

**AGREEMENT
BETWEEN OWNER AND PROJECT ARCHITECT/ENGINEER**

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

By and between

The **Owner:** The University of Texas M. D. Anderson Cancer Center
 c/o Facilities Planning, Design and Construction
 6900 Fannin, Suite 1010
 Houston, Texas 77030

and **Project Architect/Engineer:**

for the following **Project:** South Campus Parking Garage No. 2

Construction Services Delivery Method: Construction Manager-at-Risk

The Owner and the Project Architect/Engineer agree as follows:

This form of agreement is for Architectural/Engineering services on projects that use an Owner-Architect/Engineer-Contractor/Construction Manager delivery method (e.g. Competitive Sealed Proposal or Construction Manager at Risk). It has been prepared by the Office of General Counsel for the University of Texas System for use on M. D. Anderson Cancer Center projects and its legal terms should not be altered without the approval of the Office of General Counsel.

Use this form for all appropriate M. D. Anderson Cancer Center projects after July 25, 2018.

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Article 1 Project Architect/Engineer's Services and Responsibilities

Project Architect/Engineer ("Project A/E") shall provide the usual and customary Basic Services necessary and reasonably inferable to provide design services for each phase of the Project described in Paragraphs 1.2 through 1.6, below, along with any Additional Services requested by Owner.

1.1 Basic Services

1.1.1 Project A/E's Basic Services include all disciplines identified in Article 14 and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the design for the Project, or any phase of the Project, in accordance with Owner's requirements and the terms of this Agreement.

1.1.2 The Pre-Design Document (see Article 2) shall describe the intended project scope and character along with the anticipated Project Milestone Schedule and the Preliminary Project Cost. Project A/E shall review and understand the requirements of the Pre-Design Document and perform its professional services so as to achieve those objectives.

1.1.3 The Construction Cost Limitation ("CCL") for this Project is specified in Article 14 and means the maximum amount that Owner is willing to pay for the construction of the Project. The CCL includes all costs for constructing the Project, and includes, without limitation, reasonable allowances for the Contractor's overhead, profit and general conditions costs, the cost of labor and materials furnished by the Contractor and any equipment which has been shown in the plans, specified, and specially provided for by Project A/E. The CCL does not include compensation to Project A/E and its consultants, Owner's Construction Contingency, Owner's Special Cash Allowance, the cost of the land, the cost of rights-of-way, or other costs which are the responsibility of Owner as provided in Article 2. Project A/E is responsible for managing the design of the Project so that the Construction Contract Sum does not exceed the CCL.

1.1.4 Owner anticipates requiring Project A/E to provide services for the Project in multiple stages or parts identified as Construction Contract Stages ("CCS"). Each CCS shall have a unique Sub-Construction Cost Limitation ("SCCL"). Project A/E shall manage the design of each CCS so that its costs for construction do not exceed the SCCL. Project A/E shall manage the design of the Project so that the sum of all SCCLs does not exceed the CCL. As of the Effective Date of this Agreement, Owner anticipates that the Project will consist of the following Construction Contract Stages:

CCS1 – Infrastructure to Support Campus Development – construction of below grade and grade-level utilities (e.g. general demolition of existing parking areas and building slabs and foundations, water lines, sewer lines, roads, pedestrian pathways) need to support development of the garage site a surrounding area.

CCS2 – construction of the South Campus Parking Garage No. 2.

1.1.5 Project A/E shall manage the design of the Project to achieve the objectives of scope and cost set forth in the Pre-Design Document through completion and acceptance of the Construction Documents. As part of its Basic Services, Project A/E shall advise Owner of any adjustments to the scope or quality of the Project necessary to comply with the CCL throughout the development of the design.

1.1.6 Project A/E shall submit the names of all consultants, persons, or firms, which Project A/E proposes to use in the execution of its services and shall provide Owner with a fully executed copy of each contract or agreement that Project A/E enters into with any consultant. Project A/E is responsible for coordinating the work of all of its consultants to assure that their services are appropriate for and adequately

incorporated into the design of the Project. Owner reserves the right, in its sole discretion, to reject the employment by Project A/E of any consultant for the Project to which Owner has a reasonable objection. Project A/E, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.7 Project A/E shall pay for its consultants' services out of its fees. Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.

1.1.8 Project A/E agrees to allocate work to consultants that are historically underutilized businesses in accordance with Owner's Rider 104; Policy on Utilization of Historically Underutilized Businesses, a copy of which is included as an Exhibit hereto. No changes to the HUB Subcontracting Plan approved by Owner, a copy of which is included as an Exhibit hereto, may be made unless approved in writing by Owner. While this Agreement is in effect and until the expiration of one year after Final Completion, Owner may require information from Project A/E, and may conduct audits, to assure that the approved HUB Subcontracting Plan is followed.

1.1.9 Project A/E shall design the Project to incorporate current systems technology as appropriate to the stated mission of Owner and the programmed functional activities. The technology shall be compatible with any existing facility and acceptable to Owner.

1.1.10 Project A/E shall perform its services in accordance with the Owner's Design Guidelines, a listing of which is included as an Exhibit hereto.

1.1.11 Project A/E shall design the Project in accordance with the approved Campus Master Plan.

1.1.12 Basic design services shall include incorporation of the provisions of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, State Comptroller's Office of the State of Texas. Project A/E shall provide Owner with a Statement of Compliance and associated compliance documentation as required.

1.1.13 When required and as appropriate for the scope of the Project, Project A/E, as part of Basic Services, shall assist with and attend with Owner representatives an open meeting to be held pursuant to Section 2166.403(b) *Texas Government Code*, to verify the economic feasibility of incorporating alternative energy devices for space heating, cooling, water heating, electrical loads, and interior lighting into the building's design and proposed energy system. At a minimum, Project A/E shall provide an economic evaluation for the potential of renewable energy applications pursuant to the legislative requirements. Guidelines are available from the State Energy Conservation Office, State Comptroller's Office.

1.1.14 When appropriate for the scope of the Project, Basic Services shall include incorporation of the provisions of the Xeriscape Landscaping design requirements as adopted by the State of Texas Building & Procurement Division for Xeriscape landscaping, pursuant to Section 2166.404 *Texas Government Code*. Project A/E shall provide Site analysis and design to incorporate these provisions. A summary of the project requirements meeting these guidelines shall also be provided for the Design Development submittal package.

1.1.15 Project A/E, as part of Basic Services, shall engage a recognized and specialized construction cost estimating consultant acceptable to Owner to prepare detailed Estimated Construction Cost Reports of the Project in a form acceptable to Owner following the Construction Specifications Institute (CSI) format. Project A/E shall include updated and detailed Estimated Construction Cost Reports with the Drawings and Specifications submitted for review at completion of the Schematic Design phase and the Design Development phase and at the stages of completion of the Construction Documents required

in Article 14. If the Estimated Construction Cost exceeds the Construction Cost Limitation at any time, Owner will determine, solely at Owner's discretion, whether to increase the Construction Cost Limitation, or to instruct Project A/E to proceed to the next stage of design with no increase in the Construction Cost Limitation, or to require Project A/E to revise, at no charge to Owner, the Project scope or quality to comply with the Construction Cost Limitation. Reductions in Project scope or quality shall be subject to Owner's review and approval. If the Estimated Construction Cost is below the Construction Cost Limitation at any time, Owner may determine, solely at Owner's discretion, whether to reduce the Construction Cost Limitation, or to instruct Project A/E to proceed to the next stage of design with no decrease to the Construction Cost Limitation, or to require Project A/E to increase the Project scope or quality.

1.1.16 Project A/E shall submit documents to Owner for review at completion of the Schematic Design and Design Development phases and at the stages of completion of the Construction Documents as described in Article 14. Project A/E shall incorporate into the documents such corrections and amendments as Owner requests, unless Project A/E objects in writing and receives Owner's consent not to make the changes. Project A/E will be responsible for any damages incurred by Owner that are caused by Project A/E's failure to incorporate requested corrections and amendments to the documents.

1.1.17 Project A/E shall provide a review and comment form acceptable to Owner for Owner's use during document review. Owner will provide its review comments to Project A/E on the form and Project A/E shall provide a detailed written response to each of Owner's review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, Project A/E shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of Project A/E's then current Statement for Architectural/Engineering Services Rendered. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by Project A/E.

1.1.18 Project A/E, as part of Basic Services, shall become sufficiently familiar with the existing facilities, systems and conditions at the Project location so that the proposed Project will completely and properly interface functionally with them.

1.1.19 Project A/E agrees and acknowledges that Owner is entering into this Agreement in reliance on Project A/E's represented professional abilities with respect to performing Project A/E's services, duties, and obligations under this Agreement. Project A/E shall perform its services (i) with the professional skill and care ordinarily provided by competent architects/engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect/engineer; and (iii) in compliance with all applicable, federal, State of Texas and municipal regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the Project A/E that will limit or prevent performance by Project A/E of its services. Project A/E hereby agrees to correct, at its own cost, any of its services, and the services of its consultants, that do not meet the standard of care.

1.1.20 Project A/E shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Project A/E (by Owner or any other party) that Project A/E uses for the Project. Project A/E shall identify to Owner in writing any such documents or data which, in Project A/E's

professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Owner does not warrant for the accuracy or suitability of such documents or data as are furnished unless Project A/E advises Owner in writing that in Project A/E's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Project A/E to proceed in accordance with the documents or data as originally given.

1.1.21 Project A/E's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Project A/E's services by Owner shall relieve Project A/E of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Project A/E for its skill and knowledge in performing Project A/E's services. Owner shall have the right to reject any of Project A/E's services because of any fault or defect in the Project due to any material errors or omissions in the Drawings, Specifications, and other materials prepared by Project A/E or its consultants. Upon notice of any such errors or omissions, Project A/E shall promptly provide any and all services necessary to correct or remedy them at no additional cost to Owner. Project A/E's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law, in equity, or both.

1.1.22 Project A/E shall not proceed to any phase of design not expressly authorized by Owner, except at Project A/E's own financial risk.

1.1.23 Project A/E agrees to furnish efficient business administration and superintendence and to use Project A/E's best efforts to design the Project in an expeditious and economical manner consistent with the interest of Owner and Project A/E's professional skill and care.

1.1.24 Project A/E shall allocate adequate time, personnel and resources as necessary to perform its services. Project A/E's senior principal(s) responsible for managing the Project is (are) identified in an Exhibit attached hereto and shall not be changed without the prior approval of Owner. The day-to-day Project team will be led by the senior principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of Project A/E. The senior principal(s) shall act on behalf of Project A/E with respect to all phases of Project A/E's services and shall be available as required for the benefit of the Project and Owner.

1.1.25 Project A/E shall make reasonable efforts to investigate any documents provided by Owner and the visible existing conditions at the Project Site to identify existing systems and construction which must be modified to accommodate Project A/E's design for the Project and the construction of the Project. Project A/E shall identify to Owner any discrepancies between the documents and visible conditions, and shall consult with Owner on any special measures, services or further investigations required for Project A/E to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional architects and engineers, as appropriate.

1.1.26 Project A/E, when requested by Owner, shall coordinate the purchase of additional reprographic materials for procurement purposes or when additional review sets, in excess of those required by Article 1.4 are required by Owner. Project A/E shall present a Tax Exemption Certificate to the vendor and coordinate Owner's requirements for type, quantity and invoice billing. When so requested by Owner, Project A/E will account to Owner for all additional materials ordered by Owner through Project A/E as Owner's agent and shall distinguish between those materials ordered on behalf of Owner without sales tax and any other copies thereof that Project A/E, or others, may order and pay for which includes sales tax, on its own or their behalf. Project A/E shall forward to Owner the original vendor's invoice for materials purchased by Owner and delivered to Project A/E as Owner's agent.

1.1.27 If the Project is subject to Texas Commission on Environmental Quality (TCEQ) regulations, Project A/E shall coordinate all related design efforts, including the civil engineer and landscape architect, so that consideration of site design and Best Management Practices ("BMP's") are integrated.

1.1.28 Insurance Coverage. Project A/E shall carry professional liability/errors and omissions insurance, covering the services provided under this Agreement and other coverages as required below with companies authorized to do business in the State of Texas or an eligible surplus lines insurer operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts as further described, acceptable to and approved by the Owner. The costs of such insurance will be at the expense of the Project A/E. The insurance policy shall remain in force for a period of two (2) years beyond the Final Completion Date. Each request for payment by Project A/E shall include the expiration date of the insurance. Project A/E shall deliver to Owner replacement certificates not less than thirty (30) days after the expiration of any such insurance.

- a) Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance shall cover all professional services rendered by or on behalf of the Project Architect and its consultants under the Agreement. Renewal policies written on Claims-Made basis will maintain the same retroactive date as is in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Project Architect agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of this policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two years after the expiration of cancellation of this policy.
- b) On Site Insurance: For services performed on Owner's premises, Project A/E shall furnish to Owner Certificates of Insurance ("COIs") as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence

- c) Notice of Cancellation: Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

1.1.29 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Project A/E under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued

existence of all required insurance no later than 30 days after each annual insurance policy renewal. All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents of The University of Texas System, The University of Texas System and Owner as Additional Insured for activities arising out of this Agreement on an ISO (CG 20 10 0704) or equivalent form. Workers compensation insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The University of Texas System, The University of Texas System and Owner. Commercial General Liability and Business Auto Liability insurance policies will be endorsed to provide primary and non-contributory coverage.

1.1.30 Project A/E is responsible for any self-insured retentions, or deductibles that apply to any policy limit required herein.

1.1.31 Certificates of Insurance. Approved Texas Department of Insurance certificates will be mailed, faxed, or emailed to the following Owner's contact.

1.1.32 The insurance policies required in this Agreement will be kept in force for the periods a) specified below:

- a) Required coverages will be kept in force until receipt of Final Payment to Project Architect by Owner;
- b) Workers' Compensation Insurance and Employer's Liability insurance will be kept in force until the services have been fully rendered and accepted by Owner in writing.

1.2 Schematic Design Phase

1.2.1 Based on the mutually agreed upon Pre-Design Document, the Construction Cost Limitation and the Project Milestone Schedule, Project A/E shall prepare sufficient alternative approaches to design the construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents in accordance with Owner's Design Guidelines, Owner's Master Construction Specifications, and any additional requirements set forth in Article 14.

1.2.2 Project A/E shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in Owner's Design Guidelines.

1.2.3 Project A/E shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

1.2.4 Project A/E shall furnish and deliver to Owner the number of complete printed sets of Schematic Design documents as enumerated in Article 14.

1.2.5 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Schematic Design Documents. Project A/E shall advise Owner of any adjustments to the project scope necessary to align the Estimated Construction Cost with the Construction Cost Limitation and shall revise the Schematic Design documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.2.6 Before proceeding into the Design Development Phase, Project A/E shall obtain Owner's written acceptance of the Schematic Design documents and acknowledgement of Project A/E's submission of the detailed Estimated Construction Cost and updated Project Milestone Schedule. Owner's acknowledgement of Project A/E's submission of the detailed Estimated Construction Cost Report prepared at the Schematic Design Phase does not relieve Project A/E of its obligation to design the Project within the Construction Cost Limitation.

1.3 Design Development Phase

1.3.1 Based on the approved Schematic Design documents and any adjustments to the Pre-Design Document or Construction Cost Limitation authorized by Owner, Project A/E shall prepare, for approval by Owner, Design Development documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines, Owner's Master Construction Specifications, and any additional requirements set forth in Article 14.

1.3.2 Project A/E shall furnish and deliver to Owner the number of complete printed sets of Design Development documents as enumerated in Article 14.

1.3.3 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Design Development documents. Project A/E shall advise Owner of any adjustments to the project scope necessary to align the Estimated Construction Cost with the Construction Cost Limitation and shall revise the Design Development documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.3.4 Before proceeding into the Construction Document Phase, Project A/E shall obtain Owner's written acceptance of the Design Development documents and acknowledgement of Project A/E's submission of a detailed Estimated Construction Cost Report and updated Project Milestone Schedule. Owner's acknowledgement of Project A/E's submission of a detailed Estimated Construction Cost Report prepared at the Design Development Phase does not relieve Project A/E of its obligation to design the Project within the Construction Cost Limitation.

1.3.5 When so requested by Owner, Project A/E shall prepare presentation materials as defined in Owner's Design Guidelines at completion of Design Development and, if so requested, shall present same to the Board of Regents at a regular meeting where scheduled within the State of Texas.

1.3.6 Project A/E shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical or electrical elements.

1.3.7 Project A/E shall assist Owner with submitting the project to the Texas Higher Education Coordinating Board ("THECB"). Such assistance shall include (i) the preparation of a listing of the rooms, room type and usage codes, and square footages in the project, and (ii) the preparation of project cost information, in accordance with THECB Guidelines. This information shall be provided at the completion of the Design Development Phase when requested by Owner. The listing of rooms, room type and usage codes, and square footages shall then be updated to reflect any changes occurring during construction and provided to Owner at Substantial Completion.

1.4 Construction Document Phase

1.4.1 Based on the approved Design Development documents and any further adjustments in the scope or quality of the Project or in the Construction Cost Limitation authorized by Owner, Project A/E shall prepare, for approval by Owner, Construction Documents consisting of Drawings and Specifications, in accordance with Owner's written requirements, setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines, Owner's Master Construction Specifications and any additional requirements contained in Article 14. The Drawings and Specifications for the entire Project shall be prepared so that the construction of the Project will cost no more than the Construction Cost Limitation established by Owner. Project A/E is responsible for managing the design to stay within the Construction Cost Limitation.

1.4.2 Project A/E shall advise Owner on matters such as construction phasing and scheduling, the inclusion of alternate scopes of work, special cash allowance items, liquidated damages, the Construction Contract Time, and other construction issues appropriate for the Project.

1.4.3 Project A/E shall assist Owner in connection with Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.

1.4.4 Project A/E shall ensure coordination and inclusion of sequence of operations for all operable systems in the Project.

1.4.5 Project A/E, at Project A/E's expense, at each stage of review described in Article 14, shall furnish and deliver to Owner the number of complete printed copies of all Drawings and Specifications of every character made or furnished in connection with defining the scope of the Work, as enumerated in Article 14, which copies shall become the property of Owner. Project A/E shall incorporate into the Drawings and Specifications such changes as are necessary to satisfy Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

1.4.6 Project A/E shall pay for the reproduction of all Drawings, Specifications and other documents for use by Project A/E and its consultants and all documents reproduced for the various completion stage reviews (as set forth in Article 14) by Owner prior to the reproduction of Construction Documents. All other reproduction costs shall be borne by Owner, provided that all invoices for such reproduction work are billed directly to Owner, free of state sales taxes, and identified by Project A/E as to the Owner's project name and project number. However, addenda documents issued after the Construction Documents are reproduced, except for changes generated by Owner, shall be supplied at Project A/E's expense.

1.4.7 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Construction Documents. Project A/E shall advise Owner of any adjustments to the project scope necessary to align the Estimated Construction Cost with the Construction Cost Limitation and shall revise the Construction Documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.4.8 Construction Document drawings shall be produced with computer aided design software as part of Basic Services. Owner will define the design software requirements and the final media for the data.

1.4.9 Project A/E shall participate in a final review of the Construction Documents with Owner at the Project location or other location specified by Owner in the State of Texas. Prior to Owner's approval of the Construction Documents, Project A/E shall incorporate such changes as are necessary to satisfy Owner's review comments.

1.4.10 Before proceeding into the Construction Services Procurement Phase, Project A/E shall obtain Owner's written acceptance of the Construction Documents and acknowledgement of Project A/E's submission of a detailed Estimated Construction Cost Report and Project Milestone Schedule. Owner's acknowledgement of Project A/E's submission of a detailed Estimated Construction Cost Report prepared at the Construction Document Phase does not relieve Project A/E of its duty to design the Project within the Construction Cost Limitation.

1.5 Construction Services Procurement Phase

1.5.1 Project A/E shall assist Owner in obtaining and evaluating bids or proposals, and assist in awarding contracts for construction services including preparation for and attendance at Pre-Submittal Conferences and HUB meetings. Project A/E shall answer inquiries from prospective respondents to requests for bids or proposals, at Owner's request, and shall prepare and issue any necessary addenda to the Construction Documents. Project A/E shall maintain a register of procurement documents, arrange for the distribution of documents to prospective respondents, and plan rooms, and, when so requested by Owner, obtain and administer deposits.

1.5.2 For solicitations based upon competitive sealed bidding, Project A/E shall review and inquire about the responsibility of apparent low bidders and inform Owner in writing of Project A/E's findings and recommendations. For solicitations based upon competitive sealed proposals, Project A/E shall review and inquire about qualifications and other pertinent proposal information and inform Owner in writing of Project A/E's findings and recommendations.

1.5.3 In the event the best value proposal or lowest responsible bid received for the Project exceeds the Construction Cost Limitation following the completion of the Construction Document Phase, Project A/E, without charge to Owner, and if so directed by Owner, shall revise the Construction Documents as necessary to bring the cost of the Project within the Construction Cost Limitation. Owner reserves the right to accept a proposal or bid and award a construction contract that exceeds the Construction Cost Limitation, if such award is determined by Owner to be in Owner's best interest.

1.6 Construction Phase—Administration of the Construction Contract

1.6.1 The Construction Phase shall commence with the award of the Construction Contract, either the "Agreement Between Owner and Contractor" or the "Agreement Between Owner and Construction Manager-at-Risk", and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Project A/E's services have been satisfactorily performed, whichever occurs later.

1.6.2 Project A/E shall administer the Construction Contract for the Project as set forth below and in the edition of Owner's Design Guidelines current as of the date of this Agreement.

- a) Project A/E shall coordinate with the Construction Manager to establish and maintain a numbering and tracking system for all Project records, including changes, Requests for Information, Submittals, and Project A/E's supplementary instructions.

- b) Project A/E shall chair all pre-design and design phase meetings scheduled by Owner or Project A/E and shall promptly provide summary notes to all parties. Project A/E shall attend the Contractor's regularly scheduled planning meetings when requested.

1.6.3 Project A/E shall review the Contractor's list of proposed subcontractors for the work, initial administrative submittals for the Baseline Schedule, Schedule of Values, Submittal Register, and Equipment Matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. Project A/E shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by Owner when appropriate. Project A/E shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.6.4 Project A/E and its consultants shall prepare appropriate materials for and conduct a Pre-Construction Conference at the Site prior to commencement of construction by the Contractor.

1.6.5 Project A/E shall be a representative of Owner during the Construction Phase, and shall advise and consult with Owner. Instructions to the Contractor shall be forwarded through Project A/E and all communication by and with Project A/E's consultants shall be through Project A/E except that Owner reserves the right to communicate directly with the Contractor and consultants as Owner deems necessary or appropriate at any time. Project A/E shall have authority to act on behalf of Owner to the extent provided in this Agreement and as supplemented by the Construction Contract Documents. Duties, responsibilities and limitations of authority of Project A/E shall not be restricted, modified or extended without written acceptance of Owner.

1.6.6 Project A/E shall visit the Site at least once each week during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Contract Documents. Each of Project A/E's consultants shall visit the Site at least once each week during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Contract Documents. Project A/E and its consultants shall submit written reports of their Site visits and meetings. Project A/E shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work.

- a) On the basis of the onsite observations, Project A/E shall keep Owner informed of the progress and quality of the Work, and shall endeavor to guard Owner against defects and deficiencies in the Work. Project A/E shall notify Owner and Contractor in writing of any portions of the Work which Project A/E has observed as not being in conformity with the Construction Contract Documents and make recommendations as to correction of the deficiencies or defects. Project A/E shall make its Site representative available and shall consult with Owner and Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.
- b) In addition to Site visits for general inspection and observation, Project A/E and its consultants shall visit the Site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. Project A/E and its consultants shall provide written reports of all Site visits to Owner and Contractor.

1.6.7 Project A/E shall prepare an agenda for, and conduct monthly job conferences for attendance by representatives of Contractor, Subcontractors, Project A/E and Owner, and prepare and distribute minutes of the meetings.

1.6.8 Project A/E shall not have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Construction Contract Documents.

1.6.9 Project A/E shall at all times have access to the Work wherever it is in preparation or progress.

1.6.10 Project A/E shall determine the amounts owing to Contractor based on observations of Work placed at the Site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with Owner's representatives, and shall certify Contractor's Application for Payment in an appropriate amount.

1.6.11 The certification of Contractor's Application for Payment shall constitute a representation by Project A/E to Owner, based on Project A/E's observations at the Site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of Project A/E's knowledge, information and belief, the quality of the Work is in accordance with the Construction Contract Documents (subject to an evaluation of the Work for conformance with the Construction Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Construction Contract Documents, to minor deviations from the Construction Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that Contractor is entitled to payment in the amount certified. However, the approval of Contractor's Application for Payment shall not be a representation that Project A/E has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract.

1.6.12 Project A/E shall be the interpreter of the technical requirements of the Construction Contract Documents and the judge of the performance of the Work of the Contractor. Project A/E shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Contract Documents.

1.6.13 Interpretations and recommendations of Project A/E shall be consistent with the intent of and reasonably inferable from the Construction Contract Documents and shall be in written or graphic form.

1.6.14 Subject to approval of Owner, Project A/E's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Construction Contract Documents. Project A/E shall review interior designs, furniture selections or both proposed by Owner and advise Owner on their aesthetic compatibility with Project A/E's design.

1.6.15 Project A/E shall have the responsibility and the authority, with appropriate notification to the parties, to reject Work which does not conform to the Construction Contract Documents. Whenever, in Project A/E's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Construction Contract Documents, Project A/E will have authority to require special inspection or testing of the Work in accordance with the provisions of the Construction Contract Documents, whether or not such Work will then be fabricated, installed or completed. Project A/E shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.

1.6.16 Project A/E and its consultants shall review and approve or take other appropriate action upon the Contractor's Submittals, such as Shop Drawings, product data and Samples, but only for conformance with the design concept of the Work set forth in the Construction Contract Documents, and shall respond to the Contractor's inquiries and questions and provide supplemental information as appropriate. Action on Submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) Days after receipt. Project A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Project A/E's review shall not constitute approval of any construction means or methods.

1.6.17 Project A/E shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.

1.6.18 Project A/E shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.

1.6.19 Unless Owner expressly directs otherwise, Project A/E shall prepare and sign Change Orders for Owner's approval and execution in accordance with the Construction Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Construction Contract Sum or an extension of the Construction Contract Time which are not inconsistent with the intent of the Construction Contract Documents. In conjunction with each Change Order, Project A/E shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to Owner whether the proposal is acceptable.

1.6.20 Project A/E shall prepare Proposed Change Order(s) and revise Construction Contract Documents, when appropriate, to illustrate and document the work required by approved Change Orders, addenda, Project A/E's supplemental instructions, and any other alterations to the Construction Contract Documents generated by Project A/E or Owner. All proposed changes to Drawings and Specifications, regardless of how initiated, shall be totally defined in the document depicting them as to scope of work added, removed, or changed. The original Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, Owner's design software. Such revisions shall be clearly indicated and a current revision date shall be included on the document. Changes to the Specifications shall be made by consecutively numbered and dated addenda. All changes to Drawings and Specifications will be identified with date of change, revision number and other customary identification references. Areas changed on Drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded. Project A/E shall submit revised Construction Documents per Owner's native software and in Adobe PDF format and per Owner's close-out procedures.

1.6.21 Project A/E and its consultants shall conduct and participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion or pre-final work observations to determine the dates of Substantial Completion, and Final Completion. In association with each observation, Project A/E and its consultants shall prepare a list of items which Project A/E and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official Open Item List(s) and Punchlist(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

1.6.22 Project A/E shall review, for conformance with the Construction Contract Documents, Contractor's submission of guarantees and warranties.

1.6.23 Project A/E and its consultants shall assist Owner in checking Record Documents during the course of the Work in association with certifying Applications for Payments and shall review Record Drawings and Specifications for completeness and compliance with Construction Contract requirements at Substantial Completion and at Final Completion of the Project.

1.6.24 Project A/E shall receive and review Contractor's submission of Record Documents and Close-out Documents furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Construction Contract, shall forward to Owner. Project A/E shall execute the Certificate of Final Completion and certify Final Payment to the Contractor when the requirements of the Construction Contract have been met.

1.6.25 Project A/E shall monitor the Contractor's Work Progress Schedule for the construction phase work and assist Owner in reviewing all relevant activities and advise Owner of the Contractor's scheduled progress.

1.6.26 Project A/E shall provide assistance to Owner for the purpose of advising and counseling Owner's personnel in the usage, operation and maintenance of the building mechanical, electrical, and plumbing systems.

1.6.27 Project A/E shall be available after Final Payment to advise Owner regarding warranty items and to inspect warranty work during the Warranty Period. Project A/E shall participate in the Project's one-year warranty review.

1.7 Additional Services

1.7.1 Additional Services are those services which shall be provided if authorized and confirmed in writing by Owner and for which compensation will be provided as described in this Agreement in addition to compensation for Basic Services. Prior to commencing any Additional Services, Project A/E shall prepare for acceptance by Owner an Additional Services Proposal, in the form attached hereto as an Exhibit, or other format as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Project A/E has determined that such services are Additional Services, and which shall set forth the proposed fee and Reimbursable Expenses for which Project A/E is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Those services which Owner contemplates to be provided as Additional Services or considers to be Additional Services are described in Article 14. Project A/E shall proceed with rendering Additional Services only after receiving Owner's written acceptance of the Additional Services Proposal.

1.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Project A/E pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

1.7.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is an Additional Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by Owner and to the extent necessary for Project A/E to complete its responsibilities hereunder free of material errors and omissions. Project A/E shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.

1.8 Time

1.8.1 Project A/E shall perform all of Project A/E's services described herein as expeditiously as is consistent with (1) Project A/E's best professional efforts, skill and care, (2) the orderly progress of such services, and (3) in conformance with the Project Milestone Schedules so that the desired development and construction schedule for the Project shall be maintained. Project A/E shall at all times provide sufficient personnel to accomplish Project A/E's services within the time limits set forth in the schedules described herein.

1.8.2 The Project Milestone Schedule, attached hereto as an Exhibit, identifies the schedule for completion of each of the phases of services to be performed by Project A/E pursuant to this Agreement. The Project Milestone Schedule includes dates previously provided in the Request for Qualifications but subject to modifications made by Owner to reflect current conditions. Supplemental activities shown on the Project Milestone Schedule, and any associated dates not yet defined, shall be determined at the completion of the Pre-design Phase or at such time when both parties mutually agree that the Project is sufficiently developed and documented. Changes in this Project Milestone Schedule may be made only with the written approval of Owner. Project A/E shall perform all of its services in accordance with the then-current Project Milestone Schedule approved by Owner.

1.8.3 Project A/E shall prepare and submit on a monthly basis an updated design milestone schedule that is acceptable to Owner prior to submission of the Project A/E's Statement for Architectural/Engineering Services Rendered, in conformance with the design Project Milestone Schedule, so that the desired design schedule for the Project is maintained by Project A/E.

Article 2 Owner's Responsibilities

2.1 Owner has prepared a pre-design phase summary document ("Pre-design Phase Document" in the form of either a "Facility Program" or a "Pre-Design Report"), which is attached hereto as an Exhibit, or Owner and Project A/E may agree that Project A/E shall prepare the Pre-design Phase Document as an Additional Service as set forth in Article 14 of this Agreement. The Pre-design Phase Document will set forth Owner's description of the project scope, preliminary project cost, schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, information related to existing facilities, and desired special components, systems and equipment. If Project A/E prepares the Pre-design Phase Document, then Owner will review the Pre-design Phase Document when completed and then determine whether to proceed with the Project and authorize commencement of Basic Services. Owner reserves the right to terminate the Agreement following completion of the Pre-design Phase, and shall have no further obligation to Project A/E other than payment for services authorized by Owner and provided by Project A/E prior to such termination in accordance with the terms and conditions of this Agreement.

2.2 Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Construction Cost Limitation, Owner's Special Cash Allowance, Owner's Construction Contingency, and other costs which are the responsibility of Owner. The Project Milestone Schedule attached hereto as an Exhibit, sets forth Owner's plan for milestone dates and completion of the Project.

2.3 Owner designates its Associate Vice President for Facilities Planning, Design and Construction as its representative authorized to act in Owner's behalf with respect to the Project. Owner's authorized representative, or her or his delegate, shall examine the documents submitted by Project A/E and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of Project A/E's services. The Associate Vice President for Facilities Planning, Design and Construction is also designated as Owner's representative for the purpose of administering this Agreement, including determination of fees earned by Project A/E and equitable back charges against Project A/E. Owner shall have the right to withhold from payments due Project A/E such sums as Owner deems reasonably necessary

to protect Owner against any loss or damage which may result from negligence by Project A/E or failure of Project A/E to perform Project A/E's obligations under this Agreement pending final resolution of such claims.

2.4 Unless otherwise agreed between Owner and Project A/E, Owner, at Owner's cost, will secure the services of surveyors, geotechnical and laboratory testing engineers, or other special consultants to develop additional information to the extent necessary for the design of the Project. Project A/E shall provide Owner with parameters for inclusion in Owner's instructions to such providers.

2.5 Owner shall arrange and pay for structural, mechanical, chemical and other laboratory tests as necessary during construction except as required of the Contractor in the Construction Contract Documents.

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

2.7 The services, information, surveys and reports required by the preceding paragraphs shall be furnished at Owner's expense.

2.8 If Owner observes or otherwise acquires actual knowledge of any design flaw or defect in the Project or conflict in the Construction Contract Documents, written notice thereof will be given by Owner to Project A/E; however, Owner shall have no obligation or duty to investigate whether such flaws, defects, or conflicts exist.

2.9 Owner will review Project A/E's design at the completion of Schematic Design and Design Development and at completion of the stages of Construction Documents as described in Article 14. Comments concerning corrections or amendments to the Drawings and Specifications will be furnished in writing to Project A/E as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. Owner may require Project A/E to halt production during design review.

2.10 Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Project A/E's services and of the Work.

2.11 At the time the Construction Documents are issued for procurement of construction services, Owner shall prepare a statement calculating Project A/E's fees for the Project based upon the provisions of this Agreement and any adjustments to the fee calculation mutually agreed to during design. If Project A/E objects to the revised project fees, Project A/E must notify Owner of its objections in writing within fourteen (14) days of receipt of the fee statement otherwise Project A/E's approval of the fee amounts shall be deemed given.

2.12 Owner will furnish personnel who will be responsible for inspecting the Work, including close, on-site examination of the materials, structure and equipment; and surveillance of the workmanship and methods used to ensure that construction of the Project is reasonably accomplished in accordance with the Construction Contract Documents and good construction practices.

Article 3 Construction Cost—Definition

3.1 The Estimated Construction Cost means the amount calculated by Project A/E for the total cost of all elements of the Project, including all alternate scopes of work, designed and specified by Project

A/E or reasonably inferable as a usual and customary component of the Project or otherwise necessary for complete construction of the Project.

3.2 The Estimated Construction Cost shall include at current market rates a reasonable allowance for overhead, profit and general conditions costs, the cost of labor and materials to be furnished by Contractor and any equipment which has been shown in the plans, specified, and specially provided for by Project A/E. The Estimated Construction Cost shall include and consider the cost of labor and materials necessary for installation of Owner-furnished equipment which has been shown in the plans, specified, and specifically provided by Project A/E.

3.3 The Estimated Construction Cost does not include compensation to Project A/E and Project A/E's consultants, Owner's Construction Contingency, Owner's Special Cash Allowances, the cost of the land, rights-of-way, or other costs which are the responsibility of Owner as provided in Article 2.

Article 4 Direct Salary Expense

4.1 Direct Salary Expense ("DSE") is defined as the actual salaries, expressed on an hourly wage basis, prior to deductions for employment taxes (such as FICA, Medicare, income tax withholding) and employee-paid benefits, of all personnel, including Project A/E's employees directly engaged on the Project (and performing consultations or research or preparing designs, Drawings, and Specifications for the Project). DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to the Project. Any multiplier applied to such DSE shall be for the purpose of covering such fringe benefits, expense, and profit. All personnel shall mean anyone employed by Project A/E and its consultants including, but not limited to, architects, engineers, officers, principals, associates, design software technicians, designers, job captains, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing Drawings, Specifications, plans, or other documents pertaining to the Project, or who are performing services during construction at the Site that are directly attributable to, and necessary for, such construction.

4.2 The full list of all personnel titles and the hourly wage for each which has been initially accepted by Owner is included as an Exhibit hereto. With Owner's express, written approval, the hourly rates contained therein may be adjusted annually in accordance with the usual and customary salaries of the architectural profession in the area of Project A/E's home office.

Article 5 Reimbursable Expenses

5.1 Reimbursable Expenses are in addition to the compensation for Basic Services and Additional Services, and include actual out-of-pocket reasonable expenditures made by Project A/E and Project A/E's employees and consultants incurred solely and directly in connection with Project A/E's performance of its services hereunder for the following expenses:

- 5.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.
- 5.1.2 Professional models and renderings produced for presentations when requested by Owner.
- 5.1.3 Shipping or mailing of all reports, Drawings, Specifications, and other items in connection with the Project except for: correspondence between Project A/E and Owner; Project A/E's in-house work or correspondence; or work or correspondence exchanged between Project A/E and its consultants.

- 5.1.4 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by Owner.
- 5.1.5 Expense of transportation and living expenses in connection with out-of-state travel approved in advance in writing by Owner and directly associated with the Project will be reimbursed in accordance with Owner's Current Employee Travel Policy, which is included as an Exhibit hereto.
- 5.1.6 Expenses of any reprographic services that are in addition to those required under Basic Services requested by Owner in writing, including, but not limited to reproduction and delivery of Drawings, Specifications, addenda, reports or other miscellaneous documents. Reprographic services may include electronic document files or paper printing and delivery. Authorized additional reprographic services that are not provided in-house by Project A/E shall be procured in the following manner:
- a) Project A/E shall develop a complete scope of services fully describing the services to be provided by the reprographic vendor. Project A/E shall submit the scope of services to and request offers from at least three reprographic vendors, including at least one woman owned Historically Underutilized Business ("HUB") and one minority owned HUB. For services projected to be less than \$25,000, three offers procured by telephone are acceptable. For services anticipated to be greater than \$25,000, three written offers are required. An updated HUB Subcontracting Plan (HSP) reflecting the new scope of work shall be submitted to Owner for approval.
 - b) Reprographic services vendor shall provide, as a minimum, the following information in its offer to Project A/E:
 - (1) Its ability to handle projected volume on given schedule.
 - (2) Its ability to receive and warehouse Project A/E's electronic document files.
 - (3) Its ability to manage construction procurement document deposit process.
 - (4) Its ability to print partial document sets as directed by Project A/E.

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

5.3 Expenses not allowed for reimbursement include the cost of review documents required to be provided to Owner under Article 14, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-project related items. All tips must be included within the per diem allowances.

5.4 Owner shall not pay a mark-up on Reimbursable Expenses. Project A/E shall submit receipts for all Reimbursable Expenses along with any reimbursement request.

Article 6 Basis of Compensation

Owner shall compensate Project A/E for the services provided in accordance with Article 7, Payments to Project A/E, and other terms and conditions of this Agreement, as follows:

6.1 Basic Services Fee

6.1.1 For Basic Services, as described in Article 1, and including all disciplines identified in Article 14.1 as part of Basic Services, Project A/E's Basic Services Fee shall be calculated as follows:

The Construction Cost Limitation times the agreed fee percentage equals Basic Services Fee (see paragraph 14.4).

6.1.2 The agreed fee percentage for Basic Services cannot exceed the maximum fee allowed as interpolated from the Architect/Engineer Fee Schedule, which is included as an Exhibit hereto.

6.1.3 Project A/E's Basic Services Fee will be based on the Construction Cost Limitation regardless of whether the actual Construction Contract Sum at time of award, less Owner's Special Cash Allowance(s) and Owner's Construction Contingency, is more or less than the Construction Cost Limitation provided that the resulting fee, when expressed as percentage of the actual Construction Contract Sum at time of award, shall not exceed the maximum percentage fee established by the Board of Regents, or any other limitations imposed by law.

6.1.4 In multi-stage projects, the Basic Services Fee for each Construction Contract Stage ("CCS") shall be calculated multiplying the Sub-Construction Cost Limitation for the CCS times the agreed fee percentage for the Basic Services Fee established in paragraph 14.5. Project A/E's total Basic Services Fee will be the sum of the Basic Services Fees for all CCSs. The total Basic Services Fee shall not exceed the maximum fee allowed as a percentage of the Construction Cost Limitation interpolated from the appropriate Board of Regents table.

6.1.5 If the description of Project A/E's Basic Services is changed materially, the applicable fee percentage shall be adjusted equitably, subject to the maximum fee limitations established by the Board of Regents.

6.2 Fees for Changes in Project Scope

6.2.1 For reductions in the scope of the Project that occur after commencement of the Schematic Design Phase but before confirmation of the Construction Cost Limitation at the completion of the Construction Services Procurement Phase, Project A/E's fee for basic services related to the eliminated scope of the Project, to the extent such services are provided by Project A/E, shall be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide price obtained for the eliminated scope or, if no price is obtained, an up-to-date detailed Estimated Construction Cost for the eliminated scope, but only to the extent that services for the eliminated scope were performed by Project A/E.

6.2.2 For increases in the scope of the Project that occur after commencement of the Schematic Design Phase but before confirmation of the Construction Cost Limitation at the completion of the Construction Services Procurement Phase, the fee for the Basic Services related to the additional scope, to the extent such services are provided by Project A/E, shall be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide price obtained for the added scope or, if no price is obtained, an up-to-date detailed Estimated Construction Cost for the added scope, but only to the extent that services for the added scope were performed by Project A/E.

6.3 Fees for Change Order Services

6.3.1 If revised Construction Documents are required due to material changes ordered by Owner and not due to errors and omissions on the part of Project A/E, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide price obtained for the changes to the Work or, if no price is obtained, an up-to-date detailed

Estimated Construction Cost for the changes to the Work, but only to the extent that services for the changes to the Work are performed by Project A/E.

6.4 Additional Services

6.4.1 Fees for Additional Services, including any services identified in Article 14.2 are in addition to the Basic Services Fee described above.

6.4.2 For Additional Services of Project A/E that are not Basic Services or fees due to changes in Project scope, Project A/E's fee shall be calculated as follows.

6.4.3 The fees for Additional Services will be negotiated by Owner and Project A/E as the scope of the Additional Services is defined and shall be calculated in one of the following ways:

- a) A pre-established fixed price amount;
- b) An agreed percentage of the Contractor's cost of the Work resulting from the service being provided; or;
- c) On an hourly basis for time expended at an amount not to exceed 3.0 times the Direct Salary Expense for all personnel directly involved in providing the service.

6.4.4 In the absence of an agreement between Owner and Project A/E, the fees for Additional Services shall be calculated on an hourly basis.

6.4.5 For additional services of Project A/E's consultants that are not Basic Services or additional Basic Services due to changes in Project scope, Project A/E's fee shall be calculated as an amount not to exceed FIVE PERCENT (5%) times the amount that the consultant bills Project A/E for the additional services. The consultant's fee for the additional services shall be calculated in the same manner as described in Article 6.4.3.

6.5 Reimbursable Expenses

For Reimbursable Expenses, as described in Article 5, and any other items included in Article 14 as Reimbursable Expenses, Project A/E's reimbursement shall be calculated as an amount not to exceed 1.00 times the amounts actually expended by Project A/E, and Project A/E's employees and consultants in the interest of the Project.

Article 7 Payments to Project Architect/Engineer

7.1 Payments for Basic Services

7.1.1 Payments for Basic Services shall be made at the end of each phase of services or, with Owner's approval, monthly and shall be in proportion to services performed within each phase of services, as demonstrated by work product, on the basis set forth in Article 6. The form for the Statement for Architectural/Engineering Services Rendered ("Statement for Services Rendered") to be utilized is attached as an Exhibit hereto, and Attachments H and I thereto, which concern payments planned and payments made to Historically Underutilized Businesses.

7.1.2 No partial payment made shall be, or construed to be, final acceptance or approval of the services to which the partial payment relates, or a release of Project A/E of any of Project A/E's obligations or liabilities with respect to such services.

7.1.3 Project A/E shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

7.1.4 Project A/E shall submit a final Statement for Services Rendered to Owner within thirty days after approval of the Final Payment to the Contractor.

7.1.5 The acceptance by Project A/E, or Project A/E'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 which Project A/E, or Project A/E's successors, have or may have against Owner under the provisions of this Agreement except those claims previously made in writing and identified by Project A/E as unsettled at the time of the final request for payment.

7.1.6 All Statements for Services Rendered shall be submitted in accordance with Owner's Rider 116, Invoice Payment Requirements, a copy of which is included as an Exhibit hereto. For purposes of Texas Government Code 2251.021, the date the performance of service is completed is the date when Owner's representative approves the Statement for Services Rendered. Owner shall make payment within 30 days of the date Owner approves the Statement for Services Rendered.

7.2 Payments for Additional Services and Reimbursable Expenses

Payments for Project A/E's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of Project A/E's valid Statement for Services Rendered incurred as approved by Owner. Statements for Services Rendered shall include complete documentation of all expenses.

7.3 Payments Withheld

7.3.1 Under no circumstances shall Owner be obligated to make any payment (whether a progress payment or final payment) to Project A/E if any one or more of the following conditions precedent exist:

- a) Project A/E is in breach or default under this Agreement;
- b) Any portion of a payment is for services that were not performed in accordance with this Agreement provided, however, payment shall be made for those services that were performed in accordance with this Agreement;
- c) Project A/E has failed to make payments promptly to consultants or other third parties used in connection with services for which Owner has made payment to Project A/E;
- d) If Owner, in its good faith judgment, determines that the balance of the unpaid fees is not sufficient to complete the services in accordance with this Agreement; or
- e) Project A/E has failed to achieve a level of performance necessary to maintain the Project Milestone Schedule.

7.3.2 No deductions shall be made from Project A/E's compensation on account of liquidated damages or other sums withheld from payments to Contractors or on account of the cost of changes in the Work other than those for which Project A/E may be liable.

Article 8 Project Architect/Engineer's Accounting Records

8.1 Records of A/E Costs, Reimbursable Expenses, expenses pertaining to Additional Services, services performed on the basis of a multiple of Direct Salary Expense, and other Project costs shall be kept on the basis of Generally Accepted Accounting Principles and shall be available to Owner or Owner's authorized representative business hours for a period of at least four (4) years after Final Payment or abandonment of the Project. Owner shall have the right to verify the details set forth in Project A/E's billings, certificates, and statements, either before or after payment by (1) inspecting the books and records of Project A/E during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Project A/E's business employees; (4) visiting the Project Site; and (5) other reasonable action.

8.2 Project A/E shall submit a notarized statement documenting that the Direct Salary Expenses stated on the Exhibit hereto comply with the definition for Direct Salary Expense under Article 4, Direct Salary Expense, and that any multiplier applied to DSE on the attached Exhibit complies with the definition for DSE under Article 4. Project A/E shall break down the multiplier under Article 4 for the purpose of fringe benefits, expense, and profit to justify the multiplier up to a maximum of 3 allowed under Article 6.

Article 9 Ownership and Use of Documents

9.1 Drawings and Specifications as instruments of service are and shall remain property of Project A/E whether the Project for which they are made is executed or not. Owner shall be permitted to retain copies, including reproducible files in Owner's native software, of Drawings and Specifications for information and reference in connection with Owner's use and occupancy of the Project. Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this Agreement, to use the Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose, regardless of whether Project A/E remains as Project A/E, has resigned, this Agreement has been terminated, Project A/E's scope of services has been modified, or the services herein have been completed.

9.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not be construed as publication in derogation of Project A/E's rights.

Article 10 Termination of Agreement

10.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such seven-day period.

10.2 This Agreement may be terminated at any time by Owner for its convenience upon at least seven days' written notice to Project A/E.

10.3 In the event of termination not the fault of Project A/E, Project A/E shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Project A/E shall have delivered to Owner such statements, accounts, reports and other materials as required by paragraph 10.5 below together with all reports, documents and other materials prepared by Project A/E prior to termination.

10.4 A termination under this Article shall not relieve Project A/E or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Project A/E. The provisions of this Article shall survive the termination of this Agreement. In the event of a termination under this Article, Project A/E hereby consents to employment by Owner of a substitute Project A/E to complete the services under this Agreement, with the substitute Project A/E having all rights and privileges of the original Project A/E. Project A/E and its consultants shall not be liable for any changes

made by Owner to the Drawings or Specifications (including Drawings or Specifications provided in Owner's native software or other electronic format) or for claims or actions arising from any such changes on projects in which Project A/E is not involved.

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

Article 11 Successors and Assigns

11.1 Owner and Project A/E, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, permitted successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement is a personal service contract for the services of Project A/E, and Project A/E's interest in this Agreement, Project A/E's duties hereunder, and Project A/E's fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner.

Article 12 Extent of Agreement

12.1 This Agreement supersedes all prior agreements, written or oral, between Project A/E and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. 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 Owner and Project A/E.

Article 13 Miscellaneous Provisions

13.1 **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.

13.2 **Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without giving effect to principles of conflicts of laws.

13.3 **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

13.4 **Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

13.5 **Independent Contractor.** Project A/E acknowledges that it is engaged as an independent contractor and that Owner has no responsibility to provide Project A/E or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Project A/E is not, and will

not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Project A/E hereby agrees to make Project A/E's own arrangements for any of such benefits as Project A/E may desire and agrees that Project A/E is responsible for all income taxes required by applicable law.

13.6 Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Project A/E 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.

13.7 Franchise Tax Certification. A corporate or limited liability company Project A/E 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.

13.8 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Project A/E agrees that any payments owing to Project A/E under this Agreement may be applied directly toward any debt or delinquency that Project A/E 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.

13.9 Loss of Funding. Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Project A/E and Owner may terminate this Agreement in accordance with Article 10. Project A/E acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

13.10 Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Project A/E in the performance of services for Owner, which is not generally known to the public, shall be confidential. Project A/E shall not, beginning on the date of first association or communication between Owner and Project A/E and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Project A/E's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Project A/E shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Project A/E as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Project A/E shall obtain assurances similar to those contained in this subparagraph from persons, vendors and consultants retained by Project A/E. Project A/E acknowledges and agrees that a breach by Project A/E of the provisions hereof will cause Owner irreparable injury and damage. Project A/E, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

13.11 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Project A/E a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Project A/E shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

13.12 Dispute Resolution.

13.12.1 To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used by Owner and Project A/E to attempt to resolve any claim for breach of contract made by Project Architect.

13.12.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Project Architect, in whole or in part, except as permitted by Subchapter D, Chapter 2251 of the Texas Government Code. Any periods set forth in this Agreement for notice and cure of defaults are not waived.

13.12.3 It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Project A/E, except at Owner's sole option. If Owner makes a claim against Project A/E and Project A/E then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, Owner's original claim against Project A/E does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*, except at the sole option of Owner.

13.12.4 In any litigation between the Owner and the Project Architect arising from this Agreement or this Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.

13.13 **Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

Ben Melson
Senior Vice President and Chief Financial Officer
Office of the SVP and CFO
1515 Holcombe Blvd., Unit 1495
Houston, Texas 77030-4009

With Copies to:

James Waters, J.D., P.E.
Director, Facilities Contract and Project Financial Services
Operations and Facilities Management
6900 Fannin, Suite 11.1024
Houston, Texas 77030

If to Project A/E:

_____[Name]_____
_____[Company Name]_____
_____[Street Address]_____
_____[City, State, Zip]_____
_____[Telephone Number]_____
_____[Email]_____

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

13.14 Authority to Act. Project A/E warrants, represents, and agrees that (1) it is a duly organized and validly existing legal entity in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Project A/E has been duly authorized to act for and bind Project A/E.

13.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument.

13.16 Ethics Matters; No Financial Interest. Project A/E and its employees, agents, representatives and consultants have read and understand Owner's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, Owner's Standards of Conduct Guide available at <https://www.mdanderson.org/patients-family/search-results.html?q=conflict%20of%20interest>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Project A/E nor its employees, agents, representatives or consultants will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Project A/E 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.

13.17 179 D Benefit Allocation.

13.17.1 Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Project A/E.

13.17.2 If the Owner and the Internal Revenue Service (IRS) determine that the Project A/E is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Project A/E could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Project A/E hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project A/E. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Project A/E fees or both.

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

13.17.4 Project A/E agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

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

13.19 Certification Regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Project A/E certifies Project A/E (1) does not currently boycott Israel; and (b) will not boycott Israel

during the Term of this Agreement. Project A/E acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

13.20 Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Project A/E certifies Project A/E (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Project A/E acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

13.21 Drug Testing Requirements. Prior to commencing any services under this Agreement, Project A/E will ensure that all Project A/E Personnel have tested negative on a five (5) panel drug test. The test must include the following: (a) Amphetamines, (b) Cocaine, (c) Opiates (2000 ng/ml), (d) PCP, and (e) THC. "Project A/E Personnel" is any individual who is compensated by Project A/E, or by a consultant engaged by Project A/E, for providing a service directly to Owner, whether or not that individual is present on Owner's premises. Project A/E Personnel may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.

Article 14 Other Conditions or Services

Owner and Project A/E hereby agree to the full performance of the covenants contained herein.

14.1 Basic Services. Project A/E's Basic Services are those services described in paragraphs 1.2 through 1.6 for which Project A/E is to be paid a Basic Services Fee in accordance with the terms of this Agreement and shall include the following disciplines:

- a. Architectural Services
- b. Landscape Architectural Services
- c. Civil Engineering Services
- d. Structural Engineering Services
- e. Mechanical Engineering Services
- f. Electrical Engineering Services
- g. Plumbing Engineering Services
- h. Life Safety Code Compliance*
- i. Life Safety Engineering Services (responsible for Fire Alarm System design and third-party certification of installed system)*
- j. Storm Water Pollution Prevention Plan Design Services (TPDES Consultant)*
- k. Commissioning Coordination*
- l. Security Planning Services*
- m. Personnel and Material Transport Planning Services*
- n. Geotechnical Services*

14.2 Additional Services. The services identified in the following list are not included in Basic Services.

14.2.1 PRE-DESIGN SERVICES.

14.2.1.1 Before proceeding into the Schematic Design Phase, Project A/E and its entire consultant team, working with Owner, shall prepare a comprehensive Pre-Design Phase Document for the Project. At Owner's sole discretion, the Pre-Design Phase Document shall be a Facility Program prepared in accordance with the U. T. System Facilities Programming Guidelines, which are included as an Exhibit hereto.

- 14.2.1.2 The anticipated services and deliverables under the responsibility of Project A/E are summarized in the Schedule of Anticipated Pre-Design Deliverables, which is included as an Exhibit hereto. Following selection, Project A/E shall provide Owner with a written itemized cost proposal to provide the designated pre-design services. Such compensation shall be in addition to the percentage based fee for Basic Services. Project A/E shall plan to meet with representatives of Owner as required during the development of the Pre-Design Phase Document and shall revise the Pre-Design Phase Document as necessary to achieve approval of Owner. In accordance with the Professional Services Procurement Act, Owner will review Project A/E's proposal for pre-design services and attempt to negotiate a fair and reasonable fee for these services. If Owner and Project A/E are unable to do so, Owner may, at Owner's sole discretion, formally end negotiations with Project A/E and, in accordance with the Professional Services Procurement Act, engage another architect/engineer to provide the Pre-Design Phase Services.

14.2.2 CONSTRUCTABILITY SERVICES. Project A/E shall retain a Constructability Consultant or Contractor to provide outside constructability consultation, cost estimating services and construction expertise through the Pre-Design, Schematic Design, Design Development and Construction Document Phases. The Constructability Consultant or Contractor, working with a Mechanical/Electrical/Plumbing Subcontractor, will provide review input related to Project objectives, methods and concepts of "constructability." In addition, the Constructability Consultant or Contractor will submit for review a Cost Quantity Survey to coincide with Project A/E's Basic Services submission requirements. When and as requested by Owner, Project A/E shall provide Owner with a written itemized cost proposal to provide the "constructability" services identified in the Constructability Implementation Program, attached to this Agreement as an Exhibit. Owner will review Project A/E's proposal for "constructability" services in accordance with the Professional Services Procurement Act.

14.2.3 HAZARDOUS MATERIAL ABATEMENT SERVICES. Project A/E shall employ a Hazardous Material Abatement consultant to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through the Pre-Design, Schematic Design, Design Development, Construction Document and Construction Administration Phases. This shall include reviewing Owner provided surveys, making recommendations for any additional surveys required, providing design and cost alternatives regarding hazardous material abatement, preparing Drawings and Specifications to include abatement in the general construction scope of work, providing a licensed individual to monitor hazardous material removal as required by State of Texas and Federal Environmental Protections Agency guidelines, and preparing a final abatement report. Compensation for these services shall be in addition to the percentage-based fee for Basic Services. Therefore, the construction cost of the abatement work will not be included in the basis for Project A/E's Basic Services fee. Following selection, Project A/E shall provide Owner with a written itemized cost proposal to provide the above Hazardous Material Abatement Consulting services, including coordination of Project A/E. Owner will review Project A/E's proposal for these services in accordance with the Professional Services Procurement Act.

14.2.4 COMMISSIONING SERVICES. [Not Used]

14.2.5 TPDES CONSULTANT. Project A/E shall employ a qualified Consultant (the "TPDES Consultant"), experienced in the Texas Pollutant Discharge Elimination System (TPDES) requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively "BMPs"), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant's services shall include, without limitation, (1) recommending structural and non-structural BMPs to Project A/E or other subcontractors under this

Contract for civil and landscape Site coordination, (2) preparing of Storm Water Pollution Prevention Plans (SWPPPs) including any BMP drawings and details (3) as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (4) the drafting of technical specifications governing the Contractor/Contractor's obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites ("General Permit") No. TXR 150000 and governing the Contractor/Contractor's recommended courses of action under BMPs. The TPDES Consultant shall insure that the storm water pollution prevention plan has been prepared for the Site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The University of Texas component on which the Site is located. The TPDES Consultant, through Project A/E, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner's obligations under the General Permit and shall advise Owner of the Contractor/Contractor's obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall advise Owner of Owner's obligations and prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to insure that the Contractor(s) of each project can comply with TPDES requirements and BMPs. Project A/E HEREBY INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO A WILLFUL, NEGLIGENT OR ACCIDENTAL ACT OR OMISSION OF Project A/E OR ITS CONSULTANTS.

14.2.6 REGISTERED ACCESSIBILITY SPECIALIST. Services provided by an independent contract provider under contract with TDLR to include the Preliminary Plan Review and Final Plan Review and Field Inspection of placed work to coincide with the pre-final inspections. Issues regarding accessibility shall be coordinated to be included in the punch list provided to the Contractor. Design consultation services and preliminary field inspections during installation of work are optional services. These services are related to the provisions of The Texas Architectural Barriers Act (Article 9102, T.C.S.).

14.2.7 PROJECT RECORD DOCUMENTS. Project A/E shall revise the Drawings and Specifications upon Final Completion of construction, to incorporate all modifications recorded by the Contractor on the Drawings and Specifications maintained at the Site, in addition to all alterations to the Construction Contract Documents generated by Project A/E or Owner. Project A/E shall label the revised Drawings and Specifications as "Record Drawings" and "Record Specifications" and shall deliver copies to Owner for record purposes, as follows:

- All Record Drawings and Record Specifications shall be submitted per Owner's native software requirements.
- In addition, submit one (1) full size paper copy of Record Drawings.
- In addition, submit Record Documents in Adobe PDF format.

14.2.8 LIFE SAFETY ENGINEERING CONSULTANT. Project A/E shall employ a qualified Fire Protection and Life Safety Engineering Consultant experienced in the design and third-party certification of building fire alarm systems in accordance with NFPA 72 and Title 28, Part 1, Chapter 34. Subchapter F. of the Texas Administrative Code (Fire Alarm Rules). The Life Safety Consultant's services shall include, without limitation, (1) preparing fire alarm system design plans and specifications, (2) performing third party certification as outlined in attached Exhibit titled "Fire Alarm Testing and Acceptance Procedures", and (3) participating in Owner's technical review process and responding to comments made during the reviews.

14.2.9 LEED CERTIFICATION SPECIALIZED SERVICES. [Not Used]

14.2.10 SPECIALIZED CONSULTANTS. The specialized consultant services identified in the following list are included in Additional Services:

- Audio Visual/Data & Telecommunications Engineering
- Materials Handling Services
- Furniture and Equipment Purchasing Services
- Major Medical Equipment Purchasing Services
- Hazardous Materials Handling Services
- Integrated Scheduling Services
- Graphics/Wayfinding Planning Services
- Safety Engineering Services
- Traffic Control Planning Services
- Wind Tunnel Testing/Emissions Control/Wind Pressure Analysis
- Art Procurement Consulting Services (not architectural renderings or models)
- Surveying Services

14.2.11 SPECIALIZED SERVICES. The specialized consultant services identified in the following list are included in Additional Services:

- Providing financial feasibility or other special studies.
- Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- Providing services to make detailed investigation of existing conditions or facilities or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by Owner.
- Providing coordination of Work performed by Owner's separate Contractors or by Owner's own forces.
- Providing services in connection with the Work of a Contractor or separate consultants retained by the Owner other than commissioning consultant, testing and balance consultant, material testing firms or similar firms.
- Providing services for planning tenant or rental spaces.
- Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of Project A/E.
- Making extensive investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, except as otherwise required by the Agreement, and services required in connection with construction performed by Owner.
- Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of the Contractor under the Construction Contract.

- Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- Providing services after the expiration of sixty (60) days following Final Payment to the Contractor, excluding any services necessary during the warranty period inspections and provided that all of Project A/E's services as required under this Agreement have been satisfactorily completed.
- Preparing to serve or serving as an expert witness at the request of Owner in connection with any public hearing, arbitration proceeding or legal proceeding.
- Providing any other services not otherwise customarily furnished in accordance with generally accepted architectural practice.

14.3 **Owner-Provided Services.** The services identified in the following list will be provided by Owner at Owner's expense.

- Code Check
- Plan Check
- Forensic Consultant
- Construction Auditing Consultant
- Existing Facility Surveys
- Integrated Scheduling
- Testing and Balancing
- Hazardous Materials Surveying and Abatement
- Laboratory Testing (Soils, Materials, Environmental, Welding, Steel Construction)
- Project Commissioning
- Wind Tunnel/Air Quality Analysis
- Exhaust Stack Testing
- Vibration Analysis
- Radio Frequency Interference Testing

14.4 **Basis of Compensation**

14.4.1 Basic Services.

On the Effective Date of this Agreement, the Construction Cost Limitation for the Project is stipulated to be:

THIRTY-SIX MILLION AND NO/100 (\$36,000,000.00)

This Construction Cost Limitation is hereby allocated as set forth below with such allocation subject to adjustment at Owner's sole discretion.

<u>Construction Cost Limitation - Total</u>	<u>\$36,000,000.00</u>
<u>Sub-Construction Cost Limitation for CCS1 (SCCL1)</u>	<u>\$14,000,000.00</u>
<u>Sub-Construction Cost Limitation for CCS2 (SCCL2)</u>	<u>\$22,000,000.00</u>

Therefore, on the Effective Date of this Agreement, the Basic Services Fee for the Project is stipulated to be:

$$\frac{\$36,000,000.00}{\text{Construction Cost Limitation}} \times 5\% = \underline{\$1,800,000.00} \\ \text{Fee \%} \qquad \qquad \qquad \text{Basic Services Fee}$$

The Basic Services is hereby allocated as set forth below with such allocation subject to adjustment at Owner's sole discretion.

<u>Basic Services Fee - Total</u>	\$1,800,000.00
<u>Basic Services Fee for CCS1</u>	\$700,000.00
<u>Basic Services Fee for CCS2</u>	\$1,100,000.00

If the Construction Cost Limitation is revised, due to a change in the scope of the Project, prior to acceptance of the Construction Manager's guaranteed maximum price proposal, the Basic Services Fee will be adjusted based on interpolation of the attached Exhibit, The University of Texas System Office of Facilities Planning and Construction Architect/Engineer Fee Schedule, *dated December 1987*:

Over \$15,000,000.00	5.0%
Over \$10,000,000.00	5.5%
Over \$ 1,000,000.00	6.0%
Up to \$ 200,000.00	7.0%

Owner may amend the Construction Cost Limitation after Owner authorizes the commencement of the Schematic Design Phase. If the Construction Cost Limitation is amended by Owner, and Project A/E has been notified in writing of such Construction Cost Limitation, then this paragraph of this Agreement shall be deemed to be amended by including such Construction Cost Limitation amount as the cost referenced in the first sentence of this paragraph of this Agreement. The Construction Cost Limitation will be confirmed or re-established at the completion of the Schematic Design Phase, at the completion of the Design Development Phase, at the completion of the Construction Document Phase, and at the completion of the Construction Services Procurement Phase.

14.4.2 Reimbursable Expenses. The maximum allowable cost on this Project for Reimbursable Expenses identified in Article 5 as approved by Owner is:

Maximum Reimbursable Expense Amount: \$100,000.00

14.4.3 Maximum Contract Sum

	Description	Amount
	Basic Services Fee (Article 14.4.1)	\$1,800,000.00
<i>plus</i>	Additional Services Fees:	T.B.D.
<i>plus</i>	Maximum Reimbursable Expenses (Article 14.4.2)	\$100,000.00
	MAXIMUM CONTRACT SUM	\$1,900,000.00

14.5 Progress Payments. Payments for Basic Services shall be made as provided in Article 7 in accordance with the following schedule:

Schematic Design Phase;	15%	\$270,000.00
Design Development Phase:	20%	\$360,000.00
Construction Documents Phase:	40%	\$720,000.00
Construction Services Procurement Phase:	5%	\$90,000.00
Construction Administration Phase	20%	\$360,000.00
TOTAL BASIC SERVICES FEE:	100%	\$1,800,000.00

14.6 Review Stages. Project A/E shall submit Drawings, Specifications, and other documents required by the Agreement to Owner for review at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase:

50%, 95%, 100%

14.7 Construction Cost Estimates. Project A/E shall submit Drawings and Specifications, Estimated Construction Cost Reports, and other documents as described in Article 1.1.15 at completion of the Schematic Design Phase, Design Development Phase and at the following stages of completion of the Construction Documents Phase:

50%, 95%, 100%.

14.8 Review Documents. Project A/E shall, at its expense, furnish and deliver to Owner for Owner's review, the following number of sets of review documents at the required review stages. Review documents shall also be furnished in Adobe PDF format:

Schematic Design:	(10) sets
Design Development:	(10) sets
Construction Documents:	(10) sets for each stage of % complete

14.9 Partnering. For the benefit of all parties and as a part of Basic Services, Project A/E and its entire Consultant team shall attend two (2) full day Partnering sessions in Houston, Texas; the first at the beginning of the Schematic Design Phase, and the second at the beginning of the Construction Phase.

14.10 Design Software Standards. Project A/E and its entire Consultant team, as part of Basic Services, shall utilize Owner's design software drawing-layering standard and shall review standard with Owner prior to commencing drawing preparation.

14.11 Space Planning Documents. Project A/E, as part of Basic Services, shall provide Owner with a complete current electronic set in Owner's native design software, of the architectural floor plan drawings with room names, room numbers, and room square footages indicated. Per Owner's Design Guidelines, Owner will determine when the initial drawings, defined as the "Room Number Control Set", must be submitted. Project A/E shall submit periodic updates to Owner as room name and number designations are changed.

Article 15 Amendments to the Agreement between Owner and Project A/E when using the Construction Manager at Risk Delivery Method

15.1 By incorporating this Article 15, Project A/E acknowledges and accepts that Owner intends to construct the Project using the Construction Manager at Risk delivery method. Therefore, Owner and Project A/E hereby agree that certain preceding terms in this Agreement are supplemented and/or modified as indicated below.

15.2 The following preceding terms of this Agreement are amended by incorporating the new paragraphs and substituting the modified paragraphs for their counterparts in their entirety. For clarity purposes only, all new contract language is indicated by *italicized type face*. Existing contract language that is unchanged by the amendments is shown in standard type face.

1.1 Basic Services

1.1.30 Owner has or intends to appoint a Construction Manager-at-Risk for this project ("Construction Manager" or "Contractor"). Project A/E shall coordinate its Services (Basic and Additional) hereunder with the Construction Manager. Owner may direct Project A/E to recognize the Construction Manager as its representative for the performance of various duties hereunder which are otherwise defined as the responsibility of Owner hereunder. Project A/E hereby acknowledges such appointment. Upon request, Project A/E shall be entitled to review a redacted version of the Agreement between Owner and Construction Manager at Risk for this project ("CM Agreement"). Nothing in the CM Agreement shall confer direct responsibility on the Construction Manager for Project A/E's services, nor shall anything contained therein diminish Project A/E's responsibility for its services as set forth hereunder.

1.1.31 Project A/E shall participate in the development and review of the Construction Manager's Guaranteed Maximum Price ("GMP") Proposal. This GMP Proposal will include the qualifications, assumptions, exclusions, value engineering and all other requirements identified within Attachment 1 To Exhibit D (Guidelines for the Preparation of the GMP) of the CM Agreement. Following Owner's Approval of the GMP Proposal, Project A/E shall be responsible for developing the Construction Documents, consisting of Drawings and Specifications, setting forth in detail, and incorporating the aforementioned requirements described within the Attachment 1 To Exhibit D and contained in the GMP Proposal. Furthermore, Project A/E shall participate in the documentation of the Construction Manager's GMP Proposal so as to adequately understand the contents of the GMP Proposal and ultimately confirm that the Construction Documents, when complete, reflect all qualifications, clarifications and assumptions contained within the GMP Proposal. Project A/E and the Construction Manager shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions and value engineering and all other requirements identified in Attachment 1 To Exhibit D, into the Construction Documents."

1.2 Schematic Design Phase

1.2.1 Based on the mutually agreed upon Pre-Design Phase Document, the Construction Cost Limitation and the Project Milestone Schedule, Project A/E shall prepare sufficient alternative approaches to design the construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents in accordance with Owner's Design Guidelines and any additional requirements set forth in Article 14. *Project A/E shall review alternative approaches to design and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate to the progress of the Project with Owner and Construction Manager at the Project location or other location specified by Owner within the State of Texas. Project A/E shall provide the Construction Manager with copies of Project A/E's documents at the Construction Manager's expense to assist the Construction Manager in fulfilling its responsibilities to Owner.*

1.2.5 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Schematic Design Documents. *Project A/E shall review its Estimated Construction Cost Report in comparison with the construction cost estimate prepared by the Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If Project A/E is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then Project A/E shall provide a detailed explanation of the differences to Owner.* Project A/E shall advise Owner of any adjustments to the project scope necessary to align the Project A/E's Estimated Construction Cost with the Construction Cost Limitation and shall revise the Schematic Design Documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.2.7 Project A/E shall participate in a final review of the Schematic Design Documents with Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Prior to Owner's approval of the Schematic Design Documents, Project A/E shall incorporate such changes as are necessary to satisfy Owner's review comments, any of which may be appealed for good cause.

1.3 Design Development Phase

1.3.1 Based on the approved Schematic Design Documents and any adjustments to the Pre-Design Phase Document or Construction Cost Limitation authorized by Owner, Project A/E shall prepare, for approval by Owner *and review by Construction Manager*, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines and any additional requirements set forth in Article 14. *Project A/E shall review the Design Development Documents as they are being prepared at intervals appropriate to the progress of the Project with Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Project A/E shall provide Construction Manager with copies of Project A/E's documents at Construction Manager's expense to assist Construction Manager in fulfilling its responsibilities to Owner.*

1.3.3 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Design Development Documents. *Project A/E shall review its Estimated Construction Cost Report in comparison with the construction cost estimate prepared by Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with Construction Manager. If Project A/E is unable to*

reconcile all differences between the two construction cost estimates with Construction Manager, then Project A/E shall provide a detailed explanation of the differences to Owner. Project A/E shall advise Owner of any adjustments to the project scope necessary to align Project A/E's Estimated Construction Cost with the Construction Cost Limitation and shall revise the Design Development Documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.3.8 At the completion of the Design Development Phase, or such other time as Owner may specify to Project A/E, at Owner's sole option and discretion, Owner will furnish Project A/E with the GMP Proposal prepared by Construction Manager based upon the Design Development Documents prepared by Project A/E and approved by Owner. Project A/E shall assist Owner and further advocate Owner's interests during Owner's negotiations with Construction Manager in an effort to develop a GMP Proposal acceptable to Owner, in Owner's sole option and discretion. If Owner does not accept Construction Manager's GMP Proposal, Project A/E shall participate with Owner and Construction Manager in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If Construction Manager's proposed GMP exceeds the estimated construction cost furnished to Owner by Project A/E, and Owner directs Project A/E to revise the Drawings and Specifications, then Project A/E shall revise the Drawings and Specifications without charge to Owner such that the proposed GMP for constructing the Project, minus Owner's Special Cash Allowance, if any, within the proposed GMP and minus Owner's Construction Contingency, if any, within the proposed GMP, does not exceed the Construction Cost Limitation. If it is determined to be in Owner's best interest, instead of requiring Project A/E to revise the Drawings and Specifications, Owner reserves the right to accept a proposed GMP, minus Owner's Special Cash Allowance, if any, within the proposed GMP and minus Owner's Construction Contingency, if any, within the proposed GMP, that exceeds the Construction Cost Limitation. Project A/E shall analyze the final GMP Proposal, including its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the GMP Proposal to Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications.

1.3.9 After Owner has accepted the GMP Proposal, Project A/E shall incorporate into the Design Development Documents all revisions which are necessary because of inaccurate assumptions and clarifications made in the development of the GMP Proposal.

1.4 Construction Document Phase

1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Construction Cost Limitation authorized by Owner, Project A/E shall prepare, for approval by Owner and review by Construction Manager, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines and any additional requirements contained in Article 14 of this Agreement. The Construction Documents for the entire Project shall be so prepared that same will call for the construction of the Project which will cost not more than the Guaranteed Maximum Price accepted by Owner, or the Construction Cost Limitation approved by Owner if no proposed Guaranteed Maximum Price has been accepted by Owner. Project A/E will be responsible for managing the design to stay within such Guaranteed Maximum Price or Construction Cost Limitation. Project A/E shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Project A/E shall provide Construction Manager with copies of Project A/E's documents at Construction Manager's expense to assist Construction Manager in fulfilling its responsibilities to Owner.

1.4.2 Project A/E shall advise Owner *and Construction Manager* on matters such as construction phasing and scheduling, design alternates for which to obtain bids or proposals, special cash allowances, liquidated damages, the Construction Contract Time, and other construction issues appropriate for the Project. *Project A/E shall assist Owner and Construction Manager in the preparation of the necessary procurement information, procurement forms, and the Owner's Master Construction Specifications Sections for Division 00, Procurement and Contracting Requirements, and Division 01, General Requirements.*

1.4.7 Project A/E shall direct the preparation of a detailed Estimated Construction Cost Report as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include the detailed Estimated Construction Cost Report with the completed Construction Documents. *Project A/E shall review its Estimated Construction Cost in comparison with the construction cost estimate prepared by Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with Construction Manager. If Project A/E is unable to reconcile all differences between the two construction cost estimates with Construction Manager, then Project A/E shall provide a detailed explanation of the differences to Owner.* Project A/E shall advise Owner of any adjustments to the project scope necessary to align Project A/E's Estimated Construction Cost with the Construction Cost Limitation and shall revise the Construction Documents, without charge to Owner, as may be required to comply with the Construction Cost Limitation. Owner may, solely at Owner's discretion and in writing, increase or decrease the Construction Cost Limitation to align with Project A/E's detailed Estimated Construction Cost.

1.4.9 Project A/E shall participate in a final review of the Construction Documents with Owner *and Construction Manager* at the Project location or other location specified by Owner in the State of Texas. Prior to Owner's approval of the Construction Documents, Project A/E shall incorporate such changes as are necessary to satisfy Owner's review comments.

1.5 Construction Services Procurement Phase

1.5.1 In conjunction with the development of the GMP, the awarding of subcontracts for construction services and at other times as appropriate to the Project, Project A/E shall assist Owner and Construction Manager by receiving and recording Invitation to Bid ("ITB") and Request for Proposal ("RFP") documents, issuing procurement documents, and accounting for procurement documents issued; receiving and resolving questions about procurement documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-submittal conferences and HUB meetings; obtaining and evaluating Bids and Proposals; and assisting in preparing and awarding subcontracts for construction. Project A/E shall answer inquiries from prospective respondents to ITBs and RFPs at Owner's request, and shall prepare and issue any necessary addenda to the subcontract procurement documents.

1.6 Construction Phase—Administration of the Construction Contract

1.6.1 The Construction Phase shall commence with the acceptance of the Construction Manager's GMP (or acceptance of a partial GMP for a stage or phase) and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Project A/E's services have been satisfactorily performed, whichever occurs later.

1.6.2. c) *Project A/E shall assist Owner in making arrangements for a Pre-Construction Conference and a Partnering Workshop and shall assist in preparation of an administration booklet for the Pre-Construction Conference and shall distribute copies of the bound booklet to all parties. Project A/E and its consultants shall*

participate in the project partnering process including attendance at all Partnering Workshops.

1.6.5 Project A/E shall be a representative of Owner during the Construction Phase, and shall advise and consult with Owner. Instructions to the Contractor shall be forwarded through Project A/E *and all communication by and with Project A/E's consultants shall be through Project A/E, except that Owner reserves the right to communicate directly with the Construction Manager and consultants as it deems necessary or appropriate at any time.* Project A/E shall have authority to act on behalf of Owner to the extent provided in the Construction Contract Documents. Duties, responsibilities and limitations of authority of Project A/E shall not be restricted, modified or extended without written acceptance of Owner.

1.8 Time

1.8.2 Attached hereto as an Exhibit containing a schedule for completion of each of the phases of services to be performed by Project A/E pursuant to this Agreement. The Project Milestone Schedule contains milestone dates which have been established in the Request for Qualifications previously issued or may be modified by Owner to reflect current conditions. Supplemental activities shown on the schedule, and any associated dates not yet defined, shall be determined at the completion of the Pre-Design Phase or at such time when both parties mutually agree that the Project is sufficiently developed and documented. *Project A/E shall coordinate with Construction Manager in the preparation and maintenance of the schedule for performance of the professional services for the Project, including Project A/E's services.* Changes in this schedule may be made only with the written approval of Owner. Project A/E shall perform all of its services in accordance with the then-current schedule approved by Owner.

Article 16 Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 16.1 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Construction Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 16.2 *Architect/Engineer* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project ("Project A/E") or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Construction Contract.
- 16.3 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by Project A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path

of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.

- 16.4 *Certificate of Final Completion* means the certificate issued by Project A/E that documents, to the best of Project A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other Close-Out Documents required by the Construction Contract Documents.
- 16.5 *Change Order* means a written modification of the Construction Contract between Owner and Contractor, signed by Owner, Contractor and Project A/E.
- 16.6 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Construction Contract Documents.
- 16.7 *Construction Contract* means the entire agreement between Owner and Contractor, including all of the Construction Contract Documents.
- 16.8 *Construction Contract Documents* mean those documents identified as a component of the agreement (Construction Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; the Uniform General Conditions for University of Texas System Building Construction Contracts ("UTUGCs"), Owner's Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 16.9 *Construction Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Construction Contract.
- 16.10 *Construction Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 16.11 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Construction Contract Documents may refer to Contractor as if singular in number.
- 16.12 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Construction Contract Documents when listed in the Construction Contract or any Change Order.
- 16.13 *Construction Manager-at-Risk*, in accordance with Tex. Educ. Code § 51.782, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 16.14 *Day* means a calendar day unless otherwise specifically stipulated.

- 16.15 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Educ. Code § 51.780.
- 16.16 *Drawings* mean that product of Project A/E which graphically depicts the Work.
- 16.17 *Final Completion* means completion of the Work to the extent that Project A/E and Owner certify that the Work is fully and satisfactorily complete in accordance with the Construction Contract.
- 16.18 *Final Completion Date* means the date determined and certified by Project A/E and Owner that Contractor has achieved Final Completion.
- 16.19 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Construction Contract Sum resulting from approved Change Orders, and release of Contractor's retainage.
- 16.20 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 16.21 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 16.22 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 16.23 *Owner's Construction Contingency* means amount, as designated by Owner, that is included within the Construction Contract Sum to be used when and as directed by Owner to pay for changes in the Work.
- 16.24 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Construction Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Construction Contract.
- 16.25 *Owner's Special Cash Allowance* means the amount of money to be included in the Construction Contract Sum for items as clearly identified in the Construction Documents.
- 16.26 *Owner's Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Owner's Special Conditions are a part of the Construction Contract Documents and have precedence over the UTUGCs.
- 16.27 *Project* means all activities necessary for realization Owner's desired building or other structure, or renovation thereof, including all ancillary and related work. This includes design,

construction contract award(s), execution of the Work itself, work by Owner's forces and/or other contractors and fulfillment of all Construction Contract and warranty obligations.

- 16.28 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 16.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 16.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor before Final Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Construction Contract Documents.
- 16.31 *Record Documents* mean the Drawing, Specifications, and other materials maintained by Contractor that documents all addenda, Project A/E's supplemental instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 16.32 *Request for Information (RFI)* means a written request by Contractor directed to Project A/E or ODR for a clarification of the information provided in the Construction Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Construction Contract Documents.
- 16.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 16.34 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Construction Contract Documents, submitted by Contractor for approval by Owner and Project A/E.
- 16.35 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 16.36 *Site* means the geographical area of the location of the Work.
- 16.37 *Specifications* mean the written product of Project A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 16.38 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 16.40 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by Project A/E and Owner and as identified in the Construction Contract Documents including anticipated sequence and submittal dates.

- 16.40 *Substantial Completion* means completion of the Work, or a portion thereof, in accordance with the Construction Contract Documents to the extent that the Project, of portion thereof, is operational and fit for the use intended.
- 16.41 *Substantial Completion Date* means the date determined and certified by Contractor, Project A/E, and Owner when the Contractor has achieved Substantial Completion of the Work.
- 16.43 *Warranty Period* means, except as may be otherwise specified or agreed, the time during which Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for each phase begins on the date of Substantial Completion of that phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular phase.
- 16.44 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Construction Contract.
- 16.45 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

BY SIGNING BELOW, Project A/E has executed and bound itself to this Agreement upon the execution of the Agreement by both parties. Changes in the terms and conditions under which Project A/E must perform the services to be provided hereunder shall become effective only upon the execution of a written Amendment to this Agreement. Changes in the services to be provided hereunder or to the Maximum Contract Sum shall become effective upon Owner's acceptance of Additional Services Proposal(s) or the issuance of a notice of Adjustment to Basic Services Compensation, signed by Owner's duly authorized representative. Subsequent to such acceptance or issuance, Owner will issue a revised Purchase Order. Project A/E must receive the revised Purchase Order prior to requesting compensation for the Additional Services or an increase in the Basic Services Fee in its Statement for Architectural/Engineering Services Rendered. Only duly authorized representatives of Owner's Department of Supply Chain Management are authorized to execute amendments to this Agreement and issue Purchase Orders to bind Owner for any payment to be made to Project A/E pursuant to the terms of this Agreement.

Project A/E's Name
(Project Architect/Engineer)

By: _____
(original signature)

Name: _____

Title: _____

Date: _____

The Texas Board of Architectural Examiners, 333 Guadalupe Street, Suite 2-350, Austin, Texas 78701, telephone (512) 305-9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Chapter 1051, Texas Occupations Code.

CONTENT APPROVED:

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

Office of Vice President
Operations & Facilities Management

Office of the Sr.VP and Chief Financial Officer

By: _____
(original signature)

By: _____
(original signature)

Name: Spencer Moore
Title: Vice President, Operations & Facilities
Management

Name: Ben Melson
Title: Senior Vice President and Chief Financial
Officer

Date: _____

Date: _____

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

EXHIBITS

- Exhibit A – Architect/Engineer Fee Schedule
- Exhibit B – Personnel Titles and Hourly Rates
- Exhibit C – Adjustment to Basic Services Compensation
- Exhibit D – Additional Services Proposal Form
- Exhibit E – Statement for Architectural/Engineering Services Rendered Form (Includes Attachments H & I – Documentation of Subcontracted Work)
- Exhibit F – Project Milestone Schedule
- Exhibit G – Pre-Design Phase Documentation Requirements
- Exhibit H – Anticipated Pre-Design Phase Deliverables
- Exhibit I – Owner’s Design Guidelines
- Exhibit J – Owner’s Building Information Modeling Requirements
- Exhibit K – Constructability Implementation Program
- Exhibit L – Owner’s Commissioning Requirements
- Exhibit M – Rider 104, Policy on Utilization of Historically Underutilized Businesses
Attachment 1 to Exhibit H – HUB Subcontracting Plan
- Exhibit N – Project Architect/Engineer’s Approved HUB Subcontracting Plan
- Exhibit O – Rider 105, Contractor’s Affirmations
- Exhibit P – Rider 106, Premises Rules
- Exhibit Q – Rider 107, Travel Policy
- Exhibit R – Rider 116, Invoice Payment Requirements
- Exhibit S – Rider 117, Institutional Policies
- Exhibit T – Sales and Use Tax Exemption Certification
- Exhibit U – Execution of Offer