from material errors and omissions. Design-build Firm acknowledges: (1) that notwithstanding the fact that Design-build Firm has retained Design Professional, to perform all or parts of the Design Services, Design-build Firm remains responsible to Owner for the design of the Project, and neither the reservation by Owner of any rights of approval over any portion of the Design Services nor the granting of any such approval by Owner shall be deemed to relieve Design-build Firm from Design-build Firm's responsibilities hereunder; and (2) that no feature, item or detail shown or provided for in Owner's Criteria shall be deemed waived by Owner merely by its approval of any documents prepared as part of the Design Services, and a waiver shall only be accomplished by an express written waiver signed by Owner.
- 4.19.7 Owner shall have the right to reject any defective Design Services of which Owner becomes aware and Design-build Firm shall promptly correct any such defect at Design-build Firm's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, Drawings, Specifications, and other Construction Document materials prepared or furnished by Design-build Firm, Design-build Firm shall promptly correct any such damage

or defect at no additional cost to the Owner. Should the Design-build Firm refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

4.20 Subcontractors

- 4.20.1 With the prior written approval of Owner, Design-build Firm may subcontract such services as Design-build Firm deems necessary to meet its obligations under this Agreement. Subcontractors shall be qualified and experienced in the type of work they will be performing. Owner shall have the right to reject any Subcontractor but such right shall not relieve the responsibility of Design-build Firm for its work and the work of the Subcontractors. Design-build Firm expressly assumes such responsibility and liability.
- 4.20.2 Design-build Firm shall be responsible for the management of the Subcontractors in the performance of their work.
- 4.20.3 If this Agreement is terminated, each subcontract agreement shall be assigned by Design-build Firm to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to Article 14; and (b) Owner accepts such assignment after termination by notifying the Subcontractor and Design-build Firm in writing, and assumes all rights and obligations of Design-build Firm pursuant to each subcontract agreement.
- 4.20.4 Subcontractors used on this Project shall be subcontracted in accordance with the terms and conditions of the Contract Documents. Design-build Firm shall include and enforce the terms and conditions within the Contract Documents on all contracts with all Subcontractors and vendors performing work on this Project.

ARTICLE 5 PRECONSTRUCTION PHASE

- 5.1 The Preconstruction Services and Design Services shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Design-build Firm is not entitled to reimbursement for any costs incurred for Preconstruction Services performed prior to issuance of Notice to Proceed. Preconstruction Services may overlap with Construction Services.
- 5.2 Preconstruction Services General Coordination
 - 5.2.1 Design-build Firm shall schedule, conduct, and document regular meetings with Owner to review project procedures, progress, and coordination of the Work. Design-build Firm shall consult with Owner regarding site use and improvements, selection of materials, building systems, and equipment as well as constructability concerns, procurement challenges, and any other factors affecting the execution of the Project. Design-build Firm shall be responsible for preparing and distributing meeting minutes to all relevant parties to ensure alignment on project decisions and action items.
 - 5.2.2 Design-build Firm shall schedule and conduct regular Preconstruction Meetings with the Owner, Project Team, and key project stakeholders to ensure alignment on project scope, budget, schedule, and constructability considerations. These meetings shall serve as a forum to review and address design progress, procurement strategies, site logistics, and other critical preconstruction matters. Design-build Firm shall maintain and distribute meeting agendas and minutes, tracking key action items, decisions made, and outstanding issues requiring resolution. Preconstruction Meetings shall occur at intervals agreed upon

with the Owner and shall continue throughout the duration of the Preconstruction Phase to facilitate clear communication and proactive problem-solving

- 5.2.3 Design-build Firm shall visit the Project site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required. Design-build Firm shall report to Owner any observed discrepancies, conflicts, or deficiencies that may impact design feasibility, constructability, cost, or schedule. Design-build Firm shall provide such reports in writing in the form required by the Contract Documents and shall recommend corrective actions where applicable
- 5.2.4 Design-build Firm shall participate as a member of the Project Team in the development of the Program of Requirements if such program has not been developed prior to the Effective Date of this Agreement. Design-build Firm shall provide recommendations regarding constructability, feasibility, and cost implications to ensure that the Program of Requirements aligns with the project's budget, schedule, and scope. Construction Manager shall also assist in identifying any constraints or risks that could impact the successful execution of the Project
- 5.2.5 Design-build Firm shall provide recommendations and information to the Project Team on: building systems, equipment and construction feasibility; site improvements; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Design-build Firm and Owner's separate contractors, if any; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets, and possible cost savings. Design-build Firm shall assist in identifying and tracking the resolution of conflicts in proposed Drawings and Specifications, including performing clash detection analysis on 3D project models and reporting findings to Owner. Design-build Firm shall assist in developing and implementing mutually agreed Building Information Modeling (BIM) and digital data protocols for the exchange and coordination of digital project files . methods of delivery of materials, systems and equipment; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents; and any other matters necessary to accomplish the Project in accordance with the Preconstruction Work Progress Schedule and Construction Cost Limitation.
- 5.2.6 Design-build Firm shall assist Owner in selecting, coordinating, and directing the services of existing facility surveys, environmental surveys, geotechnical investigations, or other special consultants hired by Owner to develop additional information for the design or construction of the Project. Design-build Firm shall review and evaluate the findings of such surveys and investigations and provide recommendations regarding their impact on constructability, schedule, and cost. The Design-build Firm shall report any discrepancies, conflicts, or potential risks identified in the survey data to the Owner in a timely manner and shall propose appropriate mitigation strategies where applicable
- 5.2.7 At Owner's request, Design-build Firm shall attend public meetings and hearings concerning the development and schedule of the Project. Design-build Firm shall provide technical information and schedule updates as necessary to support the Owner's communication with stakeholders. If requested by the Owner, Design-build Firm shall assist in preparing presentations or reports summarizing project status, constructability considerations, or anticipated impacts related to construction activities. Design-build Firm shall ensure that any information provided in such meetings is accurate and consistent with the most current project plans, schedules, and budgets.
- 5.2.8 Design-build Firm shall create and continuously update a decision tracking system in a format provided by Owner to document project decisions, design modifications, and unresolved coordination issues. The decision tracking system shall be maintained

throughout the Preconstruction Phase to ensure timely resolution of outstanding matters affecting constructability, schedule, or cost.

- 5.2.9 Design-build Firm shall create and continuously update a decision tracking system in a format provided by Owner. Design-build Firm shall also develop and update a "Constructability Review Report" which will be due within fourteen (14) days prior to scheduled estimates. The Report will be based on frequent communication with the Project Team and will outline items that in Design-build Firm's opinion may cause problems in the way the Project is to be constructed and will review the overall coordination of Specifications and Drawings, details, and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. The Report will include the following items in a format provided by the Owner: Location/Discipline, Description, Date Initiated, Current Status, Date Required, Date Completed, Responsible Party, Action Required.
- 5.2.10 Design-build Firm shall work in conjunction with Owner and Design Professional to work toward completion of the GMP process, to include meeting with all Parties. Meetings shall include, but are not limited to reviewing and commenting on construction logs, cost estimation, and shall ensure that the cost information remains accurate and aligned with the project's budget constraints. Design-build Firm shall monitor cost trends throughout the Preconstruction Phase and shall notify Owner in writing within forty-eight (48) hours if at any time it becomes evident that the anticipated construction cost may exceed the approved budget. Design-build Firm shall analyze and reconcile any discrepancies between its cost estimates and those of Design Professional, and shall provide recommendations for cost reductions, value engineering opportunities, or scope modifications necessary to maintain compliance with the Construction Cost Limitation. Design-build Firm shall also participate in the resolution of conflicts within BIM systems, ensuring that identified clashes are addressed in a timely manner to avoid impacts to cost or schedule
- 5.2.11 Design-build Firm shall coordinate with Owner to establish mutually agreed BIM and digital data protocols for the development, use, transmission, and exchange of digital data. Design-build Firm shall ensure that BIM models and digital data are coordinated to align with project goals and requirements. Design-build Firm shall also participate in BIM coordination meetings to facilitate the resolution of detected conflicts before construction begins.
- 5.2.12 Design-build Firm shall assist Owner in identifying and reporting clashes and interferences in any 3D project models or Drawings provided by Design Professional. Design-build Firm shall perform clash detection analysis using its clash detection software and shall provide reports detailing identified conflicts and recommended resolutions to avoid impacts to project cost and schedule.
- 5.2.13 Design-build Firm shall provide a staffing plan for Preconstruction Phase services for Owner's review and approval. The staffing plan shall identify key personnel assigned to the Project, their roles and responsibilities, and anticipated level of effort required during the Preconstruction Phase. Any proposed changes to the approved staffing plan shall require prior written approval from Owner.
- 5.2.14 If Owner has identified a sustainable objective in the Contract Documents, Design-build Firm shall fulfill its responsibilities during the Preconstruction Phase to ensure compliance with the requirements of any Sustainability Plan or certification goals set forth for the Project. Design-build Firm shall provide recommendations regarding material selection, building systems, and construction methods that support the achievement of sustainability objectives

- 5.2.15 Design-build Firm shall not be entitled to any increase in the Preconstruction fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its sole discretion.

5.3 Budget and Cost Consultation

- 5.3.1 Design-build Firm shall obtain from Owner all Project service, materials, and property costs and expenses not known directly by Design-build Firm, such costs to include, without limitation, Owner's personnel costs, force account labor, and special consultants. Design-build Firm shall integrate this data into its cost estimates, budget analyses, and reporting to ensure that all anticipated expenditures are accounted for in the total Project budget. Design-build Firm shall also consider market conditions, material availability, and potential price escalation when evaluating costs to provide Owner with accurate and realistic budget forecasts.
- 5.3.2 Design-build Firm shall prepare and update Construction cost estimates at Design milestones: (i) fifty percent (50%) schematic design; (ii) one hundred percent (100%) schematic design; (iii) fifty percent (50%) design development; (iv) one hundred percent (100%) design development and fifty percent (50%) Construction Documents for written approval by Owner, such cost estimate to include estimating, updating and reporting of all construction costs. Design-build Firm shall refine cost estimates at each stage to reflect the increasing level of design detail and accuracy. Each estimate shall include all anticipated construction costs and shall account for cost escalation, labor and material availability, and market conditions. If cost estimates indicate a potential budget overrun, Design-build Firm shall promptly notify the Owner and provide recommendations for scope adjustments, value engineering, or alternative materials and systems to bring costs within the approval budget.
- 5.3.3 The design development phase and Construction Documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit in Construction Specifications Institute Division format, Master Format 32, for each portion of the Work. Design-build Firm shall refine each estimate to reflect the increasing level of design detail and shall account for scope development, market conditions, and anticipated price escalation. If discrepancies arise between Design-build Firm's cost estimates, Design-build Firm shall work with the Owner to reconcile the estimates and ensure alignment with the project budget.
- 5.3.4 Design-build Firm shall provide, throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Design-build Firm shall prepare and be responsible for all procurement and construction cost estimates, and advise the other members of the Project Team in writing within forty-eight (48) hours if at any time Design-build Firm has knowledge that the previously established CCL will not be met. Design-build Firm shall make recommendations to the Project Team for corrective action. Should the impact be critical in nature, Design-build Firm shall schedule a follow-up discussion with Owner to evaluate mitigation strategies and ensure prompt resolution of cost concerns.
- 5.3.5 At the completion of the Construction Documents, Design-build Firm shall update and refine a comparison of actual and projected costs to the CCL, and in the event such actual and projected costs exceed the original CCL, Design-build Firm shall conduct a detailed assessment of cost variances and shall provide Owner with specific recommendations to mitigate budget overruns. Design-build Firm shall evaluate scope adjustments, value engineering opportunities, alternative procurement strategies, and material or system substitutions to reduce costs while maintaining project quality and functionality. Any proposed cost-reduction strategies shall be submitted to Owner for review and approval

prior to implementation. Design-build Firm shall also account for potential price escalation, changing market conditions, and any remaining scope development to ensure that the final budget remains stable throughout the Project. d

5.4 Coordination of Design and Construction Documents

- 5.4.1 Design-build Firm shall examine and compare the Drawings and Specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Design-build Firm, and any visible conditions at the Site affecting the Project. Design-build Firm shall identify any discrepancies, conflicts, or omissions in the Construction Documents and shall promptly report such findings in writing to Owner. Design-build Firm shall also provide recommendations to resolve identified issues and shall work collaboratively with the Project Team to ensure that necessary adjustments are made before construction begin
- 5.4.2 Design-build Firm shall review all plans, Drawings and Specifications and any other design documents and advise Owner of any identified potential constructability issues, which could impact Design-build Firm's ability to perform the Work in an expeditious and economical manner. Design-build Firm shall analyze and report any conflicts, ambiguities, or omissions that could lead to construction delays, increased costs, or change orders and shall propose solutions to mitigate these risks. Design-build Firm shall advise Owner on site use, foundations, structural and MEP systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner.
- 5.4.3 Design-build Firm shall review all plans, Drawings and Specifications and any other design documents and report to Owner any discrepancies, errors, omissions, or inconsistencies discovered and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules. Design-build Firm shall report these items to Owner in writing within forty-eight (48) hours, and if the impact would be critical schedule a follow-up discussion with Owner.
- 5.4.4 Design-build Firm shall assist in development of any Special Conditions of the Construction Documents to address project-specific requirements, procurement constraints, construction phasing, or other unique considerations. Design-build Firm shall provide input regarding constructability, schedule impacts, site logistics, and risk mitigation measures to ensure that Special Conditions align with project feasibility and contractual obligations. All Special Conditions shall be subject to Owner's review and shall require written approval at Owner's sole option and discretion before incorporation into the Contract Documents. Design-build Firm shall coordinate with Owner to ensure that the Construction Documents comply with all applicable State of Texas statutes, laws, rules and regulations, and University of North Texas System requirements. Design-build Firm shall review the Construction Documents for any potential conflicts with regulatory requirements and shall promptly notify Owner in writing of any known or discovered noncompliance issues. Design-build Firm shall assist the Owner in coordinating with permitting agencies, code officials, and other regulatory authorities as necessary to facilitate project approvals and ensure compliance with applicable codes and standards.
- 5.4.5 Design-build Firm shall consult with Owner to suggest reasonable adjustments in the scope of the Project and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the GMP.

5.5 Pre-Existing Conditions & Design Errors and Omissions

- 5.5.1 Design-build Firm acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions and performed due diligence during the investigation.

Design-build Firm's due diligence includes, but is not limited to, reviewing available surveys, geotechnical reports, environmental studies, and as-built drawings, as well as identifying underground infrastructure (i.e. water, sewer, electrical, gas and data lines) and/or other conditions that may affect the Project. Design-build Firm shall document its findings and promptly notify the Owner in writing of any discrepancies, conflicts, or conditions that could impact constructability, cost, or schedule. Design-build Firm shall not make or be entitled to any claim for any adjustment to the Substantial Completion date or the cost for Preconstruction Services or Construction Services arising from Project conditions that Design-build Firm discovered or, in the exercise of reasonable care, should have discovered in the Design-build Firm's investigation.

- 5.5.2 Design-build Firm shall participate in the development and review of the Construction Documents. Design-build Firm shall review the Drawings, Specifications and other Construction Documents and, in writing, notify Owner of any errors, omission and discrepancies in the documents of which it is aware. Design-build Firm shall not make or be entitled to any claim for any adjustment to the Substantial Completion date or the cost for Preconstruction Services or Construction Services for errors or omissions in the Construction Documents that Design-build Firm discovered or, in the exercise of reasonable care, should have discovered in Design-build Firm's Preconstruction design review process that Design-build Firm did not bring to the attention of Owner in a timely manner.

5.6 Construction Planning

- 5.6.1 Design-build Firm shall identify and recommend to the need for items requiring extended delivery times (long lead items), and expedite the procurement of such items to ensure their delivery by the required dates. Design-build Firm shall continuously monitor supply chain risks and shall provide Owner with contingency recommendations for mitigating procurement delays that could impact the Project schedule. Design-build Firm shall participate as requested by Owner and subject to Owner's prior approval, in the preparation of performance Specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead-time equipment and materials. If requested by Owner, and subject to Owner's prior approval, Design-build Firm shall issue requests for technical proposals to qualified sources, receive proposals, and assist in their evaluation, and provide recommendations based on constructability, cost-effectiveness, and long-term performance considerations.
- 5.6.2 Design-build Firm shall make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts. Design-build Firm shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and onsite production costs, shipping costs, code restrictions, Owner's goals for HUB subcontractor participation, and other constraints. Design-build Firm shall ensure that bid packages are structured to eliminate gaps or overlaps in subcontractor responsibilities and shall assist Owner in evaluating bid scopes for constructability and compliance with project objective.
- 5.6.3 Design-build Firm shall review the Contract Documents with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors. Design-build Firm shall analyze the clarity and completeness of subcontractor bid scopes to ensure that all necessary work is accounted for without duplication or gaps. Where potential scope ambiguities or coordination issues are identified, Design-build Firm shall provide recommendations to adjust subcontractor scopes, sequencing, and coordination requirements to prevent disputes, scheduling conflicts, or Change Orders during construction. Design-build Firm

shall work collaboratively with the Project Team to refine bid packages and contract documents to ensure seamless execution of the Work

- 5.6.4 Design-build Firm shall schedule and conduct pre-bid conferences with a record of minutes for interested bidders, subcontractors, material suppliers, equipment suppliers, and Owner to review the scope of work, bidding requirements, and project schedule. Design-build Firm shall provide clarifications on the Contract Documents, address bidder inquiries, and facilitate discussions to ensure a clear understanding of the Project requirements. Design-build Firm shall prepare and distribute official meeting minutes documenting all questions raised, responses provided, and any clarifications issued. If necessary, Design-build Firm shall coordinate with the Owner and Project Team to issue formal addenda incorporating changes or clarifications resulting from the pre-bid conferences.
- 5.6.5 Design-build Firm shall coordinate, develop, and review with Owner bid packages and scopes of work for each separate bid category representing the entirety of the scope of the Work for each bid category to ensure that they comprehensively represent the entirety of the Project scope for each phase and stage of construction. Design-build Firm shall ensure that bid packages are clearly defined, without gaps or overlaps in subcontractor responsibilities, and are structured to align with project sequencing, budget constraints, and market conditions. Design-build Firm shall evaluate each bid package for constructability, procurement feasibility, and compliance with Owner-established goals for Historically Underutilized Business (HUB) subcontractor participation. Prior to finalizing bid scopes, Design-build Firm shall confirm that each package is complete and consistent with the Contract Documents to minimize post-award conflicts or Change Orders.
- 5.6.6 Design-build Firm shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Design-build Firm shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by Design-build Firm or Owner. Design-build Firm shall certify that the procurement process complies with all applicable legal and contractual requirements and shall maintain detailed documentation of the bid opening process. Upon completion of bid evaluations, the Design-build Firm shall submit a written analysis and recommendation to the Owner for final review and approval before awarding any contracts
- 5.6.7 Design-build Firm and Owner shall jointly review all trade contractor and subcontractor bids or proposals to determine compliance with the selection criteria outlined in the request for proposals. Design-build Firm shall provide a structured written analysis, including bid tabulations, evaluation scores, and justification for its recommendations, to ensure transparency and facilitate informed decision-making. Based on this evaluation, Design-build Firm shall recommend to Owner, in a manner acceptable to Owner, the bid or proposal(s) that provides the best value for the Project. Upon Owner's written concurrence, Design-build Firm may negotiate the subcontract terms with the apparent best value bidder or proposer, provided that such negotiations remain within the parameters approved by the Owner. The Owner shall make a final determination within ten (10) business days, as to whether Design-build Firm's bid recommendation provides the best value for Owner. Owner's determination in such matters shall be final. All bids and proposals shall be made public within seven (7) days after the date of final selection, in accordance with applicable laws and regulations.
- 5.6.8 Design-build Firm shall prepare and issue addenda to the Construction Documents, including Drawings when appropriate, as may be required to clarify or interpret the Documents.

- 5.6.9 Design-build Firm shall review final estimated construction cost prepared before bid opening(s). If the estimated construction cost for the final design and Specifications (Construction Documents) exceeds the original or Owner adjusted (if so done in writing during the Design Stage Services) Construction Cost Limitation, Owner may, at its discretion and decision, exercise one or more of the rights reserved to Owner as stated in this Agreement.
- 5.6.10 If the final estimated construction cost prepared by Design-build Firm prior to bid opening, or the lowest and best bid(s) received exceeds the original or latest adjusted Construction Cost Limitation of the Project Budget by more than ten percent (10%), Owner may, at its discretion:
- 5.6.10.1 Give written approval of an increase in the construction cost portion of the Project Budget;
 - 5.6.10.2 Direct Design-build Firm to make such changes at no additional expense to Owner in the Construction Documents to permit rebidding of the Project within the shortest, reasonable time;
 - 5.6.10.3 Direct Design-build Firm revise the scope or quality, or both, of the Project, so as to reduce the Project construction cost; in which case Design-build Firm shall at its expense, if so directed by Owner, modify the Construction Documents, as directed, in order to reduce the estimated Project construction cost to be within the adjusted construction cost portion of the Project Budget;
 - 5.6.10.4 Direct Design-build Firm to assist in negotiating with lowest and best bidder(s); or
 - 5.6.10.5 Abandon the Project, in which case the appropriate part of Design Services fee to be paid for the Design Development Phase shall be based on the latest adjusted construction cost portion of the Project Budget, and provided that this fee shall not be exceeded if the Project is later awarded at a cost still in excess of that portion of the Project Budget.
- 5.6.11 Design-build Firm and Owner shall review all trade contractor or subcontractor bids/proposals to determine compliance with the selection criteria outlined in the request for proposals. Design-build Firm shall provide a structured written analysis, including bid tabulations, evaluation scores, and justification for its recommendations, to ensure transparency and facilitate informed decision-making. Based on this evaluation, the selection criteria included in the request for proposals, Design-build Firm shall recommend to Owner, in a manner acceptable to Owner, the bid/proposal(s) that provides the best value for the Project. Within ten (10) days, Owner shall determine if the bid proposal(s) provides the best value for Owner. Owner's determination in such matters is final. Upon Owner's written concurrence with the recommendation, Design-build Firm may negotiate the terms of the subcontract with the apparent best value bidder/proposer. All bids and proposals shall be made public within seven (7) days after the date of final selection.
- 5.6.12 For scope of work bid packages typically performed by subcontractors, Design-build Firm may seek to Self-Perform portions of the Work on a cost-plus fee (Not-To-Exceed 7.5%) basis subject to a Guaranteed Maximum Price for the Self-Performed Work. If Design-build Firm intends to submit a proposal for Self-Performance, it shall notify Owner in writing prior to soliciting proposals. Design-build Firm shall bid for the Work to be Self-Performed against at least three (3) other qualified and interested trade contractors and must submit its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors, without preferential treatment. All bids, including Design-build Firm's, shall be evaluated using the same selection criteria to ensure fairness and transparency in the procurement process. Design-build Firm's bid shall be subject to

independent review by Owner or its designated representative to confirm compliance with procurement requirements. If the Design-build Firm's bid is considered the "best value", the bid amount will be considered the Guaranteed Maximum Price for the Self-Performed Work, and the Design-build Firm shall provide full disclosure of all cost breakdowns and fee structures associated with the Work.

- 5.6.13 The Guaranteed Maximum Price will provide for payment in an amount equal to the Cost of the Work (as defined in this Agreement) plus fee and will not exceed the agreed upon Guaranteed Maximum Price. All terms and provisions of any subcontract for Self-Performed Work will be consistent with the terms and conditions of this Agreement with the exception of the agreed upon fee percentage. All savings under any such subcontract for Self-Performed Work shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. Design-build Firm shall not reallocate or retain any portion of such savings for its own use
- 5.6.14 After review and evaluation, if a bid or proposal from a trade contractor or subcontractor is recommended by Design-build Firm to Owner, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, Owner shall compensate Design-build Firm. Compensation shall be by change in price, time, or GMP for any additional cost and risk, which demonstrated to Owner's satisfaction and as required by the Contract, Design-build Firm incurs because of Owner's requirement to accept another trade contractor or subcontractor bid or proposal. Design-build Firm shall submit a detailed written request to the Owner, including a breakdown of additional costs, schedule impacts, and risk factors, along with supporting documentation as required by the Contract. The Owner shall review the request, and any adjustment shall be subject to Owner approval. The Design-build Firm shall remain responsible for the management, coordination, and performance of all subcontractors, including those selected by the Owner
- 5.6.15 Design-build Firm shall assist Owner in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, and the fire department providing fire protection. Design-build Firm shall actively track and document the status of all required approvals, permits, and regulatory reviews to ensure timely compliance. Design-build Firm shall assist in the preparation of required documentation, applications, and submittals necessary to obtain agency approvals and shall provide coordination support to facilitate timely responses to regulatory inquiries. Design-build Firm shall promptly notify Owner of any identified compliance risks or potential approval delays and shall work with the Project Team to develop and implement mitigation strategies to prevent project disruptions.
- 5.6.16 Design-build Firm shall refine, implement and monitor the HUB goals which promote equal employment opportunity in the provision of goods and services to Owner for the Project. Design-build Firm shall actively engage with HUB firms to maximize participation and shall document all outreach efforts, including bid solicitations, networking events, and subcontractor engagement activities. Design-build Firm shall submit regular HUB participation reports to the Owner, detailing progress toward meeting established HUB goals and demonstrating compliance with Good Faith Effort requirements. Design-build Firm shall also ensure that all subcontractors comply with HUB participation commitments and shall take necessary corrective actions if compliance issues arise. Design-build Firm shall work collaboratively with Owner to continuously improve HUB participation strategies and shall recommend adjustments to outreach efforts if needed to enhance engagement with HUB firms.
- 5.6.17 Design-build Firm shall advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants. Design-build Firm shall coordinate the scheduling of all required tests to ensure they are performed in a timely manner and do not

delay construction activities. Design-build Firm shall review test results and provide recommendations to Owner if test findings indicate potential concerns related to constructability, material quality, or compliance with project requirements. Design-build Firm shall maintain detailed records of all testing activities and shall promptly report any observed inconsistencies or deviations that could impact project performance or schedule.

- 5.6.18 Design-build Firm shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work. If any deficiencies or inefficiencies are identified, Design-build Firm shall provide recommendations to Owner for adjustments to improve site functionality and efficiency. Design-build Firm shall coordinate the layout and logistics of temporary facilities, ensuring they are strategically located to minimize disruption to construction activities and maintain site safety. Design-build Firm shall prepare and submit a Temporary Facilities Plan for Owner approval, detailing provisions for utilities, site access, material storage, safety compliance, and other essential job site requirements.
- 5.6.19 In accordance with Uniform General Conditions, Design-build Firm is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-build Firm shall develop and submit a Project-Specific Safety Plan for Owner's review prior to the commencement of construction activities. Construction Manager shall conduct regular job site safety meetings, perform ongoing safety audits, and enforce compliance with all applicable safety regulations and requirements among subcontractors. Design-build Firm shall provide information to Owner with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-build Firm shall verify the assignments with respect to Subcontractors are included in the Contract Documents. The existence or creation of any Owner controlled insurance program (OCIP) in connection with the Work shall in no way lessen or reduce the foregoing responsibilities set forth in this subparagraph of Design-build Firm.
- 5.6.20 Design-build Firm shall provide an analysis of the types and quantities of labor required for the Project, including an assessment of the availability of skilled and unskilled labor within the regional market. Design-build Firm shall evaluate labor requirements for critical phases and stages of construction and shall continuously monitor workforce availability throughout the Preconstruction Phase. If potential labor shortages are identified, the Design-build Firm shall provide proactive recommendations to Owner for mitigating their impact, including adjustments to project phasing, alternative workforce strategies, subcontractor outreach, or coordination with local trade organizations and workforce training programs. Design-build Firm shall ensure that labor planning efforts align with the Project schedule and budget to minimize risks associated with workforce availability.
- 5.6.21 Design-build Firm shall consult with and make recommendations to Owner on the acquisition schedule for fixtures, furniture and equipment (FF&E), and coordinate Owner's purchase and installation of such items as may be required to meet the Schedule. Design-build Firm shall integrate the FF&E acquisition schedule into the overall construction schedule to ensure that all required items are procured, delivered, and installed in a timely manner. Design-build Firm shall identify long-lead FF&E items, track their procurement status, and provide periodic updates to Owner to mitigate potential delays. Design-build Firm shall also coordinate with vendors, subcontractors, and facility end-users to ensure proper delivery, staging, and installation of FF&E in alignment with construction activities and final occupancy requirements.
- 5.6.22 Design-build Firm shall develop and maintain a Site Logistics and Phasing Plan that addresses site access, material staging, laydown areas, and the movement of personnel and equipment to minimize disruptions to ongoing university operations.

Design-build Firm shall coordinate with Owner to ensure that site logistics are properly managed to maintain safety, efficiency, and compliance with project scheduling requirements.

- 5.6.23 Design-build Firm shall be responsible for tracking and coordinating all required permits and inspections necessary for the Project. Design-build Firm shall proactively engage with regulatory authorities to facilitate timely approvals and shall provide regular updates to Owner on the status of all pending permits. Design-build Firm shall ensure that all necessary inspections are scheduled and completed in alignment with the Project Schedule to avoid construction delays.
 - 5.6.24 Design-build Firm shall implement lean construction principles and waste reduction strategies to improve project efficiency and sustainability. Design-build Firm shall coordinate procurement and just-in-time deliveries to minimize material waste and shall work with subcontractors to ensure responsible disposal and recycling of construction debris in accordance with project sustainability goals.
 - 5.6.25 Upon completion of the Preconstruction Phase, Design-build Firm shall prepare and submit a Post-Preconstruction Assessment Report to Owner. This report shall summarize key preconstruction activities, including cost trends, scope refinements, design coordination efforts, constructability assessments, procurement strategies, risk mitigation measures, and labor market conditions. Design-build Firm shall also document major challenges encountered during Preconstruction and provide recommendations for improvements in future projects based on lessons learned. The report shall be submitted within thirty (30) days following the execution of the GMP or other contract milestone identified by Owner.
- 5.7 Design-build Firm shall not be entitled to any increase in the Preconstruction Services fee due to Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are determined by Owner, at its sole discretion, to be material and significant. If Design-build Firm believes that a material and significant change has occurred that may warrant a fee adjustment, it shall submit a written request to Owner detailing the specific nature of the change, its impact on Preconstruction Services, and a detailed cost justification. Owner shall have sole discretion to approve or deny any fee adjustment requests. Normal schedule refinements, minor scope adjustments, coordination efforts, or delays that do not substantially alter the scope of Preconstruction Services shall not be considered grounds for a fee increase. Construction Manager shall continue performing Preconstruction Services as required, regardless of the status of any fee adjustment request.
- 5.8 Design Services
- 5.8.1 General Obligations
 - 5.8.1.1 At each phase of the Design Services, Design-build Firm, at its sole expense, shall provide Owner with the number of document review sets reasonably requested by Owner.
 - 5.8.1.2 Design reviews will be at: (a) fifty percent (50%) schematic design phase; (b) one hundred percent (100%) schematic design phase; (c) fifty percent (50%) design development phase; (d) one hundred (100%) design development phase; and (e) sixty percent (60%) Construction Documents phase.

- 5.8.1.3 Design-build Firm, in order to determine the requirements for Design Services shall have a preliminary evaluation of the initial programming to be provided by Owner. Design-build Firm shall confirm its understanding of such requirements with Owner and shall refine or make clarification to Owner's Program for the Project.
- 5.8.1.4 Owner and Design-build Firm may agree to merge phases of Design Services. Construction will not proceed until the GMP is approved.
- 5.8.1.5 Design-build Firm shall incorporate into the documents such corrections and amendments as Owner requests at each stage of review, unless Design-build Firm objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design-build Firm's failure to incorporate Owner's requested corrections and amendments shall be borne by Design-build Firm.
- 5.8.1.6 Any Owner directed changes that occur after the design is approved and have a financial cost will result in an amendment.
- 5.8.1.7 At each stage of the Design Services, Design-build Firm shall provide the following services as appropriate:
- Architectural Services
 - Landscape Architectural Services
 - Civil Engineering Services
 - Structural Engineering Services
 - Mechanical Engineering Services
 - Electrical Engineering Services
 - Construction Cost Estimating
 - Scheduling Services
 - Storm Water Pollution Prevention Plan Design Services
 - Building Information Modeling (BIM)
- 5.8.1.8 The format and detailed content of the cost estimate shall be approved by Owner. The cost estimates shall include the Major Categories of Work for the entire Project and shall be detailed under each category to show the individual items of Work in both quantity and unit cost for labor and materials, which are to be directly incorporated in the Work by Design-build Firm. Estimate summaries shall show the above direct quantity cost by Major Categories of Work and such indirect costs as appropriate by separate identification to estimate the Project construction cost which Owner may expect at the time of competitive bidding.
- 5.8.1.9 Design-build Firm will provide and submit Drawings and applications to the USGBC for compliance review to obtain a minimum Silver rating in accordance with the USGBC LEED rating system; provided, that this section shall not apply if the Project is not a LEED Project.
- 5.8.2 Preliminary Design Phase. Design-build Firm shall prepare a Schematic Design Study, including preliminary plan, elevation and specification which shall reveal:
- 5.8.2.1 The general configuration and layout of the Project, including materials and type of structure;
 - 5.8.2.2 The architectural, structural, mechanical and electrical schemes;
 - 5.8.2.3 The rough outline of building structure to be erected as part of the Project;

- 5.8.2.4 A statement as to the extent, if any, that Owner's Criteria do not conform to Legal Requirements (collectively "Schematic Design Study") and shall submit same to Owner for its approval; and
- 5.8.2.5 All work drawn and specified shall conform to and be in compliance with all applicable codes, laws, ordinance as applicable, regulations, and published legal restrictions which shall include but not limited to The International Building Code, 2009 Edition and NFPA 101 Life Safety Code, 2009 Edition.
- 5.8.3 Schematic Design Phase. Upon receipt Owner's written approval to proceed, Design-build Firm shall proceed with the schematic design phase and shall:
- 5.8.3.1 Based on the approved preliminary design phase documents and any adjustments to the Program or CCL authorized by Owner, Design-build Firm shall develop alternative approaches to design and construction of the Project and review them with Owner;
- 5.8.3.2 Review and validate the criteria furnished by Owner to ascertain the requirements of this Project and shall confirm such requirements to the Owner;
- 5.8.3.3 Based on the building program approved by Owner, prepare Schematic Design Studies consisting of, but not limited to, design concepts, design narrative for all disciplines, Drawings, and other documents illustrating the scale and relationship of Project components for approval by Owner. Reproducible set shall be submitted for Owner's required approval; and
- 5.8.3.4 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided at the conclusion of the schematic design phase, in a format approved by Owner, and review the written cost estimate with Owner. Design-build Firm shall adjust the scope of this Project as required based on the cost estimator's cost estimate.
- 5.8.4 Design Development Phase. Upon Owner's written approval to proceed, Design-build Firm shall proceed with the design development phase and shall:
- 5.8.4.1 Prepare the design development documents and, upon completion, submit a reproducible set for approval by Owner to include: the architectural, structural, mechanical, plumbing and electrical floor plans and distributions systems, cross sections, and other required Drawings; and the outline Specifications in sufficient detail to describe the size, character, and quality as to kinds and locations of materials and the types and sizes of structural, mechanical, plumbing and electrical systems for the entire Project. If required, Design-build Firm shall also provide a framed exterior rendering of the Project.
- 5.8.4.2 Include in the design development, schematic design documents and floor plan, exterior elevations, wall sections, roof plan, typical structural details and notes, foundation plan, MEP layout and locations, MEP load calculations, MEP notes MEP schedule, demolition plan, paving plan, erosion control plan, right-of-way work coordination plan, preparation of exterior views for Design Review Board approval, utility plan, utility drainage profiles if required, landscape and irrigation design and photometric plan; and
- 5.8.4.3 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided to Design-build Firm at the conclusion of the design development phase, in a format approved by Owner. Design-build Firm shall adjust the scope of the Project as required based on the cost estimator's cost estimate and as approved or directed by Owner.

5.8.5 Construction Documents Phase. Upon Owner's written approval to proceed, Design-build Firm shall proceed with the Construction Document phase and shall:

- 5.8.5.1 Prepare the Construction Documents in accordance with the design schedule for approval by Owner to include and consist of the standard documents as may be furnished by Owner, and the final Working Drawings and technical Specifications that set forth in detail all the requirements for construction of the entire Project. Prepare final Drawings and Specifications in full compliance with all applicable building codes, laws, or ordinances, and other regulatory authorities.
- 5.8.5.2 Submit four (4) sets for Owner's review and approval, with comments as necessary, review sets of the Working Drawings and Specifications when at sixty percent (60%) and ninety-five percent (95%) completion points are reached in this phase of design. Design-build Firm shall review the documents for updating their cost estimate at each review point except for the sixty percent (60%) set which will be the GMP set.
- 5.8.5.3 Design-Build firm shall coordinate preparation and submission for Owner's approval of a written final estimated construction cost upon one hundred percent (100%) completion of the final Drawings and Specifications in accordance with the design schedule and Owner approved format and detail. The estimate shall be itemized as necessary to include estimates for alternates (additives and/or deductive) and to conform to the form of Proposal Request intended for bidding purposes. The final cost estimate prepared and submitted by Design-build Firm shall be a continuation and expansion of previous estimates prepared and submitted during the Construction Documents phase.
- 5.8.5.4 Once Owner approves the Construction Documents, Design-build Firm shall not be entitled to any adjustment in the approved Project Construction Cost except for changes in Project scope or quality which materially increase or decrease cost to construct the Project that are ordered by Owner in writing in accordance with the Uniform General Conditions.

5.8.6 Additional Services

The following additional Design Services, when authorized by Owner in writing to Design-build Firm, shall be paid for by Owner in accordance with this Agreement:

- 5.8.6.1 Making measured Drawings of existing construction when required for planning or designing additions or alterations to existing buildings or facilities. This does not include the responsibility of Design-build Firm to confirm critical dimensions on Owner furnished drawings or documents of existing facilities or buildings, excluding underground utilities, for which the planning or design of additions and/or alteration are to be provided under the Contract Documents.
- 5.8.6.2 Revising previously approved Drawings, Specifications, or other documents to accommodate Changes when so directed by Owner, provided, however, that no compensation for Additional Services shall be paid for the following revisions which:
 - a. May be directed by Owner pursuant to this Agreement;
 - b. Corrections of design errors or omissions;
 - c. Changes initiated by the Design Professional or the Design-build Firm;

- d. Changes necessitated to bring the design development within the Construction Cost Limitation as specified herein or adjusted by Owner with the agreement of Design-build Firm; and
 - e. Are necessary to produce and furnish the final Record Documents, corrected to include all "as-built" construction and conditions.
- 5.8.6.3 Providing professional services made necessary by the default of Design-build Firm in performance of the Work under the Contract Documents.
 - 5.8.6.4 Providing construction contract administration of construction after the latest extended construction contract time has been exceeded by more than ten percent (10%) through no fault of Design-build Firm.
 - 5.8.6.5 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction.
 - 5.8.6.6 Preparing supporting data and other service in connection with Change Orders if the change is not the fault or negligence of Design-build Firm and if Contract Sum is not commensurate with the services required of Design-build Firm.

ARTICLE 6 SCHEDULE

6.1 Preconstruction Baseline Schedule

- 6.1.1 Design-build Firm shall meet with Owner to coordinate preparation of the Preconstruction Baseline Schedule. Design-build Firm shall within twenty-one (21) days of the Preconstruction Notice to Proceed prepare a Preconstruction Baseline Schedule for the Owner's review and approval. Design-build Firm shall coordinate and integrate the Preconstruction Baseline Schedule with the services and activities of Owner, Design-build Firm, Design Professional, other consultants/suppliers and the requirements of governmental entities. This Preconstruction Baseline Schedule shall become the comparison to the actual Preconstruction phase Services progress and become a part of the Preconstruction Work Progress Schedule.
- 6.1.2 As design proceeds, Design-build Firm shall update the Preconstruction Work Progress Schedule at least monthly to detail all activity sequences, durations, or milestone dates for activities of the Project, including, without limitation:
 - 6.1.2.1 commencement, milestone, and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phase, and project stages;
 - 6.1.2.2 times of commencement and completion for each Subcontractor
 - 6.1.2.3 contract document packages, completion dates, Owner contract document package review periods, construction contract bid dates;
 - 6.1.2.4 preparation and processing of shop Drawings and samples;
 - 6.1.2.5 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 Design Professional; and

- 6.1.2.6 Owner's occupancy requirements and estimated date of Substantial Completion of the Project.
- 6.1.3 If updates indicate that milestone dates contained in the Preconstruction Work Progress Schedule will not be met, Design-build Firm shall notify Owner in writing and make recommendations to Owner.
- 6.1.4 If the Project is to be completed in phases, Design-build Firm shall make recommendations to Owner regarding the phased issuance of the Drawings and Specifications.
- 6.1.5 A separate schedule shall be prepared for each stage and each set of bidding documents.
- 6.1.6 Design-build Firm shall provide the necessary Longest Path schedule control with a goal to attain Substantial Completion of the Project on or before the date set forth in the solicitation documentation, so that Owner can occupy and utilize the entire Project facilities on such date. Design-build Firm shall keep critical activities from impacting the Longest Path and shall keep activities scheduled to finish the Work on or before the Substantial Completion Date. Should Design-build Firm neglect or refuse to remedy the scheduled activities to maintain Substantial Completion, then Owner shall be entitled to remedy such delayed scheduling at the expense of Design-build Firm.
- 6.1.7 Design-build Firm shall create and maintain the Preconstruction Work Progress Schedule in a format acceptable to Owner (the license and training for which shall be at Design-build Firm's sole expense).
- 6.1.8 Prior to commencement of the Construction Services and concurrently with the submission of the GMP Proposal, Design-build Firm shall submit an up-to-date Preconstruction Work Progress Schedule for the performance of Construction Services as specified. The Preconstruction Work Progress Schedule shall include reasonable periods of time for the Owner's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.
- 6.2 Construction Baseline Schedule
- 6.2.1 Design-build Firm shall submit for review and approval a Construction Baseline Schedule to Owner no later than twenty-one (21) days after Notice to Proceed with Construction Services. The Baseline Schedule shall indicate the dates for starting and completing the various aspects required to complete the Work and shall utilize the Longest Path Method with fully editable logic. The schedule shall include mobilization, procurement, installation, testing, inspection, delivery of close-out documents, and acceptance of all Work. This Construction Baseline Schedule shall become the comparison to the actual conditions throughout the duration of the Agreement and become a part of the Construction Work Progress Schedule.
- 6.2.1.1 A Construction Baseline Schedule that does not have at least the minimum amount of Total Float at submission will result in Design-build Firm forfeiting all claims to extensions and/or delays as a result of contract changes and/or excusable delays as described in the UGC.
- 6.2.2 In accordance with the UGC, the Construction Work Progress Schedule shall include at least ten percent (10%) Total Float and Weather Days from the effective date of Notice to Proceed with Construction Services to Substantial Completion Date (refer to UGCs for amendment to the Total Float requirement and Weather Days).
- 6.2.2.1 Total Float shall not be shown as a single activity, but rather the results of the relationship between the early and late finish dates or early and late start dates

of each Activity. The allocation of float shall be determined by the Project Team as conditions warrant.

- 6.2.3 As design proceeds, Design-build Firm shall update and submit the Construction Work Progress Schedule to Owner at OAC meeting minutes. The Construction Work Progress Schedule shall detail all activity sequences, durations, or milestone dates for activities of the Project, including, without limitation:
 - 6.2.3.1 commencement, milestones, and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phase, and project stages;
 - 6.2.3.2 times of commencement and completion for each Subcontractor;
 - 6.2.3.3 bid packages, anticipated issue dates, Owner review period of responses, and completion dates;
 - 6.2.3.4 other detailed schedule activities as directed by Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology, data-transmission systems, and computer technology systems;
 - 6.2.3.5 preparation and processing of shop Drawings and samples;
 - 6.2.3.6 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 Design Professional; and
 - 6.2.3.7 Substantial Completion Date and a projected date of achieving Substantial Completion of the Project;
 - 6.2.3.8 Activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials.
- 6.2.4 Design-build Firm shall provide regular monitoring, updating, and reissuing of all Project schedules as construction progresses and identify potential and actual variances between scheduled and probable completion dates.
- 6.2.5 Design-build Firm shall review the schedules for Work not started or incomplete and recommend to Owner adjustments in the schedules to conform to the probable completion dates. Design-build Firm shall also evaluate Subcontractor's personnel, equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule and recommend action to Owner when any subcontract requirements are not met, or appear unlikely to be met.
- 6.2.6 During OAC meetings, Design-build Firm shall: review progress since last meeting with Owner; report progress on all activities that were behind schedule at any prior OAC meeting; determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to Design-build Firm's Construction Work Progress Schedule; determine how activities behind schedule will be expedited; secure commitments from parties involved to do so; discuss whether schedule revisions are required to ensure the

current and subsequent activities will be completed within the Substantial Completion; and review Construction Work Progress Schedule for next period.

- 6.2.7 In addition to attending regularly scheduled OAC Project progress meetings, Design-build Firm shall schedule, direct, and attend interim progress meetings (i.e., commissioning meetings, coordination meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. Design-build Firm shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.
- 6.2.8 If schedule updates indicate the Longest Path contained in prior Construction Work Progress Schedule will not be met, Design-build Firm shall, in writing, notify Owner within forty-eight (48) hours and make recommendations to Owner. Should the item be critical in nature, Design-build Firm shall have a follow-up discussion with Owner.
- 6.2.9 Design-build Firm, concurrently with making revisions to the Construction Work Progress Schedule, shall prepare tabulated reports showing the following:
 - 6.2.9.1 Identification of activities that have changed
 - 6.2.9.2 Changes in early and late start dates
 - 6.2.9.3 Changes in early and late finish dates
 - 6.2.9.4 Changes in activity durations in workdays
 - 6.2.9.5 Changes in the Longest Path
 - 6.2.9.6 Changes in Contract time
 - 6.2.9.7 Show relationship between activities on initial and updated Construction Work Progress Schedule
 - 6.2.9.8 Remaining Total Float and Weather Days.
- 6.2.10 If the Project is to be completed in phases, Design-build Firm shall make recommendations to Owner regarding the phased issuance of the Drawings and Specifications.
- 6.2.11 Design-build Firm shall provide the necessary Longest Path schedule control with a goal to attain the Substantial Completion Date of the Project.
 - 6.2.11.1 Punch List and Final Completion: The Longest Path schedule control shall include not more than thirty (30) days or an agreed to timeframe approved by Owner for punch list and Final Completion.
- 6.2.12 Design-build Firm shall coordinate preparation of the Schedule of Values with preparation of the Construction Work Progress Schedule.
- 6.2.13 Design-build Firm shall create and maintain the Construction Work Progress Schedule in a format acceptable to Owner (the license and training for which shall be at Design-build Firm's sole expense).
- 6.2.14 Design-build Firm shall provide within the Work Progress Schedule without limitation, the following:
 - 6.2.14.1 Perform Project scheduling in compliance with Owner's criteria as set forth in the Contract Documents.

- 6.2.14.2 Provide regular monitoring, updating, and reissuing of all Project Schedules as construction progresses.
- 6.2.14.3 Include, without limitation within the Work Progress Schedule, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules.
- 6.2.14.4 Identify potential and actual variances between scheduled and probable completion dates,
- 6.2.14.5 Review the schedules for Work not started or incomplete and recommend to Owner adjustments in the schedules to conform to the probable completion dates.
- 6.2.14.6 Provide summary reports to Owner of each schedule update and document all changes in construction schedules.
- 6.2.14.7 Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials.
- 6.2.14.8 Processing of shop Drawings, data and samples.
- 6.2.14.9 Delivery of long lead-time items.
- 6.2.14.10 Include Owner's occupancy requirements and occupancy priorities.
- 6.2.14.11 Evaluate Subcontractor's personnel, equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any subcontractor requirements are not met, or appear unlikely to be met.
- 6.2.15 Design-build Firm shall notify Owner within forty-eight (48) hours should a periodic update to the Construction Work Progress Schedule indicate the Work is fourteen (14) or more calendar days behind the current approved Schedule, Design-build Firm shall submit a separate recovery schedule indicating means by which Design-build Firm intends to regain compliance with the Construction Work Progress Schedule. The recovery schedule shall indicate changes to working hours, working days, crew sizes, and equipment required for compliance, and date by which recovery will be accomplished.
- 6.2.16 Design-build Firm shall refer to the Uniform General Conditions for schedule extension and delay processes.

ARTICLE 7

GUARANTEED MAXIMUM PRICE

- 7.1 At sixty percent (60%) completion of the Construction Documents, Design-build Firm shall prepare and submit to Owner in writing a GMP proposal in the format in attached Exhibit B or similar form as required by Owner and at Owner's sole option and discretion. The GMP proposal shall require a breakdown of estimated costs organized by trade, allowances, Contingencies, Design-build Firm's Construction Fee, General Conditions and other approved items, but shall not include compensation for Preconstruction phase Services. If accepted by Owner, the parties shall execute a GMP Amendment and the fully executed Amendment shall become a part of the Contract Documents.
- 7.2 Design-build Firm shall include with the GMP proposal a written statement of its basis, which shall include:

- 7.2.1 List of the Drawings and Specifications, including all addenda, which were used in preparation of the GMP proposal;
- 7.2.2 Allowances and a statement of their basis;
- 7.2.3 Design Contingency up to a maximum of {Word} percent ({Numeral} %) of the Direct Construction Cost to allow for continued development and completion of the Drawings and Specifications which are not reasonably inferable except for material changes in scope;
- 7.2.4 Construction Contingency up to a maximum of {Word} percent ({Numeral} %) of the Direct Construction Cost to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement of Construction Documents or procurement of the Work. Any reallocation of funds to cover increases in the Direct Construction Cost must be approved by Owner in advance and in writing. Design-build Firm shall provide detailed documentation of the scope affected and the bases for any increases in costs.
 - 7.2.4.1 The Construction Contingency is not to be used for Contractor rework, cost increases caused by lack of coordination or communication with Design Professional or trade Subcontractors.
 - 7.2.4.2
- 7.2.5 Owner's Contingency, if applicable, for the exclusive use of Owner;
- 7.2.6 The Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Baseline Schedule upon which the Date of Substantial Completion or the Date of Final Completion is based;
- 7.2.7 Catalog of applicable alternate prices; and
- 7.2.8 Catalog of applicable unit prices.
- 7.3 Owner, at its sole option and discretion may reject the GMP Proposal, attempt to renegotiate the GMP proposal with Design-build Firm (with the right to cease negotiations at any time and reject the GMP Proposal), or increase the Construction Cost Limitation. Design-build Firm shall not withdraw its GMP Proposal for ninety (90) days after submission to Owner. If Owner rejects the GMP Proposal or the parties are unable to agree on a GMP, Owner may terminate this Agreement.
- 7.4 Adjustments to the GMP Amendment will be made for changes to the scope of Work for the Project by mutual agreement of Owner and Design-build Firm, in writing, and shall include the following for both additive and deductive changes in scope of Work:
 - 7.4.1 Net amount of the actual reimbursable costs from the change in the scope of Work;
 - 7.4.2 Net amount of General Conditions, if applicable, from the change in the scope of Work;
 - 7.4.3 Net amount of the cost of bonds and insurance, as required by the Uniform General Conditions.

ARTICLE 8 CONSTRUCTION SERVICES

- 8.1 The Construction Services shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after approval by Owner of a GMP or the issuance of an early release package for the Work or portion of the Work specified in such Notice to Proceed. The Notice to Proceed date is the date the Construction schedule begins. Once Owner receives documentation of the insurance and bonds from Design-build Firm, Owner will send the Notice to Proceed.

- 8.2 Design-build Firm shall provide Project Control, including, without limitation, the following:
- 8.2.1 Construct the Work in strict accordance with the Contract Documents within the time required by the Construction Baseline Schedule approved by Owner.
 - 8.2.2 Award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Design-build Firm shall self-perform only General Conditions Work and other Work, which has been awarded to Design-build Firm in accordance with the requirements of *Texas Education Code* section 51.780 and this Agreement. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.
 - 8.2.3 Coordinate, monitor and inspect 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 completion of the Project at a cost not to exceed the CCL and GMP Amendment, and to attain Substantial Completion by the date set forth in the GMP Amendment.
 - 8.2.4 Schedule, direct, and attend weekly construction meetings in accordance with the Division 01 requirements. When requested, attend meetings scheduled by Owner and fully advise by written report the Project status.
 - 8.2.5 Maintain a competent, full-time staff at the Site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
 - 8.2.6 Establish onsite organization of personnel and clearly defined lines of authority in order to execute the overall plans of the Project Team. At a minimum, Design-build Firm's site personnel shall include a project manager, project superintendent, project engineer and appropriate administrative support personnel.
 - 8.2.7 In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Professional, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
 - 8.2.8 Expedite and coordinate delivery and installation of Owner procured material and equipment.
 - 8.2.9 Supervise and direct the Work and be solely responsible for construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work. Design-build Firm shall keep Owner informed of progress and quality of the Work.
 - 8.2.10 In accordance with Uniform General Conditions, 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.
 - 8.2.11 Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Professional in obtaining all approvals required from authorities having jurisdiction over the Project.
 - 8.2.12 Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.
- 8.3 Design-build Firm shall provide Cost Control, including, without limitation, the following:
- 8.3.1 Design-build Firm shall maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford Owner access to these records and preserve them after Owner makes final payment to Design-build Firm in accordance with the Uniform General Conditions

- 8.3.1.1 Accounting records maintained by Design-build Firm shall include a project-to-date job cost report, including an itemized listing of all actual costs incurred, identification as to whether such amounts have or have not been paid and date paid for all costs necessarily incurred to complete the scope of work of the Project. The report shall include at least the contractor, subcontractor, vendor or payee name; invoice number; invoice date; description of the cost; line item number consistent with item number in the GMP Amendment breakdown; date cost was paid by Design-build Firm; check number used to pay item; and other cost information requested by Owner.
- 8.3.1.2 Design-build Firm shall maintain and make available to Owner all original third-party invoices, receipts or other support documentation, for all costs billed to Owner. Design-build Firm shall also maintain and make available documentation verifying incurred costs have been paid to all third parties.
- 8.3.1.3 For all amounts billed to Owner for the cost of Design-build Firm's own labor forces, Design-build Firm shall maintain and make available upon request by Owner original timesheets and other timekeeping records. The records shall reflect employee name; title; position or occupation; trade labor classification (including level); identification of Project; date worked; number of hours worked (by task if multiple tasks are worked); detailed description of the work performed for each time entry; employee's signature; and supervisory signature for all time worked. Design-build Firm shall maintain and make available actual cost support documentation verifying actual amount incurred and paid for salaries and wages; itemization of all actual labor burden costs billed and paid including, but not limited to, any employer paid taxes, workers compensation, union contributions, health and welfare and other benefits costs as a result of work performed on this Project.
- 8.3.2 Design-build Firm shall prepare, administer, maintain and provide to Owner a current SOV containing information required by Owner, in a format acceptable to Owner. Design-build Firm shall submit for review and approval the SOV to Owner with submission of GMP Proposal.
- 8.3.2.1 Design-build Firm shall require, obtain, maintain, and submit to Owner, Subcontractors' sworn statements and waivers of lien, in a form and format acceptable to Owner, for all amounts paid to subcontractors, suppliers and vendors for all materials, labor and all other costs paid by Design-build Firm.
- 8.3.2.2 Design-build Firm shall maintain, and provide Owner a current listing of all change order requests proposed by Design-build Firm to include estimated or agreed to cost, status, and other information if requested by Owner, in a format acceptable to Owner.
- 8.3.2.3 Design-build Firm shall maintain the original SOV and actual costs incurred in a format acceptable to Owner. Design-build Firm shall notify Owner in writing within forty-eight (48) hours in the event actual costs incurred exceed or are expected to exceed SOV costs for any SOV line items. Should the item be critical, Design-build Firm shall also provide follow-up notification to Owner.
- 8.3.3 Design-build Firm develop and implement a system acceptable to Owner for the preparation, review and processing of change order requests, construction change directives and requests for information, in accordance with Uniform General Conditions.
- 8.3.4 Design-build Firm 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.

8.4 Documents, Shop Drawings, and Submissions

- 8.4.1 In collaboration with the other members of the Project Team, Design-build Firm shall establish and implement procedures for expediting the processing and approval of shop Drawings and other submissions, and in accordance with Division 01 Specifications, as applicable. 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.
- 8.4.2 Design-build Firm shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's 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 Uniform General Conditions. Each member of Design-build Firm's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, the daily logs shall be submitted to Owner no less than once a week for the immediately preceding week.
- 8.4.3 Design-build Firm shall maintain at the Project site and make available to Owner, updated records of subcontracts, Drawings, examples, purchases, materials, equipment, maintenance and operating manuals, instructions, and other construction related documents. Documents to include all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record Drawings and project manual.
- 8.4.4 Coordinate and facilitate the creation of record and as-built Drawings, and the procurement of warranties and guarantees.
- 8.4.5 Upon request provide Owner with complete, unaltered copies of all subcontracts, and all amendments thereto.
- 8.4.6 Submit to Owner all documents substantiating payments to all Subcontractors as well as qualifying HUB's in a format designated by Owner.

8.5 Construction Administration

- 8.5.1 Design-build Firm shall provide all the administrative services set forth and required in the Contract Documents and as required by the Construction Documents to permit timely prosecution of the construction Work.
- 8.5.2 Design-build Firm shall furnish to Owner two (2) additional sets of Construction Documents complete with all addenda issued during the bidding which are in suitable condition for use during construction. Provide electronic files of the Construction Documents for Owner and Design-build Firm's use in constructing the Project in a format acceptable to Owner.
- 8.5.3 Design-build Firm shall make visits to the Project not less often than once a week, and when conditions require shall make more frequent visits to the site, to observe the progress and quality of the executed construction Work and to determine if the construction Work is proceeding in accordance with the Construction Documents. Design-build Firm visits shall be performed by experienced and qualified representatives of Design-build Firm. Design-

build Firm shall use reasonable diligence to detect defects and deficiencies of the Work. The Design-build Firm shall notify the Owner the disapproval or rejection of Work by the Design-build Firm as failing to conform to the Construction Documents. Design-build Firm will inform Owner of the status of the Project and provide documentation to the Owner of all site visits by the Design-build Firm.

- 8.5.4 Design-build Firm will have the Design Professional review of periodic estimates for partial payments, determine the amount owed to Design-build Firm, make recommendations to Owner and certify certificates for payment on such amounts. The certificate for payment shall constitute representation to Owner that construction Work has progressed to the value indicated, the quality of the construction Work is considered to be in accordance with the Contract Documents, and that Design-build Firm is entitled to payment in the amount certified.
- 8.5.5 Design-build Firm will have the Design Professional interpret the Contract Documents and, within a Reasonable Time, render such interpretations as necessary for the proper and timely execution or progress of the construction Work.
- 8.5.6 Design-build Firm shall Provide documentation for Owner's approval, Change Orders to the Construction Documents which are necessary as a result of such interpretations and/or clarifications, and provide documentation of Design Professional's review of cost and time extension estimates for each Change Order, analyze price and time Proposal Requests received from Design-build Firm for Change Orders, advise Owner as to the acceptability of Proposal Request.
- 8.5.7 Design-build firm shall review and advise Owner, as to acceptability of Work schedules in accordance with Owner's requirements; shop Drawings, laboratory samples; fabrication, erection and setting Drawings; wiring and control diagrams; materials delivery schedules; shop drawing submittal schedules; lists of materials and equipment; mockups; equipment or systems testing procedures and schedules; and, other descriptive data pertaining to materials and equipment for compliance with the design concept for the Project and with the information given in the Contract Documents. Unless otherwise specifically stated by Owner, such review, advice, and assistance as required in each instance shall be accomplished within a reasonable time.
- 8.5.8 Design-build Firm shall analyze and advise on the acceptability of test reports, test methods, materials, equipment, and systems.
- 8.5.9 Design-build Firm shall immediately, when identified, make all necessary revisions to the Contract Documents to correct errors, conflicts, omissions, or deficiencies and reissue the corrected Drawings and Specifications at no additional expense to Owner.
- 8.5.10 Design-build Firm shall obtain approval from Design Professional as to the acceptability of substitutions and within a reasonable time, advise Owner as to the acceptability of substitutions proposed; provide a color schedule and samples of textures and finishes of all materials in the Project for review and approval of Owner; and provide a list of fixed and installed equipment to include the type/size, location and quantity to Owner for review and approval.
- 8.5.11 Design-build Firm shall have authority to reject construction Work, with concurrence of Owner, which does not conform to the Contract Documents. Design-build Firm shall recommend in writing to Owner that the Work be stopped whenever in Design-build Firm's reasonable and professional opinion it may be necessary for the proper performance of the Construction Contract.
- 8.5.12 Design-build Firm shall make recommendations to Owner on all claims of Design-build Firm relating to the execution and progress of the Work and on all matters or questions

related to performance under the Contract Documents. Such recommendations shall be prepared and forwarded in writing to Owner within fifteen (15) calendar days of the date of the written notification of such claim.

- 8.5.13 Design-build Firm will arrange and conduct inspections, to determine construction deficiencies to be corrected by Design-build Firm and to determine the dates of Substantial Completion, beneficial occupancy (in whole or parts thereof) and Final Completion, as such terms shall be defined in the Contract Documents. The Design-build Firm shall advise in writing to Owner as to the acceptability of the Work performed by Design-build Firm. Observe and evaluate the performance tests of equipment and systems tests required by the Contract Documents.
- 8.5.14 Design-build Firm will assist Owner in fulfilling the requirements of the appropriate authorities and granting agencies relative to disbursements made under the Contract Documents for the Project and to periodic progress reports required to be submitted to these authorities and/or agencies for the Project.
- 8.5.15 Design-build Firm shall within thirty (30) calendar days following Final Completion, furnish to Owner one (1) complete full-size set of prints of the Project Drawings, which have been corrected to include all construction "as-built" which was different from the original Contract Documents as reported or as known by Design-build Firm. Design-build Firm shall also furnish complete electronic files of record Drawings using the most current release of AutoCAD software or other software approved by Owner and also .pdf full-size format. Prior to submitting the final Record Documents, Design-build Firm shall furnish one complete check set of revised Project Drawings for Owner review.

8.6 Safety

- 8.6.1 Design-build Firm is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- 8.6.2 Design-build Firm shall review safety programs developed by each of the Subcontractors and shall, within fourteen (14) days of Notice to Proceed submit to Owner a comprehensive safety program. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations, and with any Owner-controlled insurance program.
- 8.6.3 Design-build Firm shall ensure compliance by the Subcontractors with their contractual safety requirements. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Design-build Firm's responsibilities under this paragraph.
- 8.6.4 Design-build Firm shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-build Firm shall verify that appropriate safety provisions are included in the Construction Documents.

8.7 Hazardous Waste

- 8.7.1 Owner represents that it has disclosed to Design-build Firm any Hazardous Waste known by Owner to exist on or near the Site. If unanticipated Hazardous Waste is discovered at the Site, Design-build Firm will be entitled to immediately stop work in the affected area. Design-build Firm will promptly report the condition to Owner and, if required, the governmental agency with jurisdiction. Design-build Firm shall not be obligated to commence or continue Services until any Hazardous Waste discovered at the Site has been removed, rendered harmless, or determined to be harmless by Owner.

- 8.7.2 Design-build Firm shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Waste without written mutual agreement.
- 8.7.3 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the unanticipated material encountered and whether it is a Hazardous Waste requiring corrective measures or remedial actions. Such measures and actions shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Services of Design-build Firm.
- 8.7.4 Material Safety Data Sheets (MSDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by Design-build Firm, Subcontractors, Owner, or others, shall be maintained at the Site by Design-build Firm and made available to Owner and Subcontractors.
- 8.7.5 During Design-build Firm's performance of the Services, Design-build Firm shall be responsible for the proper handling of all materials brought to the Site by Design-build Firm.
- 8.8 Additional Services
- 8.8.1 Owner may request Design-build Firm perform services in addition to those Services required or reasonably inferable herein (Additional Services). Each time Design-build Firm is requested to perform services, which Design-build Firm deems to be Additional Services, and prior to performing such Additional Services, Design-build Firm shall complete and forward to Owner for acceptance by Owner, a change order request in a format approved by Owner. The form shall describe in detail the nature or scope of the Additional Services; the basis upon which Design-build Firm has determined the requested services are Additional Services; the maximum amount of fees and reimbursable expenses for which Design-build Firm is prepared to perform such Additional Services; and a proposed schedule for the performance of such Additional Services. Design-build Firm shall proceed only after written approval by Owner of the change order request.
- 8.8.2 If Owner concludes that all or part of the services described in the change order request are Services already required to be performed by Design-build Firm pursuant to this Agreement, then Owner shall notify Design-build Firm of Owner's determination and Owner and Design-build Firm shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Design-build Firm are unable to resolve their differences, then Design-build Firm shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Design-build Firm's right to pursue a claim for compensation for such disputed services.
- 8.8.3 Change orders requests are to include an updated Construction Work Progress Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship.
- 8.8.4 Upon written acceptance by Owner, each change order request and the services performed by Design-build Firm pursuant to such change order request shall become part of this Agreement and shall be subject fully and completely under all the terms and conditions of this Agreement.
- 8.8.5 Change order requests for additional services can be funded by 1) Owner Buyout Savings, 2) Owner Contingency, 3) Increase in the GMP, or 4) Mutual agreed upon use of Construction Contingency.

ARTICLE 9 OWNER'S RESPONSIBILITIES

- 9.1 Owner's Representative shall be fully acquainted with the Project, shall facilitate and coordinate Owner's Project issues with Design-build Firm, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. Upon request, Owner will furnish in writing the authorization of each representative of Owner to represent it in connection with the Project.
- 9.2 Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.
- 9.3 Owner shall inform all special consultants retained by Owner that they shall coordinate their services through Design-build Firm. Owner shall provide special testing and inspection services to the extent required by Texas Education Code section 51.780, as amended.
- 9.4 If Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to Design-build Firm.
- 9.5 Prior to commencement of the Work and thereafter at the written request of Design-build Firm, Owner shall provide Design-build Firm with evidence of Project financing. Design-build Firm shall be notified prior to any material change in Project financing.
- 9.6 Except for those permits and fees related to the Work, which are the responsibility of Design-build Firm, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

ARTICLE 10 COST OF WORK

- 10.1 The term Cost of Work shall include and be limited to those costs actually incurred and paid by Design-build Firm that have been necessarily incurred to properly perform the Work in strict compliance with the Contract Documents. Cost of Work shall include the following:
 - 10.1.1 Costs to Be Reimbursed
 - 10.1.1.1 In the event Design-build Firm operates and maintains a fabrication shop to assemble pre-fab materials for installation at the job-site, Design-build Firm's direct cost will be considered Costs to Be Reimbursed. However, Design-build Firm's shop overhead such as plant and equipment, depreciation, taxes, utilities, consumables etc. will be considered covered by the overall fees quoted as markup on the various components of reimbursable Cost of Work.
 - 10.1.1.2 Where any cost is subject to the Owner's prior approval (whether or not written approval is specified), Design-build Firm shall obtain this approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price Amendment.
 - 10.1.1.3 Costs as defined herein shall be actual costs with no additional charges for mark-ups, handling or any other charges or fees paid by Design-build Firm; less all discounts, rebates, and salvages that shall be taken by Design-build Firm, subject to this Agreement. All payments made by Owner pursuant to this Agreement, whether those payments are made before or after the execution of this Agreement, are included in the Guaranteed Maximum Price; provided, however, that in no event shall Owner be required to reimburse Design-build Firm for any portion of the Cost of the Work incurred prior to the

Commencement Date unless Design-build Firm has received Owner's written consent prior to incurring such cost. Notwithstanding the breakdown or categorization of any costs to be reimbursed under this Agreement or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories

10.1.2 Labor and Administrative costs

- 10.1.2.1 Reasonable and customary wages paid to construction workers directly employed by Design-build Firm who perform the construction of the Work.
- 10.1.2.2 Reasonable and customary wages or salaries of Design-build Firm's supervisory and administrative personnel who were previously identified, but only when stationed full-time at the site with Owner's prior consent, unless otherwise approved in advance by Owner.
- 10.1.2.3 Costs paid or incurred by Design-build Firm for labor costs arising out of taxes, insurance, and benefits which are:
 - a. required by law;
 - b. required by collective bargaining agreements; or
 - c. otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of Work as defined herein.
- 10.1.2.4 Reasonable and customary travel expenses of Design-build Firm's personnel incurred directly and solely in support of the Project, and approved in advance by Owner subject to limitations set forth in the UGCs. Design-build Firm shall provide to Owner receipts, documenting travel expenses for reimbursement.
- 10.1.2.5 Costs of long-distance telephone calls, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Design-build Firm's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

10.1.3 Materials, Equipment, Tools, and Rental costs

- 10.1.3.1 Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Design-build Firm shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Uniform General Conditions.
- 10.1.3.2 Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-build Firm, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

- 10.1.3.3 Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-build Firm, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from Design-build Firm, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, approved by Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed seventy-five percent (75%) of the fair market value and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Design-build Firm shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to Owner with the amount of the fair market resale value.
- 10.1.3.4 Site debris removal and disposal costs in accordance with all applicable laws and regulations.
- 10.1.3.5 Payments made to Subcontractors by Design-build Firm for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.
- 10.1.4 Other costs
 - 10.1.4.1 Governmental sales and use taxes directly attributable to the Work. Owner is a state agency and Design-build Firm shall avail itself of all exemptions, which may exist for such taxes based on Owner's status.
 - 10.1.4.2 Permit and inspection fees, except that as a state agency, Owner is typically exempt from such fees.
 - 10.1.4.3 Premiums for Design-build Firm's insurance and bonds to the extent directly attributable to this Contract.
 - 10.1.4.4 Testing fees pursuant to the terms and conditions of Uniform General Conditions.
 - 10.1.4.5 Intellectual property royalties and licenses for items specifically required by the Contract Documents, which are, or will be, incorporated into the Work.
 - 10.1.4.6 Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Design-build Firm.
 - 10.1.4.7 Other costs approved in advance in writing by Owner at Owner's sole option and discretion.
- 10.2 The following shall not be included in the Cost of Work paid by Owner:
 - 10.2.1 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
 - 10.2.2 Legal and administrative costs to review and negotiate these Contract Documents.

- 10.2.3 Travel and subsistence expense of Design-build Firm, its officers or employees incurred while traveling between the Project and Design-build Firm's principal or branch offices, and travel in the metropolitan area of the Project.
- 10.2.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design-build Firm.
- 10.2.5 Costs incurred by Design-build Firm resulting from the failure of Design-build Firm or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Design-build Firm to comply with directives of Owner not in conflict with said schedules.
- 10.2.6 Costs resulting from the failure of Design-build Firm or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- 10.2.7 All personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.
- 10.2.8 All overhead expense or office expense at any location, except site office expense to the extent specifically included herein.
- 10.2.9 Costs related to Design-build Firm's indemnification obligations pursuant to Article 13 hereof.
- 10.2.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- 10.2.11 Any cost arising out of the fault or negligence of Design-build Firm, 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, and damage to persons or property.
- 10.2.12 Liquidated or actual damages imposed by Owner for failure of Design-build Firm to complete the Work within the Contract Time.
- 10.2.13 All costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.
- 10.2.14 All General Condition costs included in the GMP Amendment itemized breakdown regardless of classification or amount listed.
- 10.3 The Cost of Work paid by Owner shall be credited with the following discounts, rebates, and refunds:
 - 10.3.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to Owner, Design-build Firm, or to some other party; and any such sale, if made to others than Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Design-build Firm shall use its best efforts to obtain the highest price in respect of such sales.
 - 10.3.2 If Owner makes funds available to Design-build Firm, discounts earned by Design-build Firm through advance or prompt payments. Design-build Firm shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. Design-build Firm shall purchase materials for this Project in such quantities as will provide the most advantageous prices to Owner.

- 10.3.3 Reasonable market value as approved by Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by Design-build Firm.
- 10.3.4 Rebates, discounts, or commissions allowed to and collected by Design-build Firm from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
- 10.3.5 All discounts, deducts, rebates, negotiated settlements, or other credits received by Design-build Firm from its subcontractors, vendors, or suppliers related to Work on the Project.
- 10.3.6 Design-build Firm shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of Design-build Firm. Should Design-build Firm not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design-build Firm, including, but not limited to, by deducting the amount from payments due Design-build Firm.
- 10.4 Design-build Firm and Owner will work together collaboratively in a good faith effort to reduce the cost of the Project while achieving the desired end product and complying with the conditions of Owner's funding. In the event the sum of the actual Cost of Work for the existing scope of Work (without taking into consideration reductions in scope by Change Order), plus compensable General Conditions, plus Construction Services Fee, is less than the GMP, then Construction Manager and Owner agree that 100% of all savings shall be to the benefit of Owner.
- 10.4.1 Design-build Firm shall document the actual Cost of the Project buyout as compared to the GMP Proposal. Design-build Firm shall track and report this information in the form of a buyout savings log to Owner on a monthly basis and with Design-build Firm's recommendation for selection of a bid/proposal for each subcontracting package
- 10.5 Related Party Transaction
- 10.4.1 Related Party shall mean any parent, subsidiary, affiliate or other entity having common ownership or management with Design-build Firm, any entity in which any stockholder in, or management employee of, Design-build Firm owns any interest in excess of ten percent (10%) in the aggregate, or any person or entity which has the right to control the business or affairs of Design-build Firm. The term Related Party includes any member of the immediate family of any person identified above.
- 10.4.2 If any of the costs to be reimbursed arise from a transaction between Design-build Firm and a Related Party, Design-build Firm shall notify Owner of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Design-build Firm shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor. If Owner fails to authorize the transaction, Design-build Firm shall procure the Work, equipment, goods or service from some person or entity other than a Related Party.

ARTICLE 11 COMPENSATION AND PAYMENT

11.1 Preconstruction Services

- 11.1.1 In full consideration of Design-build Firm's Services during the Preconstruction of this Agreement, Owner will pay to Design-build Firm the sum of {Word Amount} and No/100

dollars (\$ {Numeral} .00) payable as a lump sum at the completion of the Bidding/Proposal Phase.

11.1.2 To receive payment, Design-build Firm shall send an invoice with supporting documentation to Owner. Design-build Firm's invoices shall specify the amount of Work completed and other information as required by Owner for payment purposes. No retainage is to be withheld from this amount.

11.1.3 In addition to the stipulated sum, the following expenses of Design-build Firm, incurred solely and directly in support of the Project are reimbursable as described below:

11.1.3.1 Actual out-of-pocket coach class, air travel and other expenses previously approved in writing by Owner for travel outside the Project area and incurred solely in connection with Design-build Firm's performance of its services hereunder; provided, however, that the cost of travel between Design-build Firm's offices and Owner's local offices or the Project shall not be reimbursed.

11.1.3.2 Reproductions, printing, binding, collating and handling of reports, Drawings and Specifications or other project-related work product, other than that used solely in-house by Design-build Firm.

11.1.3.3 Fees and associated reimbursable expenses paid to Consultants hired in accordance with prior written approval from Owner.

11.1.4 Owner shall only be responsible for payment of actual amount of such reimbursable expenses. Payment of reimbursable expenses shall not exceed {Word Amount} and No/100 dollars (\$ {Numeral} .00) without the prior written consent of Owner. Design-build Firm shall invoice for reimbursement and shall submit receipts necessary to verify reimbursable expenses along with any reimbursement request.

11.2 Design Services

11.2.1 Owner shall pay Design-build Firm for performance of Design Services, subject to additions and deductions provided herein, the sum of {Word} and No/100 Dollars ({Numeral}.00), in periodic progress payments. Payments shall be made monthly in proportion to the services performed to increase the compensation to the following maximum percentages at the completion of each of the phases of Design Work. The following cumulative payment percentages shall apply:

Schematic design phase	15%
Design development phase	35%
Construction Documents phase	65%
Bidding phase	70%
Construction Phase through acceptance by Owner (monthly payments in increments based on progress to completion)	95%
Receipt of record drawing files, reproducibles, and CD/ROM	100%

11.2.2 For Additional Services, a fee will be computed per the Personnel Titles and Hourly Labor Rate Schedule, incorporated herein for all purposes.

11.3 Construction Services

11.3.1 The Construction Cost Sum is the total compensation due to Design-build Firm for all Construction services. The Construction Cost Sum shall be the sum of:

- 11.3.1.1 The lesser of actual General Conditions costs incurred and paid by Design-build Firm or, the original General Conditions amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus
- 11.3.1.2 the lesser of actual reimbursable "Cost of Work" (as defined in Article 10) incurred and paid by Design-build Firm or, the original reimbursable Cost of Work amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus
- 11.3.1.3 Design-build Firm's Construction Fee as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus
- 11.3.1.4 the actual cost of required bonds, insurance, builder's risk and liability insurance.
- 11.3.2 Construction cost does not include the fees of Design Services and its consultants, Owner's management costs and expenses or allowances established by Owner
- 11.3.3 The Total Construction Cost Sum shall not exceed the GMP Amendment amount as established in accordance with this Agreement. Any cost not authorized by the terms and conditions of the Contract Documents, but which would cause the GMP to be exceeded, shall be paid by Design-build Firm without reimbursement by Owner.
- 11.3.4 In a format acceptable to Owner, Construction Manager must provide an estimated cost for General Conditions with the costs broken down by line item. General Conditions should be included in the SOV. Owner may accept or reject each line item of the estimated costs. In the event the General Conditions actually incurred and paid exceeds the General Conditions limit, all amounts in excess of the General Condition limit shall be borne solely by Construction Manager and are not payable by Owner. In the event actual General Condition Costs incurred and paid are less than the amount approved in the GMP, the GMP shall be reduced by an amount equal to the shortfall of actual costs incurred and paid by Construction Manager.
- 11.3.4.1 General Conditions generally follow the percentage complete for the total project Cost of Work. Owner recognizes initial start-up project costs may result in a slightly higher General Conditions. Payment shall be made monthly in proportion to the Work performed following maximum percentages of the General Conditions cost as compared to the total project percentage complete. The following cumulative payment percentage shall apply:

Project Percentage Complete	33%	66%	90%	100%
General Conditions	45%	80%	95%	100%

- 11.3.5 Owner has afforded Design-build Firm with unrestricted access to the existing improvements and conditions on the construction site and has given Design-build Firm the opportunity to thoroughly investigate the existing conditions, which Design-build Firm represents it has done. The results of Design-build Firm's investigation shall be taken into account in establishing the GMP of the Work. Design-build Firm shall not be entitled to a claim for an adjustment in time or price under Uniform General Conditions for conditions which Design-build Firm discovered or ought to have discovered in Design-build Firm's investigation. Before proceeding with the Work, Design-build Firm shall review the

Drawings and Specifications and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. Design-build Firm shall not proceed with the Work if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Design-build Firm to exist in the Contract Documents. If Design-build Firm nevertheless proceeds to perform the Work then Design-build Firm shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Contract Documents, Design-build Firm shall immediately submit a written request for an explanation or decision to Owner.

- 11.3.6 If payments are made to Design-build Firm in excess of the Contract Sum, Design-build Firm shall immediately return such amounts to Owner upon request by Owner. In the event payments are made in excess of the Contract Price and other amounts are due to Design-build Firm from Owner, Owner may offset other amounts due by amounts paid in excess of Contract Sum.
- 11.3.7 In the event the actual cost incurred and paid for Allowance is less than the amounts set forth in the GMP Amendment entered into by the Parties, which are noted as Allowance, one hundred percent (100%) of all savings shall be to the benefit of Owner. In the event the actual cost incurred and paid by Design-build Firm for Allowance is not equal to the amounts set forth in the GMP Amendment for Allowance, the GMP shall be adjusted for the difference (increased for overruns and/or decreased for shortfalls). The adjustment amount shall be the difference between the actual cost incurred and paid for Allowance, and the amount set forth in the GMP Amendment.
- 11.3.8 Design-build Firm and Owner will work together collaboratively in a good faith effort to reduce the cost of the Project while achieving the desired end product and complying with the conditions of Owner's funding. In the event the sum of the actual Cost of Work for the existing scope of Work (without taking into consideration reductions in scope by Change Order), plus compensable General Conditions, plus Design-build Firm's Fee, is less than the GMP, then Design-build Firm and Owner agree that 100% of all savings shall be to the benefit of Owner.
 - 11.3.8.1 Buyout shall occur at thirty percent (30%) Project completion as documented on the SOV. All Buyout savings realized at thirty percent (30%) completion of the SOV shall revert to the Owner for use on the Project.
 - 11.3.8.2 Design-build Firm shall document any future Buyout savings utilized by Design-build Firm after thirty percent (30%) completion of the SOV.
 - 11.3.8.3 Design-build Firm shall document the actual Cost of the Project Buyout as compared to the GMP Proposal. Design-build Firm shall track and report this information in the form of a Buyout savings log to Owner on a monthly basis and with Design-build Firm's recommendation for selection of a bid/proposal for each subcontracting package.
- 11.3.9 Contingencies shall be included in the GMP Amendment for the Project. Bonds, insurance, and fees will be calculated in the GMP Amendment. Twenty-one (21) days after issuance of one hundred percent (100%) Construction Drawings, any remaining Design Contingency shall be converted to the Owner's Contingency. Use of Owner's Contingency shall be at the Owner's sole discretion. Use of any Contingency shall only be authorized via a Contingency Release approved by Owner. In the event Owner approves less than the full amount of the Construction Contingency, all unapproved amounts shall be to the benefit of Owner. In the event the sum of all approved uses of Contingencies is less than the initial Contingencies, the GMP shall be reduced by any shortfall and fees paid shall be refunded to Owner.

- 11.3.10 In full consideration of Design-build Firm's services during the Construction of this Agreement, Owner shall pay Design-build Firm a Construction Fee as stipulated in the GMP Amendment which shall be calculated as follows: {Word} percent ({Numeral} %) of the cost of construction, which shall be converted to a fixed fee at the establishment of the GMP Amendment. Design-build Firm's Construction Service Fee shall be billed to, and paid by, Owner in direct proportion of the cost of construction in the event a balance is payable by Owner, or Owner has overpaid the fee as of the date of the final invoice, the remaining amount due or credit due to Owner shall be included in Design-build Firm's final invoice. Change in the scope which require an increase in the GMP are entitled to an equitable increase in the Design-build Firm's Construction Service Fee percentage which shall be calculated in direct proportion to the increase in Cost of Work times the Construction Service Fee percentage in this Article. T Design-build Firm's Construction Fee shall be shown as a separate line item on the SOV.
- 11.3.11 In Uniform General Conditions, references to adjustments in "cost" or "costs" refer to Costs of Work as defined herein below, and references to Design-build Firm's "overhead" and "profit" refer to Construction Services Fee.
- 11.3.12 Construction Fee shall cover Design-build Firm's profit, general overhead and all expenses in connection with maintaining and operating Design-build Firm's main office and any branch or field offices, including the following:
- 11.3.12.1 Salaries of personnel not stationed full time at the site, including but not limited to, Design-build Firm's officers, project manager(s), estimators, and schedulers.
 - 11.3.12.2 Salaries of persons employed in the main or branch offices of Design-build Firm whose time is devoted to the general conduct of Design-build Firm's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
 - 11.3.12.3 Overhead or general expenses of any kind except those specifically included herein.
 - 11.3.12.4 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than preconstruction services) relating to accounting in Design-build Firm's office and even if at the site, except as specifically identified herein.
 - 11.3.12.5 Interest on Design-build Firm's capital or on money borrowed by Design-build Firm, including the capital employed by Design-build Firm in the performance of the Work.
 - 11.3.12.6 Amounts required to be paid by Design-build Firm for Federal and/or State income and franchise taxes.
 - 11.3.12.7 Legal, accounting, or other similar professional services provided by or to Design-build Firm, in regard to contracts, disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, Design Professionals, or any other person or entity relating to the Project or otherwise.
 - 11.3.12.8 Any professional fees, training, memberships, employee or subcontractor incentives or bonuses, and any subcontractor bonding or Sub-Guard.
 - 11.3.12.9 Cost of hiring and/or relocation of any of the Design-build Firm's personnel

- 11.3.13 On a monthly basis, Construction Manager shall submit a Pay Request, in accordance with the Division 01 Specifications. Support Documentation should include, but is not limited to, a project-to-date job cost report; a current period job cost report; copies of third party invoices; receipts and other third party support documentation, sufficient to evidence each cost billed for has been incurred by Design-build Firm; a current SOV; sworn statements and waivers of lien for all amounts paid to Design-build Firm for materials, labor, equipment and all other costs; project status report in a format acceptable to Owner; and a current Work Progress Schedule in .xer format or a format acceptable to Owner. Upon Owner's request, Design-build Firm shall submit original timesheets and other timekeeping records.
- 11.3.14 In no event shall Design-build Firm invoice for nor shall Owner be required to pay, any costs in excess of work put in place by Design-build Firm and its subcontractors at any given time.
- 11.3.15 Design-build Firm shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Preconstruction Services and the construction of the Work.
- 11.3.16 Owner shall have the right to verify and audit the details set forth in Design-build Firm's billings, certificates, accountings, cost data, and statements, either before or after payment therefore, by (1) inspecting the books and records of Design-build Firm during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Design-build Firm's business employees; (4) visiting the Project site; and (5) other reasonable action.
- 11.3.17 No partial payment made hereunder shall be or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Design-build Firm of any of Design-build Firm's obligations hereunder or liabilities with respect to such services.
- 11.3.18 Owner shall be billed in accordance with Chapter 2251 if the Texas Government Code and interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Design-build Firm must be in good standing, not indebted to the State of Texas and current on all taxes owed to the State of Texas for payment to occur.

11.4 Application for Final Payment and Final Accounting

- 11.4.1 The final request for payment shall not be made until Design-build Firm delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that so far as Design-build Firm has knowledge or information, the release includes and covers all materials and services over which Design-build Firm has control for which a lien could be filed, but Design-build Firm may, if any agent or consultant refuses to furnish a release in full, furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design-build Firm shall refund to Owner all moneys 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.
- 11.4.2 Upon completion of Design-build Firm's work, Design-build Firm shall submit an Application for Final Payment to Owner including all costs incurred and paid, that are payable by Owner pursuant to the Contract Documents. As a basis for the Application for Final Payment, Design-build Firm shall provide Owner with a final listing of all project costs incurred and paid by Design-build Firm, together with all reconciliations necessary to reconcile amounts billed to the final Contract Price. Design-build Firm shall also provide all support documentation for all costs not previously supported. To the extent that any costs have been incurred by Design-build Firm, but have not been paid by

Design-build Firm, Design-build Firm shall separately list any such costs and provide any additional support necessary to verify costs have been incurred and will be paid. Design-build Firm shall include within Design-build Firm's Application for Final Payment the benefit of all credits, charge backs and negotiated reductions to contract, subcontractor and vendor contracts and invoices.

- 11.4.3 Upon receipt of Design-build Firm's Application for Final Payment, Owner shall have thirty (30) days to review and verify the amounts billed by Design-build Firm prior to acceptance. During this time, Design-build Firm shall cooperate with Owner, or its designee, and provide Owner with all project records and documents requested by Owner or its designee to verify the amounts billed by Design-build Firm for its Work on the Project.
- 11.4.4 Owner's auditors will review and report in writing on Design-build Firm's final accounting within thirty (30) days after delivery of the final accounting to Owner by Design-build Firm. Based upon review of amounts billed, if Owner's auditors' report substantiates Design-build Firm's final accounting and provided all other conditions for final payment have been met, Owner will, after receipt of the written report of Owners auditors, either issue to Design-build Firm a final Payment or notify Design-build Firm in writing of Owner's reasons for withholding final payment, in whole or in part.
- 11.4.5 If Owner's auditors' report finds that Design-build Firm's final accounting fee or actual costs incurred and paid are less than claimed by Design-build Firm, Design-build Firm shall be entitled to provide, for Owner's review, additional documentation to support the final accounting costs. Additional documentation shall be provided within thirty (30) days after Design-build Firm's receipt of a copy of Owner's auditor's Final Certificate for Payment. Failure to provide additional documentation for review by Owner within the thirty (30) day period shall result in the substantiated amount reported by Owner's auditors becoming binding on Design-build Firm. Owner shall pay Design-build Firm the amount certified in the Final Certificate for Payment.
- 11.4.6 Owner shall have the right to withhold from payments due Design-build Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-build Firm or failure of Design-build Firm to perform Design-build Firm's obligations under this Agreement.
- 11.4.7 Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Design-build Firm if any one or more of the following conditions precedent exist:
 - 11.4.7.1 Design-build Firm is in breach or default under this Agreement;
 - 11.4.7.2 any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
 - 11.4.7.3 Design-build Firm has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Design-build Firm; or
 - 11.4.7.4 if 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, no additional payments will be due Design-build Firm unless and until Design-build Firm, at Design-build Firm's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid

is determined by Owner to be sufficient to so complete the then remaining services.

- 11.4.7.5 Nothing contained herein shall require Owner to pay Design-build Firm an aggregate amount exceeding the GMP or to make payment if in Owner's belief the cost to complete the Work would exceed the GMP less previous payments to Design-build Firm.

ARTICLE 12 BONDS

- 12.1 Design-build Firm shall provide performance and payment bonds in accordance with the requirements set forth in the Uniform General Conditions. The penal sum of the payment and performance bonds shall be no less than the GMP. If construction is phased or staged with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all GMPs in effect. No retainage is to be withheld with respect to the cost of the required bonds.
- 12.2 Design-build Firm shall not cause or allow any of its bonds to be canceled nor permit any lapse during the term of the Agreement or as required in the Agreement.

ARTICLE 13 INDEMNITY AND INSURANCE

- 13.1 **Design-build Firm covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS Owner, and its component institutions, Regents, elected and appointed officials, directors, officers, employees, agents, representatives, and volunteers, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal or bodily injury, death, or property damage, made upon Owner directly or indirectly arising out of, resulting from, or related to Design-build Firm's activities under the Contract, including any acts or omissions of Design-build Firm, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Design-build Firm, and their respective directors, officers, employees, agents, and representatives while in the exercise of performance of the rights or duties under the Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner or separate contractors in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT DESIGN-BUILD FIRM AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 13.1.1 **The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 13.1.2 **Design-build Firm shall promptly advise Owner in writing of any claim or demand against Owner or against Design-build Firm known to Design-build Firm related to or arising out of Design-build Firm's activities under this Contract.**
- 13.2 Except for the obligation of Owner to pay Design-build Firm certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Design-build Firm or to anyone claiming through or under Design-build Firm by reason of the execution or performance of this

Agreement. Notwithstanding any obligation or liability of Owner to Design-build Firm, no present or future partner or affiliate of Owner or any Regent, director, officer, employee, or agent of Owner, or of the components comprising the University of North Texas System, or anyone claiming under Owner has or shall have any personal liability to Design-build Firm or to anyone claiming through or under Design-build Firm by reason of the execution or performance of this Agreement.

13.3 Insurance

- 13.3.1 Design-build Firm shall not commence work under the Agreement until it has obtained all insurance required in accordance with this Agreement and the Uniform General Conditions 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 Design-build Firm hereunder. Prior to commencing any of the Preconstruction Services, Design-build Firm shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability as set forth in the Uniform General Conditions are in full force and effect. Prior to commencing any Construction Services, Builder's Risk as set forth in the Uniform General Conditions shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or stage of construction prior to the commencement of construction for that package, phase, or stage. No retainage is to be withheld with respect to the cost of the required insurance.
- 13.3.2 Design-build Firm shall include Owner, {Campus if different from Owner}, and the Board of Regents of the University of North Texas System as loss payees and Additional Insured's on General Liability and Business Automobile Liability. The Commercial General Liability, Business Automobile Liability, and Worker's Compensation policies shall include a waiver of subrogation in favor of Owner.
- 13.3.3 Insurance policies required under this Article shall contain a provision that the insurance company must give Owner written notice transmitted in writing: (a) thirty (30) calendar days before coverage is non-renewed by the insurance company and (b) within ten (10) business days after cancellation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, Design-build Firm shall furnish Owner with certificates of insurance until one year after acceptance of the Services. If any insurance policy required under this Article is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-build Firm will give Owner written notice within forty-eight (48) hours upon actual or constructive knowledge of such condition.
- 13.3.4 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 coverage and their limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as Design-build Firm.
- 13.3.5 Owner shall be entitled, upon request, and without expense, to receive copies of the policies, all endorsements thereto and documentation to support costs and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, exclusions and costs, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Any price credits determined in the insurance review will be refundable to Owner. Actual losses not covered by insurance as required by this Article shall be paid by the Design-build Firm.
- 13.3.6 Design-build Firm shall not cause or allow any of its insurance to be canceled nor permit any lapse during the term of the Agreement or as required in the Agreement.

- 13.3.7 Professional Liability Insurance. Design-build Firm shall carry professional liability and errors and omissions insurance covering the Design Services provided under this Agreement, as is acceptable to and approved by Owner with Owner being named as Additional Insured. Such insurance shall have minimum policy limits of two million dollars (\$2,000,000) in the aggregate and one million dollars (\$1,000,000) per claim. A Certificate of Insurance indicating the expiration date of Design-build Firm's professional liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to Owner. If Design-build Firm is performing the Design Services, then the professional liability insurance shall be in Design-build Firm's name and shall include a Design/Build Endorsement in form acceptable to Owner. If Design-build Firm is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for the Project, and Design-build Firm shall also provide a Design-build Firm's Errors and Omissions policy naming it as the insured. If Design-build Firm is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.
- 13.3.8 Tail Coverage. Design-build Firm shall be responsible for the costs associated with providing required insurance. Design-build Firm shall maintain such insurance throughout the course of the Project and for a minimum of one (1) year following Substantial Completion.

ARTICLE 14 TERMINATION AND OWNER'S REMEDIES

- 14.1 With or without cause, Owner reserves and has the right to terminate this Agreement or to cancel, suspend or abandon execution of all or any Services in connection with this Agreement at any time upon written notice to Design-build Firm. Design-build Firm may terminate this Agreement upon seven (7) days written notice to Owner only if Owner substantially fails to perform obligations under Article 9 of this Agreement or fails to timely pay Design-build Firm as required under Article 11, and after adequate written notice is delivered to Owner and Owner has failed to take action within thirty (30) days in order to begin to correct the problem.
- 14.1.1 In the event of termination, cancellation, suspension, or abandonment that is not the fault of Design-build Firm, Owner shall pay to Design-build Firm as full payment for all services performed and all expenses incurred under this Agreement, the appropriate portion of sum due under Article 11 as shall have become payable because of the progress in the Work as the services actually rendered hereunder by Design-build Firm bear to the total services necessary, plus any sum due Design-build Firm for Additional Services described under Section 8.8 herein which were previously approved by Owner.
- 14.1.2 In ascertaining the services actually rendered hereunder up to the date of termination, cancellation, suspension, or abandonment of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete Drawings, and to other related documents, whether delivered to Owner or in possession of Design-build Firm.
- 14.1.3 For any said sum paid under this Article, Design-build Firm agrees to accept same in full settlement of all claims for services rendered under this Agreement.
- 14.2 If, upon payment of the amount required to be paid under this Article following the termination of this Agreement, Owner thereafter should determine to complete the original project or, substantially, the same project without major change in scope; Owner, for such purposes, shall have the right of utilization of any and all original tracings, Drawings, calculations, design analysis, Specifications, estimates, related data, and other documents including Construction Documents, prepared under

this Agreement by Design-build Firm who shall make them available to Owner upon request, with compensation to Design-build Firm limited to actual reproduction costs. Owner agrees to credit Design-build Firm with such authorship as may be due to him but is not required to renew this Agreement.

- 14.3 Upon request at the termination, cancellation, suspension, or abandonment of this Agreement, Design-build Firm agrees to furnish to Owner copies of the latest documents prepared by Design-build Firm for the Project.
- 14.4 A termination, cancellation, suspension, or abandonment under this Article shall not relieve Design-build Firm or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Design-build Firm. In the event of a termination under this Article, Design-build Firm hereby consents to employment by Owner of a substitute Design-build Firm to complete the services under this Agreement, with the substitute Design-build Firm having all rights and privileges of the original Design-build Firm of the Project.
- 14.5 Design-build Firm shall, at its own cost, remedy any defects in the Work as soon as Design-build Firm becomes aware of such defects or is notified of such defects. Should Design-build Firm refuse or neglect to remedy such within a reasonable time after receiving notice requesting such remedial work, then Owner shall be entitled to remedy such defective services at the expense of Design-build Firm. Should the defects be critical in nature, Design-build Firm shall provide immediate notice as well as a follow-up discussion. This commitment by Design-build Firm is in addition to, and not in substitution for, any other remedy for defective Services which Owner may have at law or in equity.
- 14.6 Design-build Firm shall keep critical activities from impacting the Longest Path and shall keep activities scheduled to finish the Work on or before the Substantial Completion Date. Should Design-build Firm neglect or refuse to remedy the scheduled activities to maintain Substantial Completion, then Owner shall be entitled to remedy such delayed scheduling at the expense of Design-build Firm.

ARTICLE 15 MISCELLANEOUS

- 15.1 Assignment. The terms and conditions of this Agreement shall be binding upon the Parties, their partners, successors, and legal representatives. This Agreement is a personal service Agreement for the services of Design-build Firm, and Design-build Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of Owner or a branch or agency of the State of Texas.
- 15.2 Death or Incapacity. If Design-build Firm transacts business as an individual, his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder; and Owner shall pay him or his estate the compensation payable under the Agreement for any services rendered prior to such termination. If Design-build Firm is a Design-build Firm comprised of more than one principal and any one of the members thereof dies or becomes incapacitated and the other members continue to render the services covered herein, Owner will make payments to those continuing as though there had been no such death or incapacity, and Owner will not be obliged to take any account of the person who died or became incapacitated or to make any payment to such person or his estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Design-build Firm; and if death or incapacity befalls the last one of such group before this Agreement is fully performed, then the rights shall be as if there had been only one Design-build Firm. In any event, notice of the death or incapacity of any principal shall be given to Owner by any surviving principal within a reasonable time.

- 15.3 Irreparable Injury. It is acknowledged and agreed that Design-build Firm's services to Owner are unique, which gives Design-build Firm a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Design-build Firm acknowledges and agrees that a breach by Design-build Firm of the provisions hereof will cause Owner irreparable injury and damage. Design-build Firm, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.
- 15.4 Certifications.
- 15.4.1 Pursuant to Texas Family Code, Section 231.006, Design-build Firm certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 15.4.2 Pursuant to Texas Government Code, Section 2155.004, Design-build Firm certifies that the business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 15.4.3 If a corporate or limited liability company, Design-build Firm certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Texas Tax Code, Chapter 171, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 15.4.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Design-build Firm agrees that any payments owing to Design-build Firm under this Agreement may be applied directly toward any debt or delinquency that Design-build Firm owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 15.4.5 Pursuant to Texas Government Code Chapter 2252, Subchapter F, Design-build Firm certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Design-build Firm acknowledges this Agreement may be terminated if this certification is inaccurate.
- 15.4.6 Pursuant to Texas Government Code Sections 2252.201-2252.205, Design-build Firm certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States.
- 15.4.7 If the Agreement is subject to Texas Gov't Code Section 2271.002, Construction Manager hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement. If the Agreement is subject to Texas Gov't Code Section 2274.002, Construction Manager hereby represents, verifies, and warrants that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. If the Agreement is subject to Texas Gov't Code Section 2276.002, Construction Manager hereby represents, verifies, and warrants that it does not boycott energy companies and will not boycott energy companies during the term of the Agreement.
- 15.4.8 Design-build Firm certifies that no member of the Board of Regents of the University of North Texas System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

- 15.5 Illegal Dumping. Design-build Firm shall ensure that it and all of its subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.
- 15.6 Asbestos Containing Materials.
- 15.6.1 Design-build Firm shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM) no later than Design-build Firm's application for Final Payment as required by the UGCs.
- 15.6.2 All materials used in this Project shall be certified as non-ACBM. Design-build Firm shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with the following acts:
- 15.6.2.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763, Subpart E)
- 15.6.2.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos)
- 15.6.2.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295, Subchapter C, Asbestos Health Protection)
- 15.7 Business Ethics. During the performance of Design-build Firm's contract responsibilities, Design-build Firm agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest with Owner's best interests. Neither Design-build Firm nor its employees, agents, representatives, or subcontractors will assist or cause Owner to violate Owner's Conflicts of Interest Policy or applicable state ethics laws or rules.
- 15.8 State Auditor's Right to Audit. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by Construction Manager or any other entity or person directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Construction Manager or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Construction Manager shall ensure that this paragraph concerning the authority to audit funds received indirectly by Subcontractors through the contract and the requirement to cooperate is included in any subcontract awards.
- 15.9 Records. Records of Design-build Firm's costs, reimbursable expenses pertaining to the Project and payments shall be maintained and made available to Owner or its authorized representative during business hours for audit or other purposes as determined by Owner in accordance with the requirements in the Uniform General Conditions.
- 15.10 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. Mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

{Name}

{Title}

University of North Texas [System or
Institution Name]

{Address}

If to Design-build Firm:

{Contact Name}

{Design-build Firm Name}

{Street Address}

{City, State Zip}

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

- 15.11 Independent Contractor. Design-build Firm recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Design-build Firm, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Design-build Firm hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.
- 15.12 Loss of Funding. Performance by Owner under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of North Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Design-build Firm and Owner may terminate the Agreement. Design-build Firm acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 15.13 Confidentiality. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Design-build Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Design-build Firm shall not, beginning on the date of first association or communication between Owner and Design-build Firm and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Design-build Firm's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Design-build Firm shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Design-build Firm as an independent Design-build Firm of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Design-build Firm shall obtain assurances similar to those contained in this subparagraph from persons, and subcontractors retained by Design-build Firm. Design-build Firm acknowledges and agrees that a breach by Design-build Firm of the provisions hereof will cause Owner irreparable injury and damage. Design-build Firm, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 15.14 Open Records. Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Design-build Firm shall make public information available to Owner in an electronic format. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the Design-build Firm agrees that the Agreement can be terminated if the Design-build Firm knowingly or intentionally fails to comply with a requirement of that subchapter.

- 15.15 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas and venue shall be as provided in Texas Education Code Section 105.151 for any legal proceeding pertaining to this Agreement.
- 15.16 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- 15.17 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

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

OWNER:

DESIGN-BUILD FIRM:

UNIVERSITY OF NORTH TEXAS {SYSTEM or {DESIGN-BUILD FIRM NAME}
INSTITUTION NAME}

By: _____
(signature)

By: _____
(signature)

Name: {Name}
Title: {Title}

Name: _____
Title: _____

Date: {Date}

Date: _____

Street/PO Box

City, State, ZIP

Telephone

State of TX Vendor ID Number

EXHIBIT A
UNIFORM GENERAL CONDITIONS 2019

SAMPLE

This Exhibit contains the Uniform General Conditions , all of which is made part of this Agreement between Owner and Design-build Firm.

Initialed by Owner

Initialed by Design-build Firm

EXHIBIT B

GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

{PROJECT}
Project Name

We hereby submit to the Owner for the use and benefit of the Owner pursuant to the provisions of Article 7 of the Design-Build Construction Agreement by and between the Owner and {Design-build Firm Name} , dated {Contract Month, Date, Year} ("Agreement"), a GMP for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. A not-to-exceed amount for General Conditions pursuant to the Agreement		\$ <u>{Amount}</u>
1a. Payment and Performance Bond Cost <i>(Included in General Conditions cost)</i>	\$ <u>{Amount}</u>	
1b. Insurance cost for Builder's Risk / Liability / Auto / etc. pursuant to Agreement <i>(Included in General Conditions cost)</i>	\$ <u>{Amount}</u>	
2. A not-to-exceed amount for Cost of Work pursuant to the Agreement		\$ <u>{Amount}</u>
2a. General Requirements (Division 1 Costs) <i>(Included in Cost of Work above)</i>	\$ <u>{Amount}</u>	
3. Contingencies		
a. Design Contingency (__%)	\$ <u>{Amount}</u>	\$ <u>{Amount}</u>
b. Construction Contingency (__%)	\$ <u>{Amount}</u>	
c. Owner's Contingency (__%)	\$ <u>{Amount}</u>	
4. Direct Construction Cost (DCC) [lines 2 & 3 above]		\$ <u>{Amount}</u>
5. Design-build Firm's Construction Services Fee pursuant to the Agreement (% in Agreement x DCC)		\$ <u>{Amount}</u>
6. GMP AMENDMENT TOTAL [lines +4+5]		\$ <u>{Amount}</u>

This figure shall be the GMP, which we hereby guarantee to the Owner. The document prepared by {Design-build Firm Name} titled {Document Title} dated {Month, Date, Year} is hereby incorporated by reference for all purposes and provides *(INSERT SECTION HEADINGS FROM GMP)* . The Schedule of Values reflects how the Design-build Firm anticipates bidding the project.

Design-build Firm agrees to substantially complete all Work on the Project as specified in the Agreement and Contract Documents by the {Date} day of {Month} {Year} (Substantial Completion), which shall be the total amount of time to substantially complete the Work.

Upon acceptance of the GMP by the Owner, the Owner will issue to the Design-build Firm a Notice to Proceed for the Project.

Presented by:
{DESIGN-BUILD FIRM NAME}

Accepted and Agreed by:
UNIVERSITY OF NORTH TEXAS {SYSTEM or
INSTITUTION NAME}

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____