AGREEMENT BETWEEN OWNER AND

CONSTRUCTION MANAGER-AT-RISK

MD ANDERSON AGREEMENT No. _____

This Agreement is made as of _____ , 20xx (the "Effective Date"), by and between

The **Owner**: The University of Texas M. D. Anderson Cancer Center
c/o Sourcing and Contract Management
7007 Bertner Avenue, Suite 10.3212
Houston, Texas 77030

and **Construction Manager**: _____
_____
_____

for the **Project**: Clinical Research Building (CRB) Animal Area Renovation

CPM Project Number: **12-0545**

UGC Version: 2010

Project Architect: _____
_____
_____
_____

The Owner and the Construction Manager agree as follows:

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ARTICLE 1 SCOPE OF WORK

The Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
b. The Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts for the Owner ("UGC");
c. Special Conditions and Owner's Specifications;
d. All Addenda issued prior to the Effective Date of this Agreement;
e. The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by the parties;
f. All Change Orders issued after the Effective Date of this Agreement;
g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
i. The HUB Subcontracting plan submitted by the Construction Manager in response to the Request for Proposals issued by the Owner for this Project.

2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral.

2.3 The term "Construction Manager" shall be interchangeable with the terms "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

ARTICLE 3 DEFINITIONS

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

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

3.2 "**Construction Documents**" means, collectively, the UGCs, Owner's Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders and other documents prepared by the

Project Architect, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.3 "**Construction Phase Services**" means the coordination, implementation and execution of the Work required by the Contract Documents.

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

3.5 "**Direct Construction Cost**" means the sum of the amounts that the Construction Manager actually and necessarily incurs for General Conditions Costs, Cost of the Work and Construction Manager's Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.

3.6 "**Estimated Construction Cost**" (ECC) means the amount calculated by the Construction Manager for the total cost of all elements of the project including, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect or reasonably inferable as a usual and customary component of the project or otherwise necessary for complete installation and operation of the project. The Estimated Construction Cost shall include, at current market rates with a reasonable allowance for overhead, profit and price escalation, the cost of labor and materials furnished by the Construction Manager and any equipment which has been shown in the plans, specified, and specially provided for by the Project Architect. The ECC shall include and consider the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC does not include Construction Manager's Pre-Construction Phase Fee, the Owner's Construction Contingency, the Owner's Special Cash Allowance, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

3.7 "**Guaranteed Maximum Price**" or "GMP" means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's Construction Phase Fee, the General Conditions Costs, the Cost of the Work, Construction Manager's Construction Contingency amount, and the Owner's Construction Contingency amount and Owner's Special Cash Allowance.

3.8 "**General Conditions Cost**" means costs incurred and minor work performed by the Construction Manager without the need for competitive bids/proposals as allowed under Texas Education Code section 51.782(i), as amended. The allowable General Conditions items are further described and limited by attached exhibit.

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

3.10 "**Owner's Specifications**" means the construction and contract administration requirements and standards detailed in the Owner's Specifications exhibit attached to this Agreement.

3.11 "**Pre-Construction Phase Services**" means the participation, documentation and execution of the Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.

3.12 "**Preliminary Project Cost**" (PPC) means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by the Owner prior to the commencement of design.

3.13 "**Project Architect**" means the professional architect or engineer employed by the Owner as architect or engineer of record for the Project and its consultants.

3.14 "**Project Team**" means the Owner, Construction Manager, Project Architect and its consultants, 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.

3.15 "**Subcontractor**" means a person or entity who has an agreement with the Construction Manager to perform any portion of the Work. The term Subcontractor does not include the Project Architect or any person or entity hired directly by the Owner.

3.16 "**Total Project Cost**" (TPC) means the total budget established for the Project by the Board of Regents or the Chancellor of The University of Texas System or the Owner at the end of the design development phase (subject to subsequent modification by Owner). The TPC includes, but is not limited to, Construction Manager's Pre-Construction Fee, Guaranteed Maximum Price Proposal(s), Project Architect and other professional service fees, and other miscellaneous Project costs.

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

3.18 "**Worker Wage Rate**" means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage Rate Form required by the Construction Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. Any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

ARTICLE 4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

4.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project and provides the Owner with a completely functional

building. Construction Manager agrees to perform these services using its best efforts, skills, judgments and abilities.

4.2 Construction Manager shall cooperate with the Project Architect and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.3 Construction Manager shall designate a representative authorized to act on the Construction Manager's behalf with respect to the Project.

4.4 Construction Manager shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and, upon owner's approval, implement such procedures.

4.5 Construction Manager shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

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

4.7 Attend and participate in Owner's "Partnering" Program for all phases of the Project.

4.8 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly remove any employee that Owner determines, at Owner's sole discretion, to be unacceptable. Construction Manager shall provide an acceptable replacement within ten (10) business days. Construction Manager shall promptly update the list of persons and consultants if they change during the course of the Project.

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

ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

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

Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services.

5.1 General Coordination

5.1.1 The Construction Manager's Pre-construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

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

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

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

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

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

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

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

5.2 Constructability Program

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

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

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

5.3 Scheduling

5.3.1 Develop a critical path method schedule ("CPM Schedule") for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, commissioning, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion. The CPM Schedule shall be created and maintained in accordance with the Owner's Specifications using the Owner specified format and software.

5.3.2 The Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases as described in the Owner's Specifications.

5.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the 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.

5.4 Budget and Cost Consultation

5.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

5.4.2 Provide Estimated Construction Cost (ECC) reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project as required in Article 25. The Estimated Construction Cost reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the Work.

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

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

5.4.5 Should any ECC exceed or fall significantly below the approved CCL, the Owner and Construction Manager shall negotiate changes to the Project requirements or the CCL as required.

5.5 Coordination of Design and Construction Contract Documents

5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.

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

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

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

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

5.6 Construction Planning and Bid Package Strategy

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

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

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

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

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

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

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

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

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

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

5.7 Obtaining Offers for the Work

5.7.1 In accordance with *Texas Education Code* section 51.782, as amended, Construction Manager shall publicly advertise and solicit competitive lump sum bids or competitive lump sum 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. Subcontracts awarded on the basis of competitive bids shall be awarded to the lowest responsible bidder. For subcontracts awarded on the basis of competitive sealed proposals, criteria for determining the proposals that provide the best value to the Owner shall be established by the Project Team and included in the request for proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids and proposals.

5.7.2 Schedule and conduct pre-submittal conferences with interested offerors, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

5.7.3 Construction Manager and Owner shall review all trade contractor or Subcontractor offers in a manner that does not disclose the contents of any bid or proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the

requests for bids or requests for proposals, Construction Manager shall recommend to the Owner the bid submitted by the lowest responsible bidder if soliciting competitive bids, or the proposal that provides the best value for the Project if soliciting competitive proposals. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent lowest responsible bidder or best value offeror.

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

5.7.5 If Construction Manager reviews, evaluates, and recommends to Owner an offer from a trade contractor or Subcontractor, but Owner requires another offer to be accepted, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other offer be accepted.

5.7.6 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the procurement package strategy. The Construction Manager must submit an offer for the self-performance work in the same manner as all other trade contractors or Subcontractors. The Owner will determine whether the Construction Manager's offer provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performance work in the same manner as it does all other subcontract costs.

5.7.7 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

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

5.8 Safety

5.8.1 In accordance with Owner's Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of an Owner controlled insurance program, if any, and with Owner's safety program.

5.8.2 Construction Manager shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Construction Manager's safety responsibilities.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

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

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

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

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

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

6.4.1 A pre-established lump sum amount; or

6.4.2 The hourly cost of Construction Manager's employee's or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

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

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, Construction Manager shall prepare and submit a Guaranteed

Maximum Price ("GMP") Proposal to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner in the attached exhibits. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to the Owner.

7.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

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

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

7.5 The GMP Proposal may include a Construction Manager's Contingency amount as allowed under Cost of the Work.

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

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

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

7.9 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this

Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

7.10 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Owner and the Construction Manager. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.

7.11 Following Owner acceptance of the GMP Proposal, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The monthly status report shall also include an updated start-to-finish project schedule that encompasses the Project Architect's activities, the Contractor's activities, and the Owner's commissioning and occupancy activities, short-term schedules, and production rates for key elements of the Project as determined by the Owner.

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

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

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

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

ARTICLE 8 CONSTRUCTION PHASE SERVICES

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

8.1 Construct the Work in strict accordance with the Construction Documents and as required by the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts and Owner's Specifications within the time required by the Project Schedule approved by Owner.

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

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

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

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

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

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

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

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

8.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Construction Manager shall keep the Owner informed of the progress and quality of the Work.

8.11 Construction Manager shall promptly correct any defective Work at Construction Manager's sole expense, unless the Owner specifically agrees to accept the Work.

8.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. The Construction Manager shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

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

ARTICLE 9 OWNER'S RESPONSIBILITIES

9.1 The Owner will designate a Project Architect for the Project.

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

9.3 The Owner will identify a person as its Owner Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative shall examine the documents submitted by the Construction Manager and shall render decisions on behalf of the Owner.

9.4 The Owner will identify a person as its Owner Designated Representative authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the Construction Manager and equitable backcharges against the Construction Manager.

9.5 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, commissioning, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

9.6 The Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents.

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

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

9.9 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen

Construction Manager's responsibility for the Work. Construction Manager is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

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

9.11 Owner shall furnish to the Construction Manager the number of Construction Document sets as required by this Agreement.

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

10.1 Drawings, specifications and other documents prepared by the Project Architect, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the Construction Manager (the "Construction Documents") are instruments of service and shall remain the property of their authors whether the Project for which they are made is executed or not. The Construction Manager shall be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents shall be returned to their respective authors or suitably accounted for. The Construction Manager and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. The Construction Manager and its Subcontractors shall not use the Construction Documents on any other projects.

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

ARTICLE 11 TIME

11.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.

11.2 Unless otherwise approved, the Owner and the Construction Manager shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

11.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, the Construction Manager shall submit an up-to-date CPM Schedule for the performance of Construction Phase Services as specified. The CPM Schedule shall include reasonable periods of time for the Owner's and Project Architect's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.

ARTICLE 12 PAYMENTS

12.1 General Requirements

12.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and

unpaid portion of the Work, including Construction Manager's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

12.1.2 Expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment. Expense of transportation and overnight living expenses in connection with out-of-state travel approved in advance in writing by the Owner and directly associated with the Project will be reimbursed per the Owners Current Employee's Travel Policy, which is attached to this Agreement as Rider 107.

12.1.2.1 Unless expressly directed, and approved in advance, by the Owner, transportation (including mileage and parking expenses) and living expenses incurred within the State of Texas will not be subject to reimbursement.

12.1.2.2 Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, laundry service, valet service, entertainment expenses and any non-Project related items. Tips are included in the per diem rates. Owner shall not pay a mark-up on reimbursables. Construction Manager shall submit receipts for all reimbursable expenses along with any reimbursement request.

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

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

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

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

12.1.7 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment, to Construction Manager under any of the following circumstances:

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

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

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

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

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

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

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

12.1.7.8 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the Agreement.

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

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

12.2 Pre-Construction Phase Payments

12.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the percentage completion of the Construction Manager's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids and proposals in accordance with the following schedule:

Pre Design Phase (Program)	05%
Schematic Design Stage	10%

Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid and Proposal Stage	05%

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

12.3 Construction Phase Payments

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

12.3.2 The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

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

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

12.3.5 Construction Manager's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of final payment; and an affidavit that, to the best of Construction Manager information, knowledge and belief, the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Construction Manager may, at its sole expense, furnish a bond satisfactory to

Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Construction Manager shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

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

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

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

ARTICLE 13 DIRECT CONSTRUCTION COST

Direct Construction Cost is defined in paragraph 3.5 and means the sum of the amounts that the Construction Manager actually and necessarily incurs constructing the Work in strict compliance with the Construction Documents. Direct Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

References in the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts to adjustments in "cost" or "costs" mean the Direct Construction Cost.

13.1 General Conditions Costs

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

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

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

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

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

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

13.1.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.

13.1.6 Permit and inspection fees that are not subject to exemption.

13.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project.

13.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

13.2 Cost of the Work

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

of the Work costs incurred before receipt of Owner's written authorization. Cost of the Work includes the following:

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

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

13.2.3 Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

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

13.2.5 Testing fees pursuant to the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts.

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

13.3 Construction Manager's Contingency

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

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

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

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

ARTICLE 14 CONSTRUCTION PHASE FEE

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

14.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager

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

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

14.4 Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

14.5 Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

14.6 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions or other levies assessed by any governmental body against Construction Manager.

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

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

14.9 Any and all costs that would cause the Guaranteed Maximum Price, minus the amounts allocated in the GMP for Owner's Contingency and Owner's Special Cash Allowance, to be exceeded.

14.10 Any and all costs not specifically identified as an element of the Direct Construction Cost.

ARTICLE 15 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

15.1 If the allowable, final, verified, audited amount of the cost of General Conditions, Cost of the Work, allowance items and Construction Manager's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the final contract amount shall be adjusted accordingly. When buyout of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

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

15.3 The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the Construction Manager:

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

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

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

15.3.4 Deposits made by Owner and forfeited due to the fault of the Construction Manager.

15.3.5 Balances remaining on any Allowances, the Construction Manager's Contingency, or any other identified contract savings.

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

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

ARTICLE 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

16.1 The Construction Manager 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. Construction Manager's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's investigation.

16.2 The Construction Manager acknowledges that as part of its Pre-Construction Phase Services it shall participate in the development and review of the Construction Documents. Construction Manager's participation in the design development process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Project Architect in a timely manner.

ARTICLE 17 BONDS AND INSURANCE

17.1 Within ten (10) days of the date that the Construction Manager executes this Agreement, Construction Manager shall provide a security bond on a form provided by the Owner in the amount of 5% of the Construction Cost Limitation. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds. Construction Manager shall not begin a construction phase of the Work until Construction Manager has submitted and Owner has accepted payment and performance bonds for that construction phase of the Work.

17.2 When Construction Manager executes and submits a Guaranteed Maximum Price Proposal to Owner, Construction Manager shall provide payment and performance bonds on forms prescribed by Owner and in accordance with the requirements set forth in the Uniform General and Supplementary General Conditions for The University of Texas Building Construction Contracts. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the payment and performance bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3 In the event that Owner implements an Owner Controlled Insurance Program (OCIP), the Construction Manager will be required to provide the following insurance coverages:

> 17.3.1 Pre-Construction Phase: Provide those coverages specified below for the Pre-Construction Phase. OCIP does not provide coverages during the Pre-Construction Phase.

17.3.2 Construction Phase: Provide Automobile Liability, Owner's Protective Liability and Builder's Risk, as set forth in the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts.

17.3.3 Refer to the Owner's Project Insurance specification for a complete listing of coverages provided by OCIP.

17.4 The Construction Manager shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Construction Manager. Prior to commencing any work under this Agreement, Construction Manager shall provide evidence of the following insurance coverages:

17.4.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts.

17.4.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk in the amounts as set forth in the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts.

17.4.3 Prior to commencing any construction work, Construction Manager shall provide evidence of Builder's Risk coverage as set forth in the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts, which coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid or proposal package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

17.4.4 Construction Manager shall include required insurance information in trade packages and indicate on bid and proposal forms the insurance that bidders and proposers are to include in their base bids or proposals.

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

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

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

17.8 The cost of premiums for any additional insurance coverage desired by the Construction Manager in excess of that required by this Agreement, the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts, or the Contract Documents shall be borne solely by the Construction Manager out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.9 OCIP Insured Projects.

17.9.1 In the event that the Owner implements an Owner Controlled Insurance Program (OCIP) for the Project, the Construction Manager shall provide the required Pre-Construction Phase insurance for the Project and additional Construction Phase insurance coverages as required by the OCIP specification.

17.9.2 Construction Manager's GMP Proposal shall exclude the cost of premiums for insurance coverage provided through the OCIP. The GMP Proposal shall only include the cost of premiums of all other insurance required by the Contract Documents.

17.9.3 The cost of premiums for any additional insurance coverage desired by the Construction Manager in excess of that required by this Agreement, the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts, or the Contract Documents shall be borne solely by the Construction Manager out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.9.4 Construction Manager shall include required OCIP insurance information in trade packages and indicate on bid and proposal forms the insurance that bidders and proposers are to include and exclude in their base bids and proposals.

17.9.5 During construction, Owner may audit the Construction Manager's and Subcontractors' labor hours and certified payroll reports to determine actual insurance costs.

ARTICLE 18 DISPUTE RESOLUTION

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

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

19.2 This Agreement may be terminated by the Owner during the Pre-Construction Phase upon at least three (3) days written notice to the Construction Manager in the event that the Project is to be temporarily or permanently abandoned.

19.3 This Agreement may be terminated by the Owner at the GMP Proposal stage upon at least three (3) days written notice to the Construction Manager in the event that the parties are unable or unwilling to agree on a GMP Proposal.

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

19.5 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement.

19.6 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

19.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, the Construction Manager's compensation for Pre-Construction Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

ARTICLE 20 INDEMNITY

20.1 SEE ARTICLE 3 OF THE UNIFORM GENERAL AND SUPPLEMENTARY GENERAL CONDITIONS FOR THE UNIVERSITY OF TEXAS SYSTEM BUILDING CONSTRUCTION CONTRACTS FOR CONSTRUCTION MANAGER'S GENERAL INDEMNIFICATION OBLIGATIONS.

20.2 CONSTRUCTION MANAGER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSSES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY THE CONSTRUCTION MANAGER OR THE USE BY CONSTRUCTION MANAGER, OR BY OWNER AT THE DIRECTION OF CONSTRUCTION MANAGER, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONSTRUCTION MANAGER AND CONSTRUCTION MANAGER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONSTRUCTION MANAGER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR PROJECT ARCHITECT'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONSTRUCTION MANAGER AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

20.3 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 21 SPECIAL WARRANTIES

21.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

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

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

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

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

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

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

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

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

ARTICLE 22 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

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

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

22.3 The Construction Manager shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

22.4 The Construction Manager shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

22.5 All materials used on this_Project shall be certified as non Asbestos Containing Building Materials (ACBM). The Construction Manager shall insure compliance with the following acts from all of his subcontractors and assigns:

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

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

22.5.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

22.6 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

22.7 The Construction Manager shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

22.8 At Final Completion the Construction Manager shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 23 MISCELLANEOUS PROVISIONS

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

23.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

23.3 *Texas Family Code* Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Construction Manager certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

23.4 Eligibility Certification. Pursuant to Section 2155.004, *Texas Government Code*, Construction Manager certifies that the individual or business entity named in this Agreement is not ineligible to receive

the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

23.5 Franchise Tax Certification. A corporate or limited liability company Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

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

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

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

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

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

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

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

23.13 Records. Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

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

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

23.16 Illegal Dumping. The Construction Manager shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

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

23.18 Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at http://www.utsystem.edu/policy/policies/int160.html, University's Standards of Conduct Guide available at http://www.utsystem.edu/systemcompliance/, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

ARTICLE 24 COMPENSATION

24.1 Construction Cost Limitation

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

_____ Dollars ($ _____).

24.2.2 Refer to Article 12.2.1 for the percentages of each stage of work within the Pre-Construction Phase Fee for payment purposes. The Owner may elect, at its option, to stage or "fast-track" portions of the work. If Owner elects to implement the Project in multiple stages, the Construction Manager shall allocate the Pre-Construction Phase Fee across all stages of the

Project pursuant to the schedule set forth in Article 12.2.1, unless the Owner and Construction Manager agree otherwise.

24.2 Pre-Construction Phase Fee

24.2.1 For Pre-Construction Phase Services, Owner shall pay Construction Manager a Pre-Construction Phase Fee in the total stipulated amount of:

_____ Dollars ($_____).

24.3 Construction Phase Fee

24.3.1 For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to _____percent (_____%) of the Construction Cost Limitation for the Project.

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

_____ Dollars ($_____).

24.3.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 24.3.1 to the amount of the increase in the Guaranteed Maximum Price, provided however, if the increase in the Guaranteed Maximum Price is less than five percent of the Guaranteed Maximum Price, then Construction Manager shall not be entitled to any increase in the Construction Manager's Construction Phase Fee.

24.3.4 The percentage rate established in paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Associate Vice President, Capital Planning and Management.

24.3.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the Guaranteed Maximum Price (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the Construction Manager's fee for these increases shall be calculated accordance with the provisions of the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts for Change Orders.

24.4 Limitation on General Condition Costs

24.4.1 The maximum allowable amount of General Conditions Costs payable to the Construction Manager during the Construction Phase of the Project shall not exceed ____percent (_____%) of the Construction Cost Limitation Price for the Project.

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

_____ Dollars ($ _____).

24.4.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase the maximum allowable amount of General Conditions Costs shall be equitably adjusted by applying the percentage established in paragraph 24.4.1 to the amount of the increase in the Guaranteed Maximum Price.

24.4.4 The percentage rate established in paragraph 24.4.1 of this Agreement for calculation of the maximum allowable amount of General Conditions Costs cannot be increased except with the express written approval of the Associate Vice President, Capital Planning and Management.

24.4.5 If the Owner agrees to any increases in the Construction Cost Limitation during the Construction Phase without increasing the Guaranteed Maximum Price (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the allowable General Conditions Costs for these increases shall be calculated accordance with the provisions of the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts for Change Orders.

ARTICLE 25 OTHER TERMS AND CONDITIONS

25.1 Time of Completion

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

January 10, 2014.

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

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

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

25.2 Liquidated Damages

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

_____ Dollars ($ _____)

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

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

25.3 Estimated Construction Cost Reports

Construction Manager shall prepare and update an Estimated Construction Cost report as required by Article 5.4 at the fifty percent (50%) and the ninety-five percent (95%) completion stages during the schematic, design development and construction documents phases of the Pre-Construction Services.

25.4 Notices

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

If to Owner:	Dwain Morris Vice President and Chief Financial Officer 1515 Holcombe Blvd., Unit 1495 Houston, TX 77030
With Copies to:	William E. Bailey, JD, CPA Executive Director, Facilities Finance 1515 Holcombe Boulevard Fannin Holcombe Building - Unit 717 Houston, Texas 77030-4009
If to Construction Manager:	_____ _____ _____ _____ _____ _____

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

Original Invoices must be submitted to:

MD Anderson Cancer Center
Accounts Payable – Box 199
P. O. Box 301401
Houston, TX 77230-1401

email: mdaccap@mdanderson.org

25.5 Party Representatives

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

Paul Kuester
Director, CP&M Operations
1515 Holcombe Blvd., Box 703
Houston, TX 77030

25.5.2 The Construction Manager's designated representative authorized to act on the Construction Manager's behalf and bind the Construction Manager with respect to the Project is:

_____
_____
_____
_____
_____
_____

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

25.6 Construction Document Sets

The Project Architect shall coordinate the printing, binding and distribution of the initial issuance of all construction documents to all Subcontractor proposers requesting documents in order to provide proposals to the Construction Manager. A minimum of twenty-five (25) sets will be furnished at the expense of the Owner. The Construction Manager shall utilize all construction documents returned to the Project Architect from the Subcontractor proposers.

25.7 OCIP Insured Project

The Owner has (has not) elected to implement an Owner Controlled Insurance Program (OCIP) for this Project. Refer to Article 17 for specific coverages required.

25.8 As-built Telecommunication Drawings and Telecommunication Port Log.

The Construction Manager shall provide the Owner, at between one month and three months prior to Substantial Completion, with a complete set of the as-built Telecommunication Drawings and Telecommunication Port Log for the Owner's use in coordinating selection and procurement of telephone/data equipment.

25.9 Interim Record Drawings and Specifications

As a requirement for acceptance of Substantial Completion, Construction Manager shall reproduce two (2) copies of the current As-Build Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled "Interim Record Drawings and Specifications", and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final As-Built Drawings and Specifications are provided to the Project Architect to prepare the final "Record Drawings" and "Record Specifications".

25.10 LEED Certification

The Construction Manager at Risk shall provide services necessary for securing LEED Certification or better under LEED-NC Version 2.2 Primary services for LEED Certification will be provided by the Project Architect. Services shall include, but not be limited to, attending a pre-design workshop where the LEED rating system will be reviewed and LEED points targeted, reviewing a LEED Certification Plan, monitoring the LEED Certification process, attending design review meetings required to achieve LEED Certification, reviewing LEED specifications in the Contract Documents, reviewing a LEED Certification Report detailing the LEED rating the project achieved, participating in the Owner's technical review process and reviewing comments made during the reviews, working with the Project Architect to establish procedures and processes to maximize LEED points obtained during building construction, and coordinating project closeout services including collection and assembly of record documents and other necessary materials required for LEED Certification.

25.11 List of Exhibits

The following exhibits are fully incorporated into this Agreement by reference:

Exhibit A - Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts
Exhibit B - Owner's Specifications
Exhibit C - Allowable General Conditions Line Items
Exhibit D - Guaranteed Maximum Price Proposal Form
Attachment 1 to Exhibit D - Guidelines for the Preparation of the GMP
Attachment 2 to Exhibit D - Payment and Performance Bonds
Exhibit E - Security Bond
Exhibit F - Construction Manager's Personnel and Monthly Salary Rate
Exhibit G - Constructability Implementation Program
Exhibit H - Policy on Utilization, Historically Underutilized Businesses
Exhibit I - HUB Subcontracting Plan for Pre-Construction Phase Services
Exhibit J - Additional Services Proposal
Exhibit K - Sales Tax Exemption Form
Exhibit L - Rider 1 to the Agreement
Exhibit M - Rider 105 - Contractor Affirmations
Exhibit N - Rider 106 - Premises Rules
Exhibit O - Rider 107 - Travel Policy
Exhibit P - Execution of Offer
Exhibit Q – Rider 117 – Institutional Policies

BY SIGNING BELOW, the Construction Manager has executed and bound itself to this Agreement as of the day and year first above written. The Agreement shall become effective only upon the execution of the

Agreement by both parties. Change orders, additional services, amendments, modifications, deletions or other changes to the Agreement, if any, shall become effective only upon the issuance of a signed Notice to proceed by Owner to the Construction Manager. Subsequent to the issuance of a signed Notice to Proceed, Owner will issue a Purchase Order Revision reflecting the changes in scope, additional services, amendments, modifications, deletions or other changes to the Agreement. Contractor must receive the Purchase Order Revision prior to Contractor submitting invoice for payment for the associated Agreement change.

(SEAL) **[Contractor's Name]**

ATTEST:

By: _____
(original signature)

_____
(name and title)

By: _____
(original signature)

_____
(name and title)

Date: _____

CONTENT APPROVED:

Office of Vice President
Operations and Facilities Management

By: _____
(original signature)

Name: Spencer Moore
Title: Vice President for Operatins and Facilities Managment

Date: _____

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER
(Owner)

By: _____
(original signature)

Name: _____
Title: _____

Date: _____

EXHIBIT A

UNIFORM GENERAL AND SUPPLEMENTARY GENERAL CONDITIONS FOR THE UNIVERSITY OF TEXAS SYSTEM BUILDING CONSTRUCTION CONTRACTS

EXHIBIT B

OWNER'S SPECIFICATIONS

1. Section 00 25 00 Owner's Special Conditions
2. Section 00 25 00A – Attachment "A" Minimum Wage Rate Determination
3. Section 00 25 00C – Attachment "C" Project Sign Layout
4. Section 00 73 16 Project Insurance (OCIP)
5. Section 01 31 00 Project Administration
6. Section 01 32 00 Project Planning and Scheduling
7. Section 01 35 16 Alteration Project Procedures
8. Section 01 35 23 Project Safety (O.C.I.P.)
9. Section 01 35 25 Owner Safety Requirements
10. Section 01 45 00 Project Quality Control
11. Section 01 57 25 Dust Control Plan
12. Section 01 77 00 Project Closeout Requirements
13. Section 01 91 00 General Commissioning Requirements

EXHIBIT C – CPM No. 12-0545
ALLOWABLE GENERAL CONDITION LINE ITEMS

On-Site Project Management Staff

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

Bonds and Insurance

- Builder's Risk Insurance
- General Liability Insurance (unless ROCIP)
- Payment and Performance Bonds
- Other Project Insurance as Required by Contract

Temporary Project Utilities

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

Field Offices & Office Supplies

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

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

EXHIBIT D
GUARANTEED MAXIMUM PRICE PROPOSAL

The Construction Manager hereby submits to MD Anderson Cancer Center pursuant to the provisions of Article VII of the Agreement by and between Owner and _____ dated _____, 2009 (the Agreement"), a Guaranteed Maximum Price (GMP) for the _____ Project, CPM Project Number _____, 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 the Cost of the Work pursuant to the Agreement:	$_____
2.	A not-to exceed amount for the General Conditions pursuant to the Agreement:	$_____
3.	A not-to exceed amount for the Construction Manager's Contingency pursuant to the Agreement:	$_____
4.	A lump sum amount for the Construction Phase Fee pursuant to the Agreement:	$_____
5.	Owner's Special Cash Allowance provided by the Owner:	$_____
6.	Owner's Construction Contingency provided by the Owner. This is a lump sum amount from which changes are to be paid in accordance with the Uniform General and Supplementary General Conditions for The University of Texas System Building Construction Contracts. Any unused amount will be deducted from the Guaranteed Maximum Price by Change Order:	$_____
7.	TOTAL OF GMP LINE ITEMS 1 THROUGH 6:	$_____

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

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE
(Continuation of Exhibit D)

Corporations/LCC's: Attest:

_____
Corporate Secretary

Other business forms: Witness:

_____

(Vendor Name)

By: _____
(original signature)

_____
(name and title typed)

Date: _____

ATTACHMENT 1 TO EXHIBIT D

GUIDELINES FOR THE PREPARATION OF THE GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS:

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

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

2. PRE SUBMITTAL REQUIREMENTS:

A. Scope Definition: Prior to GMP submittal, the Contractor shall thoroughly review the GMP construction document package with the Owner and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted. Refer to the section "PDRI For Buildings" which is an attachment to the Agreement for additional guidelines. The PDRI checklist must be completed at this time.

B. Schedule: The anticipated Notice To Proceed and Substantial Completion dates shall be coordinated and approved by the Owner.

C. Value Engineering: Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the "final acceptance" of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by the Owner prior to GMP submittal.

D. Pre-submittal Conference: The Contractor shall schedule a conference with the Project Manager no later than six (6) weeks prior to submitting the GMP to the Owner. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. The Contractor shall obtain a copy of the "Owner Standard Schedule of Values Format" from the Project Manager. Additionally, a review of acceptable "General Condition" items, as defined in the Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:

The Owner and the Owner's Consultants shall provide review comments. The Contractor shall consolidate all responses to those groups into TAB 9 of the document. Each owner comment

shall have a corresponding answer directly below the original comment. A reply to each owner comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS;

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

5. MULTIPLE GMP'S:

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

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be bound in 3-ring notebook or spiral notebook and entitled "Guaranteed Maximum Price Proposal". Below it the following items shall be shown:

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

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

All pages within each tab shall be numbered.

The proposal shall be organized in the order described below:

TABLE OF CONTENTS

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

TAB 1 – Guaranteed Maximum Price Proposal (Exhibit D)

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

TAB 2 - Executive Project Summary

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

TAB 3 - Project Team

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

TAB 4 - List of Documents

- Drawings Index – provide detailed listing of each sheet number, sheet title, original date of drawing, revised date of drawing

- Specification Index:

- Provide a detailed listing of each specification section required by the Owner as identified in the Agreement (see the Exhibit for "Owner's Specifications")
- Provide a detailed listing of all other spec sections describing the project.
- Specifications shall be organized by CSI Division format. State the name, original date of issue, and a column for revision date.

TAB 5 - Qualifications and Value Engineering

- Qualifications – A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB 4.
- Exclusions – A summary of exclusions organized by drawing sheet number or by specification section.
- Substitutions – A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB 4. Organize by specification section.
- Value Engineering Recommendations - List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition identify those VE items not currently accepted. State if the price is good for a limited time period.
- Alternates List. State the amount of each alternate and the last date in which the price is good in the event the alternate is not currently included in the GMP price.

TAB 6 - GMP Proposal Cost Breakdown

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

The U.T. System Schedule of Values - Contractor's Estimate Continuation Sheet (8 1/2" x 11" Sheet ONLY)

OFPC Project No.:							Project Address:							
OFPC Project Name:							Application For Payment Number:							
CM-R/DB Name:							Application Period: From			To				
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
CSI Section / Work Breakdown Structure	Description of Work / Subcontractor Name / Specification Section	Initial Proposed Line Item Value	Actual Subcontract Amount at Buyout	Contingency Allocation	Delta (Proposal to Actual)	Subcontract, Purchase Order or Vendor No.	Detailed Breakdown of Contract Line Items	Total Amount Previously Requested & Percent		Current Application: This Period Amount & Percent		Current Application: Total Amount Completed To Date & Percent		Balance to Finish Including Retainage
	Column Equations		C'	C'	C - D + E		D'	M'	N'	M - I	K / H	I + K	M / H	H - (M x 95%)
Preconstruction (Part I) Services														
Programming		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Schematic Design		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Design Development		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Contract Documents		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Bidding		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Owner's Special Cash Allowance		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Preconstruction (Part I) Services Subtotal		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	N/A
Construction (Part II) Services														
General Conditions (Breakdown per Exhibit I)														
Project Management		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Bonds & Insurance		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Temporary Utilities		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Field Office& Construction Supplies		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
General Conditions Subtotal		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Cost of Work														
	Sitework	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Concrete	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Masonry	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Metals	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Woods & Plastics	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Thermal & Moisture Protection	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Doors & Windows	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Finishes	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Specialties	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Equipment	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Furnishings	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Special Construction	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Conveying Systems	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Mechanical	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
	Electrical	$ -	$ -	$ -	$ -		$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Cost of Work Subtotal		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Contractor's Contingency		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Construction Phase Fee		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Owner's Special Cash Allowance		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Owner's Construction Contingency		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Construction (Part II - GMP) Services Subtotal		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -
Contract (Part I + Part II Services) Total		$ -	$ -	$ -	$ -	N/A	$ -	$ -	0%	$ -	0%	$ -	0%	$ -

(An electronic copy is available upon request)

- The Construction Manager shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration.
- Clearly state the different types of insurance coverages included in the general conditions.
- On a separate page state whether this GMP includes provisions to incorporate the Owner's ROCIP program. (this affects your provided insurance coverages).
- General Condition breakdown shall include line items for each type of insurance coverage including builders risk and auto.
- State how the CM's Contingency was established or show a breakdown of major items anticipated to be funded by the contingency.
- For projects which are a renovation of an existing building or a project which is being constructed adjacent to or connected to an existing building, provide a page which states whether or not the builders risk insurance coverage includes a $5M endorsement for coverage of damages to the existing Owner's property for damages caused by the contractor or subcontractors.
- The Construction Manager may request to include an updated Exhibit F, "CM's Personnel and Monthly Salary Rates" identifying any proposed new staff or proposed rate modifications. **Bold any revisions.** Revisions, if any, are subject to the approval of Owner at Owner's sole discretion.
- Identify the CM's Contingency and provide a breakdown or explain the basis for how the amount was established.
- Provide a breakdown of the Owner's Special Cash Allowance showing the major items anticipated to be included in this cost. The Owner's Project Manager should help provide this detail.

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically **<u>on a CD</u>** and on paper bound with the GMP Proposal.

- Summary Schedule Requirements
  - The schedule shall comply with the requirements of Owner's Specification Section 01 32 00 and shall form the basis for the "Detail" schedule, which shall be submitted within sixty (60) days following Notice to Proceed for Construction Services.
  - The schedule shall be a computer generated CPM schedule developed in Microsoft Project Planner software.
  - The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones included in Pre-construction Services
  - The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first 90 days) may be summarized by trades and may have longer durations than the "detailed" activities mentioned above.

- Total Float

- The total float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion). i.e. - All paths in the schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately 90% of the time allowed by contract for the Owner established Substantial Completion Date.

TAB 8 - Bid/Proposal Package Strategy

- The Contractor shall provide a written Bid/Proposal Package Strategy for procuring subcontracts including self-performance work (other than General Conditions) as described in Owner's Specification Section 01 31 00.

TAB 9 - Historically Underutilized Business Plan

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

TAB 10 - Responses to Review Comments

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

ATTACHMENT 2 TO EXHIBIT D

PAYMENT AND PERFORMANCE BONDS

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

EXHIBIT E

SECURITY BOND

Surety Bond No._____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____§

That we, _____, as Principal, and _____ _____, as Surety, are hereby held and firmly bound unto Owner and The Board of Regents of The University of Texas System as Obligees in the penal sum of Five Percent (5%) of_____ ($_____), the Construction Cost Limitation (CCL) for the Project defined herein below, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

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

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

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

(SEAL) _____
Principal

ATTEST:

By: _____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

(SEAL) _____
Surety

ATTEST:

By: _____ By: _____

_____ _____
(Typed Name and Title) (Typed Name and Title)

EXHIBIT F

CM'S PERSONNEL AND MONTHLY SALARY RATES

CPM Project No. & Name: _____ - _____ _____

[CM - Insert Project No.] *[CM - Insert Project Name]*

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

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

Construction Manager shall certify, to the best of his knowledge, that the above referenced salary information is accurate.

CM signature: _____ (same individual who signs agreement)

EXHIBIT G

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- Implement a rigorous constructability program following The University of Texas System, Office of Facilities Planning and Construction Constructability Manual.

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

Proposed Steps:

- **Constructability Implementation Meeting**
  - identification of all project team personnel and all project stakeholders
  - clarification of project goals, objectives, and progress to date
  - team briefing on objectives, methods, and concepts of constructability
  - familiarization with implementation program
  - preliminary identification of constructability priorities and special challenges or concerns

- **Constructability Review of Schematic Design (SD) Documents; Comments Submitted to CM Team**
  - establishment of project constructability procedures, including procedures for documenting savings

- **Meeting to Review Schematic Design Constructability Comments**
  - assessment of applicability of 17 CII constructability concepts
  - prioritization and time-phasing of constructability concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Design Development Constructability Review Comments to CM Team**
  - follow-up discussions on front-end, high-priority concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Constructability Review Meeting**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements;

consider life-cycle cost effects

- **30% CD Constructability Review Comments to CM Team**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements

- **50% CD Constructability Review Comments to CM Team**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements

- **95% CD Constructability Review Comments to CM Team**

- **Constructability Discussions with CM Team**

- **Document On-site Constructability Lessons Learned**

- **Close-out Project Constructability Documentation**

EXHIBIT H

POLICY ON UTILIZATION, HISTORICALLY UNDERUTILIZED BUSINESSES

(Included herein by reference)

EXHIBIT I

HUB SUBCONTRACTING PLAN FOR PRE-CONSTRUCTION SERVICES

EXHIBIT J

ADDITIONAL SERVICES PROPOSAL FOR PRE-CONSTRUCTION PHASE SERVICES

Requisition Number _____
Project Number:_____
Project Name: _____
Campus:_____

Date:_____

To: PM _____
RCM_____

Central File (original)

(Contractor)
_____
_____
_____

Gentlemen:

Please refer to the Agreement dated _____, 20__ between _____ ("Owner") and the undersigned ("Construction Manager") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Construction Manager is to perform certain services. The terms, which are defined in the Agreement, shall have the same meanings when used in this letter.

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

(Description of Services.)

Construction Manager agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars ($_____).

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

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

Sincerely yours,

Construction Manager
By:_____
Name:_____
Title:_____

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

MD Anderson Cancer Center

By:_____
Name:_____
Title:_____

PRE-CONSTRUCTION PHASE SERVICES FEE SUMMARY

ORIGINAL Pre-Construction Phase Fee:	($_____)
Previous Additions:	($_____)
Previous Deductions:	($_____)
NET BALANCE of Pre-Construction Phase Fee:	($_____)
THIS Addition / Deduction:	($_____)
Adjusted Pre-Construction Phase Fee:	($_____)

xc: Contractor
Project Manager
Contract Manager
Accounting
central file

EXHIBIT K

SALES TAX EXEMPTION FORM