

Date, 2012

Contract Number: **13PSAXXXX**

Project Number: **CP445520**

«Legal_Name»
«Street_Address»
«City», «State» «ZIP»

Attn: «PresidentPrincipal», «PTitle»

Dear «Courtesy_Title» «Lname»:

Enclosed are two originals of the MASTER AGREEMENT BETWEEN OWNER AND PROFESSIONAL SERVICES PROVIDER FOR ON-GOING PROFESSIONAL SERVICES, Campus (CAM), The University of Texas at Austin, Austin, Texas. All Master Agreements shall be the same across disciplines. Specific project issues or conditions shall be incorporated in the proposals for the individual “Project Assignments.”

Please execute both sets of the **Master Agreement** with your original signature and the original signature of the «C_Sec_Title». **If your title is not “President” and you represent a corporation, attach a “corporate resolution” to each agreement.** Return them within **7 calendar days** to this office together with one set of **Certificates of Insurance** providing the coverage specified in the Paragraph 1.1.28 of the agreement. In addition, please submit **Attachment 2 – Hourly Billing Rates.**

The Historically Underutilized Business (HUB) information required by the HUB Subcontractor Plan and as required in Attachment 3 (Exhibit “H”) **shall be returned with the Proposals for all Individual Project Authorizations in excess of \$100,000.00 prior to final execution of the individual Project Authorizations. Any revisions or additions to the HSP Plan during the duration of this agreement and subsequent renewals shall be submitted at that time for review / approval.**

Very truly yours,

Robert G. Miller
Manager Contracting Services
Contract Administrator

Attachments

cc: Muriel Kruse, PMCS
HUB Staff Associate

Please sign and return a copy of this letter.

Received By

Date Received

MASTER AGREEMENT
BETWEEN OWNER AND PROFESSIONAL SERVICES PROVIDER
FOR
ON-GOING PROFESSIONAL SERVICES

CONTRACT No.: 13PSAXXXX

PROJECT No.: CP445520

This Master Agreement Between Owner and Professional Services Provider for On-Going Professional Services made the «**Initial_Authorization_Day**» day of «**Initial_Authorization_Month**» in the year «**Initial_Authorization_Year**», by and between «**Legal_Name**», «**Art**» «**Business_Type**» of the State of Texas, located at «**Street_Address**», «**City**», «**State**» «**ZIP**» with a mailing address of «**Mailing_Address**», «**City**», «**State**» «**ZIP**» hereinafter called the **PSProvider**, and **THE UNIVERSITY OF TEXAS AT AUSTIN**, hereinafter called the **OWNER**.

WITNESSETH

WHEREAS, **OWNER** desires to obtain the primary discipline of «**Specific_Functional_Discipline**» **Professional Services** as defined herein; and other discipline services as may be required; and

WHEREAS, **PSProvider** represents that he/she has the knowledge, ability, skills and resources to provide the services required hereunder, and **OWNER** in reliance on such representations is willing to contract in such capacity on the terms and agreements herein below expressed.

NOW, THEREFORE, for and in consideration of the mutual benefits and covenants herein the parties agree as follows:

For the following **On-Going Professional Services**: xxxxxx

The term “**Project**” when used throughout this agreement refers to **individual “Project Assignments”** (Projects) that may be authorized during the term of this agreement.

This Master Agreement shall serve as a collection of conditions, requirements and terms including the Owner’s latest version of the Uniform General Conditions, the Owner’s Additional General Conditions and Special Conditions, as well as all requirements of the original RFQ with subsequent addenda, the PSProvider’s responses to the RFQ, and Interviews (if applicable), etc. and other requirements specific to all individual “Project Assignments”. **The specific phases or descriptions of service shall ONLY apply IF that service is part of the requirements in the individual “Project Assignment” authorization.** (Example: If the authorization is for testing services or feasibility studies, etc., then the basic services requirements are not applicable). **If Basic Services are required then all elements of Basic Services shall be included unless specifically excluded.**

Project Assignments **may** utilize the Construction Manager at Risk Delivery Method for all or part of the required construction. Refer to **Article 15** within this agreement for additional detail information and requirements concerning the CM@Risk delivery method.

Refer to **Article 16** within this agreement for detail information and requirements concerning the On-Going nature and properties of this Master Agreement.

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- Att 3 Exhibit H: Policy on Utilization of Historically Underutilized Businesses (HUB)s Professional Services

Article 1 PSPROVIDER'S SERVICES AND RESPONSIBILITIES

The PSProvider shall provide the usual and customary Basic Services necessary and reasonably inferable to complete the **individual Project Assignments** and each phase of the project described in Paragraphs 1.2 through 1.6, below, along with any Supplemental Basic Services identified in this Agreement and any Additional Services requested by the Owner.

1.1 **Basic Services and Supplemental Basic Services**

- 1.1.1 **Basic Services.** The PSProvider's Basic Services included all disciplines identified in Article 14 and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement. The PSProvider shall attend all required meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties.
- 1.1.2 The Facilities Program (see Article 2) describes the intended project scope and character along with the anticipated Project Schedule and the Preliminary Project Cost. It is the PSProvider's responsibility to review and understand the requirements of the Facilities Program and to perform his professional services so as to achieve those objectives.
- 1.1.3 The **Construction Cost Limitation** for this Project **shall be unique to each individual "Project Assignment". Refer to Article 14.** The PSProvider is responsible for managing the design of the Project so that its construction does not exceed the Construction Cost Limitation.
- 1.1.4 The Owner may require the PSProvider to provide services for the Project in multiple stages or parts identified as Construction Contract Stages (CCS). Each CCS shall have a unique Sub-Construction Cost Limitation (SCCL). The PSProvider is responsible for managing the design of each CCS so that its construction does not exceed the SCCL. The PSProvider is responsible for managing the design of the Project so that sum of all SCCLs does not exceed the Construction Cost Limitation.
- 1.1.5 The PSProvider shall manage the design of the Project to achieve the Facilities Program objectives of scope and cost through completion and acceptance of Construction Documents phase. The PSProvider shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Construction Cost Limitation as part of Basic Services.
- 1.1.6 The PSProvider shall submit the names of all consultants, persons, or firms, which the PSProvider proposes to use in the execution of its services for **individual "Project Assignments"** and shall provide the Owner with a fully executed copy of each contract or agreement that the PSProvider enters into with any consultant, if requested by the owner. The PSProvider is responsible for coordinating the work of all of its consultants to assure that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by PSProvider of any consultant for the Project to which Owner has a reasonable objection. PSProvider, however, shall not be required to contract with any consultant to which it has a reasonable objection.

- 1.1.7 The PSProvider shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.
- 1.1.8 It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB)s in all contracts. Accordingly, Project Management & Construction Services (PMCS) has adopted Exhibit H, Policy on Utilization of Historically Underutilized Businesses (See attached). The Policy applies to all contracts with an expected value of \$100,000 or more. If PMCS determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the Qualifications.
- a) The University of Texas at Austin, Project Management & Construction Services (PMCS), has determined that subcontracting opportunities are probable in connection with this procurement solicitation. Therefore, a HUB Subcontracting Plan (HSP) is required as a part of the respondent's Qualifications.
 - b) **All individual "Project Assignments" with fees exceeding or modified to exceed, \$100,000 shall include a fully developed HUB Subcontracting Plan (HSP) as described in Exhibit H.** (If the project involves member(s) of the team that were submitted and approved on the initial response and selection, then an HSP will be completed for that particular project listing the approved subconsultants, without the need for further "Good Faith Effort"). However, if a new scope(s) of work is identified that was not listed in the response for the Master Contract, then you will solicit qualifications from certified State of Texas HUB firms for consideration for those areas at the time you are given a Project Assignment.
 - c) The PSProvider agrees to allocate work to consultants that are historically underutilized businesses in accordance with the Policy on Utilization of Historically Underutilized Businesses (HUB)s for Professional Services, attached as Exhibit H. No changes to the HUB Subcontracting Plan may be made unless approved in writing by the Owner. While this Agreement is in effect and until the expiration of one year after final completion, the Owner may require information from the PSProvider, and may conduct audits, to assure that the Plan is followed.
- 1.1.9 The PSProvider shall design the Project to incorporate current systems technology as appropriate to the stated mission of the institution and the programmed functional activities. The technology shall be compatible with any existing facility and acceptable to the Owner.
- 1.1.10 The PSProvider shall perform its services in accordance with Owner's Design Guidelines, as may be developed and/or revised, and is incorporated herein by reference. The PSProvider shall design projects generally using "sustainable" design considerations where possible and require recycling of discarded materials, where possible. More detailed certifications and development may be considered as Additional Services, if requested by the OWNER.

- 1.1.11 When exterior elements are involved, the PSProvider shall design the individual Project in accordance with the approved Campus Master Plan and shall, in coordination with the OWNER, obtain approval from appropriate committees that may review such work.
- 1.1.12 Basic design services shall include (if applicable to specific projects) incorporation of the provisions of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, State Comptroller's Office of the State of Texas. PSProvider shall provide the Owner with a Statement of Compliance and associated compliance documentation as required.
- 1.1.13 The PSProvider, as part of Additional Services, (if required by the Owner) (and if applicable to specific projects) shall assist with and attend with Owner representatives an open meeting to be held pursuant to Section 2166.403(b) *Texas Government Code*, to verify the economic feasibility of incorporating alternative energy devices for space heating, cooling, water heating, electrical loads, and interior lighting into the building's design and proposed energy system. At a minimum, PSProvider shall provide an economic evaluation for the potential of renewable energy applications pursuant to the legislative requirements. Guidelines are available from the State Energy Conservation Office, State Comptroller's Office.
- 1.1.14 Basic design services shall include (if applicable to specific projects) incorporation of the provisions of the Xeriscape Landscaping design requirements as adopted by the State of Texas Building & Procurement Division for Xeriscape landscaping on construction projects, pursuant to Section 2166.404 *Texas Government Code*. PSProvider shall provide site analysis and design to incorporate these provisions. A summary of the project requirements meeting these guidelines shall also be provided for the Design Development submittal package.
- 1.1.15 The PSProvider, as part of Basic Services, shall with their own employees (if qualified) or shall engage a recognized and specialized construction cost estimating consultant acceptable to the Owner to prepare detailed Construction Cost Estimates of the Project in a form acceptable to the Owner following the Construction Specifications Institute (CSI) format. Updated Estimates shall be included with the plans and specifications submitted for review, as required in Article 14.8. **If the Construction Cost Estimate exceeds the Construction Cost Limitation at any time, the Owner will determine whether to increase the Construction Cost Limitation or require the PSProvider to revise the Project scope or quality to comply with the Construction Cost Limitation at no additional cost to Owner.** Reductions in Project scope or quality are subject to Owner's review and approval. If the Construction Cost Estimate is below the Construction Cost Limitation, the Owner and PSProvider shall mutually agree on changes to the project scope or the Construction Cost Limitation.
- 1.1.16 The PSProvider shall submit documents to the Owner for review at completion of the Schematic Design (if required) and Design Development phases and at the stages of completion of the Construction Documents as described in Article 14.7. The PSProvider shall incorporate into the documents such corrections and amendments as the Owner requests, unless the PSProvider objects in writing and receives the Owner's consent not to make the changes.

The PSProvider will be responsible for any damages incurred by the Owner that are caused by PSProvider's failure to incorporate requested corrections and amendments to the documents.

- 1.1.17 PSProvider shall provide a review and comment form acceptable to the Owner, or use Owner furnished form (if so requested), for Owner's use during document review. Owner will provide its review comments to PSProvider on the form and the PSProvider shall provide a detailed written response to each of the Owner's review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, the PSProvider shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of the PSProvider's then current Statement for PSProvider Services. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any PSProvider's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by PSProvider.
- 1.1.18 The PSProvider, as part of Basic Services, shall become **sufficiently familiar** with the existing facilities, systems and conditions at the Project location, in order that the proposed Project will completely and properly interface functionally with them. More extensive investigation of existing systems and conditions may be considered as additional Services, if required.
- 1.1.19 PSProvider agrees and acknowledges that Owner is entering into this Agreement in reliance on PSProvider's represented professional abilities with respect to performing PSProvider's services, duties, and obligations under this Agreement. PSProvider agrees to use PSProvider's professional efforts, skill, judgment, and abilities in performing PSProvider's services. PSProvider shall perform its Services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. PSProvider agrees to use its best efforts to perform its services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with good architectural practices for architectural firms, and / or engineering practices for engineering firms, and / or other licensed professionals in Texas that provide professional design or project related services for projects that are similar in size, scope, and budget to the individual project assignments, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction (current during the period of services required by the individual project assignment). There are no obligations, commitments, or impediments of any kind known to the PSProvider that will limit or prevent performance by PSProvider of its services. PSProvider hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the standard of care.
- 1.1.20 PSProvider shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to PSProvider (by Owner or any other party) that PSProvider uses for the Project. PSProvider shall identify to the Owner in writing any such documents or data which, in PSProvider's professional opinion, are unsuitable, improper, or

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

- 1.1.21 PSProvider's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of PSProvider's services by the Owner shall relieve PSProvider of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon PSProvider for its skill and knowledge in performing PSProvider's services. Owner shall have the right to reject any of PSProvider's services because of any fault or defect in the Project due to any material errors or omissions in the plans, drawings, specifications, and other materials prepared by PSProvider or its consultants. Upon notice of any such errors or omissions, PSProvider shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. PSProvider's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.
- 1.1.22 The PSProvider shall not proceed to any phase of design not expressly authorized by the Owner, except at the PSProvider's own financial risk.
- 1.1.23 PSProvider agrees to furnish efficient business administration and supervision of its employees and all sub-consultants and to design the Project in an expeditious and economical manner consistent with the interest of Owner and PSProvider's professional skill and care.
- 1.1.24 **PSProvider shall allocate adequate time, personnel and resources necessary to perform their services within the completion time agreed to within the individual "Project Assignment"**. PSProvider's Senior Principal(s) responsible for managing the Project is identified in Attachment 2 and shall not be changed without the prior approval of the Owner. The day-to-day Project team will be led by the Senior Principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of PSProvider. The Senior Principal(s) shall act on behalf of PSProvider with respect to all phases of PSProvider's Services and shall be available as required for the benefit of the Project and Owner.
- 1.1.25 PSProvider shall make reasonable efforts to investigate any documents provided by the Owner and the visible existing conditions at the Project site in an effort to identify existing systems and construction which must be modified to accommodate the PSProvider's design for the Project and the construction of the Project. The PSProvider shall identify to Owner any discrepancies between the documents and visible conditions, and shall consult with the Owner on any special measures, services or further investigations required for PSProvider to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional architects and engineers, as appropriate.
- 1.1.26 The PSProvider, when requested by the Owner, shall coordinate the purchase of additional reprographic materials for bidding or proposal purposes or when additional review sets, in excess of those required by Article 1.4. is required by the Owner. The PSProvider shall present a Tax Exemption Certificate to the vendor and coordinate the Owner's requirements for type, quantity and invoice

billing. When requested, the PSProvider will account to the Owner for all additional materials ordered by the Owner through the PSProvider as the Owner's agent and shall distinguish between those materials ordered on behalf of the Owner without sales tax and any other copies thereof that PSProvider, or others, may order and pay for which includes sales tax, on its own or their behalf. Forward to the Owner the original vendor's invoice for materials purchased by the Owner and delivered to the PSProvider as the Owner's agent.

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

1.1.28 **Insurance Coverage.** The PSProvider shall carry such professional liability/errors and omissions insurance, covering the services provided under this Agreement and other coverage's as further described, acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the PSProvider. The insurance policy shall remain in force for a period of one (1) year beyond the final completion date of any Project Assignment, this Master Agreement and each of four one year renewals, as may be applicable. A Certificate of Insurance indicating the expiration date, and existence, of the PSProvider's insurance coverage's is required prior to commencement or continuation of performance of the services under this Agreement. Each annual renewal of this agreement by the PSProvider shall include the expiration date of the insurance. PSProvider shall deliver to Owner replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, PSProvider 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 PSProvider under this Agreement.

a) A Certificate of 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 PSProvider'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 University of Texas at Austin as the Project's Owner.

b) On Site Insurance: For services performed on Owner's premises, the PSProvider 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 and any subsequent renewals.

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

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

1.1.29 PSProvider 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.

1.1.30 **Supplemental Basic Services.** Supplemental Basic Services are the services specifically identified in Article 14.2 that are to be provided by the PSProvider in conjunction with the delivery of Basic Services under this Agreement. Compensation for Supplemental Basic Services will be additional to compensation for Basic Services. The PSProvider shall attend all required meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties.

1.2 **Schematic Design Phase (as may be required by certain project assignments)**

1.2.1 Based on the mutually agreed upon Facilities Program, Construction Cost Limitation and the Project Schedule, the PSProvider shall prepare sufficient alternative approaches to design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic Design Documents in accordance with Owner's requirements, Owner's Design Guidelines and any additional requirements set forth in Article 14. The PSProvider shall attend required design / review meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties.

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

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

1.2.4 The PSProvider shall furnish and deliver to the Owner the number of complete printed sets of Schematic Design documents as enumerated in Article 14.9.

1.2.5 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include it with the completed Schematic Design Documents. The PSProvider shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Schematic Design Documents as may be required.

1.2.6 Before proceeding into the Design Development Phase, the PSProvider shall obtain Owner's written acceptance of the Schematic Design documents and approval of the PSProvider's preliminary construction cost estimate and schedule.

1.3 **Design Development Phase**

- 1.3.1 Based on the approved Schematic Design Documents and any adjustments to the Facilities Program or Construction Cost Limitation authorized by the Owner, the PSProvider shall prepare, for approval by the Owner, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines and any additional requirements set forth in Article 14. The PSProvider shall attend required design / review meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties.
- 1.3.2 The PSProvider shall furnish and deliver to the Owner the number of complete printed sets of Design Development documents as enumerated in Article 14.9.
- 1.3.3 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.16 to confirm compliance with the Construction Cost Limitation and include it with the completed Design Development Documents. The PSProvider shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Design Development Documents as may be required.
- 1.3.4 Before proceeding into the Construction Document Phase, the PSProvider shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Construction Cost Limitation and schedule.
- 1.3.5 (Not Used)
- 1.3.6 The PSProvider 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.
- 1.3.7 (Not Used)

1.4 **Construction Document Phase**

- 1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, the PSProvider 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 and any additional requirements contained in Article 14. 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 PSProvider is responsible for managing the design to stay within the Construction Cost Limitation. The PSProvider shall attend required design / review meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties.

- 1.4.2 The PSProvider 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.
- 1.4.3 The PSProvider shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.
- 1.4.4 The PSProvider shall ensure coordination and inclusion of sequence of operations for all operable systems in the facility.
- 1.4.5 The PSProvider, at the PSProvider's expense, at each stage of review described in Article 14, shall furnish and deliver to the Owner the number of complete printed copies of all plans, drawings and specifications of every character made or furnished in connection with the Work, as enumerated in Article 14, which copies shall become the property of the Owner. The PSProvider 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.
- 1.4.6 The PSProvider shall pay for the plotting and reproduction of all plans, specifications and other documents for use by the PSProvider and its consultants and all documents plotted and reproduced for the various completion stage reviews (as set forth in Article 14.7) by the Owner prior to the reproduction of bidding or proposal documents. All other reproduction costs (with prior approval of the Owner) shall be borne by the Owner, provided that all invoices for such reproduction work are billed directly to the Owner, free of state sales taxes, and identified by the PSProvider as to the project name, number and institution.
- 1.4.7 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.16 to confirm compliance with the Construction Cost Limitation and include it with the completed Construction Documents. The PSProvider shall advise the Owner of any adjustments to the project scope necessary to align the cost estimate and the project budget with the established Construction Cost Limitation and revise the Construction Documents as may be required.
- 1.4.8 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. Provide documents in electronic format as required in Article 14.11.
- 1.4.9 The PSProvider shall participate in a final review of the Construction Documents with the Owner at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Construction Documents, the PSProvider shall incorporate such changes as are necessary to satisfy the Owner's review comments.
- 1.4.10 (Not Used)
- 1.4.11 Before proceeding into the Bidding and Proposal Phase, the PSProvider shall obtain Owner's written acceptance of the Construction Documents and approval of the mutually established Final Construction Cost Limitation.

- 1.4.12 Documentation shall be suitable for soliciting conventional sealed bids, competitive sealed proposals (CSP or CM@Risk) from general construction contractors or to obtain pricing under a Job Order Contract or UT shop project.
- 1.4.13 Specifications shall be written and organized to incorporate the **latest** Construction Specifications Institute (CSI) numbering systems.

1.5 **Bidding and Proposal Phase**

- 1.5.1 The PSProvider shall assist the Owner in obtaining and evaluating bids or proposals, and assist in awarding contracts for construction, including preparation for and attendance at Prebid or Preproposal Conferences and HUB meetings. PSProvider shall answer inquiries from bidders and proposers at Owner's request, and shall prepare any necessary addenda to the bidding or proposal documents, to be issued by the Owner.
- 1.5.2 The PSProvider shall investigate the responsibility of apparent low bidders or proposers and inform Owner in writing of its findings and recommendations. For proposers selected by qualifications and by competitive sealed proposals, the PSProvider shall investigate qualifications and other pertinent proposal information and inform the Owner in writing of its findings and recommendations.
- 1.5.3 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, the PSProvider, without charge to the Owner, and 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. 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 Owner to be in the Owner's best interest.
- 1.5.4 **PSProvider shall submit Electronic record copy of all specifications and drawings that were submitted for pricing as well as addenda related additions or corrections, in a format described elsewhere in the Agreement. Invoice payments for this phase shall be held until these documents are received.**

1.6 **Construction Phase—Administration of the Construction Contract**

- 1.6.1 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 PSProvider's services have been satisfactorily performed, whichever occurs later.
- 1.6.2 PSProvider shall provide administration of the Contract for Construction as set forth below and in the edition of the Owner's Design Guidelines current as of the date of this Agreement as well as the current Uniform General Conditions (UGC).
 - a) The PSProvider 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 progress meeting and when requested.

- b) The PSProvider or Owner shall chair all meetings scheduled by the Owner or PSProvider and shall promptly provide meeting minutes to all parties. The PSProvider shall attend Contractor's regularly scheduled planning meetings.
- 1.6.3 The PSProvider 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 PSProvider shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The PSProvider shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.
- 1.6.4 The PSProvider and its consultants shall prepare appropriate materials for and conduct with the Owner a Pre-Construction Conference at the site prior to commencement of construction by the Contractor.
- 1.6.5 The PSProvider shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded to the PSProvider. The PSProvider shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities and limitations of authority of the PSProvider shall not be restricted, modified or extended without written acceptance of the Owner.
- 1.6.6 **Site Visits.** The PSProvider shall visit the site at least once each week during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of PSProvider's consultant shall visit the site at least once each week or at intervals appropriate for the progress of the work 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. PSProvider and its consultants shall submit written reports of their site visits and meetings. The PSProvider shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work.
- a) On the basis of the onsite observations, the PSProvider shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. PSProvider shall notify Owner and the Contractor in writing of any portions of the work which PSProvider has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. PSProvider shall make its site representative available and shall consult with Owner and the Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.
 - b) In addition to site visits for general observation, the PSProvider and its consultants shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal observations of the Work. The PSProvider and its consultants shall provide written reports of all site visits to the Owner and Contractor.

- 1.6.7 The PSProvider shall prepare an agenda for, and conduct with the Owner, weekly job conferences for attendance by representatives of the Contractor, major subcontractors, the PSProvider and the Owner, and prepare and distribute meeting minutes.
- 1.6.8 The PSProvider 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.
- 1.6.9 The PSProvider shall at all times have access to the Work wherever it is in preparation or progress.
- 1.6.10 The PSProvider 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 Owner's representatives, and shall certify Contractor's Application for Payment in an appropriate amount.
- 1.6.11 The certification of a Contractor's Application for Payment shall constitute a representation by the PSProvider to the Owner, based on the PSProvider'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 PSProvider'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 PSProvider has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.
- 1.6.12 The PSProvider shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the work of the Contractor. The PSProvider 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.
- 1.6.13 Interpretations and recommendations of the PSProvider shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.
- 1.6.14 Subject to approval of the Owner, the PSProvider'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 PSProvider shall review interior designs and/or furniture selections proposed by the Owner and advise the Owner on their aesthetic compatibility with the PSProvider's design.

- 1.6.15 The PSProvider shall have the responsibility and the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the PSProvider's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the PSProvider 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 PSProvider shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.
- 1.6.16 The PSProvider and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the 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 seven (7) calendar days after receipt. The PSProvider's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The PSProvider's review shall not constitute approval of any construction means or methods.
- 1.6.17 PSProvider shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.
- 1.6.18 PSProvider shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.
- 1.6.19 The PSProvider shall prepare Change Order documents (RFP's) if applicable and necessary for the contractor to prepare a proposal, 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 PSProvider shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the proposal is acceptable.
- 1.6.20 PSProvider 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 totally 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, as required in Article 14.11. 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.

- 1.6.21 PSProvider and its consultants shall conduct and participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion or pre-Final work observations to determine the Dates of Substantial Completion, and Final work observation. In association with each observation, PSProvider and its consultants shall prepare a list of items which PSProvider and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official punch(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.
- 1.6.22 PSProvider shall review, for conformance with the Contract Documents, Contractor’s submission of guarantees and warranties.
- 1.6.23 The PSProvider and its consultants shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project.
- 1.6.24 PSProvider shall receive and review Contractor’s submission of record drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out 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 Owner. The PSProvider shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.
- 1.6.25 PSProvider shall monitor the Contractor’s schedule for the construction phase work and assist the Owner in reviewing all relevant activities and advise the Owner of the Contractor’s scheduled progress.
- 1.6.26 PSProvider shall provide a milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of construction payment application, in conformance with the project milestone schedule, so that the desired development and construction schedule for the Project shall be maintained.

1.7 **Additional Services**

- 1.7.1 Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to Basic Compensation. Prior to commencing any Additional Service, PSProvider shall prepare for acceptance by the Owner an Additional Services Proposal, in the form as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which PSProvider has determined that such services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which PSProvider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service.

Those services which the Owner contemplates to be provided as Additional Services or considered to be Additional Services are described in Article 14. PSProvider shall proceed only after written acceptance by Owner of the Additional Services Proposal.

- 1.7.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by PSProvider pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.
- 1.7.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is an Additional Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by the Owner and to the extent necessary for the PSProvider to complete its responsibilities hereunder free of material errors and omissions. PSProvider shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.
- 1.7.4 The PSProvider shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period. PSProvider shall participate in the Project's one year warranty review, as may be required by the OWNER.
- 1.7.5 The PSProvider shall be available for additional project reviews that are in excess of the number indicated in basic services.

1.8 **Time**

- 1.8.1 PSProvider shall perform all of PSProvider's services described herein as expeditiously as is consistent with (1) PSProvider's professional efforts, skill and care, (2) the orderly progress of such services, and (3) in conformance with the project milestone schedules so that the desired development and construction schedule for the Project shall be maintained. PSProvider shall at all times provide sufficient personnel to accomplish PSProvider's services within the time limits set forth in the schedules described herein.
- 1.8.2 Each individual Project Assignment proposal shall indicate time required to complete the respective phases of the services.

Article 2 OWNER'S RESPONSIBILITIES

- 2.1 The Owner will provide a Facilities Program, or the Owner and PSProvider may agree that PSProvider shall prepare a Facility Program as an Additional Service as set forth in Article 14 of this Agreement. The Facility Program will set forth the Owner's description of the project scope, preliminary project cost, schedule, risks, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment. If PSProvider prepares the Facility Program, then Owner will review the Facility Program when completed and then determine whether to proceed with the Project and authorize commencement of Basic Services. The Owner reserves the right to terminate the Agreement following completion of the Facility Program, and shall have no further obligation to PSProvider other than payment for services authorized by Owner and provided by PSProvider prior to such termination in accordance with the terms and conditions of this Agreement.

- 2.2 The Owner will provide a preliminary project budget and schedule for the Project. The budget will include the Construction Cost Limitation, contingencies for bidding and changes in the Work during construction, and other costs which are the responsibility of the Owner.
- 2.3 The Owner designates Project Management and Construction Services (PMCS) as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner's authorized representative shall examine the documents submitted by the PSProvider and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the PSProvider's services. The Owner shall have the right to withhold from payments due PSProvider such sums as the Owner deems reasonably necessary to protect Owner against any loss or damage which may result from negligence by PSProvider or failure of PSProvider to perform PSProvider's obligations under this Agreement pending final resolution of such claims.
- 2.4 The Owner, at Owner's cost, will secure or will request PSProvider to provide proposals for additional services of surveyors, geotechnical and laboratory testing engineers, or other special consultants to develop additional information to the extent necessary for the design of the project. The PSProvider shall provide the Owner with parameters for inclusion in the Owner's instructions to such providers.
- 2.5 The Owner shall arrange and pay for structural, mechanical, chemical and other laboratory tests as necessary during construction except as required of the Contractor in the Contract Documents.
- 2.6 The Owner shall furnish all legal, accounting, auditing and insurance counseling services as may be necessary for the Project on the Owner's behalf.
- 2.7 The services, information, surveys and reports required by the preceding paragraphs shall be furnished at the Owner's expense, unless authorized as additional services by the PSProvider.
- 2.8 If the Owner observes or otherwise acquires actual knowledge of any design fault or defect in the Project or conflict in the Contract documents, written notice thereof will be given by the Owner to the PSProvider; however, Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.
- 2.9 The Owner will review the PSProvider's design at the completion of Schematic Design and Design Development and at completion of the stages of Construction Documents as described in Article 14. Comments concerning corrections or amendments to the plans and specifications will be furnished in writing to the PSProvider as promptly as possible after receipt of the documents for review. Owner's approval of the documents must be in writing and no approval may be deemed given in the absence of written approval. The Owner may require the PSProvider to halt production during design review.
- 2.10 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the PSProvider's services and of the Work.
- 2.11 (Not Used)
- 2.12 The Owner may furnish one or more Construction Quality Control Inspectors who shall be responsible for inspection of the Work, consisting of close, on-site examination of the materials, structure and equipment; and surveillance of the workmanship and methods used to insure that the Project is reasonably accomplished in accordance with the

Contract Documents and good construction practices, unless authorized as additional services by the PSProvider.

Article 3 **CONSTRUCTION COST—DEFINITION**

- 3.1 The Estimated Construction Cost shall be the total cost of all elements of the project, including all alternate bids or proposals, designed and specified by the PSProvider.
- 3.2 The Estimated Construction Cost shall include at current market rates a reasonable allowance for overhead, profit and general conditions, the cost of labor and materials furnished by the Owner and any equipment which has been shown in the plans, specified, and specially provided for by the PSProvider.
- 3.3 The estimated Construction Cost does not include compensation to the PSProvider and the PSProvider’s consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

Article 4 **DIRECT SALARY EXPENSE**

- 4.1 Direct Salary Expense (“DSE”) is defined as the actual salaries, expressed on an hourly wage basis, prior to deductions for employment taxes (such as FICA, Medicare, income tax withholding) and employee-paid benefits, of all personnel, including PSProvider’s employees directly engaged on the Project (and performing consultations or research or preparing designs, drawings, and specifications for the Project). DSE shall exclude mandatory and customary fringe benefits and employee benefits (such as employer-paid insurance, sick leave, holidays, vacation, pensions and similar contributions, or additions such as bonuses or other surplus payments), overhead expense (which includes salaries of bookkeepers, secretaries, clerks, and the like), and profit relating to the Project. Any multiplier applied to such DSE shall be for the purpose of covering such fringe benefits, expense, and profit. All personnel shall mean anyone employed by the PSProvider and its consultants including, but not limited to, Architects, officers, principals, associates, PSProvider, CADD technicians, engineers, designers, job captains, draftspersons, and specifications writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services during construction at the Property that are directly attributable to, and necessary for, such construction.
- 4.2 Prior to entering into any agreement between the PSProvider and the Owner, and the PSProvider and its consultants, the PSProvider shall submit a full list of all personnel titles and the hourly wage for each which is attached hereto as an Attachment 2. The hourly rates contained therein may be adjusted semi-annually in accordance with the usual and customary salaries of the architectural, engineering, etc. profession in the area of PSProvider’s office.

Article 5 **REIMBURSABLE EXPENSES** **(with prior approval)**

- 5.1 Reimbursable Expenses are only as approved by Owner in writing in the Project Assignment Agreement, in addition to the Compensation for Basic Services, Supplemental Basic Services and Additional Services. These include actual out-of-pocket reasonable expenditures made by the PSProvider and the PSProvider’s employees and consultants incurred solely and directly in connection with PSProvider’s performance of its services hereunder for the following expenses:
 - 5.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.

- 5.1.2 Professional models and renderings produced for presentations when requested by the Owner.
- 5.1.3 Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project except for: correspondence between the PSProvider and the Owner; PSProvider's in-house work or correspondence; or work or correspondence exchanged between the PSProvider and its consultants. Courier services specifically requested by the Owner for deliveries between the PSProvider and the Owner shall be reimbursable; however courier services for the convenience of the PSProvider shall not be reimbursed.
- 5.1.4 Expense of any additional insurance coverage or limits that exceed those required by this Agreement, when requested by the Owner.
- 5.1.5 Expense of transportation and living expenses in connection with **out-of-state travel** as follows: (ALL TRAVEL EXPENSE SHALL HAVE PRIOR APPROVAL BY THE OWNER AND SHALL BE INCLUDED AS A LINE ITEM IN THE RELATED PROJECT ASSIGNMENT.)
- a) **Travel from Texas to out of state locations:**
- (1) Maximum rates for lodging and meals shall be in accordance with the "Out of State Meals and Lodging Rates", Texas Comptroller of Public Accounts. (Website https://fmx.cpa.state.tx.us/fm/travel/out_of_state/index.php, plus city and state taxes.
 - (2) Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the PSProvider for lodging exceed the State rate, the PSProvider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
 - (3) The meal per diem will only be paid on trips involving overnight travel.
- b) **Travel to Texas from out of state locations:**
- (1) Lodging: maximum reimbursement for lodging in state shall be limited to current State of Texas per diem rate plus city and state taxes. The meal per diem will only be paid on trips involving overnight travel.
 - (2) Notwithstanding the limitation on lodging rates above, if the expenses actually incurred by the PSProvider for lodging exceed the State rate, the PSProvider may be reimbursed for the additional amount incurred up to a maximum of forty percent (40%) of the State rate.
 - (3) Meals; reimbursement limited to current State of Texas per diem rate.
- c) **Automobile Expenses:** auto rental for moderate size category, related auto insurance, gasoline, parking and taxi service. Costs include applicable taxes.
- d) **Airline Travel:** coach class air travel with rates nearest to the State contract rate. All airline travel shall be booked no less than 7 days in advance when possible. Reimbursement for air travel booked within 7

days of departure, without the prior approval of the PM/RCM, may be limited. A sales receipt and a boarding pass must be provided for each flight in order to receive reimbursement.

e) **Approval:** Unless expressly directed and approved “in writing” by the Owner, amounts exceeding the above stipulated limitations will not be subject to reimbursement.

5.1.6 Expenses of any reprographic services that are in addition to those required under Basic Services requested by the Owner in writing, including, but not limited to reproduction and delivery of plans, specifications, addenda, reports or other miscellaneous documents. Reprographic services may include electronic document files or paper printing and delivery. Written Owner’s request is required for reimbursement of these expenses.

5.2 Unless expressly directed, and approved in advance, by the Owner, transportation and living expenses incurred within the State of Texas, for firms whose principal address is within the State of Texas, **will not be subject to reimbursement. Travel reimbursable expenses to campuses outside of Austin, Texas, shall be considered on a project by project basis and only if approved by the Owner in writing.**

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

5.4 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursable identified in 5.1.1 through 5.1.4 above. A mark-up shall not be paid on lodging, meals or travel expenses. PSProvider shall submit receipts for all reimbursable expenses along with any reimbursement request.

Article 6 BASIS OF COMPENSATION

The Owner shall compensate the PSProvider for the services provided in accordance with Article 7. Payments to the PSProvider, and other terms and conditions of this Agreement, as follows:

6.1 Basic Services Fee (Task II on Proposal and Individual Project Assignment)

6.1.1 For Basic Services, as described in Article 1, and including all disciplines identified in Article 14.1 as part of Basic Services, PSProvider’s Basic Fee shall be calculated as follows:

The Final Construction Cost Limitation (CCL) times the agreed fee percentage (see paragraph 14.5) equals Basic Services Fee for the full Basic Services Phases. If certain Alternates designed by the PSProvider and included in the bid documents, are not awarded, then an additional fee for all phases of Basic Services minus Construction Administration, may also be considered in determining the final Basic Services fees.

6.1.2 The agreed fee percentage for Basic Services cannot exceed the maximum fee allowed as interpolated from the appropriate Board of Regents table.

6.1.3 The PSProvider’s Basic Services Fee will be based on the Final Construction Cost Limitation regardless of whether the actual contract award for construction, less special cash allowances and construction contingency, is more or less than the Final construction Cost limitation provided that the resulting fee, when expressed

as percentage of the actual contract award cost, shall not exceed the maximum percentage fee established by the Board of Regents, or any other limitations imposed by law.

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

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

6.2 **Supplemental Basic Services Fees (Task I or III on Proposal and Individual Project Assignment)**

6.2.1 Fees for Supplemental Basic Services, as described in Article 1 and including any services identified in Article 14.2 are in addition to the Basic Services Fee described above.

6.2.2 The fees for Supplemental Basic Services will be negotiated by the Owner and the PSProvider as the scope of the Supplemental Basic Services is defined and shall be calculated in one of the following ways, subject to any not-to-exceed amount identified in Article 14.5:

- a) A pre-established lump sum amount;
- b) An agreed percentage of the Final Construction Cost Limitation; or;
- c) On an hourly basis for time expended at an amount not to exceed 3.0 times the direct salary expense for all personnel directly involved in the direct salary expense for all personnel directly involved in providing the service, with a not to exceed maximum.

6.2.3 In the absence of an agreement between the Owner and the PSProvider, the fees for Supplemental Basic Services shall be calculated on an hourly basis, with a not to exceed maximum.

6.3 **Fees for Changes in Project Scope**

6.3.1 For reductions in the scope of the Work of the Project that occur after commencement of the Construction Documents Phase but before establishment of the Final Construction Cost Limitation, the PSProvider' fee for basic services related to the eliminated portion of the work, to the extent such services are provided, shall be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the eliminated scope of Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the eliminated scope of Work, but only to the extent that services for the eliminate scope of Work were performed.

6.3.2 For increases in the scope of Work of the Project that occur after establishment of the Final Construction Cost Limitation, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the added scope of Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the added scope of Work, but only to the extent that services for the added scope of Work are required.

6.4 Fees for Change Order Services

If revised construction documents are required due to material changes ordered by the Owner and not due to errors and omissions on the part of the PSProvider, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the changes to the Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the changes to the Work, but only to the extent that services for the changes to the Work are required. Change Order documents that are the result of the error or omission of the PSProvider's required service shall be performed by the PSProvider at no cost to the OWNER.

6.5 Additional Services (Task I or III on Proposal and Individual Project Assignment)

6.5.1 For additional services of the PSProvider that are not Basic Services, Supplemental Basic Services or additional Basic Services due to changes in Project scope, the PSProvider's fee shall be calculated in the same manner as Supplemental Basic Services.

6.5.2 For additional services of the PSProvider's consultants that are not Basic Services, Supplemental Basic Services or additional Basic Services due to changes in Project scope, the PSProvider's fee shall be calculated as an amount not to exceed 1.10 times the amount that the consultant bills the PSProvider for the additional services. The consultant's fee for the additional services shall be calculated in the same manner as Supplemental Basic Services.

6.6 Reimbursable Expenses (with Prior Approval)

For reimbursable expenses, as described in Article 5, and any other items included in Article 14 as Reimbursable Expenses, the PSProvider's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the PSProvider, the PSProvider's employees and consultants in the interest of the Project.

6.7 TOTAL FEES \$1,000,000.00 OR ABOVE

THE TOTAL AMOUNT OF FEES THAT MAY BE EARNED UNDER THIS AGREEMENT IS LIMITED TO THE TOTAL SUM OF \$1,000,000 UNLESS APPROVED BY THE UNIVERSITY OF TEXAS BOARD OF REGENTS.

Article 7 PAYMENTS TO THE PS PROVIDER

7.1 Payments for Basic Services and Supplemental Basic Services

7.1.1 Payments for Basic Services and Supplemental Basic Services shall be made at the end of each Phase of services or, with the Owner's approval, monthly and shall be in proportion to services performed within each Phase of services, as demonstrated by work product, on the basis set forth in Article 6. Invoices shall be submitted for

individual "Project Assignments" using a standard format furnished by the Owner as may be occasionally revised. Minimum information included shall be Contract name, project number, contract number as well as total contract authorization amount to date, amount previously invoiced, current amount invoiced (% of phase and \$), balance to finish for each Task and phase.

- 7.1.2 No partial payment made shall be, or construed to be, final acceptance or approval of the services to which the partial payment relates, or a release of PSProvider of any of PSProvider's obligations or liabilities with respect to such services.
- 7.1.3 PSProvider shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.
- 7.1.4 PSProvider shall submit a request for final payment to the Owner within thirty days after approval of the final payment to the Contractor.
- 7.1.5 The acceptance by PSProvider, or PSProvider's successors, of final payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which PSProvider, or PSProvider's successors, have or may have against Owner under the provisions of this Agreement except those claims previously made in writing and identified by PSProvider as unsettled at the time of the final request for payment. For purposes of Texas Government Code 2251.021, the date the performance of service is completed is the date when the Owner's representative approves the invoice.
- 7.1.6 For purposes of Texas Government Code 2251.021, the date the performance of service is completed is the date when the Owner's representative **approves the invoice**.

7.2 **Payments for Additional Services and Reimbursable Expenses**

Payments for the PSProvider's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the PSProvider's valid statement of services rendered or expenses incurred as approved by Owner. Invoices shall include complete documentation of all expenses.

7.3 **Payments Withheld**

- 7.3.1 Under no circumstances shall the Owner be obligated to make any payment (whether a progress payment or final payment) to PSProvider if any one or more of the following conditions precedent exist:
 - a) PSProvider is in breach or default under this Agreement;
 - b) Any portion of a payment is for services that were not performed in accordance with this Agreement provided, however, payment shall be made for those services which were performed in accordance with this Agreement;
 - c) PSProvider has failed to make payments promptly to consultants or other third parties used in connection with services for which Owner has made payment to PSProvider;

- d) If Owner, in its good faith judgment, determines that the balance of the unpaid fees are not sufficient to complete the services in accordance with this Agreement; or
- e) PSProvider has failed to achieve a level of performance necessary to maintain the project schedule.

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

Article 8 PSPROVIDER ACCOUNTING RECORDS

- 8.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of Direct Salary Expense shall be kept on the basis of Generally Accepted Accounting Principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after final completion of the Project. Owner shall have the right to verify the details set forth in PSProvider's billings, certificates, and statements, either before or after payment by (1) inspecting the books and records of PSProvider during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing PSProvider's business employees; (4) visiting the Project site; and (5) other reasonable action.
- 8.2 PSProvider shall submit a notarized statement documenting that the Direct Salaries stated on Attachment 2 comply with the definition for Direct Salary Expense under Article 4 Direct Salary Expense and that any multiplier applied to DSE on Attachment 2 complies with the definition for DSE under Article 4 Direct Salary Expense. PSProvider shall break down the multiplier under Article 4 for the purpose of fringe benefits, expense, and profit to justify the multiplier up to a maximum of 3 allowed under Article 6.2.
- 8.3 Records of PSProvider costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Consultant in writing.

Article 9 OWNERSHIP AND USE OF DOCUMENTS

- 9.1 Drawings and Specifications as instruments of service are and shall remain property of the PSProvider whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible and electronic copies, of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project. **Owner shall have an irrevocable, paid-up, and perpetual non-exclusive license and right, which shall survive the termination of this agreement, to use the Drawings and Specifications, including the originals thereof, and the ideas and designs contained therein, for any purpose,** regardless of whether PSProvider remains as the PSProvider, has resigned, this Agreement has been terminated, PSProvider's scope of services has been modified, or the services herein have been completed. If this Agreement is terminated, PSProvider hereby consents to the employment by Owner of a substitute PSProvider to complete the services under this Agreement, with the substitute PSProvider having all of the rights and privileges of the original PSProvider. **The PSProvider and its consultants shall not be liable for any**

changes made by the Owner to the Drawings or Specifications (including Drawings or Specifications provided in CADD or other electronic format) or for claims or actions arising from any such changes on projects in which the PSProvider is not involved.

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

Article 10 TERMINATION OF AGREEMENT

- 10.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such seven day period.
- 10.2 This agreement may be terminated at any time by the Owner for its convenience upon at least seven days' written notice to the PSProvider.
- 10.3 In the event of termination not the fault of the PSProvider, the PSProvider shall be compensated for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided PSProvider shall have delivered to Owner such statements, accounts, reports and other materials as required by Paragraph 10.5 below together with all reports, documents and other materials prepared by PSProvider prior to termination.
- 10.4 A termination under this Article shall not relieve PSProvider or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of PSProvider. The provisions of Article hereof shall survive the termination of this Agreement. In the event of a termination under this Article, PSProvider hereby consents to employment by Owner of a substitute PSProvider to complete the services under this Agreement, with the substitute PSProvider having all rights and privileges of the original PSProvider of the Project.
- 10.5 As of the date of termination of this Agreement, PSProvider shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by PSProvider in connection with PSProvider's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.

Article 11 SUCCESSORS AND ASSIGNS

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

Article 12 EXTENT OF AGREEMENT

This Master Agreement, annual renewal letters and all individual "Project Assignment" agreements supersede all prior agreements, written or oral, between PSProvider and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement

and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Owner and PSProvider.

Article 13 **MISCELLANEOUS PROVISIONS**

- 13.1 **Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 13.2 **Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without giving effect to principles of conflicts of laws
- 13.3 **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- 13.4 **Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.
- 13.5 **Independent Contractor.** PSProvider acknowledges that it is engaged as an independent Contractor and that Owner has no responsibility to provide PSProvider or its employees with transportation, insurance or other fringe benefits normally associated with employee status. PSProvider is not, and will not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. PSProvider hereby agrees to make PSProvider's own arrangements for any of such benefits as PSProvider may desire and agrees that PSProvider is responsible for all income taxes required by applicable law.
- 13.6 **Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, PSProvider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 13.7 **Eligibility Certification.** Pursuant to Section 2155.004, *Texas Government Code*, PSProvider certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 13.8 **Franchise Tax Certification.** If a corporation or limited liability company, PSProvider certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

- 13.9 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, PSPProvider agrees that any payments owing to PSPProvider under this Agreement may be applied directly toward any debt or delinquency that PSPProvider owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 13.10 **Loss of Funding.** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “Board”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to PSPProvider and Owner may terminate this Agreement in accordance with Article 10. PSPProvider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 13.11 **Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by PSPProvider in the performance of services for Owner, which is not generally known to the public, shall be confidential. PSPProvider shall not, beginning on the date of first association or communication between Owner and PSPProvider and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for PSPProvider’s own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, PSPProvider shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of PSPProvider as an independent Contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. PSPProvider shall obtain assurances similar to those contained in this Subparagraph from persons, vendors and consultants retained by PSPProvider. PSPProvider acknowledges and agrees that a breach by PSPProvider of the provisions hereof will cause Owner irreparable injury and damage. PSPProvider, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 13.12 **Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to PSPProvider a representative to act partially or wholly for Owner in connection with the performance of Owner’s obligations hereunder. PSPProvider shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.
- 13.13 **Dispute Resolution.** To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time (“Chapter 2260”), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and PSPProvider to attempt to resolve any claim for breach of contract made by PSPProvider:
- a) PSPProvider’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, PSPProvider shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Agreement. PSPProvider’s notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages PSPProvider seeks, and the method used to calculate the damages. Compliance by PSPProvider with

subchapter B of Chapter 2260 is a required prerequisite to PSProvider's filing of a contested case proceeding under subchapter C of Chapter 2260.

- b) If the parties are unable to resolve their disputes under subparagraph (a) of this section, the contested case process provided in subchapter C of Chapter 2260 is PSProvider's sole and exclusive process for seeking a remedy for any and all of PSProvider's claims for breach of this Agreement by Owner.
- c) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

13.13.1 The submission, processing and resolution of PSProvider's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended

13.13.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by PSProvider, in whole or in part. Owner and PSProvider agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

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

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

**Mailing / Delivery Address:
(Via U.S. Mail, In Person or via Courier)**

The University of Texas at Austin
Manager of Contracting Services
Contract Administrator
Project Management and Construction Services
1301 East Dean Keeton Street, Suite 2.102
Austin, Texas 78722

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

accordance with the aforesaid.

- 13.15 **Authority to Act.** PSProvider warrants, represents, and agrees that (1) it is a duly organized and validly existing legal entity in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of PSProvider has been duly authorized to act for and bind PSProvider.
- 13.16 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument.

Article 14 **OTHER CONDITIONS OR SERVICES**

The Owner and PSProvider hereby agree to the full performance of the covenants contained herein.

- 14.1 **Basic Services.** The PSProvider's Basic Services are those services described in paragraphs 1.2 through 1.6 for which compensation is provided as Basic Compensation in this Agreement and shall include some or all of the following disciplines:
- a. Architectural Services
 - b. Landscape Architectural Services
 - c. Civil Engineering Services
 - d. Structural Engineering Services
 - e. Mechanical Engineering Services
 - f. Electrical Engineering Services
 - g. Plumbing Engineering Services
 - h. Other relevant services as the Individual Project Assignment may require

Final discipline services required will be reviewed based on the requirements of each individual "Project Assignment".

- 14.2 **Supplemental Basic Services.** The PSProvider's Supplemental Basic Services are those services described in this Article for which compensation is provided as Supplemental Basic Services in this Agreement and may include but not limited to the following services, IF included in the Individual Project Assignment and specifically requested by the Owner.

14.2.1 **PROGRAMMING SERVICES.** Before proceeding into the Schematic Design Phase (or the Design Development Phase, as may be relevant), the PSProvider and his entire consultant team, including Civil Engineer, Laboratory Design Consultant, Hazardous Material Abatement Consultant, Commissioning Consultant and Constructability Contractors, working with the Owner shall prepare a comprehensive Facility Program for the project. This Facility Program shall be prepared in a format approved by the Owner's requirements. The PSProvider shall provide the Owner with a written itemized cost proposal to provide the designated programming services. Such compensation shall be in addition to the percentage based fee for Basic Services. The PSProvider shall plan to meet with representatives of the Owner as required during the development of the Facility Program and shall revise the Program as necessary to achieve approval of the Owner. In accordance with the Professional Services Procurement Act, the Owner will review the PSProvider's proposal for

programming services and attempt to negotiate a fair and reasonable fee for these services. If the Owner and PSProvider are unable to do so, the Owner will formally end negotiations with the PSProvider, select the next most highly qualified PSProvider, and attempt to negotiate a fair and reasonable fee for these services.

- 14.2.2 **CONSTRUCTABILITY SERVICES.** If requested by the Owner, the PSProvider shall employ a Constructability Consultant or Contractor, which will not submit a bid for this project, to provide outside constructability consultation, cost estimating services and construction expertise through the Facility Program, Schematic Design, Design Development and Construction Document Phases. The Constructability Consultant or Contractor, working with a Mechanical/Electrical/Plumbing Subcontractor, will provide review input related Project objectives, methods and concepts of “constructability.” In addition, the Constructability Consultant or Contractor will submit for review a Cost Quantity Survey to coincide with the PSProvider’s Basic Services submission requirements. Following selection, the PSProvider shall provide the Owner with a written itemized cost proposal to provide the “constructability” services identified in the Constructability Implementation Program. The Owner will review the PSProvider’s proposal for “constructability” services in accordance with the Professional Services Procurement Act.
- 14.2.3 **HAZARDOUS MATERIAL ABATEMENT SERVICES.** If the scope of the individual project assignment requires, the PSProvider shall employ a Hazardous Material Abatement consultant, as shall be approved by the OWNER, to provide hazardous material abatement expertise (including, but not limited to, asbestos and lead) through the Facility Program, Schematic Design, Design Development, Construction Document and Construction Administration Phases. This shall include reviewing Owner provided surveys, making recommendations for any additional surveys required, providing design and cost alternatives regarding hazardous material abatement, preparing plans and specifications to include abatement in the general construction scope of work, providing a licensed individual to monitor hazardous material removal as required by State and EPA guidelines, and preparing a final abatement report. Compensation for these services shall be in addition to the percentage based fee for Basic Services. Therefore, the construction cost of the abatement work will not be included in the basis for the PSProvider’s Basic Services fee. Following selection, the PSProvider shall provide the Owner with a written itemized cost proposal to provide the above Hazardous Material Abatement Consulting services, including coordination of the PSProvider. The Owner will review the PSProvider’s proposal for these services in accordance with the Professional Services Procurement Act.
- 14.2.4 **COMMISSIONING SERVICES.** The PSProvider shall employ a Commissioning consultant to provide commissioning expertise through the Facility Program, Schematic Design, Design Development, Construction Document and Construction Administration Phases. The Commissioning Consultant will provide review input related project objectives, methods and concepts of commissioning. If requested, the PSProvider shall provide the Owner with a written itemized cost proposal to provide the commissioning. The Owner will review the PSProvider’s proposal for commissioning services in accordance with the Professional Services Procurement Act. Commissioning fees shall be Supplemental Services.
- 14.2.5 **TPDES CONSULTANT.** If the scope of the individual project assignment requires, the PSProvider shall employ a qualified Consultant (the “TPDES

Consultant”), experienced in the Texas Pollutant Discharge Elimination System (TPDES) requirements and in the best management practices used at construction sites to control erosion and sediment, to prevent the discharge of pollutants and to prevent or mitigate the impacts of storm water runoff on water quality (collectively “BMPs”), which TPDES Consultant shall be approved in writing in advance by Owner, to provide expertise with respect to Texas Commission on Environmental Quality regulations and BMPs through all phases of the Project. The TPDES Consultant’s services shall include, without limitation, (1) recommending structural and non-structural BMPs to PSProvider or other subcontractors under this Contract for civil and landscape site coordination, (2) preparing of Storm Water Pollution Prevention Plans (SWPPPs) including any BMP drawings and details (3) as requested in writing by Owner, assisting in the updating of SWPPPs and all other permit documentation required by the TCEQ for the Project, and (4) the drafting of technical specifications governing the Contractor/Contractor’s obligations under the applicable TPDES regulations and the TCEQ General Permit for Storm Water Discharges From Construction Sites (“General Permit”) No. TXR 150000 and governing the Contractor/Contractor’s recommended courses of action under BMPs. The TPDES Consultant shall insure that the storm water pollution prevention plan has been prepared for the site in accordance with the General Permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits, including, without limitation, any TPDES permit issued to The University of Texas component on which the site is located. The TPDES Consultant, through PSProvider, shall determine whether General Permit coverage is required, and, if so, shall advise Owner of Owner’s obligations under the General Permit and shall advise Owner of the Contractor/Contractor’s obligations under the General Permit. If there are multiple projects proposed to be conducted concurrently in contiguous areas and general permit coverage is required, the TPDES Consultant shall advise Owner of Owner’s obligations and prepare one SWPPP for the entire area encompassing all projects and shall amend such SWPPP at the request of Owner to insure that the Contractor/Contractor’s of each project can comply with TPDES requirements and BMPs. PS PROVIDER HEREBY INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, COST, AND EXPENSE ARISING OUT OF A VIOLATION OF THE APPLICABLE TCEQ TPDES REGULATIONS, BMPs, THIS PARAGRAPH OF THIS AGREEMENT, OR THE TERMS AND CONDITIONS OF THE GENERAL PERMIT TO THE EXTENT ATTRIBUTABLE TO A WILLFUL, NEGLIGENT OR ACCIDENTAL ACT OR OMISSION OF PS PROVIDER OR ITS CONSULTANTS.

14.2.6 REGISTERED ACCESSIBILITY SPECIALIST. NOTE: THESE SERVICES SHALL BE PROVIDED BY THE OWNER UNLESS OTHERWISE REQUESTED.

14.2.7 AS-BUILT DRAWINGS AND SPECIFICATIONS (if required by the OWNER). PSProvider shall revise the drawings and specifications upon Final Completion of the construction, to incorporate all Addenda, all Change Orders for the Work and any modifications recorded by the Contractor on the As-Built Drawings and Specifications maintained at the job site. The PSProvider shall label the revised drawings and specifications as “Record Drawings” and “Record Specifications” and shall deliver copies to the Owner for record purposes, as follows:

- All project drawings: provide 1 copy of electronic readable media as required in Article 14.11.

- All project specifications in electronic format on CD readable by MSWord.
- “Record Drawings” – 1 paper copy

These as-built services shall be considered as Supplemental Services.

14.2.8 **SPECIALIZED CONSULTANTS.** The specialized consultant services identified in the following list are included in Supplemental Basic Services:

- Audio Visual/Data & Telecommunications Engineering
- Materials Handling Services
- Furniture and Equipment Purchasing Services
- Major Medical Equipment Purchasing Services
- Security Planning Services
- Personnel and Material Transport Planning Services
- Hazardous Materials Handling Services
- Hazardous Materials Surveying and Abatement documents and monitoring
- Integrated Scheduling Services
- Radiation Control Services
- Graphics/Wayfinding Planning Services
- Safety Engineering Services
- Traffic Control Planning Services
- Wind Tunnel Testing/Emissions Control/Wind Pressure Analysis
- Art Procurement Consulting Services (not architectural renderings or models)
- Surveying Services
- Geotechnical Services
- Code Check for project related building areas outside the defined limits of the project assignment.
- Plan Check
- Forensic Consultant
- Construction Auditing Consultant
- Existing Facility Surveys
- Integrated Scheduling
- Testing and Balancing
- Laboratory Testing (Soils, Materials, Environmental, Welding, Steel Construction)
- Exhaust Stack Testing
- Vibration Analysis
- Radio Frequency Interference Testing

14.3 **Additional Services.** These services shall be identified in detail in the individual Project Assignments and are not included in Basic Services. Some examples are as follows:

- Providing financial feasibility or other special studies.
- Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- Providing services to make detailed investigation of existing conditions or facilities

or to make measured drawings thereof, other than to verify the accuracy of drawings or other information furnished by the Owner.

- Providing coordination of Work performed by Owner's separate Contractors or by the Owner's own forces.
- Providing services in connection with the Work of a Contractor or separate consultants retained by the Owner.
- Providing services for planning tenant or rental spaces.
- Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the PSProvider.
- Making extensive investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, except as otherwise required by the Agreement, and services required in connection with construction performed by the Owner.
- Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.
- Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of the Contractor under the Contract for Construction.
- Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- Providing services after the expiration of sixty (60) days following final payment to the Contractor, excluding any services necessary during the warranty period inspections and provided that all of PSProvider's services as required under this Agreement have been satisfactorily completed.
- Preparing to serve or serving as an expert witness at the request of the Owner in connection with any public hearing, arbitration proceeding or legal proceeding.
- Providing any other services not otherwise customarily furnished in accordance with generally accepted architectural, engineering, or other functional discipline practice.

14.4 (Not Used)

14.5 Basis of Compensation

14.5.1 Basic Services. (Task II in the Individual Project Assignment shall be based on current BOR Fee Schedule)

The initial Construction Cost Limitation (CCL) shall be established for each Project Assignment. Therefore, the Basic Services Fee for the Project shall be

$$\frac{\text{Construction Cost Limitation}}{\text{Fee \%}} = \$ \frac{\text{Basic Services Fee}}{\text{Fee \%}}$$

Refer to Attachment 1, the Board of Regents Fee Schedule dated December 1987 (or as may be subsequently revised by the BOR). The type of project shall dictate which part of the fee schedule shall be applicable.

In the absence of an initial CCL, a not to exceed amount may be agreed to in order to get an initial estimate of cost based on the projected scope of work, after which it will become the CCL for determining the Basic Services Fee.

If the Construction Cost Limitation is revised by the Owner at any time, the Basic Services Fee will be adjusted based on interpolation of the BOR schedule. The Owner may amend the CCL after the PSProvider completes the Facilities Program and the Owner authorizes the commencement of Basic Services. If the CCL is amended by Owner, and PSProvider has been notified in writing of such CCL, then this paragraph of this Agreement shall be deemed to be amended by including such CCL amount as the cost referenced to in the first sentence of this paragraph of this Agreement. The CCL will be confirmed or re-established at the completion of the Design Development Phase.

14.5.2 **Supplemental Basic Services.** (As indicated as Task I or III in the Individual Project Assignments)

The Supplemental Basic Services shall be provided on a not to exceed cost basis and indicated in the proposal submitted for the individual "Project Assignment".

14.5.3 **Reimbursable Expenses.** (As indicated on Individual Project Assignment)

The maximum allowable cost on individual Project Assignments for Reimbursable Expenses identified in Article 5 as approved by the Owner shall be indicated in the Project Assignment agreements.

14.5.4 (Not Used)

14.6 **Progress Payments.** Payments for Basic Services shall be made as provided in Article 7 in accordance with the following schedule (for full design through construction project):

Schematic Design Phase: (if required)	15% or 0%
Design Development Phase:	20%
Construction Documents Phase:	40% or 55% (if no schematic)
Bidding or Negotiation Phase:	5%
Construction Phase:	20%

The above percentages may vary depending on the specific Discipline and Scope of Service being provided.

Payments for supplemental and Additional services shall be made based on % of completion of each identified service.

14.7 **Review Stages.** The PSProvider shall submit documents to the Owner for review at completion of the Schematic Design Phase (if applicable), Design Development Phase and at the following stages of completion of the Construction Documents Phase as follows:

60%, 100%

14.8 **Construction Cost Estimates.** The PSProvider shall submit construction cost estimates as described in Article 1.1.16 at completion of the Schematic Design Phase (if applicable), Design Development Phase and at the following stages of completion of the Construction Documents Phase:

60%, 100%.

14.9 **Review Documents.** The PSProvider shall, at its expense, furnish and deliver to the Owner for Owner's review, the following number of sets of review documents at the required review stages:

Schematic Design: 3 sets
Design Development: 3 sets
Construction Documents: 3 sets for each stage of % complete

14.10 (Not Used)

14.11 **CADD Standards.** PSProvider, as a basic service, shall utilize a CADD drawing-layering standard comparable to the current National CAD Standard version 3.1, in conjunction with the standards at PMCS and shall review proposed standard with the Owner prior to commencing drawing preparation. See "Facilities Design Services A/E/C CADD Standard Manual" located at http://www.utexas.edu/pmcs/dcstandards/resources/A_E_CADD_STD_000.pdf Provide all disciplines of required construction document drawings in electronic .dwg file format readable by AutoCAD 2007 or latest version used by Owner. Verify database for correctness prior to delivering data files. **Provide 1 electronic copy of bid documents, including Specifications, Drawings and addenda, on CD, Flash drive, FTP or SharePoint site of these files to owner no later than at the conclusion of the Bid or Pricing Phase (see conditions described in Article 9.1).**

14.12 **Space Planning Documents** (if required by the OWNER). PSProvider, as a supplemental service, shall provide the Owner, at approximately one month prior to Substantial Completion, with a complete current electronic set, including all current changes, of the architectural floor plan drawings with room names, room numbers, and room square footages indicated. PSProvider shall provide 1 copy as required in Article 14.11.. PSProvider shall not be relieved of responsibility when files are delivered if the files do not meet established requirements or are defective. Owner shall verify all files and PSProvider will be notified of acceptance.

- Room names, Room numbers, and square footage shall be linked to data fields using appropriate attributes for text and number fields. Microsoft Access 2000 shall be used as the database (if required). PSProvider shall provide data layering proposal for approval, per Article 14.10.
- Provide floor plans in electronic format as required in Article 14.11. Verify database for correctness prior to delivering data files.

Article 15 PROJECT ASSIGNMENTS WHERE CONSTRUCTION MANAGER AT RISK IS PROJECT DELIVERY METHOD

The following Amendments to the Agreement between Owner and PSProvider shall ONLY be applicable when Individual Project Assignments are for Projects using the Construction Manager at Risk Project Delivery Method

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

15.2 The following terms of the preceding Agreement are amended by incorporating the new paragraphs and substituting the modified paragraphs for their counterparts in their

entirety. For clarity purposes only, all new contract language is indicated by italics. Existing contract language that is unchanged by the amendments is shown in standard type face.

1.1 **Basic Services and Supplemental Basic Services**

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

1.1.32 The PSProvider shall participate in the development and review of the Construction Managers GMP Proposal. This GMP Proposal will included the qualifications, assumptions, exclusions, value engineering and all other requirements identified within the Agreement between the Owner and the Construction Manager at Risk. Following Owner’s Approval of the GMP Proposal, the PSProvider shall be responsible for developing the Construction Documents, consisting of plans and specifications, setting forth in detail, and incorporating the aforementioned requirements described within the GMP Proposal. Furthermore, the PSProvider shall participate in the documentation of the Construction Manager’s GMP Proposal so as to adequately understand the contents of the Proposal and ultimately confirm that the Construction Documents, when complete, reflect all qualifications, clarifications and assumptions contained within the GMP Proposal. The PSProvider and the Construction Manager shall jointly provide a monthly status report stating the progress of the incorporation of the GMP qualifications, clarifications, assumptions, exclusions and value engineering and all other requirements identified in the Construction Documents.”

1.2 **Schematic Design Phase**

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

- 1.2.5 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include it with the completed Schematic Design Documents. The PSProvider shall review its construction cost estimate in comparison with the construction cost estimate prepared by the Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If the PSProvider is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then the PSProvider shall provide a detailed explanation of the differences to the Owner.
- 1.2.7 The PSProvider shall participate in a final review of the Schematic Design Documents with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Schematic Design Documents, the PSProvider shall incorporate such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed for good cause.

1.3 **Design Development Phase**

- 1.3.1 Based on the approved Schematic Design Documents and any adjustments to the Facilities Program or Construction Cost Limitation authorized by the Owner, the PSProvider shall prepare, for approval by the Owner and review by the Construction Manager, Design Development Documents in accordance with Owner's written requirements to further define and finalize the size and character of the Project in accordance with Owner's Design Guidelines and any additional requirements set forth in Article 14. The PSProvider shall review the Design Development Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. The PSProvider shall provide the Construction Manager with copies of the PSProvider's documents at the Construction Manager's expense to assist the Construction Manager in fulfilling its responsibilities to the Owner.
- 1.3.3 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.15 to confirm compliance with the Construction Cost Limitation and include it with the completed Design Development Documents. The PSProvider shall review its construction cost estimate in comparison with the construction cost estimate prepared by the Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If the PSProvider is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then the PSProvider shall provide a detailed explanation of the differences to the Owner.
- 1.3.8 At the completion of the Design Development Phase, or such other time as Owner may specify to PSProvider, at Owner's sole option and discretion, Owner will furnish PSProvider with a Guaranteed Maximum Price proposal prepared by Construction Manager based upon the Design Development Documents prepared by the PSProvider and approved by the Owner. The PSProvider shall assist the Owner and further and advocate the Owner's interests in Owner's negotiations with the Construction Manager in an effort to develop a Guaranteed Maximum Price proposal acceptable to Owner, in Owner's sole option and discretion. If the Owner does not accept the Construction Manager's Guaranteed Maximum Price

proposal, the PSProvider shall participate with the Owner and Construction Manager in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If Construction Manager's Guaranteed Price proposal exceeds the cost quantity survey furnished to Owner by PSProvider, and Owner directs PSProvider to revise the documents, then PSProvider shall revise the documents at its own expense so that the Guaranteed Maximum Price proposal for constructing the Project shall not exceed the Owner's Construction Cost limitation and any previously approved construction cost estimate. If it is determined to be in the Owner's best interest, instead of requiring the PSProvider to revise the drawings and specifications, the Owner reserves the right to accept a Guaranteed Maximum Price proposal that exceeds the stipulated Construction Cost Limitation. The PSProvider shall analyze the final Guaranteed Maximum Price proposal document, together with its supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the Owner. Such analysis shall include, without limitation, reference to and explanation of any inaccurate or improper assumptions and clarifications.

- 1.3.9 After the Guaranteed Maximum Price has been accepted, the PSProvider shall incorporate into the Design Development Documents any revisions which are necessary due to inaccurate assumptions and clarifications made in the development of the Guaranteed Maximum Price.

1.4 **Construction Document Phase**

- 1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Construction Cost Limitation authorized by the Owner, the PSProvider shall prepare, for approval by the Owner and review by the Construction Manager, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project, including, without limitation, Owner's Design Guidelines and any additional requirements contained in Article 14 of this Agreement. The plans, drawings and specifications for the entire Project shall be so prepared that same will call for the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost not more than the Guaranteed Maximum Price accepted by Owner, or the Construction Cost Limitation established by Owner if no Guaranteed Maximum Price proposal has been accepted by Owner. The PSProvider will be responsible for managing the design to stay within such Guaranteed Maximum Price proposal or Construction Cost Limitation. The PSProvider shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. The PSProvider shall provide the Construction Manager with copies of the PSProvider's documents at the Construction Manager's expense to assist the Construction Manager in fulfilling its responsibilities to the Owner.
- 1.4.2 The PSProvider shall advise the Owner and Construction Manager 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 the PSProvider shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Conditions of the Contract.

- 1.4.3 The PSProvider shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.16 to confirm compliance with the Construction Cost Limitation and include it with the completed Construction Documents. The PSProvider shall review its construction cost estimate in comparison with the construction cost estimate prepared by the Construction Manager, and shall reconcile any differences between the two construction cost estimates in coordination with the Construction Manager. If the PSProvider is unable to reconcile all differences between the two construction cost estimates with the Construction Manager, then the PSProvider shall provide a detailed explanation of the differences to the Owner.
- 1.4.4 The PSProvider shall participate in a final review of the Construction Documents with the Owner and Construction Manager at the Project location or other location specified by Owner in the State of Texas. Prior to the Owner's approval of the Construction Documents, the PSProvider shall incorporate such changes as are necessary to satisfy the Owner's review comments.

1.5 **Bidding and Proposal Phase**

- 1.5.1 In conjunction with the development of the Guaranteed Maximum Price and at other times as appropriate to the Project, the PSProvider shall assist the Owner and Construction Manager by receiving and recording requests for Bid and Request for Proposal ("RFP") Documents, issuing Bid and RFP Documents, and accounting for Bid and RFP Documents issued; receiving and resolving questions about Bid and RFP Documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences and HUB meetings; obtaining and evaluating bids and proposals; and assisting in preparing and awarding multiple contracts for construction. PSProvider shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.

1.6 **Construction Phase—Administration of the Construction Contract**

- 1.6.1 The Construction Phase shall commence with the acceptance of the Construction Manager's Guaranteed Maximum Price (or acceptance of a partial Guaranteed Maximum Price for a stage or phase) and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of PSProvider's services have been satisfactorily performed, whichever occurs later.
- 1.6.2 c) The PSProvider shall assist the Owner in making arrangements and preparation for one or more Pre-Construction Conferences.
- 1.6.3 The PSProvider shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the PSProvider and all communication by and with the PSProvider's consultants shall be through the PSProvider, except that the Owner reserves the right to communicate directly with the Construction Manager and consultants as it deems necessary or appropriate at any time. The PSProvider shall have authority to act on behalf of the Owner to the extent provided in the Contract Documents. Duties, responsibilities and limitations of authority of the PSProvider shall not be restricted, modified or extended without written acceptance of the Owner.

1.8 Time

- 1.8.1 The project schedule shall contain milestone dates which have been established in the Request for Qualifications previously issued or may be modified by the Owner to reflect current conditions. Supplemental activities shown on the schedule, and any associated dates not yet defined, shall be determined at the completion of the Program Phase or at such time when both parties mutually agree that the project is sufficiently developed and documented. The PSProvider shall coordinate with the Construction Manager in the preparation and maintenance of the schedule for performance of the professional services for the Project, including the PSProvider's services. Changes in this schedule may be made only with the written approval of Owner. PSProvider shall perform all of its services in accordance with the then-current schedule approved by Owner.

Article 16 MASTER ON-GOING RELATED REQUIREMENTS

The term of this Agreement shall be for a **period of twelve (12) months**, commencing on effective date as of the day and year first written above and continuing for **12 calendar months**, unless sooner canceled or terminated in accordance with the provisions set forth per Article 10 herein.

- 16.1 The PSProvider shall submit proposals, additional service proposals, invoices, specification formatting and addenda for individual "Project Assignments" using a standard format, as may be occasionally revised, shown at the PMCS website, https://ecs.austin.utexas.edu/PMCS/Contracting_Services/default.aspx. (special access permission required)". Valid UT EID is required. Coordinate access with PMCS PSP contracting section. Without the EID and password, access to these documents online will not be available to you. USE OF THIS INFORMATION IS A REQUIRED CONDITION OF YOUR CONTRACT,
- 16.2 The requirements for construction represented in the drawings and technical specifications shall comply with the latest editions of the Codes, Standards, and Regulations indicated in section 4.01.02 of the "Design and Construction" standards located on the PMCS website. <http://www.utexas.edu/pmcs/dcstandards/divisions/IntroGuidelines/4.01.02CodesStandardsandRegulations.pdf>
Coordinate public access, fire control, etc. with local authorities including UT Fire Marshall as may be necessary. **PSProvider** shall verify with **OWNER** final requirements prior to starting documents.
- 16.3 The parties recognize that the **PSProvider** shall render services **on as needed basis**. Each request will be **based on a per-project basis according to a project specific scope of work and mutually agreed upon fee**. This Master Agreement establishes **no minimum number of projects** that **OWNER** must undertake with the **PSProvider** during the term of this Agreement.
- 16.4 The parties recognize that **OWNER** reserves the right to renew this Agreement for a maximum of **four (4) one calendar year renewal periods** subject to the terms and conditions herein contained, and such renewal shall be effective only if evidenced in writing of a signed renewal letter by the parties hereto. Each renewal shall automatically require the use of updated codes, UT construction and Design standards or versions currently in use by the Owner at the time of renewal. Updated hourly PSP fee schedules

and current insurance certificates (as applicable) shall be provided at the same time of renewal.

- 16.5 This Agreement (any subsequent renewals) shall automatically be extended such that the revised Agreement / renewal end date coincides with the completion date of any project already begun by the **PSP** Provider prior to the original Agreement end date, including any renewals provided.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

ATTEST:

(Seal)

«Legal_Name»

By: _____
(Original Signature)
«Corporate_Secretary»
«C_Sec_Title»

By: _____
(Original Signature)
«PresidentPrincipal»
«PTitle»

CONTENT APPROVED:

Project Management and Construction Services Department
The University of Texas at Austin

By: _____
Michael J. DeBow
Associate Director, Project Management

**THE UNIVERSITY OF TEXAS
AT AUSTIN**
(Owner)

By: _____
William H. Throop
Director, Project Management and
Construction Services

ATTACHMENT 1

THE UNIVERSITY OF TEXAS SYSTEM FEE SCHEDULE

THE UNIVERSITY OF TEXAS SYSTEM

OFFICE OF FACILITIES PLANNING AND CONSTRUCTION

ARCHITECT / ENGINEER FEE SCHEDULE

DECEMBER 1987

Construction Cost of Project	Dormitories Garages and <u>Warehouse</u>	Classrooms, Office and <u>Other Buildings</u>	Health, Research and Special Education <u>Facilities</u>
<hr/>			
New Construction			
Over \$15,000,000	5.0%	5.5%	6.0%
Over \$10,000,000	5.5%	6.0%	6.5%
Over \$ 1,000,000	6.0%	6.5%	7.0%
Up to \$ 200,000	7.0%	7.5%	8.0%
Remodeling & Renovation			
Over \$ 5,000,000	7.0%	7.5%	8.0%
Over \$ 1,000,000	8.0%	8.5%	9.0%
Over \$ 200,000	9.0%	9.5%	10.0%

NOTE: When construction cost falls between the tabular limits, the rate will be determined by direct interpolation.

ATTACHMENT 2

PROFESSIONAL SERVICE PROVIDER'S HOURLY BILLING RATES

(HOURLY RATES ARE BASED ON THE ACTING CAPACITY OF THE TASK PERFORMED. PRINCIPALS MAY BILL AT THE HOURLY RATE OF PRINCIPALS ONLY WHEN ACTING IN THAT CAPACITY. PRINCIPALS ACTING IN THE CAPACITY OF STAFF SHALL BILL AT STAFF RATES)

(PSProvider to reproduce this information on this page and add Hourly Billing rates. If two pages are required, number pages 45a and 45b.)

(This attachment may be revised at the time of each subsequent Renewal Period.)

ATTACHMENT 3

HUB REQUIREMENTS –

**EXHIBIT H – POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED
BUSINESSES (HUB)S FOR PROFESSIONAL SERVICES**

(Approved Submitted Exhibit H attached by reference)

(ALL REQUIREMENTS OF THE LATEST VERSION OF EXHIBIT H FOR UT AUSTIN
PMCS SHALL BE REQUIRED ON ALL PROJECT FEES OVER \$100,000.00)