

**THE TEXAS STATE UNIVERSITY SYSTEM
OWNER /ARCHITECT-ENGINEER AGREEMENT**

(Competitive Sealed Proposals; Delegated Project)

THIS AGREEMENT between the State of Texas, acting through the Board of Regents of the Texas State University System (Owner), and [A/E Name] is effective the _____ day of _____, 20__.

WHEREAS, the Owner intends to build a [Project Name] (“Project”) at the campus of [Component Name], [City], Texas (“Component”) and

WHEREAS, the Construction Cost Limitation (CCL) for the Project is _____ and no/100 Dollars (\$ _____), defined as the estimated cost of construction, which may include a Contractor’s contingency allowance. This will be the Owner’s target amount for the contract price under a Competitive Sealed Proposal construction contract.

NOW THEREFORE, the Owner and Architect-Engineer (A-E), for considerations as set forth, agree as follows:

ARTICLE 1 SCOPE OF SERVICES

- 1.1 The A-E agrees to perform Basic Services and certain Additional Services for the Project, both as specified more particularly in Article 3. The term “Basic Services” includes all building and landscaping architectural services (including fixed furniture equipment layout and consultation with Owner about selection) as well as civil, structural, mechanical, plumbing, lighting, acoustics, electrical engineering services. Basic Services will also include cost estimating, per paragraph 6.2, for the results of everything that is designed into the Project by the A-E whether from Basic or Additional Services. In addition to these Basic Services, Owner may include certain Additional Services (if identified in Exhibit A attached hereto) in this original agreement and in the fee set forth in Paragraph 2.1. The A-E may be requested to perform further Additional Services as set forth in Article 4 upon payment of an additional fee. The A-E agrees to comply with the Owner’s latest version of the Design Guidelines and Construction Standards applicable to the campus and/or location of the Project (“Campus Standards”) when providing the services included in this Agreement in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality under the same or similar circumstances.
- 1.2 A-E shall not replace the in-house personnel named in its submitted Qualifications to lead the Project or its phases identified in the scope of work without prior written approval from the Owner.

ARTICLE 2 FEE FOR SERVICES; REIMBURSABLES

- 2.1 The Owner agrees to pay the A-E a lump sum fee (“Fee”) for Basic Services, and any Additional Services identified in Exhibit A, of _____ and no/100 Dollars (\$_____). The Fee will not change unless the Owner directs significant changes to the quantity, quality standards or types of construction included in the Project. Without limiting the generality of the foregoing statement, the Fee will not change due to increases or decreases in the Construction Cost Limitation (see Paragraph 8.2).
- 2.1.1 << The Fee is inclusive of all reimbursable expenses of the A-E.>> *Any expenses that are reimbursable to the A/E under this Agreement shall be billed to the Owner monthly as a direct expense, without any markup for overhead or profit. [If a specific limitation on reimbursable expenses is desired, add the following sentence: Such reimbursable expenses shall be limited to a maximum of _____ Dollars (\$_____).]* Travel costs, but not the salary costs during travel, of out of town trips required by the Owner shall be treated as reimbursable expenses under this Agreement. Reimbursement for these expenses shall be limited to the lesser of actual expenses incurred and the reimbursement rates then allowable for travel by employees of the State of Texas.
- 2.2 The A-E Services contract in this Agreement are those normal and customary services necessary to the design and construction administration of a project of the type, size and quality standards [*Alternative A: described in the Architectural Program document dated _____, 20__ for the [Project Name] (“Architectural Program”)*][*Alternative B (if no Program document): as indicated by the Scope of Work provided by the Owner*], and those generally found in the public higher education sector in the State of Texas for similar projects. The A-E shall not deviate from the [*Alternative A: Architectural Program document*][*Alternative B: such*] requirements without written approval from the Owner’s Designated Site Representative (“ODSR”). The services required are further defined and detailed in, but not limited by, Article 3.
- 2.3 The times and conditions of payment for the Fee shall be as described in Article 7.
- 2.4 The A-E agrees to make a Good Faith Effort to allocate 20% of the services required under this Agreement to qualified consultants, which are Historically Underutilized Businesses. If the A-E is a Historically Underutilized Business, it shall perform at least 25% of the work. At the time of the construction contract award, the A-E shall report and justify to the Owner the percentages of work performed by Historically Underutilized Businesses.
- 2.5 Insurance Coverage. The A-E shall carry such professional liability/errors and omissions insurance, covering the services provided under this Agreement, whether provided by the A-E or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable (collectively, “Consultants”), and other coverages as further described, acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the A-E. The insurance policy shall remain in force for a period of one (1) year beyond the final completion date. A Certificate of Insurance indicating the expiration date, and existence, of the A-E’s insurance coverages is required prior to commencement or continuation of performance of the services under

this Agreement. Each request for payment by the Architect shall include the expiration date of the insurance. A-E shall deliver to Owner replacement certificates not less than thirty-(30) days prior to the expiration of any such insurance. If, however, A-E fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming due to A-E under this Agreement.

- 2.5.1 A Certificate of Professional Liability Insurance is required with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The Certificate shall indicate the expiration date of the A-E's professional liability and errors and omissions insurance. The Certificate is to identify the specific name of the project according to the terms of this Agreement and identify the Board of Regents of The Texas State University System as the Project's Owner.
- 2.5.2 On Site Insurance: For services performed on Owner's premises, the A-E shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

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

- 2.5.3 Notice of Cancellation: Required insurance shall not be cancelable without notice to the certificate holder in accordance with the terms of the insurance policy. The A-E agrees to provide to the Owner notice of cancellation of any required insurance within five (5) business days of its receipt of notice of such cancellation.
- 2.5.4 A-E shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.
- 2.5.5 A-E shall require its Consultants to maintain Commercial General Liability and Business Auto Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

ARTICLE 3 SERVICES OF THE A-E

3.1 Schematic Design Phase

- 3.1.1 Based upon the <<Building Program>><<Campus Master Plan>> <<Construction Cost Limitation >> and a desired Project Schedule established by the Owner>> provided by the Owner, the Construction Cost Limitation and a desired Project Schedule established by the Owner, the A-E shall prepare sufficient alternative approaches to design of the Project to satisfy Owner's requirements and at completion of this phase, shall submit Schematic Design documents in accordance with Owner's Design Guidelines.
- 3.1.2 A-E shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design documents) including, without limitation, unless otherwise approved by Owner, the preparation and prompt delivery of all items specified in Owner's Design Guidelines.
- 3.1.3 A-E shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.
- 3.1.4 A-E shall demonstrate adherence to the Architectural Program by providing clear and concise information showing such adherence within the documents submitted for approval.
- 3.1.5 The A-E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the ODSR and all attendees within 7 days from the date of the meeting to allow for comments and/or corrections to the minutes. The A-E shall furnish and deliver to the Owner eight complete printed sets of Schematic Design documents. Eight sets shall be distributed as directed by the ODSR. The A-E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the Construction Cost Limitation and complete it within two weeks of delivering the completed Schematic Design documents. (See Section 6.2 for estimate requirements). The A-E shall consult with the Owner, and its designated representatives including the ODSR, and recommend any Value Engineering adjustments to the Project that may be necessary to align the cost estimate and the project budget with the established Construction Cost Limitation. The A-E shall revise the Schematic Design documents as may be required to incorporate Value Engineering recommendations accepted by the Owner.

3.2 Design Development Phase

- 3.2.1 Based on the approved Schematic Design documents and any adjustments to the Building Program or Construction Cost Limitation authorized by the Owner, and upon receipt of a Notice to Proceed executed by the ODR, the A-E shall prepare, for approval by the Owner, Design Development documents in accordance with the Owner's written requirements. These documents will further define and finalize the size and character of the Project in accordance with Owner's Design

Guidelines. The DD approval package is in addition to the Design Development documents that are submitted to the VCCA for review and approval.

- 3.2.2 The A-E shall furnish and deliver to the ODSR eight complete printed sets of Design Development documents.
- 3.2.3 The A-E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the Construction Cost Limitation and complete it within two weeks of delivering the completed Design Development documents (See Section 6.2 for estimate requirements). The A-E shall consult with the Owner, and its designated representatives including the ODSR, and recommend any Value Engineering adjustments to the Project that may be necessary to align the cost estimate and the project budget with the established Construction Cost Limitation. The A-E shall revise the Design Development documents as may be required to incorporate Value Engineering recommendations accepted by the Owner.
- 3.2.4 A-E shall demonstrate adherence to the Architectural Program by providing clear and concise information showing such adherence within the documents submitted for approval.
- 3.2.5 The A-E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the ODSR and all attendees within 7 days from the date of the meeting to allow for comments and/or corrections to the minutes.
- 3.2.6 Before proceeding into the Construction Document Phase, the A-E shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation and schedule by the ODSR. The A-E shall furnish and deliver to the ODSR two compact disks of the complete documents for this phase of the design in a format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).
- 3.2.7 The A-E shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

3.3 Construction Document Phase

- 3.3.1 Based on the approved Design Development documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, and following approval of the Design Development submittal by the Board of Regents, the A-E shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines. The plans, drawings and specifications for the entire Project shall be prepared so that the construction of the building and related facilities, including built-in permanent fixtures and equipment, will cost no more

than the Construction Cost Limitation established by Owner. The A-E is responsible for managing the design elements of the Project to stay within the Construction Cost Limitation based upon pricing information provided by his independent cost estimator.

- 3.3.2 Construction document drawings shall be produced on a CADD system as part of Basic Services. The Owner will define the CADD drawing requirements and the final media for the CADD data.
- 3.3.3 The A-E shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project.
- 3.3.4 The A-E shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.
- 3.3.5 The A-E shall file and obtain approval of the project from the Texas Department of Licensing and Regulations, Architectural Barriers Division, in accordance with Chapter 469, Texas Government Code, as amended, and Title III of the Americans with Disability Act (ADA) of 1990, 42 U.S.C., Section 12181. The fees for these approvals will be paid by the Owner.
- 3.3.6 The A-E shall prepare meeting minutes for any meetings attended that reflect discussions, outcomes and pending issues that require further action by the responsible parties. Meeting minutes shall be published to the ODSR and all attendees within 7 days from the date of the meeting to allow for comments and/or corrections to the minutes.
- 3.3.7 The A-E shall provide services reasonably designed to ensure coordination and inclusion of sequence of operations for all operable systems in the facility.
- 3.3.8 The A-E, at the 50%, 100% and Final completion stages of the Construction Documents, shall furnish and deliver to the ODSR the eight complete printed copies of all plans, drawings and specifications of every character made or furnished in connection with the Work, which copies shall become the property of the Owner. The A-E shall incorporate into the plans, drawings and specifications such changes as are necessary to satisfy the Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause. The A-E shall furnish and deliver to the Owner two compact disks of the complete documents for the 50%, 100% and Final completion stage of the Construction Document Phase in a format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).
- 3.3.9 The A-E shall provide with each review submittal a Coordination Document set with colored overlays of required design disciplines. These shall include, but not be limit to, mechanical, electrical, plumbing, sprinkler, slab penetrations, telecommunications, and instructional technologies support. The A-E shall

provide all designs and shall not use design performance documents, unless approved by the Owner.

- 3.3.10 Prior to releasing the Construction Documents “For Construction”, the A-E shall provide a document that summarizes all design code requirements and provide written certification that the Construction Documents meet all applicable design codes and the requirements of the local Campus Standards. The A-E shall further certify in writing that no asbestos or lead containing materials have been specified or approved by the A-E for installation into the Project.
- 3.3.11 The general contractors bidding on the project will pay directly for all reproduction provided for bidders/proposers during the bidding stage of the Project; however, addenda documents issued after the bid/proposal documents are reproduced, except for changes generated by Owner, shall be supplied at the A-E’s expense.
- 3.3.12 The A-E shall direct the preparation of a detailed construction cost estimate to confirm compliance with the Construction Cost Limitation and provide it to the ODSR within 14 days after submitting the completed documents at the stages of design listed in paragraph 3.3.7 (See Section 6.2 for estimate requirements). The A-E shall advise the ODSR of any adjustments to the project needed to align the cost estimate and the project budget with the established Construction Cost Limitation. The A-E shall revise the Construction Documents as may be required by the adjustments at the A-E’s sole expense.
- 3.3.13 Before proceeding into the Bidding and Proposal Phase, the A-E shall obtain ODSR’s written acceptance of the Final Construction Documents and will reconfirm with the ODSR the alignment of the construction cost estimate with the established Final Construction Cost Limitation. The A-E shall furnish and deliver to the Owner two compact disks of the complete documents for the Final Bid Construction Documents in a format acceptable by the Owner for the Owner’s record (i.e. all drawings, specifications, product data, cost estimates, etc.).

3.4 Bidding and Proposal Phase

- 3.4.1 The A-E shall assist the Owner in obtaining and evaluating bids or proposals including preparation for and attendance at Pre-bid or Pre-Proposal Conferences and HUB meetings. A-E shall answer inquiries from bidders/proposers at Owner’s request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.
- 3.4.2 In the event the best value proposal received for the Project exceeds the Final Construction Cost Limitation established at the completion of the Construction Document Phase(s), the A-E, if so directed by Owner, shall revise the drawings and specifications as necessary to bring the cost of the Project within the Final Construction Cost Limitation. If the A/E has not altered the scope or quality level of the project without approval by the ODSR, then the A/E will be compensated as an Additional Service for changes to the Construction Documents needed to satisfy Owner’s budget limitations. The Owner reserves the right to accept a proposal and award a construction contract that exceeds the Final Construction Cost Limitation, if such award is determined by ODSR to be in the Owner’s best

interest. The A-E's Fee will not be adjusted if the Owner decides to accept such a proposal. The A-E shall furnish and deliver to the Owner two compact disks of the complete documents of the Final Revised Construction Documents in a format acceptable by the Owner for the Owner's record (i.e. all drawings, specifications, product data, cost estimates, etc.).

3.5 Construction Phase

- 3.5.1 The Construction Phase shall commence with the award of the Contract for Construction and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of A-E's services have been satisfactorily performed, whichever occurs later.
- 3.5.2 A-E shall assist the Owner in its administration of the Contract for Construction as set forth below.
 - 3.5.2.1 The A-E 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 monthly meeting and when requested.
 - 3.5.2.2 The A-E shall chair all meetings scheduled by the Owner or A-E and shall promptly provide summary notes to all parties. The A-E shall attend Contractor's regularly scheduled planning meetings when requested and/or appropriate to the stage of the construction (at no additional cost to the Owner).
- 3.5.3 The A-E shall review the Contractor's list of proposed subcontractors for the work, initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The A-E shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The A-E shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.
- 3.5.4 The A-E and its consultants shall prepare appropriate materials for and participate in a Pre-Construction Conference at the site prior to commencement of construction by the Contractor.
- 3.5.5 The A-E shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor regarding changes to the Work shall be forwarded through the A-E. The A-E shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents (as defined in the Contract between the Owner and the CM@R). Duties, responsibilities and limitations of authority of the A-E shall not be restricted, modified or extended without written acceptance of the ODSR.
- 3.5.6 The A-E shall visit the site periodically (not less than monthly) during the entire construction period to observe the progress and quality of the Work and to determine

in general if the Work is proceeding in accordance with the Contract Documents. Each of A-E's consultants shall visit the site periodically (not less than monthly) during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. A-E and its consultants shall submit timely written reports of their site visits and meetings. The A-E shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work. The Owner may require site visits and inspections by the A-E or the A-E's consultants at any time. The total number of site visits and inspections shall average not more than one per week during the Construction Phase. Owner-required visits beyond this total shall be compensated as an Additional Service.

3.5.6.1 On the basis of the onsite observations, the A-E shall keep the ODSR informed of the progress and quality of the Work, and shall endeavor to identify defects and deficiencies in the Work of the Contractor. A-E shall notify ODSR and the Contractor in writing of any portions of the work, which A-E has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. A-E shall make its site representative available and shall consult with ODSR and the Contractor on the occasion of all circumstances arising during the course of construction, which would make such consultation in Owner's interests.

3.5.6.2 In addition to site visits for general inspection and observation, the A-E and its consultants shall visit the site as appropriate for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The A-E and its consultants shall provide written reports of all site visits to the ODSR and Contractor.

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

3.5.8 The A-E at all times shall have access to the Work wherever it is in preparation or progress.

3.5.9 The A-E shall determine the amounts owing to the Contractor based on observations of Work placed at the site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with the ODSR, and shall certify Contractor's Application for Payment in an appropriate amount.

3.5.10 The certification of a Contractor's Application for Payment shall constitute a representation by the A-E to the Owner, based on the A-E's observations at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the A-E's knowledge, information and belief, the quality of the work is in accordance with the Contract

Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a Contractor's Application for Payment shall not be a representation that the A-E has: (1) made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum; (2) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (3) reviewed construction means, methods, techniques, sequences or procedures; (4) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (5) accepted the Contractor's responsibility for the quality or quantity of the Work.

- 3.5.11 The A-E shall be the interpreter of the technical requirements of the Contract Documents and the judge, to the extent provided herein, of the performance of the work of the Contractor. The A-E shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 3.5.12 Interpretations and recommendations of the A-E shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.
- 3.5.13 Subject to approval of the Owner, the A-E's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents. The A-E shall review interior designs and/or furniture selections proposed by the Owner and advise the Owner on their aesthetic compatibility with the A-E's design.
- 3.5.14 The A-E shall have the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the A-E's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the A-E will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work will then be fabricated, installed or completed. The A-E shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.
- 3.5.15 The A-E and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples specifically required by the Construction Documents, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide supplemental

information as appropriate. Action on submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) business days after receipt. The A-E's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The A-E's review shall not constitute approval of any construction means or methods, or of any safety precautions. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.

- 3.5.16 A-E shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.
- 3.5.17 A-E shall review and verify the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.
- 3.5.18 The A-E shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the A-E shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the Contractor's proposal is acceptable when the change is greater than \$5,000. R. S. Means Cost Resources shall be the basis for all such Change Order estimates.
- 3.5.19 A-E shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by approved Change Orders. All proposed changes to drawings plans and specifications, regardless of how initiated, shall be defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on the media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated addenda. All changes to design documents or specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.
- 3.5.20 A-E and its consultants shall participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion inspections, and Final Completion inspections. In association with each observation, A-E and its consultants shall prepare a list of items which A-E and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official list of deficiencies

(Punch list) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all Punch list items.

- 3.5.21 A-E shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.
- 3.5.22 The A-E and its consultants shall assist the Owner in checking the Contractor's as-built drawings and specifications during the course of the Work in association with certifying progress payments. Failure to review and advise on the Contractor's progress and update the as-built drawings in a timely manner will affect the progressing of the monthly payment to the A-E for the Construction Phase (Article 7). The A-E shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project. As a part of the Record Drawing and Closeout Documents Submittal phase of this Agreement (Article 7) the A-E shall enter all the Contractor's records of changes onto the original Construction Documents and shall furnish and deliver to the Owner two compact disks of the complete documents in a format acceptable by the Owner for the Owner's record.
- 3.5.23 A-E shall receive and review Contractor's submission of record drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other closeout documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Contract between Owner and Contractor, shall forward to ODSR. The A-E shall certify final payment to the Contractor when the A-E believes the requirements of the Contract between Owner and Contractor have been met.
- 3.5.24 A-E shall monitor the Contractor's schedule for the construction phase work and assist the Owner in reviewing all relevant activities and advise the ODSR of the Contractor's scheduled progress.
- 3.5.25 A-E shall prepare a complete list of project close-out and Owner-training requirements contained in the Construction Documents (CDs) and will display them in matrix form similar to Exhibit C on the CDs.
- 3.5.26 The A-E shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period. A-E shall participate in the Project's one-year warranty review.

ARTICLE 4 ADDITIONAL SERVICES

- 4.1 Services may be required for the design of the Project which are not included as part of the Basic Services described in Articles 1 and 3 <<OPTIONAL: or the Additional Services described in Exhibit A>>. If such services are required, they will either be provided by the Owner, contracted for separately from a third party, or authorized in writing to be performed by the A-E and paid for by the Owner as hereinafter provided. If authorized in writing to be performed by the A-E, such services will be subject to this Article 4.

- 4.2 Change Order effort performed by the A-E during the Construction Phase of the Project shall be compensated as an Additional Service unless the change order is the result of an error or omission on the part of the A-E. The A-E shall not be entitled to any fee for the portion of the effort required to correct errors or omissions.
- 4.3 Any Additional Service cost of change order effort shall be agreed to and authorized in writing by the ODSR before the work is performed. Fees for change order effort performed by the A-E's staff shall be proposed to the ODSR showing a detailed documented required level of effort and using the hourly rate schedule included as Exhibit C. Consultant services for change order work, provided under subcontract to the A-E, shall be compensated at actual cost plus ten percent (10%). Reimbursable expenses for both the A-E and its consultants shall be compensated at direct cost (with no markup). The Owner may decide to reach a Lump Sum agreement with the A-E prior to authorizing Additional Services change order effort or may direct the effort to be performed on a Time and Expenses basis.

ARTICLE 5 THE OWNER'S RESPONSIBILITIES

- 5.1 The Owner shall provide general requirements and description for the Project (budget limitations and required delivery schedules, etc.).
- 5.2 The Owner, through its authorized representatives, shall examine and review documents submitted by the A-E and shall render decisions and provide comments pertaining thereto promptly, to avoid unreasonable delay in the progress of the A-E's work.
- 5.3 The Owner shall furnish any existing as-built drawings. When required for the Project, the Owner shall furnish to the A-E existing boundary surveys and topographic maps giving, as applicable, grades and lines of streets and other physical features, both on and adjoining site, boundaries and contours of land, rights-of-way, restriction, easements, deed restrictions, locations, dimensions and complete data pertaining to existing buildings, location of trees, and full information concerning available utility services, public and private. The Owner shall provide any additional boundary and topographical surveys that are found to be needed during design.
- 5.4 The Owner shall provide the necessary geotechnical surveys, reports, soil borings and laboratory testing services, including required test interpretations, test data and reports.
- 5.5 The services and information, required by paragraph 5.3 and 5.4, shall be furnished at the Owner's expense, and the A-E shall be entitled to rely on the accuracy thereof; however, the A-E shall make a site visit(s) to identify any inconsistencies, which may be visually observed without special instrumentation. The A-E shall notify the ODSR promptly of any such inconsistencies observed.
- 5.6 The Owner shall furnish the A-E, when available and applicable, copies of Owner's Standard General Conditions, Contract Forms, Bond Forms, bidding information and instructions, minimum wage rates for inclusion in the specifications, and design and construction standards of the Owner.

ARTICLE 6 REVISION TO DRAWINGS AND SPECIFICATIONS

- 6.1 The A-E shall prepare Construction Documents containing such provisions which will permit the Owner to obtain a competitive sealed proposal within the Construction Cost Limitation. In the event the lowest acceptable proposal exceeds the Construction Cost Limitation, and if the Owner does not see fit to allot additional funds, the A-E agrees to revise the Construction Documents as may be necessary to bring the Construction Cost within the Construction Cost Limitation. If the A/E has not altered the scope or quality level of the project in ways that were not approved by the ODSR, then the A/E will be compensated as an Additional Service for changes to the Construction Documents needed to satisfy Owner's budget limitations.
- 6.2 Since a Construction Cost Limitation is stated herein, an estimate of cost prepared in detail form shall be provided by the A-E at each stage of the design where a review submittal is required by this Agreement. All such estimates shall be prepared by a recognized independent third party estimating consultant retained and paid by the A-E out of its Basic Services Fee. The estimates shall be prepared in detail in the Construction Specifications Institute (CSI) format. If such estimates, at any required submittal stage, exceed the stated Construction Cost Limitation (including contingencies), the Owner may modify the Construction Cost Limitation, accept Value Engineering recommendations; revise the program, scope or quality, or any combination of these to bring the construction cost within the Construction Cost Limitation. The A-E shall then revise the Construction Documents (at no added charge to the Owner) as may be necessary. The Owner may decide to include alternate bid items in the Construction Documents as a means of adjusting the actual construction cost to the cost limit. If the Owner requests alternates to be designed which by estimate exceed the Construction Cost Limitation during design, and those alternates, or parts thereof, are not constructed within the Construction Cost Limitation, then the A-E shall be compensated for having prepared these alternate bids items on an Additional Services basis as provided in Article 4. This compensation will be provided whether or not the alternates are actually constructed.
- 6.3 After the Owner approves a definite plan, with the revisions above being made during the Design Development Phase, then if decisions by the Owner are subsequently made which, for their proper execution, involves added services and expenses for conceptual revisions and additions to the Construction Documents, or if the A-E is put to added labor or expense by delays imposed on him from causes not within his/her control, such as the delinquency or insolvency of construction contractors, the A-E shall be equitably compensated as an Additional Service.

ARTICLE 7 DELIVERABLE SCHEDULE AND PAYMENTS TO THE A-E

- 7.1 Payments of fees shall be made monthly in proportion to the services performed to increase the compensation for services to the following percentages at the completion and acceptance of each phase of the work. Should the project be designed in several phases or bid packages, the A-E shall submit a revised payment schedule for signatory approval by the ODSR prior to the payment of any services. This revised A-E payment schedule will be based on the master schedule described in paragraph 7.1 above. **The Project must be substantially complete no later than [REDACTED].**

	By Phase	Cumulative
7.1.1 Schematic Design Phase	____%	____%
7.1.2 Design Development Phase	____%	____%
7.1.3 Construction Documents Phase	____%	____%
7.1.4 Bidding or Negotiation Phase	____%	____%
7.1.5 Construction Phase	____%	____%
7.1.6 Record Drawing and Closeout Documents Submittal	____%	____%
7.2	No deduction shall be made from the A-E's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Contractors.	
7.3	If any work designed or specified by the A-E is abandoned or suspended, in whole or in part, the A-E will be paid for the service actually performed on account of it, provided that such abandonment or suspension is not caused by the nonfeasance, malfeasance, fault and/or negligence of the A-E.	

ARTICLE 8 CONSTRUCTION COST LIMITATION

- 8.1 The CCL, as defined herein, is to be used as a basis for determining whether the A-E has met its obligation under to this Agreement to design the project within the Owner’s budget allowance.
- 8.2 The A-E Fee shall be a lump sum amount as stated in this Agreement whether the Owner chooses to award the project over the CCL or under the CCL. The A-E Fee will not be adjusted based on the actual construction cost of the Project.

ARTICLE 9 SCHEDULE

The schedule of events <<presented above>> << in Exhibit “__”>> represents a basic timeline for the project. With the exception of an adjustment to the Project Substantial Completion Date, a final and more detailed project timeline will be developed with the Owner and the selected General Contractor. The A-E can be expected to work with the ODSR and the selected General Contractor to optimize this initial schedule.

ARTICLE 10 TERMINATION OF AGREEMENT

- 10.1 Should either party be in material breach of this Agreement, the other party may give written notice to the breaching party that it intends to terminate this agreement for default absent appropriate corrective action upon the seventh calendar day following receipt of such notice by the breaching party. At such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.
- 10.2 Owner may terminate this Agreement without cause upon the seven days’ written notice. If Owner terminates this Agreement pursuant to this section, the A-E shall be paid for services performed to the termination date and any costs incurred by A-E for which the

Owner is responsible under Article 2 of this Agreement. As a condition of the final payment involving such a termination, the A-E shall promptly and orderly arrange data accumulated and products of its professional services and deliver the same to the Owner.

ARTICLE 11 OWNERSHIP OF DOCUMENTS

- 11.1 At the completion or termination of services, and as a part of the Basic Services of this Agreement, the A-E shall deliver to the ODSR one clear set of reproducible drawings (not sepias), one printed copy of the specifications and one complete computer generated file on disk of all drawings and specifications, including all architectural clarifications and change order supplemental drawings. All such deliverables shall be marked as Record Documents. The Owner will retain ownership of the documents produced under this Agreement though the A-E shall be free to reuse any part of them as it sees fit in its sole discretion.
- 11.2 The A-E shall insert in the specifications that the CM@R will keep a current set of Project drawings and specifications on the job and will timely indicate changes made during construction as they occur. These documents will be reviewed at least monthly by the A-E and will inform the Owner of their status immediately after this review.

ARTICLE 12 SUCCESSORS AND ASSIGNS

The A-E binds itself, its partners, successors, assigns and legal representatives to the Owner, successors, assigns and legal representatives in respect to all covenants of this Agreement. Neither the Owner nor the A-E shall assign, sublet or transfer its interest in this Agreement without the written consent of the other

ARTICLE 13 VENUE AND GOVERNING LAW

- 13.1 Public Information Pertaining To The Official Business Of Governmental Bodies And To Contracts By Certain State Governmental Entities That Involve The Exchange Or Creation Of Public Information. [Name of AR firm] is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: [Insert description of acceptable formats].
- 13.2 Dispute Resolution. In the event of any dispute arising under this Agreement, the parties agree to follow the procedures set forth in Chapter 2260 of the Texas Government Code.
- 13.3 State Auditor's Office. A/E understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. A/E further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. A/E will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt

- and transcribe any pertinent books, documents, working papers and records of A/E relating to this Agreement. A-E further understands that Owner may conduct a financial and/or performance audit of this Agreement and agrees to cooperate fully in such an audit to the same extent as an audit by the State Auditor's Office. The provisions of this Article 12 shall survive the termination of this Agreement.
- 13.4 The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Phone (512) 305-9000, has jurisdiction over individuals licensed under the Regulation of the Practice of Architecture Law, Texas Occupations Code, Section 1051.
- 13.5 The Texas Board of Registration for Professional Engineers, 1917 IH35 South, Austin, Texas 78741, Phone (512) 440-7723, has jurisdiction over individuals licensed under the Texas Engineering Registration Law, Texas Occupations Code, Section 1001.
- 13.6 Nondiscrimination: In their execution of this agreement, all contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. Any breach of this covenant may result in termination of this agreement.
- 13.7 Compliance with Senate Bill 20. The parties acknowledge that, if required pursuant to the provisions of Senate Bill 20 (79th Legislature 2015), this agreement will posted on the Owner's website.
- 13.8 No Waiver. Notwithstanding any provision of this agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.
- 13.9 Computer Project Management Software: A-E shall use the Owner's designated project management software system "e-Builder" to correspond and maintain all project related correspondence throughout the life of the project including project close-out and final payments.

ARTICLE 14 REPRESENTATIVES AND NOTICES

- 14.1 The Owner's Designated Site Representative ("ODSR") authorized to act in the Owner's behalf with respect to the Project is:

[Insert ODSR Name and address]

Phone: _____ Fax No.: _____

Email: _____

- 14.2 The A-E's designated representative authorized to act on the A-E's behalf and bind the A-E with respect to the Project is:

[Insert A/E name and contact info]

- 14.3 The Owner's Designated Site Representative (ODSR) will serve as the Component's point of contact for the A-E. The ODSR will have authority to negotiate cost, time or Agreement terms or to issue Notices to Proceed, and will have the authority to make decisions on behalf of the

Owner concerning coordination with the Component of the A-E's work on the site including, traffic controls, site safety, scheduling of utility outages, materials and color selections, and all matters within the contract that do not involve changes to the scope, cost and/or time for completion. The ODSR or designee, will coordinate and conduct quality inspections of the construction work as it is installed and authorize payment.

- 14.4 Any notices required or permitted under this Agreement shall be effective if sent to the representatives designated pursuant to this Article 13. The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, to be effective on the day and year first above written

For the Architect – Engineer:

For the Owner [[Component Name](#)]:

Principal (signature)

[Name of Component President]

Type or Write Name

Date

Date

Index to Exhibits:

Exhibit A: Additional Services Included in Fee

EXHIBIT A

Additional Services Included in Fee

The following Additional Services are a part of this Agreement, and the fee for such services is included in the Fee set forth in Paragraph 2.1 of the Agreement:

[The following is a list of additional services that may be negotiated as a part of the A/E's initial fee. Specify all services not described in Article 1 that are a part of the contract.]

1. Signage and graphics for wayfinding, both interior and exterior.
2. Telecommunications/data/security.
3. Audio-Visual/Acoustics .
4. Theatrical, including theatre planning, theatre lighting, theatre equipment design and theatre consulting.
5. Fire protection and life safety.
6. Architectural lighting.
7. Parking and traffic studies.
8. Full cooperation with and assistance to the Owner and Contractor during their development of an adequate Storm Water Protection Plan for the Project, including consultation during the preparation of the Storm Water Protection Plan, the Notice of Intent, and other required documents.