



THE COLLEGE OF EAST TEXAS

**REQUEST FOR PROPOSAL (RFP)  
CONSTRUCTION MANAGER AT RISK  
RFP #26-02**

TJC (“College”) is soliciting proposals for selection of a Construction Manager at Risk, as provided by Texas Education Code 44.039 and Texas Government Code 2269.251, for renovations to an existing building at 173 Henderson Street, Rusk, Texas, as described in the specifications and scope of work. The RFP provides the information necessary to prepare and submit proposals, including fee proposals and general conditions prices. It is not the intent of any condition of the specifications to prohibit any responsible vendor from submitting a proposal.

Proposals are due by **Wednesday, January 7, 2026 @ 2:00 p.m. Central Daylight Time (CDT)** and will be opened and the names read publicly. Proposals will be reviewed and subsequently tabulated by the Purchasing Department and then processed through appropriate channels for committee review, if applicable, and approval. The Owner and/or Architect will rank the proposals in the order that they provide the “best value” for the Owner based on the published criteria. Any potential award would be pending final approval by the Board of Trustees and a valid, signed agreement. The agreement resulting from this solicitation will be in the form of the Owner’s standard construction management at risk agreement, a copy of which is attached as an exhibit.

All proposals and supporting documentation must be submitted by mail, or delivered by courier, or hand delivered by a vendor representative. If proposal is mailed, please mark **“RFP #26-02”** on the front of the envelope; or deliver to:

**TJC  
CAMPUS & PROCUREMENT SERVICES  
ATTN: DANA BALLARD  
1327 SOUTH BAXTER  
TYLER, TX 75701**

The proposal must be received prior to the proposal deadline. Proposals received after the deadline will not be opened, read, evaluated, or recorded; and will be returned to the vendor unopened.

TJC reserves the right to accept or reject any and/or all proposals, or waive any and/or all formalities, technicalities, and conditions, or permanently abandon the RFP. The College will have a minimum of ninety (90) days after the Submittal Deadline for evaluation, selection, and any unforeseen delays. Vendors shall not withdraw their proposals prior to the termination of this period. TJC will accept the proposal(s) determined by the College to be in its best interest in

accordance with applicable law. It is not the intent of any condition, specification, or other requirement in the proposal process to prohibit any responsible vendor from submitting a bid.

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## **INTRODUCTION**

TJC is located in Tyler, Texas. Since 1926, TJC has been fulfilling three promises to its students and the Tyler area by providing a quality education, a vibrant student life, and service to the community. With more than 115+ degree and certificate programs, plus extensive training and technical programs, TJC is the best first step for any student, whether they plan to transfer to a four-year institution or gain the skills they need to go directly into the workforce.

TJC provides a friendly, smoke-free vapor-free environment at all of its campuses and satellite facilities. No alcohol will be permitted on campus grounds.

TJC is committed to providing a safe environment for students, faculty, staff, and visitors, and to respecting the right of individuals who are licensed to carry a handgun where permitted by law. Individuals who are licensed to carry may do so on campus premises or in a college-owned vehicle except in locations and at activities prohibited by law or by this policy. Individuals who observe a violation of this policy are required to report the incident immediately to the Campus Police Department, so it can be documented and properly investigated. Campus Police can be contacted at 903 510-2800. Dial 911 for emergencies.

[https://www.tjc.edu/downloads/file/1045/concealed\\_handguns\\_on\\_campus\\_policy](https://www.tjc.edu/downloads/file/1045/concealed_handguns_on_campus_policy)  
TJC's web page is located at <http://www.tjc.edu/>.

## **PROPOSAL INSTRUCTIONS**

Respondents must abide by all requirements of the Instructions to respondents.

**Entity Submitting RFP:** The terms “vendor”, “proposer”, “firm”, “company”, “respondent”, or “contractor” used in this RFP or any subsequent documents or communications related to this RFP are interchangeable and mean the entity submitting a proposal and seeking to enter into a contract for the goods and/or services requested in this RFP.

**Acquiring Documents:** Proposal documents may be downloaded from the TJC website at <https://www.tjc.edu/rfp>, or picked up from the Purchasing Department at the following location: Campus & Procurement Services, 1327 S. Baxter, Tyler, TX 75701. Respondents may also obtain proposal documents by emailing a request to Dana Ballard, [dbal@tjc.edu](mailto:dbal@tjc.edu).

Proposals may not be withdrawn for a period of ninety (90) days subsequent to the closing date and time without the consent of the College.

TJC reserves the right to accept or reject any and/or all proposals, waive any formalities and technicalities and to award contracts as determined by the College to be in its best interest in accordance with applicable law (Texas Education Code 44.031(b)). The College reserves the right to award multiple contracts as a result of this RFP if deemed in the best interest of the College.

Proposals submitted for consideration should follow the format and order of presentation described below:

**Cover Letter:** Contain a summary of respondent's ability to perform the services described in the RFP and confirm that respondent is willing to perform those services and enter into a contract with TJC.

The person signing the proposal must be:

1. A current corporate officer, partnership member, or other individual specifically authorized to submit a proposal; or
2. An individual authorized to bind the company as reflected by a corporate resolution, certificate or affidavit; or other documents indicating authority which are acceptable to the public entity

The cover letter should also:

- Identify the submitting respondent;
- Identify the name, title, address, telephone number, and email address of each person authorized by the respondent to contractually obligate the respondent;
- Identify the name, address, telephone number, and email address of the contact person for technical and contractual clarifications throughout the evaluation period.

**Number of Response Copies:** Each respondent is required to submit and provide one (1) signed original response of the proposal, one (1) copy, and one (1) thumb drive of the proposal. The original response is to be labeled "Original" on the first page or front cover of the proposal.

**Legibility/Clarity:** Responses to the requirements of this RFP in the formats requested is required with all questions answered in as much detail as practicable. The respondent's response is to demonstrate an understanding of the requirements. Proposals prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of the RFP is also desired. Each respondent is solely responsible for the accuracy and completeness of its proposal.

**Schedule of Events:**

RFP available to respondents

November 19, 2025

**Mandatory Pre-Bid Conference and Site Visit**

Thursday, December 4, 2025  
2:00 p.m.  
173 S. Henderson, Rusk, TX

Deadline to receive written inquiries  
Responses to inquiries, if any, via Addenda  
Proposal Due Date

December 11, 2025, 10:00 a.m.  
<https://www.tjc.edu/rfp>  
Wednesday, January 7, 2026, 2:00 p.m.

There will be registration at the pre-bid conference and guided tour of the site. The pre-bid conference will allow all proposers an opportunity to ask representatives relevant questions and clarify provisions of this bid. Bids will be accepted from only those proposers recorded as attending this meeting. There will be no exceptions to this requirement.

TJC reserves the right to change the schedule of events to the RFP at any time. Any changes will be issued via Addenda and posted online at <https://www.tjc.edu/rfp>.

**Respondent Inquiry Periods:** An initial inquiry period is hereby firmly set for all interested respondents to perform a detailed review of the proposal documents and to submit any written questions relative thereto. TJC is always conscious and extremely appreciative of your time and effort in preparing this proposal. Without exception, **all questions regarding this RFP must** be submitted in writing by email only to Dana Ballard, Director, Campus & Procurement Services, at [dbal@tjc.edu](mailto:dbal@tjc.edu) and received by the deadline to receive written inquiries date set forth above. Do not contact the architect directly. Inquiries shall not be entertained thereafter. It is the respondent's responsibility to make sure they have obtained all addenda and acknowledged receipt of such on the Vendor Certification Form.

**Withdrawal of Proposal:** A respondent may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, a written request signed by the authorized representative of the respondent must be submitted to the TJC Purchasing Department via the previously stated email address.

### **GENERAL REQUIREMENTS**

The specifications included with these instructions are to establish a standard of quality desired by the College. The College reserves the right to make its selections of goods and services purchase, based on its best judgment as to which products substantially comply with the quality required by the specifications and are the best value for the College. It is not the intent of any condition of the specifications to prohibit any responsible contractor from submitting a proposal.

The contract between TJC and the contractor shall consist of (1) the Request for Proposal (RFP) and any amendments thereto, (2) the proposal submitted by the vendor in response to the RFP, (3) any subsequent purchase order, and (4) a valid fully-executed contract. In the event of a conflict in language between the four documents referenced above, the provisions and requirements set forth and/or referenced in the RFP shall govern. However, the College reserves the right to clarify any contractual relationship in writing with the concurrence of the vendor and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the vendor's Proposal. In all other matters not affected by the written clarifications, if any, the RFP shall govern, along with the issued purchase order, and contract.

In connection with the furnishing of equipment, supplies or performance of work under the contract, the vendor agrees to comply with the valid, fully-executed contract, TJC's purchase order, the Fair Labor Standard Act, Equal Opportunity Employment Act, and all other applicable Federal and State laws, regulations, and executive orders to the extent that the same may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.

### **TJC SOUTH PROJECT DESCRIPTION AND SCOPE**

Owner designates the following firm as its Architect regarding Drawings and Specifications:

Fitzpatrick Architects  
Steve Fitzpatrick  
110 North College Avenue, Suite 100  
Tyler, Texas 75702

Project: Renovations and updates at TJC South

Total Project Estimated Budget: \$3,500,000.00

***Completion of all or part of the project scope is dependent on Construction Cost and available funding and will be done in phases if required.***

The project scope includes the interior renovation of a brick building located at 173 S. Henderson Street in Rusk, Texas. The existing building area is 6,973 sf with an undeveloped lot of 30,000 sf behind the building. The existing building is three (3) bays with clear span wood roof framing in each bay. The interior of the building has been demolished and is ready for new construction. One bay is pier and beam construction, and the adjacent two bays are slab on grade. The building is to be developed and used primarily by the nursing program. Program elements for the project include a classroom for 30 students, a large-tiered classroom to accommodate 48 students, an anatomy and physiology lab for 24 students, a nursing skills lab, a student/faculty lounge, office space for five faculty, storage, and restrooms. There will be required a small addition in the back of the building for storage, and the addition of an 8,300 sf covered patio behind the building for exterior student space. Sitework for the 30,000 sf lot will include approximately 65 parking spaces, paving, sidewalks, landscaping, and lighting. The intent is to proceed with Design, Construction Documents, and Construction so the project construction is completed and open for students to use the Fall Semester of 2027.

The Scope of Services desired in the RFP include: 1) deliver a Guaranteed Maximum Price for the project, and 2) to act as Construction Manager at Risk in order to complete the project in a timely manner.

Project Planning Schedule: The following anticipated dates are for planning purposes only. The contractual dates required by the Owner of the “best value” respondent will be identified in the executed agreement.

- |   |               |
|---|---------------|
| • Owner receives Requests for Proposals   | January 2026  |
| • Owner executes Agreement with CMR   | February 2026 |
| • CMR reviews plans   | TBD           |
| • Bids received by CMR  | TBD           |
| • Owner approves GMP  | TBD           |
| • Owner issues Notice to Proceed for Construction   | TBD           |
| • Construction Projects begin   | TBD           |
| • Construction Manager at Risk achieves Final Completion<br>approximately February/March 2027 |               |

## **TERMS AND CONDITIONS**

**Term of Contract:** The term of the contract will begin with TJC Board approval and a fully-executed agreement.

**Modifications of Proposal Terms And /Or Amendments:** TJC reserves the right to change the schedule of events or issue Addenda to the RFP at any time. The College also reserves the right to cancel or re-issue the RFP. Only interpretations or corrections to the proposal provided in writing by the TJC Purchasing Department shall be binding. Prospective vendors are advised that

no other source is authorized to provide information concerning, or explain or interpret, the proposal documents. If the respondent needs to submit changes or addenda, such shall be submitted in writing, signed by an authorized representative of the respondent, cross-reference clearly to the relevant proposal section, prior to the proposal opening, and should be submitted with proposal documents. Such shall meet all requirements for the proposal.

All addenda will be posted on the College website <https://www.tjc.edu/rfp>. It is the vendor's responsibility to check this website for addenda postings prior to submitting responses and acknowledge receipt of such in the Vendor Certification Form. Proposers finding errors, requests for additional information, omissions, or corrections that need to be made in the proposal shall contact the Purchasing Department no later than seven (7) days prior to the due date of this RFP, or as soon as possible before proposal is due. You may submit this addenda information via email to Dana Ballard, Director, Campus & Procurement Services, [dbal@tjc.edu](mailto:dbal@tjc.edu).

**Proposal Rejection:** Issuance of this RFP in no way constitutes a commitment by the College to award a contract. TJC reserves the right to accept or reject any or all proposals submitted or to cancel this RFP if it is in the best interest of the College to do so.

**Cost of Offer Preparation:** TJC is not liable for any costs incurred by respondents or contractors prior to issuance of or entering into a contract. Costs associated with developing the proposal and any other expenses incurred by the contractor in responding to the RFP are entirely the responsibility of the respondent and shall not be reimbursed in any manner by the College.

**Professional Services:** This proposal does not include services that are required to be procured under Chapter 2254 Professional Services Procurement Act of the Texas Government Code, such as architects and engineers.

**Written or Oral Discussions/Presentations:** Written or oral discussions may be conducted with respondents who submit proposals determined to be reasonably susceptible of being selected for award. The College reserves the right to enter into a contract without further discussion of the proposal submitted based on the initial offers received.

Any commitments or representations made during these discussions, if conducted, may become formally recorded in the final contract.

Written or oral discussions/presentations for clarification may be conducted to enhance the College's understanding of any or all of the proposals submitted. Proposals may be accepted without such discussions.

**Acceptance of Proposal Content:** By submitting a response to this sealed proposal, each respondent affirmatively accepts and consents to the terms and conditions to this sealed proposal contract in its entirety except to the extent specifically set forth in its response. The mandatory RFP requirements shall become contractual obligations if a contract ensues. A fully-executed agreement, Certificate of Liability Insurance, with worker's compensation, naming TJC as an additional certificate holder, and any bonds are required before work begins.

**Required Notices of Workers' Compensation Insurance Coverage:** The Texas Workers' Compensation Commission has adopted a new rule, 28 TAC, Sec. 110.110(c)(7), relating to reporting requirements for building or construction projects for governmental entities. The rule applies to all building or construction contracts advertised for bid on or after September 1, 1994. The rule implements Sec. 406.096, Texas Labor Code, which requires workers' compensation



insurance coverage for all persons providing services on a building or construction project for a governmental entity. The requirements of the rule are set forth in Article 5 of the Uniform General Conditions.

**Sales and Use Taxes:** Section 151.311, Tax Code, as amended effective October 1, 1993, permits the purchase free of state sales and use taxes of tangible personal property to be incorporated into realty in the performance of a contract for an improvement to realty for certain exempt entities that include junior college districts. The section further permits the purchase tax free of tangible personal property (other than machinery or equipment and its accessories and repair and replacement parts) for use in the performance of such a contract if the property is “necessary and essential for the performance of the contract” and “completely consumed at the job site.” In addition, the section permits the purchase tax free of a tangible service for use in the performance of such a contract if the service is performed at the job site and if “the contract expressly requires the specific service to be provided or purchased by the person performing the contract” or “the service is integral to the performance of the contract.”

**Prevailing Wage Rate:** A worker, such as a laborer or mechanic, employed on a public work, exclusive of maintenance work, by or on behalf of a College district shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and now less than the general prevailing rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with a political subdivision of the state or any officer or public body of a political subdivision of the state. The public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed or using the prevailing wage rate as determined by the US Department of Labor. (Gov’t Code 2258.001, .021(3))

The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents. A public body shall specify in the call for bids for the contract and in the contract itself the calculated prevailing wage rates. The public body’s determination of the general prevailing rates of per diem wages shall be final.

**Deviations:** If vendor intends to deviate from the Standard Terms and Conditions, Specifications, or other requirements associated with this solicitation, the vendor must list or reference all such deviations, with complete and detailed information regarding the deviations, on a separate sheet of paper and submit it with the bid submittal. The College will consider any deviations in its award decision, and reserves the right to accept or reject the bid based upon any submitted deviations.

In the absence of any deviation identified and described in accordance with this solicitation, the vendor asserts that it will fully comply with the Standard Terms and Conditions, Specifications, Uniform General Conditions, and all other requirements associated with this solicitation if awarded a contract.

**Insurance Requirements:** The awarded vendor will be required to comply with the Bonds and Insurance requirements laid out in the TJC Uniform General Conditions and furnish proof to the Owner.

All coverages above must be placed with an insurance company with an A.M. Best rating of A or better and provide 30 days' notice of cancellation to TJC and be primary and non-contributory coverage.

The insurance requirements also apply to any sub-contractor(s) in the event that any work is sublet. The contractor shall include all subcontractors of insured's under its policies and/or shall insure that all subcontractors satisfy the same insurance requirements stated herein for the contractor.

Should any of the policies be canceled before the expiration date, the issuing company will mail thirty (30) days' written notice to the certificate holder, TJC.

The awarded vendor shall be required to waive all right of subrogation against the College, its officials, employees and volunteers for losses arising from work performed by vendor.

**Indemnification:** To the extent allowable by Texas Law and without waiving any rights or entitlement to governmental or sovereign immunity, the parties shall indemnify and hold harmless each other and their respective officers, trustees, or employees, (hereafter referred to as "indemnified party") against any and all liability (including reasonable attorneys' fees and court costs) to any persons or entities (except to the extent such liability is the fault of the indemnified party) arising from or related to the negligence or willful acts, omissions, or other misconduct of the indemnifying party or its agents, officers/trustees, and employees, in the performance of this contract. The provisions of this section will not be construed to waive immunity in any way nor to eliminate or reduce any other indemnification or right which any indemnified party has by law or equity and shall survive the termination of this agreement.

**Limitation of Liability:** Neither respondent nor the College shall be responsible to the other for any special, indirect, or consequential damages. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials, or supplies.

The College retains the right to the approval for insurance coverage. Respondent, if awarded, shall submit Certificates of Liability Insurance naming TJC as an additional certificate holder.

**License and Permits:** The vendor is responsible for obtaining all permits and licenses, if any, required by federal, state, city, and county. The College will not be charged back for the price to obtain the permits and licenses.

**Open Records:** It is understood by submitting a proposal to TJC, the document, if requested, will be available for review by any individual or business in accordance with the Public Information Act, Texas Government Code 552. Copies of your proposal will be supplied to the requesting party as allowed by law. TJC will consider all information, documentation, and other

materials requested to be submitted in response to this RFP to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure. Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. TJC may seek to protect from disclosure all information submitted in response to this RFP until the time of a final award.

**Advertising:** The vendor shall not advertise or publish, without the College's prior written consent, the fact that the College has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

The contractor shall not use TJC's Logo unless granted expressed written permission from the College's Marketing Department.

**Ethics:** The contractor shall not accept or propose gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the College.

**Compliance with Americans with Disabilities Act (ADA):** Vendor shall be in compliance with all relevant requirements of the American with Disabilities Act (ADA) as applicable to their operations. By submission of a proposal response, vendor acknowledges intention to conform to the requirements of the ADA. Failure to comply with ADA constitutes good cause for the College to suspend a contract with any successful vendor.

**Universal & Commercial Code:** This writing and subsequent information given and forwarded to the College shall be a sole and final expression of the agreement between the College and the vendor, and is intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is controlling.

**Debarment:** Any bidder or any principals of a bidding company that are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State Government entity shall be considered ineligible to be awarded a contract by the College.

**Force Majeure:** Neither Contractor, its suppliers, Member or Lead Agency, nor TJC will be liable for any failure or delay in this agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of contractor), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If contractor is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, the college may cancel the purchase order or agreement without penalty.

**Contract Negotiations:** If for any reason the respondent whose proposal is most responsive to the College's needs, price and other evaluation factors set forth in the RFP considered, does not agree to a contract, that proposal shall be rejected and the College may negotiate with the next most responsive respondent. Negotiation may include revision terms, conditions, or requirements. The College may enter into a contract with more than one respondent.

**Contract Award Execution:** The College reserves the right to enter into an agreement without further discussion of the proposal based on the initial offers received.

The RFP, any addendums, and the proposal of the selected respondent, along with the College's purchase order, will become part of any contract initiated by the College.

If the contract negotiation period exceeds thirty (30) days or if the selected respondent fails to sign any contract within seven (7) calendar days of delivery of it, the College may elect to cancel the award and award the contract to the next highest-ranked respondent.

Award shall be made to the respondent whose proposal, conforming to the RFP, will be the most advantageous and is in the best interest of the College.

**Notice of Award:** TJC Purchasing Department will notify respondent of a potential award after Board approval. The Purchasing Department will also notify all unsuccessful respondents as to the outcome of the evaluation process.

**Award Protest:** A vendor who has timely responded to an Invitation to Bid, Request for Proposal, or Competitive Sealed Proposal, but is not awarded the bid, has the right to protest the bid award if the amount of the bid is over \$100,000 in the aggregate. A protest must be made in writing and submitted to the Director, Campus & Procurement Services, no later than five (5) business days after the award of the bid. The date of the bid award will not be counted as one of the five (5) business days. Any protest submitted after five (5) business days is untimely and will not be considered by the College.

The written protest must contain the following in order to be considered:

- (a) A specific identification of the statutory, regulatory, or policy provision(s) that the action complained of is alleged to have violated;
- (b) A specific description of each act alleged to have violated the statutory, regulatory, or policy provision(s) identified in "a" of this subsection;
- (c) A precise statement of the relevant facts;
- (d) An identification of the issue or issues to be resolved;
- (e) Arguments and authorities in support of the protest; and
- (f) An affidavit that the contents of the protest are true and accurate.

No amendments to the protest will be considered by the College.

The Director, Campus & Procurement Services, legal counsel for the College, and/or a committee headed by and appointed by the Vice-President, Financial & Administrative Affairs/CFO, shall review the protest documentation and shall provide the protestor a final written determination regarding whether any statutes, regulations, or policies have been violated, the reasons for the determination, and remedial action to be taken, if any. This review and final determination may be made with the assistance of legal counsel. The written determination shall be made within ten (10) business days of the receipt of the protest, unless the Director, Campus & Procurement Services, notifies protestor that additional time is needed. The decision shall be final.

**Venue:** Both parties agree that venue for any litigation arising from this contract shall be in Tyler, Smith County, Texas.

**Additional Items:** Following the contract award, additional services or increased scope of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added.

**Purchase Orders:** This project will be initiated by a fully-executed agreement and TJC purchase order. A valid, numbered purchase order will be emailed or faxed to the vendor by the TJC Accounts Payable Department or TJC employee. Orders will not be placed by telephone.

In accordance with applicable law, the College is not obligated to purchase any products and/or services in the event that the State of Texas or the TJC Board of Trustees does not allocate funds. TJC will not be responsible for any goods delivered or services performed prior to Board approval, a fully-executed agreement, and a valid purchase order. Contractors supplying goods or services without having first received a purchase order do so at their own risk.

Authorized TJC personnel will notify the vendor of all adjustments and cancellations to any purchase order.

**Tax Exemption:** TJC is exempt from payment of federal excise taxes as well as all state and local sales taxes. These taxes are not to be included in the proposal nor on any invoices for goods or services. If taxes are included in the vendor's proposal, it will not be included in the evaluation or award. Tax exemption certificates shall be furnished upon request.

**Warranty, if applicable:** Contractor shall provide warranty details for any equipment and work performed. All materials used on any project shall be new and, if applicable include a manufacturer's warranty.

## **SELECTION CRITERIA, INFORMATION REQUIRED FROM RESPONDENT, AND REQUIREMENTS FOR PROPOSAL**

Respondents shall carefully read the information contained in the following criteria and submit a complete response to all questions. Incomplete responses may be considered non-responsive and subject to rejection. Selection shall be made among the respondents deemed to be fully qualified and best suited among those submitting proposals on the basis of the criteria included in this RFP. The Owner is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. The following criteria will be used in the selection of the successful respondent.

- Proposals shall be prepared simply and economically providing a concise description of respondent's ability to meet the requirements of the RFP.
- Proposals shall be a maximum of fifty (50) printed pages.
- Proposals and other information submitted by respondents in response to this RFP shall become the property of Owner.

### **CRITERIA ONE: Respondent's Pre-construction Phase Services and Project Execution Plan (6 %)**

- 1.1 Describe your construction management and execution plan for providing pre-construction phase services for this project.

- 1.2 Provide a details list of all pre-construction phase services you will provide to Owner and the Architect on this project.
- 1.3 Describe your procedures and personnel responsible for reviewing design and construction documents and providing feedback regarding cost, schedule, and constructability to the Architect and Owner.
- 1.4 Describe your bid/proposal package strategy for completion of the construction documents and for procuring cost of work from subcontractors, vendors, suppliers, etc.

CRITERIA TWO: Respondent's Construction Phase Services and Project Execution Plan (6 %)

- 2.1 Describe your construction management and execution plan for providing construction phase services for this project.
- 2.2 Provide a details list of all construction phase services you will provide to Owner and the Architect on this project.
- 2.3 Describe your ability and desire to self-perform work on this project and the method for determining yourself as the "best value" through a competitive proposal process.
- 2.4 Describe your approach to coordinating inspections and approvals with the Texas Department of Licensing and Regulation regarding Texas Accessibility Standards.
- 2.5 Describe in detail your methods of advertising, receiving proposals, awarding contracts, and paying trade contractors.

CRITERIA THREE: Respondent's Estimating and Cost Control Measures (10%)

- 3.1 Describe your project estimating system for developing the GMP proposal and how you will monitor and track these costs. Note: Cost estimating services will include detailed construction costs for each of the 16 divisions of the CSI format. This will be a working estimate with respect to changes recommended by the CMR with regard to materials or construction methods. A major part of this phase will be for the CMR to evaluate each scope of work item in this project from a cost-to-value perspective. The CMR is expected to suggest to the Owner and Architect ways to save money while maintaining the integrity of the design. The CMR's fee for estimating and value engineering services should include the total cost, all costs of travel to TJC and/or the Architect's office and all general conditions and profit for this phase only. No additional costs will be allowed for this phase of the work.
- 3.2 Describe how the cost control team will ensure the executed GMP will be within the Owner's budget on this project.
- 3.3 If the Owner requests a GMP prior to 100% completion of the Construction Documents, describe your process for ensuring the scope, cost and schedule assumptions, will arrive at a "complete" GMP proposal for this project.
- 3.4 Describe the contingencies you will propose in the GMP and how these contingencies will be managed through the completion of the project.
- 3.5 Describe your plans for establishing, tracking, reporting and payment of the GMP and possible future changes on this project.
- 3.6 Identify your last three (3) renovation projects with GMP contracts over one (1) million dollars and the amount of savings returned to the Owner from the original budget and attach the final two (2) itemized pay applications for each project.

CRITERIA FOUR: Respondent's Project Planning and Scheduling (6%)

- 4.1 Provide resumes indicating the scheduling experience of all personnel responsible for establishing and updating the project schedules.
- 4.2 Provide resumes for any proposed job superintendent.
- 4.3 Describe your plan for meeting or improving the Owner's proposed schedule for design and/or construction. If you propose to improve the schedule, describe the impact on quality of services, materials, or workmanship that may occur.

CRITERIA FIVE: Respondent's General Understanding of the TJC CMR Agreement (6%)

- 5.1 Describe your interpretation of the agreement with respect to Owner's responsibility for payment of the GMP line items and costs within those line items.
- 5.2 Identify any terms of the agreement that you will ask to change before signing the TJC agreement.

CRITERIA SIX: Respondent's Job Site Safety Program (6%)

- 6.1 Describe your job site safety program for this project and specific safety policies in which employees must be in compliance.
- 6.2 Identify the project safety team, their qualifications, and duties.
- 6.3 Identify any deaths that have occurred on a project site controlled by your firm or any subcontractors that had a death on your site.

CRITERIA SEVEN: Respondent's Warranty and Service Support Program (10%)

- 7.1 Describe your warranty services support philosophy and warranty service implementation plan for this project.
- 7.2 Describe how you will measure the quality of service provided to the Owner.

CRITERIA EIGHT: Respondent's Bonding, Pricing, and Delivery Proposal (50%)

- 8.1 Complete the attached "Pricing and Delivery Proposal" form.
- 8.2 Provide information, contact name, and phone numbers/emails for your firm's bonding agent.
- 8.3 Provide total bonding capacity of your firm, largest project bonding capacity, and currently available bonding capacity for the firm.

<b>Selection Criteria</b>	<b>Weights</b>
Criteria One	6%
Criteria Two	6%
Criteria Three	10%
Criteria Four	6%
Criteria Five	6%
Criteria Six	6%
Criteria Seven	10%
Criteria Eight	50%
<b>Total</b>	<b>100%</b>

## **ADDITIONAL INFORMATION REQUIRED FROM RESPONDENT**

**Company Background and Experience:** The respondent will describe their background, relevant experience and qualifications, including, but not limited to the following:

- **Company Structure:** The respondent is to include in the proposal the legal form of their business organization, the state in which incorporated (if a corporation), the office location that will be the point of contact during the term of any resulting contract as they relate to this RFP.
- **Experience:** The respondent must clearly describe relevant experience in providing Construction Manager at Risk services.

**References:** The respondent shall provide a list of five (5) clients, current and past, for whom similar services have been provided during the previous five (5) years on the Reference Form provided in this RFP. This listing must include:

- a.) Dates of service and event name
- b.) Name of company
- c.) Name and title of contact person
- d.) Telephone number of contact person (must be current and working)
- e.) Email address of contact person (must be current and working)

**Client Satisfaction:** Using the information provided by the respondent, current and past clients may be contacted to verify client satisfaction of past service and performance.

**Prime Contractor Responsibilities:** The selected respondent shall be required to assume responsibility for all items and services offered in their proposal whether or not they produce or provide them. TJC shall consider the selected respondent to be the sole point of contact, with regard to contractual matters, including payment of any and all charges resulting from the contract.

**Use of Subcontractors:** Each contractor shall serve as the single prime contractor for all work performed pursuant to its contract. That prime contractor shall be responsible for all deliverables referenced in this RFP. This general requirement notwithstanding, respondents may enter into subcontractor arrangements. Respondents may submit a proposal in response to this RFP, which identifies subcontract(s) with others, provided that the prime contractor acknowledges total responsibility for the entire contract.

Information required of the prime contractor under the terms of this RFP is also required for each subcontractor and the subcontractors must agree to be bound by the terms of the contract. The prime contractor shall assume total responsibility for compliance.

**Vendor Information:** Respondent will submit the Vendor Information Form which identifies the legal name and address of your company, the account representative that will be assigned to TJC, acknowledgement of the terms and conditions, as well as other information and any additional fees.

**Felony Conviction Notification:** The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each



vendor must respond to this section as a requirement of the law. On May 30, 1995, Senate Bill 1 was signed by Governor George Bush and made effective as follows:

• **Senate Bill 1, section 44.034, Notification of Criminal History of Contractor**

- a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony.
- b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before termination of the contract.
- c) This section does not apply to a publicly held corporation.

**Conflict of Interest:** The following information is included in the terms and conditions of all proposals in accordance with applicable State of Texas Government Code Chapter 176:

On May 23, 2005, the Texas Senate passed House Bill No. 914, adding Chapter 176 to the Local Government Code and imposing new disclosure and reporting obligations on vendors and potential vendors to local government entities beginning January 1, 2006. Vendors doing business with Tyler Junior College are subject to Chapter 176 found in the Local Government Code. Failure to abide by these new statutory requirements can result in possible criminal penalties as a Class C misdemeanor.

- (a) An individual or business entity that contracts or seeks to contract for the sale or purchase of property, goods, or services with the college must complete and submit a CIQ (Conflict of Interest Questionnaire).
- (b) The CIQ form must be filed within seven days of beginning contract negotiations, or submitting an application, bid, response to a request for proposal, correspondence, or other writing related to a potential agreement with the College.
- (c) Upon completion, CIQ forms should be returned to TJC, Dana Ballard, Director, Campus & Procurement Services, P. O. Box 9020, Tyler, TX 75711.

Vendors are required to download the CIQ form from the College's website, then complete the form and return it with the proposal submittal. <https://www.tjc.edu/rfp>.

**State of Texas Government Codes: (H.B. No. 89) Chapter 2270, Sec. 2270.002:** A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The College requires written verification located on the Vendor Information form, that your company does not boycott Israel and will not boycott Israel during the term of this contract.

(S.B. No. 252) Chapter 2252, Sec. 2252.152: Prohibits a governmental entity from contracting with companies engaged in business with Iran, Sudan, or any known terrorist organization. The College will review the Texas Comptroller's website list of companies know to have contracts with or provide supplies or services to a foreign terrorist organization.

**State of Texas Government Code 2252.908:** Awarded contractor will be responsible for complying with Texas Government Code 2252.908 in regards to House Bill 1295 relating to the

disclosure of research, research sponsors, and interested parties by persons contracting with governmental entities and state agencies, which applies to a contract entered into after December 31, 2015. A Texas governmental entity or state agency may not enter into a contract that either (1) requires an action or vote by the governing body of the entity or agency or (2) has a value of at least \$1 million, unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes a list of each interested party for the contract of which the contracting business entity is aware and the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury. Not later than the 30th day after the date the governmental entity or state agency receives a disclosure of interested parties, the governmental entity or state agency shall submit a copy of the disclosure to the Texas Ethics Commission. A copy of the rules and Certificate of Interested Parties Form 1295 can be found at the commission's website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

The Conflict of Interested Parties Form 1295 that your company receives from the Texas Ethics Commission, which has the certificate number in the upper right-hand corner, must be signed, scanned, then submitted with any final award.

**Boycotting Energy Companies Notification:** The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each vendor must respond to this section as a requirement of the law. Pursuant to Section 2274.002 of the Texas Government Code, each respondent must verify it does not boycott energy companies and will not boycott energy companies during the term of any contract. If respondent does not make that verification, respondent must so indicate in its response and state why the certification is not required.

Exemption criteria includes the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000
3. The term "company" does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)."

**Discrimination Against Firearms Entity or Trade Association:** The following information is included in the terms and conditions of all bids, proposals and offers in accordance with applicable Texas law. Each vendor must respond to this section as a requirement of the law. Pursuant to Section 2274.002 of the Texas Government Code, respondent is required to make a verification it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If respondent does not make

that verification, respondent must so indicate in its response and state why the verification is not required.

Exemption criteria includes the following:

1. Company employs less than 10 full-time employees; AND
2. Value of the contract is less than \$100,000

“Discriminate against a firearm entity or firearm trade association:” means (A) with respect to the entity or association, to: (i) refuse to engage in the trade of goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restricts or prohibits the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.”

**Taxpayer Identification Number:** As a business, Federal income tax law requires us to report certain payments we make to you if you are not exempted from this reporting responsibility. In order for us to properly meet the federal tax law requirements, Tyler Junior College requires you to complete the Request for Taxpayer Identification Number (W-9) form. Please complete the information on the form and return with your bid.

**Reasonable Care:** Contractors agree to use reasonable care at all times while on the property taking care not to damage buildings, etc. Any property noticed to be damaged on day of services, if witnessed, will be the contractor’s responsibility to repair or replace to the satisfaction of the College.

### **RFP CHECKLIST**

Please make sure ALL pages that are to be returned with your submittal have been fully completed and legibly filled out and signed where applicable.

1. Cover Letter
2. Information Required from Respondent
3. Vendor Information Form
4. Vendor Certification Form
5. Conflict of Interest (CIQ) Form (Ref. Vendor Certification Form #2)
6. Your company’s W-9
7. Reference Sheet
8. Signed and completed Bonding, Pricing, and Delivery Form
9. Selection Criteria and Requirements for Proposal Answers

## **VENDOR INFORMATION FORM**

CompanyName: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Representative assigned to TJC account: \_\_\_\_\_

Years in business: \_\_\_\_\_ Number of employees: \_\_\_\_\_

- Vendor has insurance as requested and can provide a Certificate of Liability Insurance?  
\_\_\_Yes / \_\_\_No
- Vendor agrees to comply with all terms, conditions and specifications of this RFP?  
\_\_\_Yes / \_\_\_No
- Submission is according to specifications in the RFP? \_\_\_Yes / \_\_\_No
- Where does your company prefer to receive purchase orders?
  - Email \_\_\_\_\_

\_\_\_\_\_  
Name of Officer or Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Officer or Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

## **VENDOR CERTIFICATION FORM**

1. **State of Texas Government Code 2252.908 (Certificate of Interested Parties Form 1295):** Successful bidders **awarded** contracts that are valued at \$100,000.00 or more are required by state law to go to the Texas Ethics Commission website and create a login and complete the required Certificate of Interested Parties Form 1295. Once the complete form has been signed, the Certificate of Interested Parties Form 1295 must be notarized and submitted to TJC's Purchasing Department's designated staff member listed in the solicitation. **This will only be required if you are awarded a contract.**

Texas Ethics Commission Website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

2. **Conflict of Interest Questionnaire:** Respondents submitting a response to this solicitation must comply with applicable laws, ordinances and regulations including the State of Texas "Local Government Code Chapter 176". As applicable, the person submitting a response to this solicitation must complete and submit a Conflict of Interest Questionnaire form CIQ, in a formation approved the Texas Ethics Commission. **The form must be downloaded, completed and returned with this solicitation**, or sent via USPS to Dana Ballard, Director, Campus & Procurement Services, TJC, P. O. Box 9020, Tyler, TX 75711. A copy of the form can be found on the TJC website: <https://www.tjc.edu/rfp>
3. **Felony Conviction Notification:** Company owner/operator has not been convicted of a felony, except as indicated on a separate attachment to this proposal, in accordance with sec. 44.034, Texas Education Code.
4. **Boycotting Energy Companies Notification:** Company owner/operator verifies respondent does not boycott energy companies and will not boycott energy companies during the term of any ensuing contract, or is exempt:
  - a. Exemption claimed:  
  
\_\_\_\_\_
5. **Discrimination Against Firearms Entity or Trade Association:** Company owner/operator verifies respondent (1) does not have a practice, policy, guidance, or directive the discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association, or is exempt:
  - a. Exemption claimed:  
  
\_\_\_\_\_
6. **Texas Government Code 2270 (Texas House Bill 89 and Texas Senate Bill 252):** By signing this document, Vendor/Company declares under penalty of perjury to be true and correct that my company (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract or it's renewals; and does not contract with companies engaged in business with Iran, Sudan, or Terrorist Organizations.
7. **Delinquent Franchise Taxes:** Vendor/Company certifies that its franchise taxes are current. If the corporation is exempt from payment of franchise taxes or is an out-of-state corporation not subject to Texas Franchise Tax, it shall certify to that effect.  
  
\_\_\_\_\_ I certify, the Corporation is exempt from payment of franchise taxes or is an out-of-state corporation.  
  
\_\_\_\_\_ I certify, there is not delinquent Texas franchise tax pending against the corporation.  
  
\_\_\_\_\_ I certify, there is delinquent Texas franchise taxes pending against the corporation.
8. **Texas Resident Information:** Chapter 2252, Subchapter A, of the Texas Government Code, establishes certain requirements applicable to proposers who are not Texas Residents. Under the Statute, a "Resident" vendor is one whose principal place of business is in Texas, including one whose ultimate parent company or majority owner has its principal place of business in Texas and employs at least 500 persons in the State of Texas:

Location of Principal Place of Business (City/State) and or Number of employees based in Texas:  
City/State: \_\_\_\_\_ Number of Employees that reside in Texas: \_\_\_\_\_

9. **Debarment Certification:** Vendor certifies neither the owner or principal owner has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549 “Debarment and Suspension” as described in the Federal Register and Rules and Regulations:

\_\_\_\_\_ No, Vendor is not currently debarred, suspended or otherwise ineligible.  
\_\_\_\_\_ Yes, Vendor is currently debarred, suspended or otherwise ineligible.

10. **Addenda Acknowledgement:** Vendor acknowledges receipt of and has reviewed (insert the #) \_\_\_\_\_ addenda that have been issued and made a part of this RFP. Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued by the Owner and/or Architect as an addendum. All such addendum issued by the Owner and/or Architect before the proposals are due are part of the RFP and respondents shall acknowledge receipt of and incorporate each addendum in its proposal. It is the vendor’s responsibility to make sure they have obtained all addendum. Addenda, if any, will be posted on TJC’s website at <http://www.tjc.edu/rfp>.

**VENDOR CERTIFICATION:** The undersigned, on behalf of vendor, certifies that this proposal is made without previous understanding, agreement or connection with any person, firm, or corporation submitting a proposal on the same specifications, and is in all respects fair and without collusion, fraud or unlawful acts. Vendor hereby acknowledges that it is unlawful to offer, give, agree to give to any person, or solicit, demand, accept, or agree to accept from another person, a bribe, or unlawful gift, benefit, advantage, gratuity, payment, or an offer of employment in connection with or arising from this sealed solicitation or subsequent contract. Vendor certifies that no relationship, whether by relative, business associate, capital funding agreement, or by any other such kinship exists between respondent and TJC.

Vendor represents and warrants that respondent has the necessary experience, knowledge, abilities, skills and resources to satisfactorily perform the terms, conditions and requirements of the RFP.

Vendor declares under penalty of perjury all of the above to be true and correct. It is further certified that the person whose signature appears below is legally and duly authorized to execute this contract and empowered to bind the company in whose name the solicitation is entered.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2026 by and for the company identified as follows:

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

Signature: \_\_\_\_\_

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

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

## REFERENCE FORM

**PLEASE TYPE OR ATTACH YOUR REFERENCE LIST HERE:** (Include any educational entities you have done business with.)

<b>Company Name</b>	
<b>Contact Person Name &amp; Title</b>	
<b>Email Address</b>	
<b>Phone Number</b>	
<b>Dates of Service and/or Event Name</b>	

<b>Company Name</b>	
<b>Contact Person Name &amp; Title</b>	
<b>Email Address</b>	
<b>Phone Number</b>	
<b>Dates of Service and/or Event Name</b>	

<b>Company Name</b>	
<b>Contact Person Name &amp; Title</b>	
<b>Email Address</b>	
<b>Phone Number</b>	
<b>Dates of Service and/or Event Name</b>	

<b>Company Name</b>	
<b>Contact Person Name &amp; Title</b>	
<b>Email Address</b>	
<b>Phone Number</b>	
<b>Dates of Service and/or Event Name</b>	

<b>Company Name</b>	
<b>Contact Person Name &amp; Title</b>	
<b>Email Address</b>	

<b>Phone Number</b>	
<b>Dates of Service and/or Event Name</b>	



**RESPONDENT'S BONDING, PRICING AND DELIVERY FORM**  
**Renovations and Updates at TJC South**

Proposal of: \_\_\_\_\_  
(Respondent's Company Name)

To: Dana Ballard  
Director, Campus & Procurement Services

Project Name: Renovations and updates at TJC South, 173 Henderson St., Rusk, TX

RFP #26-02

Having carefully examined all the requirements of this RFP, the proposed form of Agreement, and any attachments to them, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

**ESTABLISHMENT OF THE CONSTRUCTION MANAGER'S BUDGET LIMITATION:** The Owner has established an **approximate** Construction Manager's Budget Limitation (CMBL) amount of \$3,500,000.00 for the entire project, which includes the Pre-Construction Phase Fee and the Construction Services Guaranteed Maximum Price Proposal. The Owner reserves the right to proceed with the entire project or only certain portions, depending on available funding, which would be completed in phases.

**RESPONDENT'S PRE-CONSTRUCTION PHASE FEE:** The Respondent shall identify a Pre-Construction Phase Fee, pursuant to Article 5 of the Agreement.

Respondent's Pre-Construction Phase Fee \$ \_\_\_\_\_

**ESTABLISHMENT OF THE CONSTRUCTION COST LIMITATION:** Using the CMBL and the Respondent's Pre-Construction Phase Fee identified above, the Respondent shall identify the Construction Cost Limitation (CCL), pursuant to Article 3 of the Agreement:

Construction Manager's Budget Limitation		\$ _____
	(less)	
Owner's Construction Contingency		\$ _____
	(less)	
Owner's Special Cash Allowance		\$ (if applicable) _____
	(less)	
Respondent's Pre-Construction Phase Fee (as identified above)		\$ _____
	(equals)	
Respondent's Construction Cost Limitation		\$ _____

**RESPONDENT'S CONSTRUCTION PHASE FEE:** Using the CCL identified above, the Respondent shall identify a Construction Phase Fee percentage, pursuant to Article 14 of the Agreement:

Respondent's Construction Phase Fee Percentage		_____ %
	(equals)	
Respondent's Estimated Construction Phase Fee Amount		\$ _____
(percentage times the CCL above)		

**RESPONDENT'S NOT-TO-EXCEED GENERAL CONDITIONS COSTS:** The Respondent shall identify a General Conditions not-to-exceed percentage and amount as defined by Article 13 and, as attachment of the Agreement, the TJC Uniform General Conditions,

Respondent's General Conditions Percentage \_\_\_\_\_ %

Respondent's Estimated General Conditions *(percentage times the CCL above)* \_\_\_\_\_  
(equals) \$ \_\_\_\_\_

Total Approximate Construction Duration; Anticipated start date  
TBD; Estimated completion February/March 2027

Using the not-to-exceed General Conditions costs identified above, the Respondent shall identify all project management, bonds, insurance, field office and office supply costs for the Project as listed below:

<u>Allowable General Condition Line Item Category (if used)</u>		<u>Estimated Total Cost</u>
On-Site Project Management Staff	subtotal	\$ _____
Bonds and Insurance	subtotal	\$ _____
Temporary Project Utilities	subtotal	\$ _____
Field Offices & Office Supplies	subtotal	\$ _____

**Estimated On-Site Project Management Staff and Rates (if used)**

<u>Position</u>	<u>Quantity</u>	<u>Months</u>	<u>Monthly Salary Rate</u>
Project Executive	_____	_____	\$ _____
Project Manager	_____	_____	\$ _____
Superintendent(s)	_____	_____	\$ _____
Assistant Superintendent(s)	_____	_____	\$ _____
Project Engineer/Expeditor(s)	_____	_____	\$ _____
Field/Office Engineer(s)	_____	_____	\$ _____
Field Office Support Staff	_____	_____	\$ _____
CPM Scheduler	_____	_____	\$ _____
Safety Coordinator/Assistant(s)	_____	_____	\$ _____

**AWARD OF CONTRACT AND COMMENCEMENT OF SERVICES:** The undersigned agrees to negotiate and execute the contract after notification that the Respondent has been identified by the Owner as the respondent with the "best value" proposal, and to commence services on or before the commencement date stated by the Owner in a Notice to Proceed. The Owner reserves the right to accept or reject and all proposals, cancel this RFP, or to waive proposal irregularities. The Owner reserves the right to proceed with the entire project or only certain portions depending on available funding. Proposals shall be valid and not withdrawn for a period of ninety (90) days from the date of opening thereof.

**Respectfully Submitted and Certified By:**

\_\_\_\_\_  
*(Respondent's Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Authorized Signature)*

\_\_\_\_\_  
*(Date and Email)*

**PROPOSED AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK**

This Agreement is made as of \_\_\_\_\_, 2026 (the “Effective Date”), by and between

The **Owner:**                               TJC  
  P.O. Box 9020  
  Tyler, Texas 75711-9020

and **Construction Manager at Risk:**

(Insert)

for the **Project:** Renovations at TJC South, 173 Henderson Street, Rusk, TX

**Project Architect:**

Fitzpatrick Architects  
Steve Fitzpatrick  
110 North College, Suite 100  
Tyler, TX 75702

The Owner and the Construction Manager at Risk agree as follows:

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#### List of Exhibits (to be attached at a later date)

- Ex.A TJC Uniform General Conditions
- Ex.B Division of Project Cost Elements
- Ex.C Guaranteed Maximum Price Proposal Form
- Ex.D Bonds
- Ex.E Constructability Implementation Program
- Ex.F Additional Services Proposal
- Ex.G Change Order
- Ex.H Final/Partial Payment Request

### ARTICLE 1 SCOPE OF WORK

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

### ARTICLE 2 CONTRACT DOCUMENTS

#### 2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The TJC Uniform General Conditions;

- c. All Addenda issued prior to the Effective Date of this Agreement;
- d. The Guaranteed Maximum Price Proposal(s) when accepted by the Owner and executed by the parties;
- e. All Change Orders issued after the Effective Date of this Agreement;
- f. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
- g. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and

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

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

2.4 No Claims for additional compensation or time will be allowed because of Construction Manager's failure to familiarize itself with site conditions.

### ARTICLE 3                      DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions and as follows.

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

3.2 "**Construction Documents**" means, collectively, the UGCs, Owner's Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders and other documents prepared by the Project Architect, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

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

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

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

3.6 **“Estimated Construction Cost”** (ECC) means the amount calculated by the Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the ECC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager’s Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

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

3.8 **“General Conditions Cost”** means costs incurred and minor work performed by the Construction Manager without the need for competitive bids/proposals as allowed under Texas Education Code section 44.038 as amended. The allowable General Conditions items are further described and limited by attached exhibit.

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

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

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

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

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

3.14 **“Project Team”** means the Owner, Construction Manager, Project Architect and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

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

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

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

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

#### ARTICLE 4 CONSTRUCTION MANAGER’S GENERAL RESPONSIBILITIES

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

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

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

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

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

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

4.7 Attend and participate in Owner’s “Partnering” Program for all phases of the Project.



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

## ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

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

### 5.1 General Coordination

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

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

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

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

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

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

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

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

## 5.2 Constructability Program

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

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

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

## 5.3 Scheduling

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

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

5.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

5.3.4 Construction Manager should identify long lead items that may require procurement during the terms of the Agreement. Major building equipment such as boilers, chillers, air handlers, generators and switchgear, etc., may be in this category.

#### 5.4 Budget and Cost Consultation

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

5.4.2 Provided Estimated Construction Cost (ECC) reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project as required in Article 25. The Estimated Construction Cost reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications Institute Division 1-16 format for each portion of the Work.

5.4.2.1 Concurrent with the submission of each ECC as defined in Article 25, the Construction Manager submits a Cash Flow Analysis for the overall construction duration of the Project. This analysis should be derived from cost loading the construction schedule as developed and revised by the Construction Manager, showing projected monthly billings for completed work in place. The analysis shall list individual monthly billings, accumulated billings to date and percentages of completion on a month-to-month basis.

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

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

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

5.4.6 The Construction Manager shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Construction Manager shall not be required to employ persons or entities to whom the Contractor has a reasonable objection. Unless otherwise provided in the Contract Documents:

- Allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- Construction Manager's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

- Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between the actual costs and the allowances identified in said Article of the Agreement, and (2) changes in Construction Managers costs under said Article.

5.4.7 Construction Manager shall submit a written quotation to Owner of the Costs associated with an allowance prior to incurring any costs associated with the allowances. Under no circumstances shall Construction Manager incur any costs related to an allowance on behalf of Owner without prior written authorization of Owner. Materials and equipment under an allowance shall be selected by the owner in sufficient time to avoid delay in the Work.

## 5.5 Coordination of Design and Construction Contract Documents

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

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

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

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

5.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Tyler Junior College requirements.

## 5.6 Construction Planning and Bid Package Strategy

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

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

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

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

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

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

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

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

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

## 5.7 Obtaining Bids/Proposals for the Work

5.7.1 In accordance with *Texas Education Code* Sections 44.031(g) and 44.038, as amended, Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Criteria for determining the bid/proposal that provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

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

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

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

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

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

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

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

## 5.8 Safety

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

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

## ARTICLE 6                      PRE-CONSTRUCTION PHASE FEE

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

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

6.3 Costs associated with the items listed in Exhibit C, *Division of Project Cost Elements* (column headed “Precon Contract”) are specifically, but not exclusively, used in the establishment of the Pre-Construction Phase Fee.

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

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

6.5.1 A pre-established lump sum amount; or

6.5.2 The hourly cost of Construction Manager’s employees or consultants who actually perform the Additional Services based on the employee’s Worker Wage Rate (<https://beta.sam.gov/>) or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

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

## ARTICLE 7                      GUARANTEED MAXIMUM PRICE PROPOSAL(S)

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

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

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

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

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

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

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

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

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

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

7.11 Following Owner acceptance of the GMP Proposal, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions



and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

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

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

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

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

## ARTICLE 8 CONSTRUCTION PHASE SERVICES

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

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

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

8.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner.

The designated representative shall be authorized to act on behalf of and bind the Construction Manager in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

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

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

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

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

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

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

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

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

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

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

8.14 Construction Manager shall submit to the Owner a Daily Construction Report using a format to be agreed upon with the Owner's Direct Representative. The report will contain information on weather conditions, manpower, material received on site, work performed, problems encountered, accidents and/or safety meetings, visitors to the site, and other job-related information.

## ARTICLE 9                      OWNER'S RESPONSIBILITIES

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

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

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

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

9.5 The Owner, at Owner's cost, will secure the services listed in Exhibit C, Division of Project Cost Elements (column headed "Owner Cost") or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

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

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

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

9.9 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Construction Manager's responsibility for the Work. Construction Manager is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

9.10 Owner shall have the right to reject any defective Work on the Project. Should Construction Manager refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Construction Manager on demand. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project. The Owner's work by its own forces or by separate contractor shall be subject to the same obligations and to have the same rights which apply to the Construction Manager under the conditions of this Agreement.

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

## ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

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

Construction Documents as necessary and appropriate for the execution of the Work. The Construction Manager and its Subcontractors shall not use the Construction Documents on any other projects.

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

## ARTICLE 11 TIME

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

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

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

## ARTICLE 12 PAYMENTS

12.1 General Requirements

12.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Construction Manager's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

12.1.2 Expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment. Allowable expenses are limited as follows:

12.1.2.1 Travel from Texas to an out-of-state location:

- Coach class air fare purchased at the lowest reasonably available rate;
- Lodging and meals for overnight travel limited to the maximum rates allowed in the "Out of State Meals and Lodging Rates" guidelines published by the Texas Comptroller of Public Accounts, plus city and state taxes; and
- Taxi, mid-size automobile rental expenses, and related costs with applicable taxes.
- An additional forty (40) percent mark-up will be allowed on lodging costs only (not including taxes or meals)

12.1.2.2 Travel to Texas from an out-of-state location:

- Coach class air fare purchased at the lowest reasonably available rate;

- Lodging and meals for overnight travel limited to the maximum current State of Texas per diem rate for in-state lodging and meals plus city and state taxes;
- Taxi, mid-size automobile rental expenses, and related costs with applicable taxes.
- An additional forty (40) percent mark-up will be allowed on lodging costs only (not including taxes).

12.1.2.3 Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, laundry service, valet service, entertainment expenses and any non-Project related items. Tips included in the per diem rates.

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

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

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

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

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

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

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

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

12.1.7.4 Construction Manager is in violation of the Prevailing Wage requirements (<https://beta.sam.gov/>) or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Construction Manager;

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

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

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

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

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

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

## 12.2 Pre-Construction Phase Payments

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

Schematic Design Stage	15%
Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	5%

12.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner.

## 12.3 Construction Phase Payments

12.3.1 Payments for Construction Phase Services shall be made as provided for in the Uniform General and Supplementary Conditions and the Owner's Specifications. All payment requests shall be submitted on an Application for Payment with a schedule of values approved by the Owner and includes all required attachments identifying payments to all Subcontractors. Payment for approved Change Orders shall be made as part of the Construction Manager's Application for Payment.

- 12.3.2 The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.
- 12.3.3 For General Conditions Costs, Construction Manager's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.
- 12.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

***[12.3.4.1 AND ITS SUBPARTS ARE ONLY APPLICABLE TO PROJECTS WHERE PM AND CONSTRUCTION MANAGER FEEL IT IS NECESSARY TO RELEASE RETAINAGE FOR SELECTED SUBCONTRACTORS EARLIER THAN THE SUBSTANTIAL COMPLETION DATE]***

12.3.4.1 The Construction Manager may request the early release of retainage for subcontractors as follows:

12.3.4.1.1 Those engaged only in the early stages of construction provided that 1) the subcontractor has completed 100% of its work on a definable phase of the project covered by a separate subcontractor's bid, and 2) the subcontractor is not expected to participate in any future stages of the project. A plan for early release of retainage must be submitted by the Construction Manager to the Owner prior to the start of the Construction Services Phase. Approval of the plan by the Owner is not to be unreasonably withheld, or,

12.3.4.1.2 as agreed in writing between the Construction Manager and the Owner.

12.3.4.1.3 Applications for early release of retainage must also include consent of surety.

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

Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

- 12.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Construction Manager and has been audited and verified by Owner or Owner's representatives.
- 12.3.7 Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager. The total amount of all Construction Phase payments to the Construction Manager shall not exceed the actual verified Direct Construction Cost for the Project plus the Construction Manager's Construction Phase Fee.
- 12.3.8 The acceptance by Construction Manager or Construction Manager's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the Request for Final Payment.

## ARTICLE 13                      DIRECT CONSTRUCTION COST

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

References in the Uniform General and Supplementary Conditions to adjustments in "cost" or "costs" mean the Direct Construction Cost.

### 13.1      General Conditions Costs

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

Allowable General Conditions items are identified by attached Exhibit C, Division of Project Costs (column headed "Gen. Cond."). These items shall be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the schedule of values. Items not specifically included in the Exhibit C will not be allowed as a General Conditions Cost.

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



and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

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

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

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

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

13.1.5.1 The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

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

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

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

## 13.2 Cost of the Work

13.2 Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization. Cost of the Work includes the items listed in Exhibit C, *Division of Project Cost Estimates* (column headed "Cost of Work").

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

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

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

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

13.2.5 Testing fees pursuant to the Uniform General Conditions.

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

### 13.3 Construction Manager's Contingency

- 13.3.1 The Guaranteed Maximum Price Proposal may include a Construction Manager's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work and unknown factor that may adversely affect the cost such as bidding of subcontractors and major material supply items; estimating assumptions and ambiguities; construction scheduling problems (manufacturer delays, strikes, disruptions, work area conflicts); weather, labor, and equipment availability; and productivity.
- 13.3.2 Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.
- 13.3.3 The Construction Manager's Contingency is specifically not to be used for Contractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with the Project Architect or trade Subcontractors, or to correct errors or omissions in the Construction Documents.
- 13.3.4 As the Construction Documents are finalized and the Buyout of the Work progresses the Construction Manager's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in the Construction Manager's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

13.3.5 The Construction Manager is to provide the Owner with a monthly accounting of the contingency as these monies are expended.

13.3.6 The Construction Manager's Contingency does not include the Owner's Construction Contingency the latter of which is to pay for scope changes. A scope change is defined as any change that increases the size, value, operation efficiency and quality of materials of the facility, time of performance, and sequence of work and is most generally initiated by the Owner or Architect.

13.3.7 The use of funds from the Construction Manager's Contingency that does not involve a change in the scope of work will not justify an increase in the Construction Manager's Construction Phase Fee.

#### ARTICLE 14 CONSTRUCTION PHASE FEE

The Construction Manager's Construction Phase Fee is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Owner elsewhere in the Agreement. References in the Uniform General Conditions to Construction Manager's "overhead" and "profit" mean the Construction Manager's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the items listed in Exhibit C, *Division of Project Cost Elements* (Column headed "Construction Phase Fee")

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

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

14.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are limited to: costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, jobsite computers and other business equipment, and specialized telephone systems, including cellular/digital phones; trade or professional association dues; cost for relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions.

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

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

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

14.7 Any cost arising out of a breach of this Contract or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment;

costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

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

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

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

## ARTICLE 15 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

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

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

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

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

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

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

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

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

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

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

## ARTICLE 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

16.1 The Construction Manager acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Construction Manager's investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Construction Manager shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's investigation.

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

## ARTICLE 17 BONDS AND INSURANCE

17.1 Upon execution of this Agreement, Construction Manager shall provide a security bond on the form provided by the Owner in the amount of 5% of the Construction Cost Limitation. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

17.2 Upon acceptance by the Owner of a Guaranteed Maximum Price Proposal, Construction Manager shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the Uniform General and Supplementary Conditions. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum

of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3 In the event that the Owner implements an Owner Controlled Insurance Program (OCIP), the Construction Manager will be required to provide the following insurance coverages (ref. 25.7):

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

17.3.2 Construction Phase: Provide Automobile Liability, Owner's Protective Liability and Builder's Risk, as set forth in the Uniform General Conditions.

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

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

17.4.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Uniform General Conditions.

17.4.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the Uniform General Conditions.

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

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

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

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

17.7 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or

modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Construction Manager and not covered by insurance shall be paid by the Construction Manager.

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

17.9 OCIP Insured Projects.

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

17.9.2 Construction Manager's GMP Proposal shall not include the cost of premiums for insurance coverage provided through the OCIP. The GMP Proposal shall only include the cost of premiums of all other insurance required by the Contract Documents.

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

17.9.4 Construction Manager shall include required OCIP insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to and are not to include in their base proposals.

17.9.5 During construction, Owner may audit the Subcontractors' labor hours to determine actual insurance costs.

ARTICLE 18 [INTENTIONALLY LEFT BLANK]

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

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

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

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

19.4 In the event of termination that is not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided,

however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

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

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

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

## ARTICLE 20 INDEMNITY

20.1 See Article 7 of the Uniform General Conditions for Construction Manager's general Indemnification obligations.

20.2 Construction Manager shall defend (with Owner choosing defense counsel), hold harmless and indemnify the Owner from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by the Construction Manager or the use by Construction Manager, or by Owner at the direction of Construction Manager, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Construction Manager and Construction Manager shall be given full opportunity to negotiate a settlement. Construction Manager does not warrant against infringement by reason of Owner's or Project Architect's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Construction Manager.

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

## ARTICLE 21 SPECIAL WARRANTIES

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

21.2 The Construction Manager represents, and agrees that it will perform its services in accordance with the usual and customary standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of



any other body having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

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

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

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

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

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

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

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

## ARTICLE 22 CERTIFICATION OF NO-ASBESTOS-CONTAINING MATERIALS OR WORK

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 23 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

23.10.1 Construction Manager's Records shall include any and all information and data, including without limitation, records, documents, agreements, purchase orders, leases, contracts, commitments, daily diaries, superintendent reports, drawings, receipts, vouchers, and any other agreements that may in Owner's judgment pertain to any rights, duties or obligations covered by any Contract Document.

23.10.2 If an audit inspection or examination in accordance with this article, disclosed overpricing or overcharges to the Owner (of any nature) by the Construction Manager and/or the Construction Manager's Subcontractors in excess of One Hundred Thousand Dollars (\$100,000.00), in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the owner by the Construction Manager.

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

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

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

23.14 Debarment: Construction Manager confirms that neither Construction Manager nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). ). Construction Manager further certifies that it is not identified on the Texas Comptroller's list of scrutinized companies doing business with Sudan or Iran or a list of companies known to have contracts with or to provide services or supplies to a foreign terrorist organization. Construction Manager will provide immediate written notification to Owner if at any time prior to award Construction Manager learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when Owner executes this Agreement. If it is later determined that Construction manager knowingly rendered an erroneous certification, in addition to the other remedies available to Owner, Owner may terminate this Agreement for default by Construction manager.

23.15 Israel: In accordance with the Texas Government Code, Construction Manager represents and verifies that it does not, and will not during the term of this contract, boycott Israel and that Construction Manager is not identified by the Texas Comptroller as boycotting Israel. "Boycott" as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

23.16 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 allocation of funds by Owner. If the Legislature fails to appropriate or allot the necessary funds, or Owner fails to allocate the necessary funds, then Owner will issue written notice to Construction Manager and Owner may terminate this Agreement without further duty or obligation hereunder. Construction Manager acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

23.17 Prohibitions: Owner provides a friendly, smoke-free, vapor-free environment at all of its campuses and satellite facilities. Construction Manager agrees to fully comply with Owner's no smoking policy and ensure compliance of same by all employees or subcontractors of Construction Manager or anyone else performing under this Agreement on its behalf. Owner's facilities are an alcohol, drug, tobacco, and vapor-free zone. These items are prohibited on the campus and satellite facilities.

23.18 Firearms: Owner is committed to providing a safe environment for students, faculty, staff, and visitors, and to respecting the right of individuals who are licensed to carry a handgun where permitted by law. Individuals who are licensed to carry may do so on campus premises or in a college-owned vehicle except in locations and at activities prohibited by law or by this policy. Individuals who observe a violation of this policy are required to report the incident immediately to the Campus Police Department, so it can be documented and properly investigated. Call 911 for emergencies and 903-510-2258 for non-emergencies. [https://www.tjc.edu/downloads/file/1045/concealed\\_handguns\\_on\\_campus\\_policy](https://www.tjc.edu/downloads/file/1045/concealed_handguns_on_campus_policy)

23.19 Domestic Preferences for Procurement and Buy American Provisions: As appropriate and to the extent consistent with law, TJC has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards, including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (Purchases that are made with non-Federal funds or grants are excluded from the Buy American Act). Vendor certifies that it is in compliance with all

applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

## ARTICLE 24                      COMPENSATION

### 24.1                      Construction Cost Limitation

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

\$TBD

### 24.2                      Pre-Construction Phase Fee

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

\_\_\_\_\_ Dollars (\$TBD);

### 24.3      Construction Phase Fee

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

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

\_\_\_\_\_ Dollars (\$TBD).

24.3.3      If the Owner agrees to a decrease or increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 24.3.1 to the amount of the decrease or increase in the GMP.

24.3.4      The percentage rate established in paragraph 24.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Owner's Direct Representative (ODR).

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

### 24.4      Limitation on General Conditions Cost

24.4.1 The maximum allowable amount of General Conditions Cost payable to the Construction Manager during the Construction Phase of the Project shall not exceed **TBD** \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Construction Cost Limitation for the Project.

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

\_\_\_\_\_ Dollars (\$ **TBD** \_\_\_\_\_).

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

24.4.4 The percentage rate established in paragraph 24.4.1 of this Agreement for calculation of the maximum allowable amount of General Conditions Costs cannot be increased except with the express written approval of the Owner's Direct Representative (ODR).

24.4.5 If the Owner agrees to any decreases or increases in the Construction Cost Limitation during the Construction Phase without increasing the GMP (for example, change orders funded by Owner's Special Cash Allowance or Owner's Construction Contingency) the allowable General Conditions Costs for these increases shall be calculated accordance with the provisions of the Uniform General Conditions for Change Orders.

## ARTICLE 25 OTHER TERMS AND CONDITIONS

### 25.1 Time of Completion

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

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

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

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

### 25.2 Liquidated Damages (Not-Applicable)

25.2.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of \$0. from any money due or that becomes due the Construction Manager, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion.

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

### 25.3 Estimated Construction Cost Reports (ECC)

25.3.1 The Construction Manager shall initially submit a comprehensive estimate based on completed Schematic Drawings within twenty-one (21) calendar days of receipt of the Schematic Drawings. This ECC, and all other estimates, shall be submitted with a complete price breakdown and detailed listing of qualifications and assumptions. Further, the Construction Manager shall provide the Owner, and Owner's Consultant's with subcontractor vendor quotes as received.

25.3.2 The Construction Manager shall initially submit a comprehensive estimate based on 100% complete Design Development Drawings within twenty-one (21) calendar days of receipt of said drawings and specifications. This ECC should be prepared by performing a detailed quantity survey and specification review. This ECC should clarify many of the qualifications and assumptions presented in the Schematic Estimate. This ECC should be submitted with a complete price breakdown and detailed listing of qualifications and assumptions. Further, the Construction Manager shall provide the Owner, and Owner Consultant's with subcontractor vendor quotes as received.

25.3.3 At approximately 30% completion of the Construction Documents, the Construction Manager shall submit the Final ECC within thirty (30) calendar days of receipt of said documents. This shall be the most detailed and comprehensive pricing, narrowing the scope of assumptions and qualifications. Again, this ECC should be submitted with a complete price breakdown and detailed listing of outstanding inconsistencies, delays or problem areas which could impact budget parameters and final delivery into the construction phase of the Project. Further, the Construction Manager shall provide the Owner, and Owner Consultant's with subcontractor vendor quotes as received.

25.3.4 Prior to 60% completion of Construction Documents and at the Owner's discretion, the Construction Manager may be required to submit a Guaranteed Maximum Price (GMP) based on early site packages. The scope of this package will be as described by the Construction Drawings.

### 25.4 Notices

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

If to Owner: Shelly Roberts, Director, Contract Administration  
Tyler Junior College  
P.O. Box 9020  
Tyler, Texas 75711-9020  
[shelly.roberts@tjc.edu](mailto:shelly.roberts@tjc.edu)

If to Construction Manager: [Name]  
[Company Name]  
[Street Address]  
[City, State, Zip]

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

## 25.5 Party Representatives

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

Larry Hatton, Director  
Facilities & Construction  
Tyler Junior College  
P.O. Box 9020  
Tyler, Texas 75711-9020  
[Larry.hatton@tjc.edu](mailto:Larry.hatton@tjc.edu)

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

[Name]  
[Title]

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

## 25.6 Construction Document Sets

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

## 25.7 OCIP Insured Project

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

### **List of Exhibits**

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

- Exhibit A – TJC Uniform General Conditions
- Exhibit B -- Division of Project Cost Elements
- Exhibit C -- Guaranteed Maximum Price Proposal Form
  - Attachment 1 to Exhibit C -- Guidelines for the Preparation of the GMP
  - Attachment 2 to Exhibit C – Payment and Performance Bonds
- Exhibit D – Bonds
- Exhibit E -- Constructability Implementation Program
- Exhibit F – Additional Services Proposal
- Exhibit G – Change Order
- Exhibit H – Partial/Final Payment Request



By signature hereon, Contractor certifies that no member of the Board of Trustees of TJC, or TJC's Executive Officers, or any employee of TJC who has authority to approve this Contract has a financial interest, directly or indirectly, in Contractor's business or in the transaction that is the subject of this Agreement.

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

**Contract Review:**

\_\_\_\_\_  
Shelly Roberts, Director  
Contract Administration

\_\_\_\_\_  
Date

**Facilities & Construction Review:**

\_\_\_\_\_  
Larry Hatton, Director  
Facilities & Construction

\_\_\_\_\_  
Date

ATTEST:  
(Seal)

(Construction Manager at Risk)

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title typed)

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title typed)

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

TJC  
(Owner)

By: \_\_\_\_\_  
Dr. Juan Mejia, President

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

**TJC UNIFORM GENERAL CONDITIONS – EXHIBIT A**  
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## Article 1. . Definitions

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

- 1.1 *Architect/Engineer (A/E)* 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 or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.2 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.
- 1.3 *Change Order Proposal* means a Contractor-generated document in response to a Change Order Request (COR).
- 1.4 *Change Order Request (COR)* means a document which informs the contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.
- 1.5 *Close-out documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.6 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.7 *Contract Date* is the date when the agreement between the owner and the contractor becomes effective.
- 1.8 *Contract Documents* means those documents identified as a component of the agreement (contract) between the owner and the contractor. These may include, but are not limited to, Drawings, Specifications, General, Supplementary and Special Conditions, and all pre-bid and/or pre-proposal addenda.
- 1.9 *Contractor* means the individual, corporation, 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 contract documents refer to *Contractor* as if singular in number.
- 1.10 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the contract.
- 1.11 *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 Change Order.
- 1.12 *Date of Commencement* means the date designated in the Notice to Proceed for the Contractor to commence the Work.

- 1.13 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.14 *Drawings* means that product of the Architect/Engineer which graphically depicts the Work.
- 1.15 *Final Completion* means the date determined and certified by the Architect/Engineer and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.16 *Owner* means Tyler Junior College
- 1.17 *Owner's Designated Representative (ODR)* means the individual assigned by the Owner to act on its behalf, and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the contract.
- 1.18 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contract and warranty obligations.
- 1.19 *Samples* means 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.
- 1.20 *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 Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.
- 1.21 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.22 *Site* means the geographical area of the location of the Work.
- 1.23 *Special Conditions* means the documents containing terms and conditions, which may be unique to the project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.24 *Specifications* means the written product of the Architect/Engineer 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.
- 1.25 *Subcontractor* means a business entity that enters into an agreement with the Contractor to perform part of the Work or to provide services, materials or equipment for use in the Work.
- 1.26 *Substantial Completion* means the date determined and certified by the Contractor, Architect/Engineer and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.27 *Supplementary General Conditions* means procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.

- 1.28 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.29 *Unilateral Change Order (ULCO)* means a Change Order issued by the Owner without the agreement of the Contractor.
- 1.30 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, and/or its agents, to fulfill the Contractor's obligations under the Contract.

## **Article 2. • Laws Governing Construction**

- 2.1. Environmental Regulations. The Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection at all times. Unless otherwise specifically determined, the Owner is responsible for obtaining and maintaining permits related to stormwater run-off. The Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to site, including hazardous materials, and all such items brought to the site by its subcontractors and suppliers, or by other entities subject to direction of the Contractor. The Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2. Wage Rates. The Contractor shall not pay less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner (<https://beta.sam.gov/>). The specified wage rates are minimum rates only. The Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The "Prevailing Wage Schedule" is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. The Contractor shall notify each worker, in writing, of the following as they commence work on the contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by the Owner, the Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law.
- 2.2.1.1 Submit a copy of each worker wage-rate notification to the ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the project.
- 2.2.1.2 The "Prevailing Wage Schedule" is determined by the Owner in compliance with Tex. Gov't Code, Chapter 2258. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner's Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a subcontractor, the

Contractor shall promptly inform the ODR of the proposed wage to be paid for the skill along with a justification for same. The Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the Prevailing Wage Schedule. In no case shall any worker be paid less than the wage indicated for Laborers.

2.2.1.3 Penalty for Violation. The Contractor and any Subcontractor will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule.

2.2.1.4 Complaints of Violations

2.2.1.4.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation of Tex. Gov't Code, Chapter 2258, the Owner will, within 31 days, make an initial determination as to whether good cause exists that a violation occurred. The Owner will send documentation of the initial determination to the Contractor against whom the violation was alleged, and to the worker involved. Upon making a good-cause finding, the Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.1.4.2 If the Contractor and claimant worker reach an agreement concerning the claim, the contractor shall promptly notify the Owner in a written document countersigned by the worker.

2.2.1.4.3 Arbitration Required. If the violation is not resolved within 14 days following initial determination by the Owner, the Contractor and the claimant worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Tex. Civ. Prac. & Rev. Code, Chapter 171. For a period not to exceed 10 days, after which, if no agreement reached, a district court may be petitioned by any of the parties to the arbitration to appoint an arbitrator whose decision will be binding on all parties.

2.2.1.4.4 Arbitration Award. If an arbitrator assesses an award against the Contractor, the Contractor shall promptly furnish a copy of said award to the Owner. The Owner may use any amounts retained under Article 2.2.1.4.1 to pay the worker the amount as designated in the arbitration award. If the retained funds are insufficient to pay the worker in

accordance with the arbitration award, the worker has a right of action against the Contractor, and/or the surety to receive the amount owed, plus attorneys' fees and court costs. The Owner has no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award.

2.2.1.4.5 No Extension of Time. If the Owner's determination proves valid that good cause existed to believe a violation had occurred, the Contractor is not entitled to an extension of time for any delay arising directly or indirectly from of the arbitration procedures set forth herein.

- 2.3. Venue for Suits. The venue for any suit arising from this contract will be in a court of competent jurisdiction in Smith County, Texas.
- 2.4. Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event the Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.
- 2.5. Royalties, Patents & Copyrights. The Contractor shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.
- 2.6. State Sales and Use Taxes. The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner is not required to reimburse Contractor for taxes paid on items that qualify for tax exemption.

### **Article 3. - General Responsibilities of Owner & Contractor**

- 3.1. Owner's General Responsibilities. The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
  - 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with Construction, a conference will be convened for attendance by the Owner, Contractor, Architect/Engineer (AE) and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the project team members.
  - 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify the Owner's Designated Representative (ODR), who has the express

authority to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.

3.1.2.1 Unless otherwise specifically defined elsewhere in the contract documents, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.

3.1.2.2 All directives on behalf of the Owner will be conveyed to the Contractor by the ODR in writing.

3.1.3 Owner Supplied Materials and Information.

3.1.3.1 The Owner will furnish to the Contractor those surveys describing the physical characteristics, legal description, limitations of the site, site utility locations, and other information used in the preparation of the Contract Documents.

3.1.3.2 The Owner will provide information, equipment, or services under the Owner's control to the Contractor with reasonable promptness.

3.1.4 Availability of Lands. The Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by the Contractor. The Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. The Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties

3.1.5.1 The Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. The Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Owner is not responsible for the acts or omissions of Contractor, or any of its subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of the Contractor.

3.1.5.2 The Owner will not take any action in contravention of a design decision made by the AE in preparation of the Contract Documents, when such actions are in conflict with statutes under which the AE is licensed for the protection of the public health and safety.

3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between the Owner and the Contractor, the AE shall provide general administration services for the Owner during the construction phase of the project. Written correspondence, requests for information, and shop drawings/submittals shall be directed to the AE for action. The AE



has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to the Contractor by the ODR, upon request.

3.2.1 Site Visits

3.2.1.1 The AE will make visits to the site at intervals as provided in the AE's contract agreement with the Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to the Owner.

3.2.1.2 The AE has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Article 3.1.5.2, the Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by the ODR such clarifications or interpretations will be provided by the AE consistent with the intent of the Contract Documents. The AE will issue these clarifications with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI) or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

3.2.3 Limitations on Architect/Engineer Authority. The AE is not responsible for:

3.2.3.1 The Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to Project nor will the AE supervise, direct, control or have authority over the same.

3.2.3.2 The Failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work.

3.2.3.3 The Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3.2.3.4 Acts or omissions of the Contractor, or of any other person or organization performing or furnishing any of the Work.

3.3 Contractor's General Responsibilities. The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the contract documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. The Contractor is responsible for visiting the site and being familiar with local conditions such as the location, accessibility, and general character of the site and/or building.

- 3.3.1 Project Administration. The Contractor shall provide project administration for all subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the AE and ODR in accordance with these General Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.
- 3.3.1.1 The Contractor shall furnish to the ODR one copy of the current edition of Means Facility Cost Data at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.
- 3.3.1.2 The Contractor shall furnish to the ODR one copy of the current edition of the “Rental Rate Blue Book for Construction Mobilization Costs” at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.
- 3.3.2 Contractor’s Superintendent. Employ a competent resident superintendent who will be present at the Project Site during the progress of the Work. The superintendent is subject to the approval of the ODR. Do not change approved superintendents during the course of the project without the written approval of the ODR unless the superintendent leaves the employ of the Contractor.
- 3.3.3 Labor. Provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents. Maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, startup, inspection and completion of the Work.
- 3.3.5 Non-Compliant Work. Should the AE and/or the ODR identify Work as noncompliant with the Contract Documents, the ODR will communicate the finding to the Contractor and the Contractor will correct such Work at its expense. The approval of Work by either the AE or ODR does not relieve the Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.6 Subcontractors. Do not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection. The Contractor will not substitute Subcontractors without the acceptance of the Owner.
- 3.3.6.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the Agreement between the Contractor and the Owner.
- 3.3.6.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a

direct or indirect contract with the Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through the Contractor. Furnish to the Owner a copy of each first-tier subcontract promptly after its execution. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies in no way relieves the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.

- 3.3.7 Continuing the Work. Carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. Do not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Contractor may agree in writing.
- 3.3.8 Cleaning. At all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. The Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion Inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.9 Acts and Omissions of Contractor, its Subcontractors and Employees. The Contractor is responsible for acts and omissions of his employees and all its subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the Project any of Contractor's or its subcontractor's employees that the ODR finds to be careless, incompetent, or otherwise objectionable.
- 3.3.10 Indemnification of Owner. The Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the board of trustees, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, officers or employees, separate Contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS

OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 3.3.10.1 The provisions of this Indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.3.10.2 Promptly advise the Owner in writing of any claim or demand against the Owner or the Contractor known to the Contractor related to or arising out of the Contractor's activities under this Contract.
- 3.3.11 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
  - 3.3.11.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by the Owner.
  - 3.3.11.2 The Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.
  - 3.3.11.3 Use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of the Contractor.
  - 3.3.11.4 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.
- 3.3.12 Separate Contracts. Additional Contractor responsibilities when the Owner awards separate Contracts
  - 3.3.12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.
  - 3.3.12.2 The Owner reserves the right to perform operations related to the Project with the Owner's own forces.
  - 3.3.12.3 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
  - 3.3.12.4 The Contractor shall cooperate with other contractors employed on the project by the Owner, including providing access to site and project information as requested.

#### **Article 4. [Intentionally Left Blank]**

#### **Article 5. . Bonds & Insurance**

5.1. Construction Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.

- 5.1.1. A Performance Bond is required if the Contract Price is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by Owner. The Performance Bond shall be effective through the Contractor's warranty period.
- 5.1.2. A Payment Bond is required if the Contract Price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be approved by Owner.
- 5.1.3. Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, on the Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to the Owner.
- 5.1.4. Power of Attorney. Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5. Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

- 5.1.6. Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code, §2253.026.
- 5.1.7. Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.1.8. Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code, §§ 53.231 – 53.239 when the value of the Contract between the Owner and the Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties shall be listed on the US Department of the Treasury's Listing.
- Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

5.2. Insurance Requirements.

The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property in the care, custody and control of Contractor prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to the Owner of certificates of insurance executed by the insurer or its authorized agent stating coverage's, limits, expiration dates and compliance with all applicable required provisions. Upon request, the Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. The Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to the Owner.

- 5.2.1. The Contractor shall provide and maintain the insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated through Substantial Completion Notices, Acceptance Notices and/or other means as deemed appropriate by the Owner.

5.2.2. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner.

5.2.2.1. Insurance coverage required includes:

5.2.2.1.1. Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the **policy endorsed to provide a waiver of all rights of subrogation, to the extent of Contractor's indemnification obligations and other rights in favor of TJC.** Employer's Liability insurance of not less than:

\$1,000,000 each accident/employee

\$1,000,000 each disease/employee

\$1,000,000 policy limit by disease

5.2.2.1.2. Commercial General Liability Insurance. Including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of :

\$2,000,000 general aggregate

\$1,000,000 per occurrence/all insured

\$1,000,000 personal injury and advertising injury limit

\$2,000,000 completed operations aggregate/all insured

\$10,000 medical expenses (any one person)

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent. As required by written contract, policy must include a waiver of all rights of subrogation to the extent of Contractor's indemnification obligations and other rights in favor of TJC. An additional insured endorsement must be included naming TJC, its Board and employees.

5.2.2.1.3. Asbestos Abatement Liability Insurance, if applicable, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the

Work or the Project includes asbestos containing materials.

The Combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

\*Specific Requirement for Claims-Made Form: Required period of coverage will be determined by the following formula: Continuous coverage for life of the contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

If this contract is for asbestos abatement only, the All-Risk Builder's Risk or All-Risk Installation Floater (e) is not required.

- 5.2.2.1.4. Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

As required by written contract, policy must include a waiver of all rights of subrogation, to the extent of Contractor's indemnification obligations and other rights in favor of TJC. An additional insured endorsement must be included naming TJC, its Board, and employees.

- 5.2.2.1.5. All Risk Builders Risk Insurance (or All Risk Installation Floater for instances in which the project involves solely the installation of equipment).

5.2.2.1.5.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the site. The cost of materials supplied or installed by others is currently estimated to be \$XXXXXX. [NEED TO FILL IN WHEN CONTRACT IS SUBMITTED] The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the



Total Value for the entire Project at the site. (If Installation Floater, limit shall be equal to 100 percent of the contract cost.)

- 5.2.2.1.5.2 This insurance shall name as insured's the Owner, the Contractor, and all subcontractors and sub-subcontractors in the Work.
- 5.2.2.1.5.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, certified terrorism, and non-certified terrorism.
- 5.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 5.2.2.1.5.1, including, but not limited to, the following:
- Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, false work and temporary buildings
  - Offsite Storage
  - Portions of the work in transit
  - Debris removal
  - Extra Expense
  - Expediting Expenses
  - Demolition and Increased Cost of Construction
  - Pollutant Clean-Up and Removal
  - Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
  - Errors & Omissions (applicable to Builders Risk policy only)
- 5.2.2.1.5.5 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.
- 5.2.2.1.5.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by itself shall be provided to Owner within 30 days after Notice to Proceed.

5.2.2.1.5.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all subcontractors and sub-subcontractors in the work.

5.2.2.1.5.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.

5.2.2.1.5.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 5.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.

5.2.2.1.5.10 Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.

5.2.2.1.5.11 If Owner is damaged by the failure of Contractor to maintain insurance as required in this Section 5.2.2.1.5 and Special Conditions, then Contractor shall bear all reasonable costs properly attributable to that failure.

5.2.2.1.6. "Umbrella" Liability Insurance. The Contractor shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring the Contractor (or Subcontractor) for an amount of not less than \$3,000,000 per occurrence and \$5,000,000 aggregate that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove, and should extend to the Employers Liability, Business Automotive Liability, and Commercial General Liability limits and conditions required in the sections above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

If this contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required

5.2.3. Policies must include the following clauses, as applicable:

5.2.3.1. This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the Owner.

- 5.2.3.2. It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the Owner for liability arising out of operations under the Contract with the Owner.
- 5.2.3.3. The Owner, its board members, officials, directors, employees, representatives, and volunteers are added as additional insured's as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.
- 5.2.3.4. The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.
- 5.2.3.5 All policies with the exception of the Workers' Compensation policy include Primary and non-contributory wording.
- 5.2.3.6 All occurrence policies must remain in force until completion of the job and until receipt of final payment by TJC to the Contractor.
- 5.2.3.7 All claims-made policies must remain in force for four (4) additional years from the completion of the job and termination of the contract. Tail-coverage may be purchased to meet this requirement.
- 5.2.4. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the Subcontractors are included as additional insured's and that Contractor agrees to provide Workers' Compensation for the Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these certificates.
- 5.2.5. Workers' Compensation Insurance Coverage must meet the statutory requirements of 28 TAC §110.110(c)(7).

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84) showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the project that they are required to be

covered, and stating how a person may verify coverage and report lack of coverage.

- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil

actions.

- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## **Article 6. • Contract Documents**

### **6.1. Drawings and Specifications**

- 6.1.1 Copies Furnished. The Contractor will be furnished, free of charge, a complete sets of the Drawings and Specifications. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the AE are to remain A/E's property. These documents are not to be used on any other project, and with the exception of one Contract set for each party to the Contract, are to be returned to the Architect/Engineer, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Agreement between the Owner and the Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement shall be required. The Contractor shall notify the AE and the ODR of any conflict before executing the work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.6 Discrepancies and Omissions in Drawings and Specifications
  - 6.1.6.1 The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner. The Contractor shall promptly report to the ODR and to the AE the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
  - 6.1.6.2 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build

firm.

- 6.1.6.3 It is further recognized that the Contractor's examination of contract documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, the Contractor has sole responsibility for discrepancies, errors, and omissions in the drawings and specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, the Contractor has a shared responsibility for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, the Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints, but does not establish a liability for design.
- 6.1.6.6 The Contractor has no liability for errors, omissions, or inconsistencies unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk contract as outlined above. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.

## 6.2 Requirements for Record Documents

Maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and AE access to these documents.

- 6.2.1 Maintain this record set of Drawings and Specifications which reflect the "As Constructed" conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by the Owner and its representatives and agents.
- 6.2.2 Update the "As-Constructed" Drawings and Specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.
- 6.2.3 Prior to requesting Substantial Completion Inspection by the ODR and AE, furnish a complete set of the marked up "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record drawings, furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the AE and the ODR.
- 6.2.4 Once determined acceptable, provide mylar prints of professionally drafted "As-Constructed" drawings, along with electronic copy on CD, "As-Constructed"

specifications in bound volume(s) along with electronic copy on CD, two sets of photocopies or prints of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents. All electronic copies shall be provided in a format acceptable to the ODR.

## **Article 7. - Construction Safety**

- 7.1. General. It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit it to the ODR and AE prior to commencing Work. In addition, the Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2. Notices. The Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDS for all materials in use on site throughout the construction phase and make such file available to the Owner and its agents as requested.
- 7.3. Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give the ODR and AE prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the Owner within 72 hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due the Contractor.



- 7.4. Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify the ODR and other parties as may be directed within twenty-four (24) hours of the event.
- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 7.4.2 Supply the ODR and AE with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5. Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify the ODR immediately.
- 7.5.1 Bind all Subcontractors to the same duty.
- 7.5.2 Upon receiving such notice, the ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, the ODR will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 7.5.3 The Owner may hire third-party contractors to perform any or all such steps.
- 7.5.4 Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, the Owner will make an equitable adjustment to the Contract price and/or the time of completion, and modify the Contract in writing accordingly.
- 7.6. Trenching Plan. When the project requires excavation which either exceeds a depth of four feet, or results in any worker's upper body being positioned below grade level, the Contractor is required to submit a trenching plan to the ODR prior to commencing trenching operations. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and employed by the Contractor. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

## **Article 8. Quality Control**

- 8.1. Materials & Workmanship. The Contractor shall execute Work in a good and workmanlike manner in accordance with the Contract Documents. The Contractor shall develop and provide a Quality Control Plan specific to this project and acceptable to the Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into

the Work under the Contract.

## 8.2. Testing

8.2.1 Contractor Testing. The Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents. This “quality control” testing shall include any particular testing required by the Specifications and the following general tests.

8.2.1.1. Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

8.2.1.3 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.2.2 Owner Testing. The Owner reserves the right to subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the AE to ensure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such “quality assurance” testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.

8.2.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, Architect/Engineer and the Contractor.

8.2.4 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the contract requirements, the burden of proof remains with the Contractor, subject to:

8.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.4.2 Acceptance by the Owner of the quality and nature of tests.

8.2.4.3 All tests taken in the presence of the Architect/Engineer and/or ODR, or their representatives.

8.2.4.4 If tests confirm that the material/systems comply with Contract Documents, the Owner will pay the cost of the test.

8.2.4.5 If tests reveal noncompliance, the Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract

#### Documents.

8.2.4.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.2.5 Notice of Testing. The Contractor shall give the ODR and the AE timely notice of its readiness and the date arranged so the ODR and AE may observe such inspection, testing or approval.

8.2.6 Test Samples. The Contractor is responsible for providing samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.

8.2.7 Covering Up Work - If the Contractor covers up any Work without providing the Owner an opportunity to inspect, the Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.

### 8.3 Submittals

8.3.1 Contractor's Submittals. Submit with reasonable promptness consistent with the Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, the Contractor shall review each submittal for compliance with Contract Documents and certify by approval stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.

8.3.1.1 Within twenty-one (21) calendar days of the effective date of the Notice to Proceed with construction, submit to the ODR, and the AE, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by the Architect/Engineer and Owner. The list shall include shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the specifications.

8.3.1.2 Indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from the Architect/Engineer and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Show and allow a minimum of thirty (30) calendar days duration after receipt by the Architect/Engineer and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents.

**Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.**

- 8.3.1.3 Coordinate the submittal register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to the ODR the updated submittal register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that they have determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 8.3.2 Review of Submittals. AE and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the AE and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains the Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. Make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to the AE and the ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Approvals. The Contractor shall not commence any Work requiring a submittal until approval of the submittal. Construct all such work in accordance with approved submittals. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The AE's and ODR's approval, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 8.3.5 No Substitutions Without Approval. The ODR and the AE may receive and consider the Contractor's request for substitution when the Contractor agrees to

reimburse the Owner for review costs and satisfies 8.3.5.1, 8.3.5.2, and 8.3.5.3 in combination with one or more of the items in 8.3.5.4 through 8.3.5.11 of the following conditions, as determined by the Owner. If the Contractor does not satisfy these conditions, the ODR and AE will return the request without action except to record noncompliance with these requirements. The Owner will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.

8.3.5.1 The Contract Documents do not require extensive revisions.

8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of the AE and do not result in an increase in cost to the Owner.

8.3.5.3 The request is timely, fully documented, and properly submitted.

8.3.5.4 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.

8.3.5.5 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.

8.3.5.6 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.

8.3.5.7 The requested substitution offers the Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities the Owner must assume.

8.3.5.8 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.

8.3.5.9 The Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where the Contractor certifies that the substitution will overcome the incompatibility.

8.3.5.10 The Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where the Contractor certifies they can coordinate the proposed substitution.

8.3.5.11 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution provides the required warranty.

8.3.6 Unauthorized Substitutions at Contractor's Risk. The Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. The Contractor shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 8.4 Field Mock-up

8.4.1 Mockups shall be constructed prior to commencement of a specified scope of

work to confirm acceptable workmanship.

8.4.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mockups for systems not part of the project scope shall not be required.

8.4.1 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to the ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by the Owner.

8.4.1 The Contractor shall include field mock-ups in their Work Progress Schedule and shall notify the ODR and Architect/Engineer of readiness for review sufficiently in advance to coordinate review without delay.

## 8.5 Inspection During Construction

8.5.1 The Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by the Owner and its agents.

8.5.2 The Contractor shall not cover up any work with finishing materials or other building components prior to providing the Owner and its agents an opportunity to perform an inspection of the Work.

8.5.2.1 Should corrections of the Work be required for approval, do not cover up corrected Work until the Owner indicates approval.

8.5.2.2 Provide notification of at least five (5) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover up inspection. Should the ODR fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## **Article 9. - Project Scheduling Requirements**

9.1. Contract Time. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion and Final Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time, Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will cause damage to the Owner and may subject the Contractor to Liquidated Damages as provided in the Contract Documents.

9.2. Notice to Proceed. The Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion and Final Completion of the Work.

9.3. Work Progress Schedule. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements. This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for

Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to the ODR and the AE. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. When acceptable to the Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration.

- 9.3.1 Schedule Requirements. Submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of the Contractor's actual plans for its completion. Organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
  - 9.3.1.1 Re-submit initial Schedule as required to address review comments from AE and ODR until such Schedule is accepted as the Baseline Schedule.
  - 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.
- 9.3.2 Schedule Updates. Update the Work Progress Schedule and the Submittal Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, and submit paper and electronic copy of the update to the AE and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. Identify all proposed changes to schedule logic to Owner and to the AE via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.
- 9.3.3 The Work Progress Schedule is for the Contractor's use in managing the Work and submittal of the Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.
  - 9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of the Contractor's proposed

sequences and duration.

9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Contract, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so.

9.3.3.3 The Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the contract. Change Orders are the only method of modifying the completion Date(s) and Contract time.

9.4. Ownership of Float. Unless indicated otherwise in the Contract Documents, the Contractor shall develop the schedule and their execution plan to provide a minimum of 10 percent total float at the project level at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5. Completion of Work. The Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

9.5.2 Within ten (10) calendar days after such notice from the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project. Should the ODR deem the plan of action inadequate, take additional steps or make adjustments as necessary to its plan of action until it meets with the ODR's approval.

9.6 Modification of the Contract Time

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the



number of calendar days lost because of excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.

9.6.2.1 A "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, immediately notify the ODR for confirmation of the conditions. At the end of each calendar month, submit to the ODR and AE a list of Weather days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by the ODR, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.2 Excusable Delay. The Contractor is entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design which the AE corrects by means of changes in the drawings and specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site which the AE corrects by means of changes to the drawings and specifications or for which the ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Changes in the Work that effect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the ODR or the AE.

9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of the Contractor.

9.6.2.2.5 Suspension of Work for convenience of the ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.3 The Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of the Contractor's schedule. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant to the provisions of Article 11.

9.7 **No Damages for Delay.** The Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of the Owner.

- 9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay
- 9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by the Owner shall be included with the Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by paragraph 9.6.2.1 above. If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give the ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one ***notice of delay*** is necessary. State claims for extensions of time in numbers of whole or half calendar days.
- 9.9.1 Within ten (10) calendar days after the cessation of the delay, the Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All Changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
- 9.9.2 No extension of time releases the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. Provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. The Owner will respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor.
- 9.9.4.1 The Owner will not grant time extensions for delays that do not affect the Contract Completion Date.
- 9.9.4.2 The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt. If the Owner cannot reasonably make a determination about the Contractor's

entitlement to a time extension within that time, the Owner will notify the Contractor in writing. Unless otherwise agreed by the Contractor, the Owner has no more than fifteen (15) additional calendar days to prepare a final response. If the Owner fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.

- 9.10 Failure to Complete Work Within the Contract Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** The Contractor's failure to substantially complete the Work within the Contract Time or to achieve final completion as required will cause damage to the Owner. These damages may be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.
- 9.11 Liquidated Damages. The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Contract Documents.

## **Article 10. IPayments**

- 10.1. Schedule of Values. The Contractor shall submit to the ODR and the AE for acceptance a Schedule of Values, or Work Breakdown, accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and using the same activity names and terms as the Work Progress Schedule. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by the ODR, and submitted not less than twenty-one calendar (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the specifications and include costs for general conditions, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 10.1.2 The Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to the ODR at the time of Contract execution. Thereafter grant the Owner during normal business hours access to said notarized copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2. Progress Payments. The Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by the Owner and the Contractor. Payment is not due until receipt by the ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format and certified by the AE. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. The Owner will not process progress payment applications for Change Order work until all parties execute the Change Order.

- 10.2.1 Preliminary Pay Worksheet once each month that a progress payment is to be requested, the Contractor shall submit to the Architect/Engineer and the ODR a complete, clean copy of a preliminary pay worksheet or Preliminary Pay Application, to include the following:
- 10.2.1.1 The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values.
  - 10.2.1.2 An updated Work Progress Schedule including the Executive Summary and all required schedule reports.
  - 10.2.1.3 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents.
- 10.2.2 Contractor's Application for Progress Payment. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the AE and ODR will meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. Based on this review, the ODR and the AE may require modifications to the Preliminary Pay Worksheet prior to the submittal of an application for progress payment, and will promptly notify the Contractor of revisions necessary for approval. As soon as practicable, the Contractor shall submit its Invoice on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by the AE and/or ODR. Attach all additional documentation required by the ODR and/or AE, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No invoice is complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.
- 10.2.3 Certification by Architect/Engineer. Within five days or earlier following the AE's receipt of the Contractor's formal invoice, the AE will review the application for progress payment for completeness, and forward to the ODR. The AE will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Invoice for processing.
- 10.3 Owner's Duty to Pay. The Owner has no duty to pay the Contractor except on receipt by the ODR of; 1) a complete Invoice certified by the AE and 2) the Contractor's updated Work Progress Schedule, and 3) confirmation that the Contractor's as-built documentation at the site is kept current.
- 10.3.1 Payment for stored materials and/or equipment confirmed by the Owner and AE to be on-site or otherwise properly stored may be limited to 85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

- 10.3.2 Retainage. The Owner will withhold from each progress payment, as retainage, 5 percent of the total earned amount, the amount authorized by law. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Government Code, subchapter B.
- 10.3.2.1 The Contractor shall provide written consent of its Surety for any request for reduction or release of retainage.
- 10.3.2.2 At least sixty-five (65) percent of the total Contract must be completed before the Owner can consider a retainage reduction or release.
- 10.3.3 Price Reduction to Cover Loss. The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor including, but not limited to:
- 10.3.3.1 Defective or incomplete Work not remedied.
- 10.3.3.2 Damaged to Work of a separate Contractor.
- 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that Work will not be completed within the Contract Time.
- 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents.
- 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the contract sum.
- 10.3.3.6 Assessment of fines for violation of Prevailing Wage Rate law; or
- 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
- 10.3.4 Title to all material and Work covered by progress payments transfers to the Owner upon payment.
- 10.3.4.1 Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.
- 10.4 Progress payments to the Contractor do not release the Contractor or its surety from any obligations under this Contract.
- 10.4.1 Upon the Owner's request, the Contractor shall furnish proof of the status of Subcontractor's accounts in a form acceptable to the Owner.
- 10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by the Contractor.
- 10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of

the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021 (a) (2), the date the performance of service is complete is the date when the Owner's representative approves the application for payment.

10.5 Off-Site Storage. With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by the Owner.

10.5.1 Store materials in a Bonded Commercial Warehouse.

10.5.2 Provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure the State Agency which is signatory to the contract, must be filed with the Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 Materials for this project are physically separated and marked for the project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.5.6 With each monthly payment estimate, submit a report to the ODR, AE, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.

10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR. The full provisions of Performance and Payment Bonds on this project cover the materials off-site in every respect as though they were stored on the Project Site.

## **Article 11. .Changes**

11.1. Change Orders. A Change Order issued after execution of the Contract is a written order to the Contractor, signed by the ODR, the Contractor, and the Architect/Engineer, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Contractor indicates his agreement with it, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Contractor to proceed with work of a change order in advance of

final execution by all parties. In the absence of an agreement with the Contractor on a Change Order, the Owner may issue a Unilateral Change Order that will have the full force and effect of a contract modification. The issuance of a Unilateral Change Order does not prejudice the Contractor's rights to make claims or to appeal disputed matters under terms of the Contract.

- 11.1.1 The Owner, without invalidating the Contract, **and without approval of the Contractor's Surety**, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.
- 11.1.2 The parties acknowledge that the specifications and drawings may not be complete or free from errors, omissions or imperfections and that they may require changes or additions in order for the work to be completed to the satisfaction of Owner. Therefore, and notwithstanding any other provisions in this Contract, the parties agree that any errors, omissions or imperfections in the specifications and drawings, or any changes in or additions to them or to the work ordered by Owner and any resulting delays in the work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, *quantum meruit*, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The parties agree that the Change Order sum, together with any extension of time contained in the Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arise out of, or result directly or indirectly from or indirectly from the work performed by Contractor under such Change Order.
- 11.1.3 Procedures for administration of Change Orders shall be established by the Owner and stated elsewhere in the Contract Documents.
- 11.1.4 Except as provided above, no order, oral statement, or direction of the Owner or his duly appointed representative shall be treated as a change under this article or entitle the Contractor to an adjustment.
- 11.1.5 The Contractor agrees that the Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. Further, the Contractor agrees to include in all its subcontracts a provision giving the Owner or any of its duly authorized representatives access to and the right to examine any directly pertinent books, documents, papers and records of any subcontractor relating to any claim arising from this Contract, whether or not the subcontractor is a party to the claim. The right of access and examination

described herein shall continue for the duration of any claims brought under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract until final disposition of such claims, appeals or litigation.

- 11.2. Unit Prices: The Contract Documents may require the Contractor to provide certain work or materials on the basis of unit prices. If the quantity originally contemplated in determining any unit price is **materially** changed such that application of the agreed unit price to the actual quantity of work required will cause substantial inequity to the Owner or the Contractor, the applicable unit price shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into Change Order.

11.3. Claims for Additional Costs

- 11.3.1 The Contractor shall provide written notice to the Owner and the Architect/Engineer within twenty-one (21) days of the occurrence of any event or the discovery of any condition that the Contractor claims will cause an increase in the Contract Sum or Contract Time that is not related to a requested change. The Contractor shall not proceed with any work for which it will assert a claim for additional cost or time before providing the written notices, except for emergency situations governed by Article 7.3. Failure to provide the required notices is sufficient grounds for rejecting any claim for an increase in the Contract Sum or the Contract Time arising from the event or the condition. Any adjustment in the Contract Sum or Contract Time for any additional Work shall be authorized by Change Order.
- 11.3.2 The notice provisions of Article 11.3.1 apply to, but are not limited to, any claims for additional cost or time brought by the Contractor as a result of: 1) any written interpretation of the Contract Documents, 2) any order by the Owner to stop the Work pursuant to Article 14 where the Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Article 11.4.
- 11.3.3 Should the Contractor or his Subcontractors fail to call attention of the AE to obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/preproposal period, but claim additional costs for corrective work after contract award, the Owner may assume intent to circumvent competitive bidding for necessary corrective work. In such case, the Owner may choose to let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by the Owner.
- 11.4. Minor Changes. The AE, with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be affected by written order which the Contractor shall carry out promptly and record on as-built record documents.
- 11.5. Concealed Site Conditions. If, in the performance of the Contract, subsurface, latent or concealed conditions at the site are found to be materially different from the information included in the bid/proposal documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the



character shown and specified, the ODR and the Architect/Engineer shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, the Architect/Engineer, with the approval of the ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of the ODR.

- 11.6. Extension of Time. All Changes to the Contract Time shall be made as a consequence of requests as required under Article 9.6, and as documented by Change Order as provided under Article 11.1.

11.7. Administration of Change Order Requests

All changes in the Contract shall be administered in accordance with procedures approved by the Owner, and when required make use of such electronic information management system(s) as the owner may employ.

11.7.1 Routine changes in the Construction Contract shall be formally initiated by the Architect/Engineer by means of a Change Request form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, AE and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the Contractor. Except for emergency conditions described below, approval of the Contractor's cost proposal by the Architect/Engineer and ODR will be required for authorization to proceed with the Work being changed. The Owner will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove work so installed.

11.7.2 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between the Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, the ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.

11.7.3 Emergency changes to save life or property may be initiated by the Contractor alone (see Article 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.

11.7.4 The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.

11.8. Pricing Change Order Work

11.8.1 All proposed costs for change order work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by the AE and ODR using current

estimating guides and/or practices.

11.8.1.1 Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR.

11.8.1.2 Contractor shall provide written response to change request within twenty-one (21) calendar days of receipt.

11.8.1.3 If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.

11.8.1.4 If the parties cannot agree on an equitable adjustment for equipment rental charges attributable to a change, they shall use the Rental Rate Blue Book for Construction Mobilization as a basis of negotiation.

11.8.2 The amounts that the Contractor and/or its Subcontractors add to a Change Order for profit and overhead will also be considered by the Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to the Owner.

**The prime Contractor shall NOT be entitled to a percentage mark-up on any change order work unless the Change Order increases the Construction Contract amount and/or the Guaranteed Maximum Price amount.**

11.8.2.1 For work performed by its forces (including Contractor self-performed work), the contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, the total cost of Federal Old Age Benefit (Social Security Tax) and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the contractor. To the total of the above costs, the subcontractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general home office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

11.8.2.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's work, all subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a maximum mark-up of 10 percent if the total of all subcontracted work is less than or equal to \$10,000, 7.5 percent if the total of all subcontracted work is between \$10,000 and \$20,000 and 5 percent if the total of all subcontractor work

is over \$20,000.

- 1.8.2.3 On change order proposals involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. The Owner does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay.

## **Article 12. . Project Completion and Acceptance**

### **12.1. Closing Inspections**

12.1.1 Substantial Completion Inspection. When the Contractor considers the entire Work or part thereof Substantially Complete, it shall notify the ODR in writing that the Work will be ready for Substantial Completion Inspection on a specific date. The Contractor shall include with this notice the Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, has corrected items where possible, and includes all items scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the building from the use to which it is intended, the Contractor shall not request a Substantial Completion Inspection. The Owner and its representatives will review the list of items and schedule the requested inspection, or inform the Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on the Contractor's list.

12.1.1.1 Prior to the Substantial Completion Inspection, the Contractor shall furnish a copy of its marked-up As-Built Drawings and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. Delivery of these items is a prerequisite for requesting the Substantial Completion Inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon, the AE, ODR, the Contractor and other Owner representatives as determined by the Owner, will jointly attend the Substantial Completion Inspection, which shall be conducted by the ODR or their delegate. If the ODR concurs with the AE and Contractor in a determination—that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the AE, Owner and Contractor, establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, and insurance. AE will provide with this certificate a list of punchlist items (the Pre-Final Punchlist) for completion prior to final inspection. This list may include items in addition to those on the Contractor's punchlist, which the inspection team deems necessary to correct or complete prior to Final Inspection. If the Owner occupies the facility

upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes.

12.1.2 Final Inspection. The Contractor shall complete the list of items identified on the Pre-Final Punchlist prior to requesting a Final Inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, the Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the Pre-Final Punchlist work, the Contractor shall give written notice to the ODR and AE that the Work will be ready for Final Inspection on a specific date. The Contractor shall accompany this notice with a copy of the updated Pre-Final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, the ODR, AE and the Contractor will inspect the Work. The AE will submit to the Contractor a Final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.1.2.1 Correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, notify the AE and ODR in writing stating the disposition of each Final Punchlist item. The AE, Owner and Contractor shall promptly inspect the completed items. When the Final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents the ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.

12.1.3 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.

12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete punch list items or failure of the Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of the Owner's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.

12.1.5 Additional Inspections

12.1.5.1 If the Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion Inspection, the ODR or AE will give the Contractor written notice listing cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. Complete or correct all work so designated prior to requesting a second Substantial

#### Completion Inspection.

12.1.5.2 If the Owner's inspection team determines that the Work is not complete at the Final Inspection, the ODR or the AE will give the Contractor written notice listing the cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.

12.1.5.3 The Contract Agreement contemplates three (3) comprehensive inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to the Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of the Contractor. The Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 Phased Completion. The contract may provide, or project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the contract related to Closing Inspections, Occupancy and Acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantially Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate or notice.

12.2 Owner's Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing and identify responsibilities for security, maintenance, and insurance. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of the Owner so as to not disrupt Owner's use of, or access to occupied areas of the project.

#### 12.3 Acceptance & Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment that includes all sums held as retainage and forward to the AE and the ODR for review and

approval.

- 12.3.2 Final Payment Documentation. Prior to or with the Application for Final Payment, Contractor shall submit final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract. Submit Consent of Surety to Final Payment and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. The Contractor may not subsequently submit a claim on behalf of a subcontractor or vendor unless the Contractor's affidavit notes that claim as an exception.
- 12.3.3 Architect/Engineer Approval. The AE will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, the AE will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it, note their approval and send to Owner.
- 12.3.4 Offsets and Deductions. The Owner may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, the Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, the Owner will identify each deduction, the amount, and the explanation of the deduction on or by the 21st day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including Unilateral Change Order as may be applicable.
- 12.3.5 Final Payment Due. Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on the 31<sup>st</sup> day following the Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth (30<sup>th</sup>) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:
- 12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects); and/or
  - 12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents; and/or
  - 12.3.6.3 Terms of any warranties required by the Contract, or implied by law; and/or
  - 12.3.6.4 Claims arising from personal injury or property damage to third parties.
- 12.3.7 Waiver of Claims. Submission of an Application for Final Payment by the

Contractor constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.

- 12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

## **Article 13. Warranty & Guarantee**

- 13.1. Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.
- 13.2. Warranty Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. **If less than all of the Work is accepted as substantially complete (Partial Substantial Completion), the warranty period for the Work accepted begins on the date of Partial Substantial Completion, or as otherwise stipulated on the Certificate of Partial Substantial Completion for the Work.**
- 13.3. Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Contractor.
- 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.
- 13.4. Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or AE.
- 13.4.2 Recommendation to pay any progress or final payment by AE.

- 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents.
- 13.4.4 Use or occupancy of the Work or any part thereof by Owner.
- 13.4.5 Any acceptance by Owner or any failure to do so.
- 13.4.6 Any review of a Shop Drawing or sample submittal; or
- 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The ODR will certify the date of service commencement in the Substantial Completion Certificate.
  - 13.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
  - 13.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. The Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 CFR 763-99 (7)) from all subcontractors and materials suppliers, and shall provide a notarized certification to the Owner that all equipment and materials used in fulfillment of their contract responsibilities are non-Asbestos Containing building Materials (ACBM). This certification must be provided no later than the Contractor's application for Final Payment.

## **Article 14. . Suspension and Termination**

- 14.1. Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work if the Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or



longevity of the Work when completed.

14.1.1 The Owner will give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of the notice, the Contractor shall immediately cease all activities related to the identified Work. As soon as practicable following the issuance of a suspension notice, the Owner will conduct an investigation into the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If the cause of the suspension is due to actions or omissions within the control of the Contractor, the Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause of the suspension is something not within the control of the Contractor and the suspension will prevent the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension will be granted through a Change Order.

14.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

14.2. Suspension of Work for Owner's Convenience. Upon seven (7) calendar days written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. Upon resumption of the Work, if the suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of the contract.

14.3. Termination by Owner for Cause

14.3.1 **Upon thirty (30) days written notice to the Contractor and its Surety,** the Owner may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of the following circumstances:

14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials; and/or

14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the ODR; and/or

14.3.1.3 Persistent failure to prosecute the work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract; and/or

14.3.1.4 Failure to remedy defective work condemned by the ODR; and/or

14.3.1.5 Failure to pay subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code Chapter 2251; and/or

- 14.3.1.6 Persistent endangerment to the safety of labor or of the Work; and/or
- 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the contract; and/or
- 14.3.1.8 Any material breach of the Contract; and/or
- 14.3.1.9 The Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the work.
- 14.3.2 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Upon receipt of a termination notice, the Contractor or its Surety has thirty days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 14.3.4 If at the conclusion of the thirty-day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the employment of the Contractor, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
  - 14.3.4.1 Recoverable costs include additional Owner expenses for items such as AE services, other consultants, and contract administration.
- 14.3.5 The Owner will make no further payment to the Contractor or its Surety until all costs of completing the Work are paid. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Contractor will receive the excess funds. If costs of completing the Work exceed the unpaid balance, the Contractor or its Surety will pay the difference to the Owner.
  - 14.3.5.1 This obligation for payment survives the termination of the Contract.
- 14.3.6 The owner reserves the right in termination for cause to take assignment of all contracts between the Contractor and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Termination for Convenience of Owner. Upon written notice to the Contractor and the AE, the Owner may, without breach, terminate the Contract for any reason.
  - 14.4.1 The notice will specify the reason for and the effective date of contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
  - 14.4.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations:
    - 14.4.2.1 Stop all work.
    - 14.4.2.2 Place no further subcontracts or orders for materials or services.

14.4.2.3 Terminate all subcontracts.

14.4.2.4 Cancel all materials and equipment orders as applicable.

14.4.2.5 Take appropriate action to protect and preserve all property related to this Contract which is in the possession of the Contractor.

14.4.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed before the notice of termination along with the actual and reasonable cost of any additional work required to secure the project and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost profits or lost business opportunities.

14.5 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed before the work stoppage and the actual and reasonable cost of securing the project and property related to the Contract during the work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost profits or lost business opportunities. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

14.6 Settlement on Termination. Within 180 days of the effective date of Contract termination for any reason, the Contractor shall submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under the contract. If the Contractor fails to submit a settlement proposal within the time allowed, the Owner may unilaterally determine the amount due to the Contractor because of the termination.

## **Article 15. IDispute Resolution**

15.1 Alternative Dispute Resolution Process. The Owner may establish a dispute resolution process to be utilized.

15.2 Before submitting any matter not resolved in the ordinary course of business to the dispute resolution process, the Contractor shall make a written request to the Owner's designated official in charge of construction contract administration for a determination of the matter in dispute. The written request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that the Contractor wants the official to consider in reaching his/her determination. The official shall issue a written notice of decision on the request. Within 30 days of the notice of decision, the Contractor may submit a request for reconsideration to the official that particularly states the factual and legal basis for the Contractor's objections to the official's decision. The official will review his/her decision and consider the basis for reconsideration asserted in the request. The official will issue a written notice of decision

following reconsideration which shall be final and conclusive on all matters except for claims of breach of contract.

15.3 Nothing herein shall hinder, prevent or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.

15.4 Nothing herein shall waive or be construed as a waiver of Owner's sovereign immunity.

## **Article 16. ▪ Miscellaneous**

16.1. Supplemental and Special Conditions. When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplemental and Special Conditions as described below:

16.1.1 Supplemental Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.

16.1.2 Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the Uniform General Conditions.

16.2. Federally-Funded Projects. On Federally-funded projects, the Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the Owner of such Federal funds for the project. In the case of any project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

16.3. Internet-based Project Management Systems. At its option, the Owner may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers or payment requests and processing, amendment, change orders and other administrative activities.

16.3.1 Accessibility And Administration.

16.3.1.1 When used, the Owner will make the software accessible via the Internet to all project team members.

16.3.1.2 The Owner shall administer the software.

16.3.2 Training. When used, the Owner shall provide training to the project team members.

**END OF UNIFORM GENERAL CONDITIONS**

## DIVISION OF PROJECT COST ELEMENTS – EXHIBIT B

### **I - CONSTRUCTION MANAGEMENT SERVICES (if applicable)**

<b>Description</b>	<b>Pre-con. Phase Fee</b>	<b>Construction Phase Fee</b>	<b>General Conditions</b>	<b>Cost of Work</b>	<b>A/E's Costs</b>	<b>Owner's Costs</b>
Cost Engineers	X					
Drawing Checker	X	X				
Estimating	X					
Life-Cycle	X					
Project Budget Estimating	X					
Project Phasing	X					
Scheduling	X		X			
Scheduling Engineer	X					
Value Engineering	X					
Corporate Executive		X				
Principal in Charge		X				
Secretarial (off site)		X				
Clerk-Typist		X				
Time Keeper / Checker		X				
Accounting		X				
Purchasing		X				
Legal (basis service)		X				
EEO Officer		X				
Production Engineering		X				
Energy Management		X				
Drafting Detailer		X				
Engineer's Transportation		X				
Off Site Staff Transportation		X				
Off Site Staff Travel Costs		X				
Project Staff Moving Expense		X				
Project Staff Subsistence Cost		X				
Staff Training and Education		X				
Project Executive			X			
Project Manager(s)			X			
Project Superintendent(s)			X			
Assistant Superintendent(s)			X			
Project Coordinator			X			
Project Expeditor			X			
Safety Engineer (on site)			X			
Safety Officer (Internal / Consultant)			X			
Secretarial (on site)			X			
Field Engineer			X			
Drug Screening			X			
On Site Project Mgr. Transport.		X				
Superintendents Transportation		X				

Note: All personnel costs shall include salaries and fringe benefits

**II. SAFETY, SECURITY, AND SERVICES (if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
2-way radio equipment		X				
Barricades			X			
Covered Walkways			X			
Debris Hauling / Removal			X			
Dust controls			X			
Final Cleanup			X			
Fire Extinguishers/Fire Watch			X			
First Aid Supplies			X			
Handrails and Toe Boards			X			
Infection control measures			X			
Opening Protection			X			
Roadway maintenance			X			
Safety Equipment			X			
Safety Nets			X			
Security Guard/Watchman Svcs.			X			
Snow and ice removal			X			
Temporary Fencing			X			
Traffic Control			X			
Trash chute & hoppers			X			
Weekly Cleanup			X			

Note: All personnel costs shall include salaries and fringe benefits

**III. FACILITIES, EQUIPMENT & SERVICES (if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Air compressors			X			
Change / shower rooms			X			
Computer network connections			X			
Dewatering equipment		X				
Fuel / repairs / maintenance			X			
Generators			X			
Lunch rooms			X			
Miscellaneous equipment			X			
Office trailer rental			X			
Power expenses (Allowance)			X			
Project signs / bulletin boards			X			
Telephone expenses *		X				
Temp. cooling expenses (Allowance)			X			
Temp. enclosures / partitions			X			
Temp. heating expenses (Allowance)			X			
Temp. lighting / wiring			X			
Temp. roads			X			
Temp. stairs			X			
Temp. toilet / sewer services			X			
Temp. water expenses			X			
Tool / utility trailer rental			X			
Water / ice			X			

\* Site office telephone & computer network expenses only, home or divisional office is part of Construction Phase Fee

Note: All personnel costs shall include salaries and fringe benefits

**IV. VERTICAL HOISTING (if applicable)**

<b>Description</b>	<b>Pre-con. Phase Fee</b>	<b>Construction Phase Fee</b>	<b>General Conditions</b>	<b>Cost of Work</b>	<b>A/E's Costs</b>	<b>Owner's Costs</b>
Crane erect and dismantle				X		
Crane Fuel / repairs/ maintenance				X		
Crane operator				X		
Crane raising / jumping cost				X		
Crane rental				X		
Crane safety inspections				X		
Elevator cage rider			X			
Elevator operation cost			X			
Elevator repairs and maintenance			X			
Elevator Service Costs			X			
Forklift Fuel / repairs/ maintenance			X			
Forklift operators			X			
Forklift rental			X			
Forklift safety inspections			X			
Hoist communications			X			
Hoist electrical			X			
Hoist erect and dismantle			X			
Hoist Fuel / repairs/ maintenance			X			
Hoist landings and forms			X			
Hoist material hoppers			X			
Hoist material skips			X			
Hoist operators			X			
Hoist rental			X			
Hoist safety inspections			X			
Safety inspections			X			
Small material hoist rental			X			

Note: All personnel costs shall include salaries and fringe benefits



**V. REPRODUCTION AND PRINTING (if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
<b>DESIGN PHASE</b>						
Bid Package Documents	X					
Bidding instructions	X					
Construction documents					X	
Cost study documents					X	
Postage and express costs					X	
Systems study documents					X	
As built documents (drafting)						X
As built documents (printing)						X
<b>CONSTRUCTION PHASE</b>						
Accounting forms		X				
Contract agreements		X				
Cost reporting forms		X				
Data processing (in-house)		X				
Estimating forms		X				
Field reporting forms		X				
Presentation charts and graphics		X				
Reference materials		X				
Schedule reporting forms		X				
Special forms		X				
Value analysis studies		X				
Duplication expenses (misc)			X			
Maintenance manuals			X			
Operations manual			X			
Postage and delivery expense			X			
Shop drawing printing			X			

Note: All personnel costs shall include salaries and fringe benefits

**VI. QUALITY CONTROL (if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Chief inspector					X	
Field inspector					X	
Inspector's transportation					X	
Inspector's equipment					X	
Inspector's office			X			
Compaction testing						X
Concrete testing						X
Fireproofing testing						X
Masonry testing						X
Soils investigation						X
Special inspection consultants						X
Special testing consultants						X
Special testing services						X
Welding inspectors						X
Field Office supplies / material			X			
Project photographs			X			
Warranty inspection coordination		X				
Air and water balancing				X		
Operations on-site training				X		
Prepare operations manuals			X			
Prepare maintenance manuals			X			

Note: All personnel costs shall include salaries and fringe benefits

**VII. PERMITS AND SPECIAL FEES (if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Chiller water service charge				X		
Construction equipment licenses			X			
Construction equipment permits			X			
Parking fees			X			
Parking lot rental			X			
Royalties			X			
Staking and layout fees / costs			X			
Steam service charge *				X		
Storage yard rental			X			
Association fees		X				
Contractor's licenses		X				
Building permits						X
Curb and gutter permits						X
Gas service charge *						X
Plan check fee						X
Power service charge *						X
Sanitary connection fee *						X
Sidewalk permits						X
Sign permits						X
Special tap fees						X
Storm connection fee*						X
Water connection fee *						X
Zoning fees / consultants						X

\* Represent final connection costs, not temporary

Note: All personnel costs shall include salaries and fringe benefits

**VIII. INSURANCE AND BONDS  
(if applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Builder's Risk Insurance			X			
Errors and Omissions					X	
General Liability			X			
Completed Operations Liability			X			
Excess Liability Coverage			X			
Workmen's Compensation *			X			
FICA Insurance *			X			
Federal Unemployment *			X			
State Unemployment *			X			
Payment Bond			X			
Performance Bond			X			
Off-site insurance		X				
Off-site taxes		X				

\* On-site staff only

Note: All personnel costs shall include salaries and fringe benefits

**IX. OTHER COSTS (if  
applicable)**

Description	Pre-con. Phase Fee	Construction Phase Fee	General Conditions	Cost of Work	A/E's Costs	Owner's Costs
Construction Equipment				X		
Construction Labor Costs				X		
Construction Material				X		
Cost of Emergency Work				X		
Project taxes				X		
Cost of Design & Engineering					X	
A/E Cost for Bid Packages					X	
Building Maint. After Move-in						X
Building Operation after Move-in						X
Land Costs						X
Moving Coordination						X
Moving Costs						X
Owner Change Contingency						X
Soils Investigation						X
Title / Development Costs						X
C.M. General Overhead Cost		X				
C.M. Profit / Margin		X				
Corrective Extra Work		X				
Costs over GMP		X				

Note: All personnel costs shall include salaries and fringe benefits

## **GUARANTEED MAXIMUM PRICE PROPOSAL – EXHIBIT C**

The Construction Manager at Risk hereby submits to TJC pursuant to the provisions of Article VII of the Agreement by and between TJC \_\_\_\_\_ and

\_\_\_\_\_ dated \_\_\_\_\_  
[CMR- Insert Component Name] [CMR - Insert Construction Manager Name]  
\_\_\_\_\_, 20\_\_ (the “Agreement”), a Guaranteed Maximum Price (GMP)  
[CMR- Insert Month and Day]

for the \_\_\_\_\_,  
[CMR - Insert Project Name and Stage, Component Name, State, City]

project number \_\_\_\_\_ - \_\_\_\_\_ (as defined in the Agreement), based on the Contract Documents  
[CMR - Insert Project No.]

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

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

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

**GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE**  
**(Continuation of Exhibit C)**

Corporations/LLC's: Attest:

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

\_\_\_\_\_  
*[ Construction Manager at Risk]*

Other business forms: Witness:

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

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

*[Print or Type]*

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

SEAL:

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

CONTENT APPROVED:

TJC/Owner

By: \_\_\_\_\_  
*(Original Signature)*

**Name:**

Title:

## ATTACHMENT 1 TO EXHIBIT C

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

#### 1. CONTRACT REQUIREMENTS:

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

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

#### 2. PRE-SUBMITTAL REQUIREMENTS:

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

3. CONSOLIDATION OF REVIEW COMMENTS:

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

4. GENERAL REQUIREMENTS;

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

5. MULTIPLE GMP'S:

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

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be bound in 3-ring notebook or spiral notebook (**8 1/2" x 11" paper only**) and entitled "Guaranteed Maximum Price Proposal". Below it the following items shall be shown:

- Submittal number (i.e. Submittal #1)
- Date of Submittal
- Project Name
- Tyler Junior College
- Project Number

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

All pages within each tab shall be numbered.

**The proposal shall be organized in the order described below:**

**TABLE OF CONTENTS**

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

**TAB 1 – Guaranteed Maximum Price Proposal (Exhibit C)**

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

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

#### **TAB 2 - Executive Project Summary**

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

#### **TAB 3 - Project Team**

- List the various teams and the team members, in an organization chart and provide a list of all personnel, including names, titles, job responsibilities/duties, and contact information. Identify the Project Safety Specialist and their duties. If Project Safety Specialist has changed from the individual approved in the RFP, please identify the change in a statement on a separate page.
- Identify all consultants.

#### **TAB 4 - List of Documents**

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

#### **TAB 5 - Qualifications and Value Engineering**

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



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

#### **TAB 6 - GMP Proposal Cost Breakdown**

- Provide an Estimated Construction Cost breakdown on the Standard Schedule of Values Format for Cost of the Work based on anticipated subcontracts organized by CSI Division format, General Conditions per exhibit, Construction Manager's Contingency, Construction Phase Fee, any Owner's Special Cash Allowance and/or Owner's Construction Contingency as identified by the Owner.
- The Contractor shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration.
- Clearly state the different types of insurance coverages included in the general conditions.
- On a separate page state whether this GMP includes provisions to incorporate the Owner's ROCIP program **(Not Applicable)**.
- General Condition breakdown shall include line items for each type of insurance coverage including builder's risk and auto.
- State how the CM's Contingency was established or show a breakdown of major items anticipated to be funded by the contingency.
- For projects which are a renovation of an existing building or a project which is being constructed adjacent to or connected to an existing building, provide a page which states **whether or not** the builder's risk insurance coverage includes a \$7.5M endorsement for coverage of damages to the existing Owner's property for damages caused by the contractor or subcontractors.
- Identify the CM's Contingency and provide a breakdown or explain the basis for how the amount was established.
- Provide a breakdown of the Owner's Special Cash Allowance showing the major items anticipated to be included in this cost. The Project Manager should help provide this detail.

#### **TAB 7 - Master Project Schedule (Summary Level)**

- The Summary Level schedule shall be submitted electronically on CD and as a Gantt Chart Report within the GMP Proposal showing the Activity ID, Activity Description, Original Duration, Early Start, Early Finish, Total Float, Late Start and Late Finish column titles.
- Summary Schedule Requirements
  - The schedule shall comply with the requirements of Owner's Specification Section 01 32 00 and shall form the basis for the "Detail" schedule, which shall be submitted within sixty (60) days following Notice to Proceed for Construction Services.
  - The schedule shall be a computer-generated CPM schedule developed in Primavera Project Planner software.
  - The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones included in Pre-construction Services

- The schedule shall include detailed, logic driven activities for all Construction Service activities scheduled to commence during the first ninety (90) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first 90 days) may be summarized by trades and may have longer durations than the “detailed” activities mentioned above.
- Total Float
  - The total float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion). i.e. - All paths in the schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately 90% of the time allowed by contract for the Owner established Substantial Completion Date.
  - Provide schedule in Tab 7 on 8 ½ x 11 formats.

#### **TAB 8 - Bid/Proposal Package Strategy**

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

#### **TAB 9 - Responses to Review Comments**

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

**Bonds – Exhibit D**  
**(included for reference only)**

**CONSTRUCTABILITY IMPLEMENTATION PROGRAM – EXHIBIT E**

**Program Objectives:**

- Implement a rigorous constructability program.
- Identify and document project cost and schedule savings (targeted cost savings: 5% of construction costs)

**Proposed Steps:**

- **Constructability Implementation Meeting**
  - identification of all project team personnel and all project stakeholders
  - clarification of project goals, objectives, and progress to date
  - team briefing on objectives, methods, and concepts of constructability
  - familiarization with implementation program
  - preliminary identification of constructability priorities and special challenges or concerns
- **Constructability Review of Schematic Design (SD) Documents; Comments Submitted to CM Team**
  - establishment of project constructability procedures, including procedures for documenting savings
- **Meeting to Review Schematic Design Constructability Comments**
  - assessment of applicability of 17 CII constructability concepts
  - prioritization and time-phasing of constructability concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Design Development Constructability Review Comments to CM Team**
  - follow-up discussions on front-end, high-priority concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)
- **Constructability Review Meeting**
  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements; consider life-cycle cost effects
- **30% CD Constructability Review Comments to CM Team**
  - review plans & specifications developed to date, identifying sub-optimal or potentially

problematic design elements

- recommend alternative design suggestions for consideration and document potential savings
- conduct Value Engineering investigations into selected high-cost design elements

- **50% CD Constructability Review Comments to CM Team**

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

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

- **Constructability Discussions with CM Team**

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

- **Close-out Project Constructability Documentation**

**ADDITIONAL SERVICES PROPOSAL FOR**  
**PRE-CONSTRUCTION PHASE SERVICES – EXHIBIT F**

Project No.: \_\_\_\_\_

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

Institution/Campus: \_\_\_\_\_

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

To: Project Manager: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

From: Construction Manager at Risk: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

**CONSTRUCTION MANAGER AT RISK**

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

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

*[INSERT DESCRIPTION OF ADDITIONAL SERVICES]*

2. Construction Manager at Risk agrees to perform the Additional Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
3. Construction Manager at Risk will perform the services no later than \_\_\_\_\_, 20\_\_ (\_\_\_\_\_) days after Construction Manager is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter in the space below and insert the date.

Construction Manager at Risk

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

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

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

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

**Current Pre-Construction Phase Fee Summary**

ORIGINAL Pre-Construction Phase Fee: (\$ \_\_\_\_\_)

Previous Additions: (\$ \_\_\_\_\_)

Previous Deductions: (\$ \_\_\_\_\_)

NET BALANCE of Pre-Construction Phase Fee: (\$ \_\_\_\_\_)

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

Adjusted Pre-Construction Phase Fee: (\$ \_\_\_\_\_)

TYLER JUNIOR COLLEGE

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

Project Manager

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

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

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

## CHANGE ORDER – EXHIBIT G

PO NUMBER:	PROJECT:
CO NUMBER:	
DATE:	

TO: \_\_\_\_\_, Contractor for the above project; is hereby authorized to make the following changes in the work under the contract.

<b>CP NO.</b>	<b>Description of Work</b>	<b>Cost</b>	<b>Time Extension</b>
---------------	----------------------------	-------------	-----------------------

It is mutually agreed that the payment of \$ \_\_\_\_\_ and day time extension provided for in this Change Order, constitutes full compensation to the Contractor, whether direct, consequential or otherwise, in any wise incident to, or arising out of, or resulting directly from the work performed or modified by the Contractor under this Change Order. The new contract completion date, including this time extension, is \_\_\_\_\_. The payment will be added to/deducted from the contract price or the contingency allowance as follows.

Is this change order associated with a contract? NO \_\_\_\_ YES \_\_\_\_ Contract # \_\_\_\_\_  
If yes to above, does contract allow for this change? NO \_\_\_\_ YES \_\_\_\_ include supporting document from contract.

<b>ACCEPTED BY:</b>	<b>DATE</b>
---------------------	-------------

CONTRACT / PO PRICE	<hr/>	<hr/>
		CONTRACTOR/CMR
PREVIOUS ADDITIONS	<hr/>	<hr/>
		LARRY HATTON, DIRECTOR, FACILITIES & CONSTRUCTION
PREVIOUS DEDUCTIONS	<hr/>	<hr/>
		ARCHITECT
NET BALANCE CONTRACT PRICE	<hr/>	<hr/>
		SHELLY ROBERTS, DIRECTOR, CONTRACT ADMINISTRATION
THIS ADDITION / DEDUCTION	<hr/>	<hr/>
		SARAH VAN CLEEF, VICE-PRESIDENT
ADJUSTED CONTRACT PRICE	<hr/>	

**Partial/Final Payment Request # \_\_\_\_\_ - EXHIBIT H**

PROJECT NUMBER \_\_\_\_\_ Purchase Order Number \_\_\_\_\_  
FOR THE PERIOD \_\_\_\_\_ TO \_\_\_\_\_ Inclusive  
NAME OF PROJECT \_\_\_\_\_ Contractor's Name \_\_\_\_\_

**TO BE FILLED IN BY CONTRACTOR**

Amount of Contract \_\_\_\_\_

**INSURANCE AFFIDAVIT:**

I, the Contractor, do hereby certify that insurance as required Approved Change No. \_\_\_\_\_  
by law and by the specification is in full force and effect.

Contract to Date \_\_\_\_\_

**CLAIMS AND LIABILITY:**

I, the Contractor, do furthermore certify that all current invoices  
and obligations have been paid in full and there are  
no claims or liabilities against this contract.

Complete to Date \_\_\_\_\_

Less Retainage \_\_\_\_\_

Total Less Retainage \_\_\_\_\_

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Date

Less Previous Payments \_\_\_\_\_

This Certificate \_\_\_\_\_

Balance Incl. Retainage \_\_\_\_\_

STATE OF TEXAS \_\_\_\_\_  
COUNTY OF SMITH \_\_\_\_\_  
Personally before, the undersigned authority, this day appeared \_\_\_\_\_

Who being by me duly sworn on his/her oath says that the account here to attached \$ \_\_\_\_\_

In favor or \_\_\_\_\_ and against Tyler Junior College is with the knowledge of Affiant. Just, true, and correct, that it is due and that all just  
and lawful offsets, payments, and credits have been allowed.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Date

Sworn to and Subscribed before me

This \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public, Smith, County, Texas My Commission Expires \_\_\_\_\_

**TO BE FILLED OUT BY THE CONSTRUCTION INSPECTOR**

Inspected and approved \_\_\_\_\_ By: \_\_\_\_\_  
Date Construction Inspector

**CERTIFICATE TO TYLER JUNIOR COLLEGE.**

THIS IS TO CERTIFY THAT HAVING COMPLIED WITH THE REQUIREMENTS OF THE SPECIFICATIONS AND SB 178  
CONTRACTOR FOR

\_\_\_\_\_  
Contractor's Firm Name

IS ENTITLED TO PAYMENT OF THIS CERTIFICATE IN THE

\_\_\_\_\_  
Name of Construction Project

AMOUNT OF \_\_\_\_\_ Dollars and cents \_\_\_\_\_  
ARCHITECT/ENGINEER