

**Dougherty Arts Center Facility Replacement – CMR**  
**Solicitation No. CLMA037/ CIP ID # 896.003**  
**AGREEMENT FORM**  
Section 00500CMR

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**CONSTRUCTION MANAGER-AT-RISK AGREEMENT**

This Construction Manager at Risk Agreement (the “Agreement”) is entered into by and between the City of Austin, Texas (the “Owner”) and **enter name of contractor** (the “CM”) (sometimes referred to individually as a “Party” or collectively as the “Parties”) for the construction of the Project.

**ARTICLE 1. GENERAL PROVISIONS, PROJECT SCOPE, AND CONSTRUCTION COST LIMITATION**

**1.1 Project Scope.**

The City of Austin Parks and Recreation Department (PARC) is soliciting Statements of Qualifications for the selection of a Construction Manager at Risk (CMR) services for pre-construction and construction services to redevelop the Dougherty Arts Center (DAC) on Butler Shores Park.

In the fall of 2018, the community approved Bond Proposition B, which provided funding for replacement of the existing DAC facility, and in spring 2019, Council approved PARC’s proposed location for this new facility on Butler Shores Park. The future DAC facility is envisioned to build on the existing core arts programs in an improved environment that can better accommodate the City’s significant demand for affordable access to arts services.

The CMR shall provide pre-construction and construction services for a new structure that will continually adapt to the needs of users and staff of the DAC. The space should encourage active inquiry, foster the love of learning through thoughtful design and enhance the function of each core arts program. Consistent with concepts from the preliminary project phase, the arts facility shall also catalyze initial development of the surrounding parkland.

Components of the design program which may arise during the pre-construction services scope will include, but is not limited to:

- Clarifying vehicle access and parking strategy
- Synthesizing architectural program and construction budget
- Space planning and flexible/adaptive room design
- Site planning and streetscape design
- Multifunction artist studios and classroom design
- Black box and proscenium theater design, including audio/visual, lighting and acoustical design
- Art Gallery design
- Public lobby and café design
- Holistic sustainable design, including incorporation of biophilic principles
- Energy modelling and HVAC design
- Provision of high-performing building envelope
- Park landscape design, incorporating outdoor play opportunities

- Active transportation connectivity improvements
- Innovative stormwater design and green infrastructure
- IT/Network design

Consistent with all City of Austin bond-funded projects, the DAC project will include a public art component to be delivered under a separate contract by the Art in Public Places (AIPP) program. The selected prime consultant and CMR will collaborate with the selected lead artist to develop the artworks and coordinate their installation.

#### **REQUIRED SUSTAINABILITY CERTIFICATION (LEED + WELL)**

The DAC Replacement project will meet the requirements of the Austin City Council Resolution No. 20071129-045 pertaining to the implementation of sustainable building practices necessary to conserve energy, water and natural resource, promote health and safety, and create high quality, enduring structures. It is the intention of the City of Austin that the DAC be constructed, operated and maintained in accordance with the United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) and International WELL Building Institute (IWBI) Rating Systems. Therefore, the Construction Manager-at-Risk will be required to construct the DAC to achieve a minimum Silver certification as defined in the LEED BD+C v4.1 Building Rating System, in addition to WELL Silver Certification.

**1.2 Phases of Services and the Work.** The services and the Work to be performed by or through the CM shall be divided into the Preconstruction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract.

**1.2.1 Work Packages.** It is anticipated that the Construction Phase Work may be divided into one or more separate packages (individually, a "Work Package") which identify a specific scope of Work and which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price (as defined herein) for the entire Work. However, in the Owner's discretion, the Work may be awarded in one Work Package for the entire Project with one Guaranteed Maximum Price.

**1.2.2 Work Authorization Amendment.** When the Parties have identified the Work to be performed in a Work Package and have agreed on any applicable Contract Time Requirements for that Work Package and such other terms and conditions relating to that Work Package, including but not limited to a Guaranteed Maximum Price (also referred to herein as the "GMP") for the Work Package, the Parties shall enter into a Work Authorization Amendment which shall amend this Agreement and incorporate the terms thereof into the Contract. However, no Work shall commence under a Work Package until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract Documents.

**1.3 Construction Cost Limitation.** There is a Construction Cost Limitation of (\$\_\_\_\_\_) for the Project, including contingencies, as described below, for the services and the Work to be performed by or through the CM for the Preconstruction Phase and the Construction Phase. The Construction Cost Limitation shall not be exceeded, except as provided herein.

**1.4 Contract Amount for the Project.** The Contract Amount for the Project shall be the sum of the compensation and reimbursements to be made to the CM for the Preconstruction Services and the compensation for the Construction Phase Services as established in accordance with the Contract Documents. The Contract Amount, as finally established in accordance with the Contract Documents, shall not exceed the Construction Cost Limitation, except as provided herein.

**1.4.1 Contract Amount – Preconstruction Phase Services.** The compensation for the services to be performed by or through the CM for the Preconstruction Phase shall be a stipulated sum (the "Preconstruction Phase Fee") as set forth in Section 7.2.1 below, subject to such adjustment only as provided by the terms of the Contract and payable as set forth in this Agreement. CM shall also be entitled to reimbursement of certain costs and expenses incurred in the performance of the Preconstruction Phase Services (the "Preconstruction Phase Reimbursables") as set forth and limited in Sec. 7.2.1.1 below.

**1.4.2 Contract Amount – Construction Phase.** The compensation for the Work to be performed by or through the CM for the Construction Phase shall be as set out in Section 7.2.2 below and shall be subject to a Guaranteed Maximum Price established in accordance with Sec. 7.4 below. To the extent that the Construction Phase consists of multiple Work Packages, each such Work Package shall be subject to a Guaranteed Maximum Price as established in accordance with Sec. 7.4 below. The sum of the Guaranteed Maximum Prices for all Work Packages shall not exceed the Guaranteed Maximum Price for the Construction Phase.

**1.5 Owner's Design Professionals.** Owner has retained the services of the following identified architectural and/or engineering firms to perform those professional design services identified below. Owner expressly reserves the right to replace or modify the responsibilities of any such firms identified below or to retain additional firms in Owner's sole discretion. Owner shall provide prompt written notice to CM of any replacement of existing firms, addition of new firms, and material modifications of the responsibilities of existing firms that might impact the CM with regard to the services to be performed or obligations of the CM arising from the Contract.

**Studio 8 Architects, Inc.  
611 W. 15th St.  
Austin, TX 78701  
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Collectively, the primary architectural and engineering firms are referred to herein as the "Principal Architects/Engineers". References to the Principal Architect/Engineer (in the singular tense) shall mean that primary architectural and/or engineering firm that has primary responsibility for the design and any construction administration obligations over the respective scope of the Work. Each Principal Architect/Engineer shall be responsible for those consultants and subconsultants retained by the respective Principal Architect/Engineer to provide the architectural and engineering services required in its agreement with the Owner. Except as otherwise expressly provided, references to the "A/E", the Engineer, or the Architect in the Contract Documents shall mean the Principal Architect/Engineer.

## **ARTICLE 2. CONTRACT TIME**

**2.1 Date of Commencement.** The Preconstruction Phase Services shall commence after this Agreement has been fully executed by the parties and upon the CM's receipt of Owner's Notice to Proceed, unless the Parties otherwise mutually agree in writing. The Construction Phase Work shall commence upon the issuance of the Owner's Notice to Proceed with the specific scope of the Work stated therein, unless the Parties otherwise mutually agree in writing.

**2.2 Project Schedule.** Attached hereto as **Exhibit 2** is the **Project Schedule** which sets out

the commencement dates and completion times for the currently scheduled Phases and, as applicable, Work Packages for the Project. The Parties hereto acknowledge that the Project Schedule will be subject to change and refinement during the course of the design of the Project as may be agreed by the parties by written amendment to this Agreement or as directed by the Owner pursuant to a Change Directive issued in accordance with the Contract Documents.

**2.3 Contract Time Requirements.** Time is of the essence of the Contract and CM's obligations arising hereunder. CM shall diligently and efficiently perform the services and furnish the Work as required hereunder within the Contract Time Requirements set forth in the Project Schedule, as amended in accordance with the Contract Documents, as well as such other Contract Time Requirements set forth in the Contract Documents, including achieving Substantial Completion and Final Completion of the Work of each Work Package and the entire Work as required in the Contract Documents and meeting all Milestone requirements (if any).

**2.3.1 Contract Time Requirements - Preconstruction Phase Services.** Without limiting the foregoing, CM shall perform its Preconstruction Phase Services diligently and efficiently in compliance with the Project Schedule, as it may be amended in accordance with the Contract Documents.

**2.3.2 Contract Time Requirements - Construction Phase.** The Contract Time with regard to each Work Package of the Construction Phase shall be measured from the Date of Commencement of the respective Work Package as stated in the respective Work Authorization Agreement.

**2.3.2.1** The CM shall diligently prosecute the Work and achieve Substantial Completion of the Work within the Contract Time Requirements set forth in the applicable Work Authorization Amendment, subject to adjustments as provided in the Contract Documents. After Substantial Completion, the CM shall diligently continue to prosecute the Work to Final Completion and, except as otherwise expressly agreed in the applicable Work Authorization Amendment, shall achieve Final Completion not later than **60 days** calendar days from the Date of Substantial Completion.

**2.3.2.2** Certain scopes or specific areas of the Work may be required in the Project Schedule for early Substantial Completion ("Milestones") sufficient to allow for installation of Owner's equipment, phased use or partial occupancy of the facility, or coordination with other work relating to the Project by the Owner or its Third Party Contractors. The parties acknowledge that a Work Authorization Amendment or Modification of the Agreement may add or modify existing Milestones. The Milestones made a part of the Contract are critical elements of the Contract Time Requirements under the Contract and are "of the essence" of the Contract.

**2.3.2.3** In the event that CM intends to request an increase in the Contract Amount or Contract Time as a result of a modification or revision of the Milestones or the Project Schedule, the CM shall strictly comply with the applicable notice requirements for changes in the Contract Amount or the Contract Time as set forth in the General Conditions. If CM fails to provide such notice as required in the General Conditions, but in no event later than twenty-one (21) days after receipt of Owner's notice with regard to the modification or revision of the Milestones or the Project Schedule, the CM shall be deemed to have waived any right to seek or recover an increase in the Contract Sum or Contract Time as a result thereof.

**2.3.2.4** In the event CM shall fall behind schedule for any reason which does not justify an extension under the Contract Documents of the Substantial Completion Date or any other Contract Time Requirements, CM shall submit a Recovery Schedule pursuant to Section 6.5 below. No approval or consent by the Owner or any plan for re-sequencing or acceleration of the Work submitted by CM pursuant to this Section and Section 6.5 below shall constitute a waiver by Owner

of any damages or losses which Owner may suffer by reason of such re-sequencing or the failure of the CM to meet the Substantial Completion Date or any other Contract Time Requirements.

**2.3.2.4.1** Owner shall additionally be entitled to direct the acceleration or re-sequencing of the Work in order to achieve completion prior to the required date for Substantial Completion or to meet any other Contract Time Requirements of the Contract, and CM shall be reimbursed for the amount of the premium portion of overtime actually incurred in respect thereto and shall be entitled to an increase adjustment to the Contract Sum to the extent of the premium portion of overtime so incurred. Before proceeding with any such Owner-directed acceleration plan under this subsection, the CM shall have received the Owner's prior written approval of the plan and its anticipated not-to-exceed cost.

**2.3.2.5** Except as provided in Article 12 of the General Conditions, adverse weather conditions are not anticipated to impact the progress of CM's work. However, CM will record on a daily basis whether its job progress has been materially affected by such conditions. Any such day lost due to adverse weather conditions shall be made up by CM performing work on the ensuing Saturday or by extended hours during that week or with best efforts the ensuing Sunday, and treating such as a work day for the purpose of complying with and meeting CM's Progress Schedule and the applicable Contract Time Requirements, it being understood that no application for extension of time will be made unless the critical path of the project is materially affected. The CM will provide written explanation and CPM schedule evidencing such impact has occurred. CM will notify Owner of any such delay in writing, and on a monthly basis submit a report to the Owner substantiating any days claimed to have been lost over and above those allotted for in the Progress Schedule, due to adverse weather conditions.

**2.3.2.6** The CM acknowledges and agrees that, if the CM fails to achieve Substantial Completion of the entire Work within the Contract Time as established by the appropriate Work Authorization Amendment or Modification of the Agreement, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and CM agree that, if the CM shall neglect, fail, or refuse to achieve Substantial Completion of the entire Work by the date required by the Contract Documents for Substantial Completion of the entire Work, subject to adjustments in the Contract Time as provided in the Contract Documents, then the CM (and the CM's Surety, if any, in the case of default) agrees to pay to the Owner as Liquidated Damages, and not as a penalty or forfeiture, the sum of **Three Thousand Three Hundred Thirty (\$3,330.00) per calendar day** for each day of such delay towards substantial completion. Such Liquidated Damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. Such Liquidated Damages shall be in lieu of all consequential damages, including any loss of use or capital, resulting from CM's delay in performance, except as otherwise provided in Section 6.14.5 of the General Conditions, but shall not be in lieu of any actual, direct costs incurred by Owner in supplementing, accelerating, completing or correcting the Work resulting from CM's breach of its obligations arising under the Contract, including all design and consulting costs also arising therefrom. The Owner may deduct Liquidated Damages described in this Subsection from any unpaid amounts then or thereafter due the CM under this Agreement. Any Liquidated Damages not so deducted from any unpaid amounts due the CM shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the highest lawful rate of interest payable by the CM.

**2.3.2.6.1** To the extent that the parties enter into a Work Authorization Amendment for a portion of the Work (a Work Package for less than the entire scope of the Work), the parties may agree therein to a required Substantial Completion Date for such portion of the Work and separate Liquidated Damages for the CM's failure to achieve Substantial Completion of such portion of the Work within the Contract Time Requirements provided therein. The Liquidated Damages set out in a Work Authorization Agreement for a portion of the Work shall be in an amount which bears the same ratio to the Liquidated Damages for the entire Work as set forth in

Section 2.3.2.6 above as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to a reasonable estimate of the Cost of the Work of the entire Project.

**2.3.2.7** Notwithstanding anything to the contrary contained herein, the maximum amount of Liquidated Damages that may be assessed against and paid by CM shall not exceed in the aggregate the amount of the sum of the CM's Preconstruction Phase Fee and the CM's Construction Phase Fee as set forth in Section 7.2 below, prior to any adjustment as authorized by the Contract Documents. This maximum amount of damages shall not apply to the amount of delay damages recoverable by the Owner in an action brought against the CM for delay in achieving Substantial Completion as required herein in the event that the Liquidated Damages are held by the applicable court or arbitration panel to be unenforceable as a penalty, except where the Liquidated Damages are held to be unenforceable as a result of a legal challenge in such action by the Owner.

**2.3.2.8** Notwithstanding any term of the performance bond furnished by CM pursuant to the terms of this Agreement, CM's performance bond sureties expressly agree and acknowledge that their obligations under the performance bond include the obligation to reimburse or pay Owner that amount of any unpaid or unreimbursed Liquidated Damages incurred by CM pursuant to the terms hereof and subject to the penal limits of the bond.

**2.3.2.9** This provision for Liquidated Damages shall only become operative upon the establishment of the GMP for the applicable Work covered by the Liquidated Damages, and, except as otherwise agreed in writing by the parties, CM shall have no liability for Liquidated Damages or any other delay damages, if Owner and CM are unable to agree upon a GMP for the applicable Work covered by the Liquidated Damages. In addition, Owner shall waive those Liquidated Damages arising from a delay in achieving Substantial Completion of any Work Package, other than the final Work Package, for the first thirty (30) days of any such CM delay under the respective Work Authorization Amendment.

### **ARTICLE 3. CM STATUS AND REPRESENTATIONS**

**3.1 CM Duties.** CM agrees that Owner is entering into this Agreement in reliance on CM's special and unique abilities with respect to construction management. The CM accepts the relationship of trust and confidence established by this Agreement. CM agrees to use its good faith best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the prevailing standards of CM's profession and business. CM warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent its performance of the Work required hereunder.

**3.1.1 Legal Requirements.** CM shall perform its services and furnish its Work in compliance with the Legal Requirements applicable to the Project.

**3.2 Representations.** The CM warrants, represents, covenants, and agrees that all of the Work to be performed by the CM will be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

**3.3 Licenses and Registrations.** The CM warrants that it and its employees and subcontractors have any and all licenses and registrations required for the performance of the Work.

**3.4 Efficiency.** The CM agrees to furnish business administration and superintendence in the performance of the Work in the best and most efficient way and in the most expeditious and economical manner consistent with the interests of Owner.

**3.5 No Third Party Liability.** Except for the obligation of Owner to pay CM hereunder and to perform certain other obligations hereunder, Owner will have no liability to CM or to any third party claiming through or under CM by reason of the execution or performance of this Agreement or the Contract Documents. In addition, neither Owner, nor its agents, officers, and employees, will have any personal liability to CM or to any third party claiming through or under CM by reason of the execution or performance of this Agreement or the Contract Documents.

**3.6 Entity Status.** CM must be a fully capitalized, legal business entity acceptable to Owner at all times during the term of this Agreement. In the event that the CM is a joint venture or partnership, each separate business entity participating in the joint venture or partnership must be jointly and severally responsible for all rights, duties, and liabilities of the joint venture or partnership and the joint venture or partnership must provide the project specific insurance set forth in the Supplemental General Conditions to the Contract Documents.

#### **ARTICLE 4. CONTRACT DOCUMENTS**

**4.1** The Contract Documents are to be comprised of the following:

**4.1.1** All Modifications to this Agreement;

**4.1.2** This Agreement, including all Exhibits attached hereto and such other documents, if any, which by the express terms of this Agreement are incorporated into this Agreement;

**4.1.3** The Supplemental General Conditions to the General Conditions of the Contract (if any) (also referred to as the "Supplemental General Conditions");

**4.1.4** The General Conditions of the Contract (also referred to as the "General Conditions");

**4.1.5** The Construction Documents (as defined in the General Conditions) prepared and approved in accordance with the Contract Documents; and

**4.1.6** The following other documents, if any:

- .1** other documents contained in the Project Manual and not otherwise specifically referenced above;
- .2** those current City of Austin Standard Contract Documents (individually referred to as "City Standard Document") when referenced in the Contract Documents by Section Number (such as "City Standard Document -- Section 00830" which references the Wage Rates and Payroll Reporting document);
- .3** the Request for Qualifications Documents, specifically including the MBE/WBE requirements; and
- .4** the CM's Response to Request for Qualifications/Proposals of Owner.

The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price and are intended to include all design, architecture and engineering, materials, equipment, labor and services of every kind necessary for the proper execution of the Work and the terms and conditions of payment for the Work.

**4.2 Rules of Interpretation.** The following rules shall govern interpretation of the Contract Documents:

**4.2.1** The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. Additionally, what is required by any of them shall be deemed to be required by all of them.

**4.2.2** In the event of any inconsistency, conflict, or ambiguity between or among the

Contract Documents that cannot be harmonized so as to avoid conflict, the Contract Documents shall take precedence in the order in which they are listed in Section 4.1 above.

- 4.2.3 With regard to Modifications, the most recently issued Modification takes precedence over previously issued Modifications or the Contract Documents modified.
- 4.2.4 Figures given on Drawings govern scale measurements, and large scale details govern small scale Drawings.
- 4.2.5 The organization of the specifications into divisions, sections, and articles, and the arrangement, titles, and numbering system used for the drawings, shall not determine the division of the Work by CM among its Subcontractors, nor establish the extent of the Work to be performed by any Subcontractor of any tier. Such matters shall be the responsibility of the CM in accordance with this Agreement.

**4.3 Meanings of Terms.** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract, unless otherwise specified herein.

**4.4 Subsidiary Work.** If an item or system is either shown or specified by the Contract Documents, all material, equipment, and labor required for the proper installation of such item or system and needed to make a complete operating installation must be provided whether or not fully detailed or specified in the Contract Documents, and shall be considered as subsidiary to the Work, to the extent such complete operating installation can be reasonably inferred by the Contract Documents. No Claim to increase the Contract Amount for such subsidiary work will be allowed.

## **ARTICLE 5. PRECONSTRUCTION PHASE SERVICES**

CM shall perform the following Preconstruction Phase Work, and shall continue to provide the required services as needed throughout the duration of the Contract:

### **5.1 General Coordination.**

**5.1.1 Team Meetings.** Attend regular meetings with the Project Team during the Construction Document review to advise them on Site considerations, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment. At Owner's request, CM will be responsible for meeting notes to be recorded and distributed to all parties.

**5.1.2 Recommendations and Information.** Provide recommendations and information to the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the CM and Owner's Third Party Contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Project Schedule and the Contract Amount.

**5.1.3 Public Hearings.** At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

**5.1.4 Decision Tracking Report.** Create and continuously update a "Decision Tracking Report," which records all Work issues and the decisions in a format acceptable to Owner. The updates must be done at least monthly immediately prior to the Application for Payment.

**5.1.5 Permits, Licenses, Fees.** Confirm that all approvals, reviews, permits, licenses that are required for construction of the Work to commence have been received.

**5.1.6 Pre-Construction Schedule, Progress Schedule, and Submittal Schedule.**

**5.1.6.1** Within thirty (30) days from the commencement of the Preconstruction Phase Services, develop a **Pre-Construction Schedule** consistent with the Project Schedule for Owner's review and approval with input from Owner, the A/E, and Owner's Representative, which will include the activities of CM, Owner, Owner's Representative and the A/E during the Pre-Construction Phase. Owner is responsible for obtaining the performance of Owner's Representative and the A/E.

**5.1.6.2** Within ninety (90) days from the commencement of the Preconstruction Phase Services, CM shall submit to Owner or Owner's Representative a preliminary **Progress Schedule** for both the Pre-construction and Construction Phases of the Project consistent with the Project Schedule and in a form reasonably acceptable to Owner's Representative. Said preliminary Progress Schedule shall include, but not be limited to, the durations for all major items of Work to be performed; the start and finish date of all such activities; and the Contract Time Requirements for the Construction Phase of the Project, including the Work Packages, as set out in the Contract Documents. Within thirty (30) days from the submission of the preliminary Progress Schedule, CM shall submit to Owner's Representative for approval, a more detailed Progress Schedule, which will be a Critical Path Method (CPM) schedule depicting all significant activities which will occur on the Project; the duration of such activities; the start and finish dates of such activities; the Contract Time Requirements as set out in the Contract Documents; and the precedence logic of such activities. CM shall submit to Owner's Representative updated Progress Schedules each month to reflect actual progress made and to forecast future progress of the Work. Prior to the commencement of the Work under a Work Package, CM shall submit to Owner and Owner's Representative a cash flow projection depicting the estimated projected monthly cash flow for the Work to be performed pursuant to such Work Package. Such projection shall be updated on a quarterly basis.

**5.1.6.3** Coordinate all Submittal Schedules for Shop Drawings and Samples required by Division 1. These Submittal Schedules must provide a method for reviewing and processing the required Submittals, which is acceptable to all parties.

**5.1.7 List of Personnel and Subcontractors.** The CM's key personnel, staff, and their respective duties, are identified in the attached and incorporated **Exhibit 3**. Upon proposing the GMP Proposal for any Work Package and when subsequently proposing other Construction Trade Packages within a Work Package, CM must submit an updated **Exhibit 3** listing all Subcontractors and consultants, if any, and their respective key personnel and salaried specialists and their respective duties, to be contracted with for portions of the Work.

**5.1.8 Consultation.** CM shall consult with Owner's Representative, the A/E, and Owner during the development of design and provide them with recommendations on improvements, construction phasing, selection of materials, building systems and equipment. CM shall provide consultation and recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost including estimated costs of alternative designs or materials, preliminary budgets and value engineering alternatives. Any material or system proposed by CM, upon acceptance by Owner, Owner's Representative, and the A/E shall be incorporated into the Contract Documents. CM shall review the drawings and specifications when they are furnished to CM, recommending alternative solutions throughout the Pre-Construction Phase regarding construction feasibility, cost, or schedule. CM shall endeavor to provide advice on ways to reduce the construction costs and conform to (and, if possible, shorten) the schedule, without reducing design quality. CM and Owner acknowledge Section 361.426 of the Texas Health & Safety Code which requires giving preference to products made of

recycled materials, if the products meet applicable specifications and national historical standards.

**5.1.9 Conditions and Limitations of the Work.** CM acknowledges that prior to the submission of the GMP Proposal for any Work Package that it will have satisfied itself, through on-site visits and examination and comparison of survey information, geotechnical reports, and the Construction Documents then made a part of the Contract Documents, as to the conditions and limitations under which the Work under the Work Package is to be performed, including, without limitation: (1) the location, condition, layout and nature of the Site and surrounding areas, including (without limitation) all property lines, visible utility locations, existing improvements, elevations, and other observable physical conditions of the Site and surrounding areas; (2) generally prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues.

## **5.2 Constructability Review of Contract Documents.**

**5.2.1 Mission.** Implement and conduct a constructability review of all Contract Documents employing a systematic analysis process that is used throughout private industry and governmental agencies for projects of the Project's nature, size, and scope. The constructability review services required herein are intended to be comprehensive of the Work to be performed with regard to each Work Package and must be completed prior to the commencement of the Work under the respective Work Package, unless otherwise approved by Owner.

**5.2.2 Review.** CM agrees to conduct a constructability reviews to examine all Contract Documents, including without limitation, the Construction Documents, to ensure that the respective scope of the Work under a Work Package will be completed with a minimum of delays from excessive requests for information and Change Orders once the Work under the Work Package is under construction. The review, at a minimum, must evaluate the workability of interrelated systems between civil, architectural, structural, mechanical, and electrical Drawings and Specifications, and review A/E's scheduled installation durations against actual installation requirements for systems integration, to ensure coordination between different design disciplines. Reviews must be conducted at 30%, 60%, 90% and 100% construction documents. Conduct a comprehensive analysis of the Construction Documents to ensure coordination of all systems in determining the ease of constructability and cost effectiveness of building the Project. If in reviewing the Contract Documents the CM discovers any Discrepancies, the CM must immediately notify the Owner and A/E about the Discrepancies.

**5.2.3 Report.** Prepare a "Constructability Review Report," which outlines items that in the CM's opinion may cause problems in the way the Project is proposed to be constructed and which will document any Discrepancies and potential problems with the Construction Documents that, if left unattended, may result in ineffective or inefficient constructability, Change Orders, or Claims once Project construction commences.

**5.2.4 Propose Solution.** CM shall propose the most practical solution to resolve the Discrepancies and potential problems. Additionally, CM shall recommend alternative design suggestions for consideration and document potential savings that require the minimum impact to the Project Schedule and Contract Amount and further the best interest of the Project.

**5.2.5 Respond to Solution.** The Owner and A/E will evaluate the proposed solution and provide a response to CM. If the approved solution prompts changes to the Contract Time or Contract Amount, the Contract will be adjusted under in accordance with the General Conditions.

## **5.3 Discrepancies.**

**5.3.1 Failure to Report or Get Response.** If CM performs the Work without reporting Discrepancies or getting a response to its proposed solution to resolve a Discrepancy, the CM will be responsible for all cost of remedying the Work resulting therefrom.

**5.3.2 Assumption of Risk.** CM assumes the risk of reviewing the Construction Documents for Discrepancies and potential problems and will not be entitled to any extensions of the Contract Time or to any adjustment of the Contract Amount on grounds that it misinterpreted or misunderstood any matter that could, or should reasonably, have been raised by the constructability review. CM assumes all risks accepted and obligations undertaken by it under the Contract Documents, except for concealed conditions or conditions that could not have been reasonably anticipated or discovered. Owner shall not be responsible for any damages resulting from a Discrepancy and CM will not be entitled to a Claim for adjustment in Contract Time or Contract Amount resulting from a Discrepancy unless the CM advises Owner in writing of the Discrepancy and potential problem and proposes a solution as required herein and Owner confirms in writing that it wishes the CM to proceed in accordance with the Contract Documents as originally given.

## **5.4 Value Engineering.**

**5.4.1 Limited Value Engineering.** Whenever the term "Value Engineering" is used in conjunction with the Contract Documents or the Work, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any Value Engineering activities constitute the professional practice of engineering, then such activities must be performed by an engineer licensed in Texas. A/E and Owner and, to the extent applicable, their other third-party consultants, may have already conducted a separate Value Engineering Review. The time to perform Pre-Construction Phase services does not allow for an extensive revision and redesign of the Project. However, the Owner is willing to consider additional Value Engineering recommendations proposed by the CM, to the degree that they can be accomplished in the time allowed and to the extent that any proposed changes can be accomplished with limited revisions to the Contract Documents. Additionally, to the extent that CM's estimated construction costs exceed the Construction Cost Limitation (or any applicable portion thereof) or the Construction Costs Fixed Limit established by an IGMP, CM shall exercise best efforts to propose Value Engineering solutions to bring such construction costs within any applicable Limit. Value Engineering activities must be performed concurrently with and without delay to the Contract Time Requirements for the Project, including the Milestones.

**5.4.2 VEP Preparation.** As a minimum, the CM shall include the following information in each Value Engineering Proposal ("VEP"):

- .1 A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance;
- .2 A list and analysis of design criteria or specifications that must be changed if the VEP is accepted;
- .3 A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Owner; and
- .4 A description and estimate of costs the Owner may incur implementing the VEP, such as design change cost. (A/E will be directed to provide input on the estimate.)

**5.4.3 VE Review and Approval.** The proposed Value Engineering solutions will be promptly reviewed by A/E, whose review will consider all Project areas implicated in the proposed VE solution(s) and will make a recommendation to the Owner. Owner will promptly approve or

reject A/E's recommendations. The A/E will incorporate any approved VE solutions into the Contract Documents.

## **5.5 Budget, Cost Estimating, and Cost Control.**

**5.5.1 Preliminary Cost Estimating.** Within fourteen (14) calendar days from the commencement of the Preconstruction Phase Services, the CM shall prepare, for the review of the A/E and approval of the Owner, a Preliminary Cost Estimate for the Work of the Project in reasonable detail and in compliance with Section 5.5.2 below and based upon the Drawings and Specifications and such other Construction Documents approved by the Owner for cost estimating and such other information furnished by the A/E and the Owner, utilizing area, volume or similar conceptual estimating techniques for the Work.

**5.5.1.1** In addition to the foregoing, when Schematic Design Documents have been issued by the A/E for the entire Work or for any Work Package and approved by the Owner for cost estimating, the CM shall prepare, for the review of the A/E and approval of the Owner, a cost estimate for the Work or the respective portion thereof in reasonable detail and in compliance with Section 5.5.2 below, with such supporting data as reasonably requested by Owner. During the preparation of the Design Development Documents, the CM shall update and refine this estimate at appropriate intervals agreed to by the Owner and CM.

**5.5.1.2** CM shall provide such additional cost estimating as may be required for preparing the GMP Proposal for the Work and each Work Package as directed by the Owner and as provided in Article 7 below.

**5.5.2 Cost Management Report.** With regard to each preliminary cost estimate CM is required to provide, including the pricing for the Initial Guaranteed Maximum Price (IGMP) and GMP Proposals for each Work Package as required in Section 7.4.1 below, the CM shall provide a Cost Management Report that compares Owner's Construction Cost Limitation for the Work to CM's estimated construction costs. If CM's estimated construction costs would reasonably cause the Owner's Construction Cost Limitation for the Project or for any Work Package (to the extent that a Construction Cost Limitation for the Work Package has been established in the Contract Documents) to be exceeded, CM shall develop reasonable strategies to be reviewed by the A/E and approved by the Owner to reduce the costs estimated to be incurred during all stages of the Construction Phase of the Work.

**5.5.3 Schedule of Values.** As part of the negotiation of the Guaranteed Maximum Price for each Work Package, CM shall provide an initial Schedule of Values for that scope of the Work. Owner will review the initial contents and format for the Schedule of Values after receipt and suggest any revisions or request any additional information. Further, the Schedule of Values will conform to the requirements of Division 1, will be subdivided into component parts in sufficient detail to serve as the basis for Progress Payments during the Project, and will be updated as needed, but at least monthly prior to submitting each Application for Payment.

**5.5.4 Procurement and Estimates.** CM shall prepare and be responsible for all Subcontractor procurement and construction cost estimates.

**5.5.5 Advice; Recommendation-Contract Amount and Contract Time.** CM shall advise the other members of the Project Team immediately, if at any time the CM has knowledge or belief that the Contract Amount or Contract Time Requirements will not be met, and make recommendations to the Project Team for corrective action to bring the costs down or to bring the Project back on Schedule.

**5.6 LEED™.** CM shall develop a Leadership in Energy & Environmental Design (LEED™) management implementation plan, documentation, and tracking methodology acceptable to Owner.

## **5.7 Construction Planning.**

**5.7.1 Procurement Plan.** CM shall provide to Owner for review and approval a "Procurement Plan" which contains the CM's procurement process and procedures. It should contain information such as identification of long lead items, recommended phased construction, identification of work to be bid or acquired by Competitive Sealed Proposal method including evaluation criteria and award factors, identification of work to be self-performed, solicitation documents and subcontractor agreements and forms, scoring matrix and evaluation method, bid award process, outreach efforts and initiatives to ensure MBE/WBE compliance, and solicitation schedule. Solicitation schedule should include key dates and milestones such as advertisement dates, bid openings, IGMP and GMP Proposal dates, GMP review period, proposed City Council dates and approvals and any other information relative to the CM's procurement process.

**5.7.2 Long Lead Items.** Identify any equipment, materials, or other components of the Work for which orders must be placed in advance of the commencement of the respective Work in order to achieve the applicable Contract Time Requirements and to protect the Owner from excessive cost escalations ("Long Lead Items") and expedite the procurement by both CM and Owner of Long Lead Items to ensure delivery and installation for all Construction Trades Packages by the dates provided on the Progress Schedule and within the applicable Contract Time Requirements.

**5.7.3 Assistance.** If requested and approved by Owner, participate with A/E in preparing performance specifications and requests for technical proposals for the procurement and installation of systems and components.

**5.7.4 Phased Construction.** CM shall make recommendations to the Owner and A/E regarding the phased issuance of Drawings and Specifications to modify the existing schedule of the Work Packages or to add Work Packages to facilitate construction of the Work, if such modifications or additions are appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

**5.7.5 Issue Requests.** As requested and approved by Owner, issue invitations for bids and/or requests for technical proposals to qualified sources and receive bids and/or proposals and assist in their evaluation.

**5.7.6 Pre-bid and/or Pre-proposal Conferences.** Schedule and conduct pre-bid and/or pre-proposal conferences with interested proposers, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.

**5.7.7 Bids and/or Competitive Sealed Proposals.** **The Owner requests and requires that all bids or proposals be made available to the Owner and the Principal Architect/Engineer in accordance with the following process and procedures.**

**5.7.7.1 CM Solicitation.** In coordination with Owner and in accordance with *Texas Local Government Code* Chapter 252 and/or Section *Texas Government Code* 2269.255-256, CM shall develop Subcontractor interest in the Project, and each respective Work Package, and, as the Construction Documents are completed, publicly advertise and solicit bids and/or competitive sealed proposals from Subcontractors to perform all major elements of the Work other than the minor work that may be included in CM's General Conditions Costs. CM shall conduct pre-bid and/or proposal conferences in order to explain the scope of the available work to interested

Subcontractors. In the case of competitive sealed proposals, CM and Owner shall jointly agree on the criteria for determination of best value for award of competitive sealed proposals. CM shall receive and open all such Subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process. Owner and A/E shall attend the opening of all bids and/or competitive sealed proposals. CM shall comply with the Owner's M/WBE Ordinance and Procurement Program policies and procedures in evaluating the impact of each Subcontractor selection to the Compliance Plan. All proposals will be made public within seven Calendar Days after the date of final selection. CM will follow this process in the development of each Construction Trades Package for each Work Package. CM shall submit CM's standard form of subcontract for the Project to Owner for review and approval in order to verify that it contains provisions required by the Contract Documents that are protective of the interests of Owner and conforms to the requirements of the Contract Documents. Subcontracts shall not be awarded on the basis of cost of the work plus a fee without the prior written consent of Owner's Representative.

**5.7.7.2 CM Self-Perform.** CM may seek to perform portions of the Work itself, other than the minor work that may be included in the CM's General Conditions Costs, if CM submits its proposal for those portions of the Work in the same manner as all other Subcontractors. If CM intends to submit a proposal for such Work, it shall notify Owner prior to soliciting proposals and all such bids and/or sealed proposals will be submitted directly to Owner or its designated representative. If Owner determines that CM's proposal provides the best value for Owner, CM will be awarded that portion of the Work. Owner's determination in such matters is final.

**5.7.7.3 Alternate Subcontractors.** If CM reviews, evaluates, and recommends to Owner a proposal from any Subcontractor, but Owner requires a proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate CM by a change in price, time, or Stipulated Sum for any additional cost and risk, which has been demonstrated to Owner's satisfaction, which CM may incur because of Owner's requirement that another Subcontractor proposal be accepted.

**5.7.7.4 Scoring.** CM must provide Owner and A/E with its completed scoring matrix, or other similar tool used for evaluating responses in a form to be approved by Owner, for each Construction Trades Package and which shows the score for each Subcontractor that submits a response to a competitive sealed proposal.

**5.7.8 M/WBE Compliance.** Comply with the Owner's M/WBE Ordinance by implementing and monitoring the M/WBE Procurement Program. Meet Project M/WBE goals and/or make a good faith effort to do so, and complete the Compliance Plan.

**5.7.9 Quality Control Plan.** Develop a quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. The CM will plan for scheduling all needed tests with Owner, Owner's Third Party Contractors and consultants and any applicable testing agencies.

**5.7.10 Temporary Site Facilities.** CM shall review the Contract Documents to ensure that adequate temporary facilities are provided as necessary to enable the Subcontractors to perform their work and provisions have been made for all Project Site facilities necessary for CM to manage, inspect, and supervise the Work. Further, CM shall provide Owner's Third Party Contractors: access to the Site; access to the sanitary facilities; access to temporary water and power on Site; and access to the Site for minor storage. CM is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, or hauling services for Owner's Third Party Contractors or Consultants, unless CM and Owner otherwise agree.

**5.7.11 Safety Plans; ROICIP.** CM is responsible for initiating, maintaining, and supervising all safety programs and precautions as required by the Contract Documents and in coordinating with the Owner's Controlled Insurance Program in connection with the Work. The existence of the Owner Controlled Insurance Program (OCIP) in connection with the Work in no way lessens or reduces the CM's responsibilities set forth in this subparagraph.

**5.7.12 Labor Analysis.** Provide an analysis of the types and quantities of labor required for the Work and review the appropriate categories of labor required for critical stages of the Work. Make recommendations for actions that will minimize adverse effects of labor shortages on the Progress Schedule.

**5.7.13 Division of Work.** CM shall make recommendations to Owner through Owner's Representative and the A/E regarding the division of Work in the Drawings and Specifications, taking into consideration such factors as time of performance, availability of labor, impact on M/WBE involvement, overlapping trade jurisdictions, and provisions for temporary facilities.

**5.8 Owner's Third Party Contracts.** Consult with and make recommendations to the Owner, the A/E, and any applicable Owner's Third Party Contractors on the acquisition schedule for (as applicable) fixtures, furniture, equipment, materials, information technology systems, and other systems. Coordinate the purchase, delivery, and installation of such items in accordance with the Progress Schedule as may be required to meet applicable Substantial Completion and the LEEDTM Credit EQ 3.2 Construction Indoor Air Quality Management Plan, Flush-out Procedure

## **5.9 Failure to Perform Preconstruction Phase Services.**

**5.9.1** If CM fails to timely perform any of the Preconstruction Phase Services set out herein, and if, in the Owner's judgment, Owner determines that the Project is not on schedule, the Owner shall notify CM who must immediately provide Owner and A/E with a recovery schedule. The recovery schedule must include any and all actions necessary to get the Project back on schedule and may include any of the following items or such similar measures, and which must remain in effect until the progress of the Work is back on schedule in Owner's sole judgment.

- .1 An increase in staff resources having the expertise necessary to assist CM's Key Personnel to perform the required services;
- .2 An increase in office equipment or tools, including computers, software, telephones, faxes, etc., as needed to expedite delivery of the required services; and,
- .3 An increase in hours of Work or number of shifts.

**5.9.2** CM is not entitled to an increase in Contract Amount for any additional effort it applies to the Work under this Section 5.9.

**5.9.3** Failure to immediately act to provide a recovery schedule for Owner's approval or to implement an approved recovery schedule, is grounds for termination for cause.

## **ARTICLE 6. CONSTRUCTION PHASE RESPONSIBILITIES**

The Preconstruction Phase will overlap into the Construction Phase, and CM will provide those services as required throughout the duration of the Contract. Additionally, the CM will perform the services in the Construction Phase as set forth in this Article 6 and elsewhere in the Contract Documents.

### **6.1 General Coordination.**

**6.1.1 Coordination.** In consultation with Owner, establish and implement procedures for coordination among the Project Team, Subcontractors, Owner's Third Party Contractors, A/E, and other consultants, including coordinating installation of any Owner-procured material and equipment. CM shall provide recommendations and information to the other members of the Project Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; development of a safety plan and responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the CM and Owner's Third Party Contractors, if any; cost factors, including costs of alternative materials and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the Contract Documents; and any other matters necessary to accomplish the Work in accordance with the Contract Time Requirements and the Contract Amount.

**6.1.2 Meetings.** CM shall attend Owner's weekly progress meetings, and fully advise the Project Team at such meetings as to Project status, especially with regard to the Progress Schedule. At each weekly progress meeting, CM shall prepare and distribute an excerpt from the Progress Schedule setting forth the Work activities for the next three weeks. Attend all other called Project meetings with Project Team members. CM shall provide to Owner and A/E the 2-3 weeks look-ahead schedule at each project progress meeting.

**6.1.3 Agenda and Minutes.** Prior to each weekly progress meeting, A/E will prepare and distribute a written agenda for the meeting. A/E will record and distribute the minutes of each meeting. A/E will also prepare agendas and minutes for all other called meetings. Review the agendas and minutes and provide comments, if any.

**6.1.4 Public Hearings.** At Owner's request, CM shall attend public meetings and hearings concerning the development and schedule of the Project.

**6.1.5 Decision Tracking Report.** CM shall continuously update a "Decision Tracking Report," which records all Work issues and the decisions on how to resolve each one. At Final Completion of the Work, the Decision Tracking Report will provide a final and complete record of each Work issue and decision and will be provided to Owner. The updates must be done at least monthly immediately prior to the then current Application for Payment.

**6.1.6 Partnering.** CM shall plan, coordinate, and conduct quarterly Partnering sessions with all appropriate Project Team members, including Major Subcontractors designated by CM and Owner, throughout all stages of the Work, based on approved Partnering Program. Publish and distribute meeting minutes to all attendees.

**6.1.7 Permits, Licenses, Fees.** CM shall confirm that all approvals, reviews, permits, licenses that are required for all portions of the construction of the Work to commence have been received

**6.1.8 Submittal Schedule.** CM shall update and coordinate all Submittal Schedules for Shop Drawings and Samples required by Division 1 and assure submission of the Submittals in accordance with the Submittal Schedule.

**6.1.9 List of Personnel and Subcontractors.** Upon proposing the GMP Proposal for a Work Package, CM must submit an updated **Exhibit 3** which shall include a list of all Subcontractors and consultants and their respective key personnel and salaried specialists and their respective duties for portions of the Work of the respective Work Package, which updated Exhibit 3 will be substituted for the then existing Exhibit 3. The CM's personnel identified in Exhibit 3 must not be changed without the Owner's prior written agreement, which will not be unreasonably withheld. The CM must notify Owner of any change to Subcontractors and consultants identified on Exhibit 3, as amended.

**6.1.10 Construction Planning.** To the extent that the Owner has agreed to permit the CM to submit a subsequent Construction Trades Package for a Work Package after the GMP Proposal for that Work Package has been submitted, CM shall prepare and submit such subsequent Construction Trade Package in accordance with the process set forth in Section 5.7.6 with an amended **Exhibit 3**.

## **6.2 Project Control.**

**6.2.1 Subcontracts.** CM shall cause the Work to be constructed in strict accordance with the Contract Documents and within the applicable Contract Time Requirements of the Contract Documents, CM shall award and enter into and manage, as the general contractor, all Subcontracts necessary to provide all labor and materials for the Work.

**6.2.2 Owner's Third Party Contracts.** Owner reserves the right to perform any part or all of the Work and to award Third Party Contracts ("Third Party Contracts") to Owner's Third Party Contractors for Other Work.

**6.2.3 Monitoring Progress.** CM shall monitor the Work of the Subcontractors and other work of Owner's Third Party Contractors in conjunction with the Progress Schedule to ultimately achieve completion of the Work, as designed, at a cost not to exceed the applicable Contract Amount and GMP and within the applicable Contract Time Requirements. CM shall update the Labor Analysis, as needed.

**6.3 Progress Schedule.** CM must achieve sufficient progress in the Work to keep on schedule with the timelines and Milestones set out in the Project Schedule in order to ultimately achieve the applicable Contract Time Requirements for the Project and each Work Package. Updating the Progress Schedule in a timely manner and comparing it to the Project Schedule will be a continuing priority for CM during the entire Project.

**6.3.1** CM shall use Oracle Primavera or such other scheduling program approved by Owner and provide Owner with a copy of the program for its use in connection with the administration of this Project, and shall update the Progress Schedule as reasonably required by Owner, but not more often than weekly nor less often than monthly, immediately prior to each then current Application for Payment.

**6.3.2** Proposed adjustments to the Progress Schedule that do not change the applicable Contract Time Requirements, including applicable Milestones, and which generally conform to the then current Project Schedule and applicable provisions of Division 1 will be approved by Owner's Representative in its reasonable discretion.

## **6.4 Budget and Cost Control.**

**6.4.1 Administration.** CM shall prepare, administer, and provide to Owner, Subcontractors' Schedule of Values, Subcontractors' sworn statements and waivers of liens, as required, Contract and disbursement summaries, Change Order Logs and Change Orders, and budget cost summary reports, as required by Owner.

**6.4.2 Procurement and Estimates.** CM shall prepare and update all procurement and construction cost estimates.

**6.4.3 Cost Management Report.** CM shall continue updating the Cost Management Report, with additional detail as may be required by the Owner and/or A/E, monthly prior to submitting the next Application for Payment. Further, the Cost Management Report shall track and compare Construction Cost Limitation amounts and GMP with the actual costs of the Work. Also, throughout the duration of the Work, continue providing cost consultation services.

**6.4.4 Report Cost Variances.** CM shall promptly, but in any event, no more than seven Calendar Days after acquiring such information, identify all variances between estimated costs and actual costs, and shall promptly report such variances to the Project Team along with recommendations for action.

**6.4.5 Schedule of Values.** CM shall continue updating the CM's Schedule of Values monthly prior to submitting the next Application for Payment.

**6.4.6 Advice.** CM shall advise the other members of the Project Team immediately, if at any time, the CM has knowledge or belief that the Contract Amount or Project Schedule will not be met, and make recommendations to the Project Team for corrective action.

**6.4.7 Cost Control System.** CM shall develop and monitor an effective system of Project cost control, which system shall be disclosed to and reviewed and approved by Owner and Owner's Representative. In connection with the management of the Cost Control System, CM shall develop cash flow reports and forecasts as reasonably requested or required by Owner or Owner's Representative.

**6.5 Recovery Schedule.** If the Progress Schedule indicates that the Work cannot be achieved within the applicable Contract Time Requirements or the Owner otherwise determines that CM is not on schedule to achieve the applicable Contract Time Requirements, Owner will notify CM in writing.

**6.5.1** CM will have seven Calendar Days after receipt of such notice to either (a) disagree with Owner and provide documentation, using the cost and resource loaded critical path methodology, of how CM is actually on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package or (b) provide Owner and A/E a Recovery Schedule, which identifies specific measures that CM will undertake to get the Project back on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package, and which must remain in effect until the progress of the Work is back on schedule to achieve the applicable Contract Time Requirements for the Project and each applicable Work Package.

**6.5.2** A "Recovery Schedule" means a short duration schedule implemented to bring the Project back on schedule to achieve the Contract Time Requirements for the Project and each applicable Work Package. The Recovery Schedule may include any of the following items, or other similar measures.

- .1 An increase in working forces;
- .2 An increase in equipment or tools;
- .3 An increase in hours of Work or number of shifts; or
- .4 Expedited delivery of material.

**6.5.3** CM is not entitled to an increase in Contract Amount for any additional temporary effort necessary under the Recovery Schedule.

**6.6 LEED.** CM shall continue implementation of LEED management plan and updating tracking methodology acceptable to Owner. CM shall provide documentation as required by Division 1 and the technical Specifications and assist A/E in applying for and successfully attaining a Silver, or higher, LEED rating for the Project.

**6.7 Construction Planning.** Without limiting CM's obligations to continue to perform necessary Preconstruction Phase Services after commencement of the Construction Phase for each

respective Work Package, CM shall perform the following services in connection with the Construction Phase Work.

**6.7.1 Long Lead Items.** CM shall coordinate and expedite the procurement by both CM and, as applicable, Owner of Long Lead Items to ensure their procurement, delivery, and installation by the Milestone dates provided on the Progress Schedule.

**6.7.2 Assistance.** If requested and approved by Owner, CM shall participate with A/E in preparing performance specifications and requests for technical proposals for the procurement and installation of systems, components.

**6.7.3 Issue Requests.** If requested and approved by Owner, CM shall issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

**6.7.4 Bids, Competitive Sealed Proposals and Conferences.** When Bids, Competitive Sealed Proposals and Pre-Bid or Pre-proposal Conferences are required, CM shall follow the methodology set out in Section 5.7, Construction Planning

**6.7.5 M/WBE Procurement Program.** CM shall continue to comply with and implement and monitor the M/WBE Procurement Program for the Project. Meet Project M/WBE goals and/or make a good faith effort to do so and complete the Compliance Plan.

**6.7.6 Quality Control Plan.** CM shall continuously implement and monitor the quality control Work plan to assure requirements of the Contract Documents are met with a minimum of remedial work. CM shall schedule and coordinate all needed tests with Owner, Owner's Third Party Contractors, consultants and any applicable testing agencies, and notify Owner and A/E of the day and time of any test, without assuming direct responsibility for the work of Owner's Third Party Contractors and any testing agencies. See Section 13.3 of General Conditions.

**6.7.7 Temporary Site Facilities.** CM shall maintain adequate temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all Project Site facilities necessary for CM to manage, inspect, and supervise the Work. Further, CM shall provide Owner's Third Party Contractors: access to the Site; access to the sanitary facilities; access to temporary water and power on Site; access to the Site for minor storage. CM is not required to provide storage containers or large storage space, office trailers, dumpsters for recycling, nor hauling services for Owner's Third Party Contractors or Consultants, unless CM and Owner otherwise agree.

**6.7.8 Safety Plans; OCIP.** CM shall maintain and supervise all safety precautions in coordination with the CM's safety plan and program and, as applicable, the Owner's insurance programs (including the OCIP) in connection with the Work.

**6.7.9 Labor Analysis.** CM shall update the Labor Analysis as needed and make any appropriate recommendations for actions that will minimize adverse effects of labor shortages on the Progress Schedule.

**6.8 Owner's Third Party Contracts.** As applicable, CM shall continue to coordinate the Owner's purchase, delivery, and installation of any Owner Supplied Equipment, materials, or other such items as may be required to achieve applicable Milestones on the Project Schedule and the Progress Schedule for complete installation prior to Substantial Completion and, as applicable, the LEED's off-gassing Milestone.

## **ARTICLE 7. CONTRACT AMOUNT**

**7.1 Contract Amount.** Owner shall pay CM, in accordance with Article 14 of the General

Conditions of Contract, the Contract Amount equal to:

- (i) the CM's Preconstruction Phase Services Fee and Preconstruction Phase Reimbursables as provided in Section 7.2.1 below,
- (ii) the CM's Fee for Construction Phase Services as provided in Section 7.2.2 below, and
- (iii) the Cost of the Work as provided in Section 7.3 below, subject to the GMP established in Section 7.4 below and any adjustments made in accordance with the Contract Documents.

The applicable Contract Amount and its component elements for each Work Package shall be subject to the GMP for that Work Package.

## 7.2 CM's Preconstruction and Construction Phase Fees

**7.2.1 CM's Preconstruction Phase Fee.** For the Preconstruction Phase Services performed prior to the commencement of the Construction Phase, the Owner shall pay the CM the stipulated sum of \_\_\_\_\_ Dollars. (See Exhibit 9 – CM's Preconstruction Phase Fee Breakdown). This amount is predicated on the progress of the design being adequate to allow the CM to present a GMP Proposal for the initial Work Package as outlined in the Project Schedule attached to this Agreement no later than (**enter negotiated # of months\_\_\_\_\_**) months after the commencement of the Preconstruction Services Phase and shall be equitably adjusted if the progress of the design is not adequate to allow such a Proposal by that date. Except as otherwise expressly provided herein, all personnel costs, including insurance and benefits in connection with the performance of the Preconstruction Phase Services, as well as the CM's overhead and profit for such Services, shall be included in the CM's Preconstruction Phase Fee.

**7.2.1.1** CM shall also be entitled to reimbursement of those actual costs and expenses reasonably and necessarily incurred in the performance of the Preconstruction Phase Services. To the extent that the Contract Documents include a schedule for reimbursement of certain travel costs, reimbursement for such costs shall be made pursuant to such schedule and in lieu of reimbursement of actual costs of travel. Such costs and expenses shall be limited to reasonable and necessary travel and lodging expenses for CM personnel not stationed at Owner's and A/E's offices and when traveling to Austin for the performance of Preconstruction Phase Services and such reasonable and necessary costs for offices at or near the Site and supplies required by CM in connection with the performance of the Preconstruction Phase Services (referred to collectively as the "Preconstruction Phase Reimbursables"). Notwithstanding the foregoing, CM shall not be entitled to reimbursement of costs for offices and supplies after the commencement of the initial Work Package of the Construction Phase. The Preconstruction Phase Reimbursables shall not exceed the sum of **enter negotiated amount in writing and (\$numerical)**. If the CM is entitled to an equitable adjustment in the Preconstruction Phase Fee as provided in Section 7.2.1 above, the Preconstruction Phase Reimbursables may also be equitably adjusted to reflect the additional actual costs and expenses reasonably and necessarily incurred by the CM.

**7.2.1.2** It is acknowledged and agreed that, even after the commencement of the Construction Phase of the initial Work Package, the CM shall continue to be obligated to perform Preconstruction Phase Services relative to that Work Package and the rest of the entire Work. However, all fees, costs, and expenses in connection with such Preconstruction Phase Services performed after the commencement of the Construction Phase of the initial Work Package, including Preconstruction Phase Reimbursables, shall be reimbursable only to the extent such fees, costs, and expenses are reimbursable as Cost of the Work, subject to the GMP as established in the initial Work Authorization Amendment (or such subsequent Work Authorization Amendments).

7.2.2 CM's Construction Phase Fee. **See Exhibit 8 – Agreement Clarifications.**

### 7.3 Cost of the Work.

**7.3.1 Included Costs.** The Cost of the Work shall include only the following:

- .1 Wages or salaries of employees of CM actually performing minor portions of the Work as permitted by law and the Contract Documents or, with Owner's agreement, at locations off the Site.
- .2 Wages or salaries of CM's supervisory and administrative personnel approved by the Owner or otherwise authorized under the Contract Documents when stationed at the site and working full time on the Project or working off-site to assist in the production or transportation of material and equipment necessary for the Work in accordance with the **CM's Supervisory and Administrative Personnel Cost Schedule** attached hereto as **Exhibit 4**.
- .3 Costs incurred by CM for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by CM, but only to the extent such costs are based on wages and salaries paid to employees of CM covered under Subsections 7.3.1.1 through 7.3.1.2 above. Notwithstanding the foregoing, the costs under this Subsection 7.3.1.3 are included within the rates for the employees as set forth in Exhibit 4.
- .4 With prior written approval of the Owner, eligible expenses for reasonable transportation and living expenses in connection with out-of-town travel by CM's supervisory and administrative Project personnel described above, which shall be reimbursable on the basis of a schedule of reimbursable costs to the extent that the Contract Documents include such a schedule for reimbursement of travel costs. Such expenses incurred by other employees of the CM not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.
- .5 Payments properly made by CM to Subcontractors and consultants for performance of portions of the Work and to the CM for self-performed Work as authorized by the Contract Documents and agreed by the Owner. To the extent that Owner has authorized the CM to enter into a subcontract whose compensation is based upon the cost of the work plus a fee, the cost of the work under such subcontract shall incorporate the same definition of the Cost of the Work as set forth in this Agreement.
- .6 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment, and supplies incorporated or reasonably used in completing the Work.
- .7 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, that are not fully consumed in the performance of the Work and that remain the property of CM, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by CM at the site, whether rented from CM or others, and costs of transportation, installation, minor repairs and replacements, dismantling

and removal thereof. Rental charges for CM-owned equipment shall be eighty-five percent (85%) of those listed in the most current edition of the Rental Blue Book for Construction Equipment published by the Equipment Guidebook Company. CM shall provide monthly an inventory of all rented or purchased equipment and small tools greater than \$500.00 committed to the Project. Such inventory shall be in form acceptable to Owner's Representative. CM shall support its rental charges for such tools and equipment based upon actual usage and in a manner reasonably acceptable to Owner's Representative. Owner will receive from CM the reasonable value, in cash or a credit against the Cost of the Work, of all such materials, equipment, temporary structures, tools and supplies when they are no longer required for the Work and are sold for salvage value at Owner's direction. However, Owner reserves the right to keep any of such materials, equipment, temporary structures, tools or supplies rather than receive cash or credit for them.

- .8 Costs of removal of debris and waste from the Site. All subcontracts shall require Subcontractors to remove regularly all debris created by their activities to a dumpster provided by CM and CM shall enforce such requirements or effect an appropriate back charge to those Subcontractors who fail to meet their requirements in this regard.
- .9 All fuel costs incurred by CM in the performance of portions of the Work self-performed by CM and not otherwise included in General Conditions.
- .10 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .11 Costs for permits, royalties, licenses, tests and inspections and reasonable attorney's fees incurred by CM as a requirement of the Contract Documents, provided that any such attorney's fees are incurred in enforcing this Agreement on behalf of the Owner and Owner has been notified of the need to obtain such legal services and the Owner has been afforded the opportunity to provide its own legal services.
- .12 That portion directly attributable to this Contract of premiums for insurance and bonds that are required by the Contract Documents or otherwise agreed to by the Owner.
- .13 Reasonable Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property provided such costs do not arise from the negligence of CM or those working by and through CM.
- .14 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner prior to incurring these costs, which approval will not be unreasonably withheld or delayed.

**7.3.2 CM's General Conditions Costs.** The Owner and CM have hereby agreed that those certain administrative and supervisory personnel costs, direct overhead, and other onsite costs and expenses incurred by Contractor in the performance of its administrative, supervisory, and management responsibilities under the Contract otherwise reimbursable under Section 7.3.1 above and described or itemized in **CM's General Conditions Costs Schedule** attached hereto as **Exhibit 5** shall, notwithstanding the other terms of this Article 7, be reimbursable to the Contractor subject to the limitations and restrictions expressly set forth in Subsections 7.3.2.1 and

7.3.2.2 below.

**7.3.2.1** Those reimbursable costs described or itemized in Exhibit 5 (the "CM's General Conditions Costs") shall be separately and clearly identified in each Application for Payment submitted by CM. The total aggregate amount of the CM's General Conditions Costs reimbursable to the CM, notwithstanding the actual costs incurred by the CM, shall not exceed Four Hundred Fifty Five Thousand Two Hundred and Sixty-Six Dollars (\$455,266.00) for the entire Work, subject to such adjustments as may be expressly authorized by the Contract Documents.

**7.3.2.2** In the event that the Construction Phase is divided into two or more Work Packages, the aggregate cap on the amount of the CM's General Conditions Costs reimbursable for a respective Work Package shall be set out in the GMP Proposal for that Work Package and shall be allocated to such Work Package in an amount which bears the same ratio to the aggregate cap on the CM's General Conditions Costs set forth in Subsection 7.3.2.1 above as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to a reasonable estimate of the Cost of the Work of the entire Project.

### **7.3.3 Excluded Costs**

The following costs are excluded from the Contract Amount to be paid by Owner:

- .1 Legal and administrative costs to review and negotiate these Contract Documents.
- .2 Travel and subsistence expense of CM, its officers or employees incurred while traveling between the Site and CM's principal or branch offices in Austin, and other travel in the Austin metropolitan area not authorized under Section 7.3.1.4.
- .3 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CM.
- .4 Costs incurred by CM resulting from the failure of CM or its Subcontractors to coordinate their work with that of Owner and Owner's Third Party Contractors, if any, after providing the Progress Schedule, or failure of CM to comply with directives of Owner not in conflict with the Progress Schedule.
- .5 Costs resulting from the failure of CM or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- .6 Any and all overhead expense, or office expense at any location, except as related to CM's Project Site office expense to the extent included in the General Conditions.
- .7 Costs related to CM's indemnification obligations arising under the Contract Documents.
- .8 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- .9 Any cost arising out of the fault or negligence of CM, its Subcontractors or consultants, or any person or entity for whom they may be liable, including, without limitation, costs related to defective Work, materials or equipment, and damage to persons or property.
- .10 Liquidated or actual damages imposed by Owner for failure of CM to complete the Work on or before the Substantial Completion Date.
- .11 Any sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. The parties hereto acknowledge that Owner is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas. Owner shall provide CM with a Sales Tax Exemption Certificate in order to provide for the tax-free

- purchase and procurement of services and materials for the Project.
- .12 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the applicable GMP to be exceeded or, in the case of the CM's General Conditions Costs, that would cause the respective aggregate cap to be exceeded, or in the case of the Preconstruction Phase Reimbursables, that would cause the respective limit of such reimbursement to be exceeded.
  - .13 The cost of non-statutory subcontractor bonds or subcontractor default insurance.

**7.4 Guaranteed Maximum Price.** The sum of the (i) the CM's Preconstruction Phase Fee and Preconstruction Phase Reimbursables, (ii) the CM's Fee for Construction Phase Services, and (iii) the Cost of the Work shall not exceed the Guaranteed Maximum Price ("GMP") as established or to be established hereunder, subject to such adjustments as may be expressly authorized by the Contract Documents. Once the applicable GMP has been established in accordance with the Contract Documents, all costs which would cause the GMP to be exceeded shall be paid by the CM without reimbursement by the Owner.

**7.4.1 GMP Proposals.** Based upon the information, analysis, findings, and reports developed during the Preconstruction Phase, at sixty (60%) completion of Construction Documents. CM shall submit its GMP Proposals ("GMP Proposals") on a Request for Proposal form as required herein, and supplemented as necessary, as follows:

**7.4.1.1 Initial Guaranteed Maximum Price Proposal.** Within sixty (60) days after the CM is furnished the Construction Documents at Design Development Phase of the entire Work or a Work Package by the A/E and with the Owner's approval thereof, the CM shall submit its Initial Guaranteed Maximum Price Proposal ("IGMP Proposal") for the entire Work or the Work Package, respectively, in such form and with such backup documentation as required for the GMP Proposal. Except as may otherwise be agreed by the Owner and the CM, the IGMP Proposal shall include a Construction Contingency of five percent (5%) of the estimated Cost of the Work. If the IGMP Proposal is accepted by the Owner, the estimated Cost of the Work component of the IGMP for the Work covered by such Proposal (including the Construction Contingency) shall constitute a fixed limit of the Cost of the Work covered by the Proposal (the "Construction Costs Fixed Limit").

**7.4.1.2 GMP Proposal for the Work or a Work Package.** Within sixty (60) days after the Construction Documents have been sufficiently developed with respect to the Work or a specific Work Package so that they contain sufficient detail as mutually agreed to, in good faith, by Owner and CM to establish a final, binding GMP for the specified scope of the Work, the CM shall submit its GMP Proposal for the entire Work or the Work Package, respectively, in such form and with such backup documentation as required herein for the GMP Proposal. Except as may otherwise be agreed by the Owner and the CM, the GMP Proposal shall include a Construction Contingency of two percent (2%) of the estimated Cost of the Work.

Notwithstanding the foregoing, the estimated Cost of the Work component of the CM's GMP Proposal (inclusive of the Construction Contingency) shall not exceed the Construction Costs Fixed Limit from the IGMP accepted by the Owner for such Work, except to the extent that CM can establish that such increases were the result of changes in the scope of the Work from the pricing for the IGMP and for which the CM would otherwise be entitled to an increase in the Contract Amount under the Contract Documents if such change occurred after the GMP was established.

**7.4.2 GMP Proposal Requirements.** The GMP Proposal shall be consistent with the **Guidelines to Prepare the GMP Proposal** attached hereto as **Exhibit 6** and shall include the following, unless the Parties mutually agree otherwise:

- .1 A proposed GMP for the designated portion of the Work, which shall be the sum of:
  - i. Stipulated Sum for Preconstruction Phase Services established under Section 7.2.1 above and the Preconstruction Phase Reimbursables subject to Section 7.2.1.1 above for the designated portion of the Work;
  - ii. the CM's Fee for the designated portion of the Work as defined in Section 7.2.2 above; and
  - iii. the estimated Cost of the Work, including the CM's General Conditions Costs, as defined in Section 7.3 above, inclusive of any Construction Contingency, if such a Contingency is established in the accepted GMP Proposal, for the designated portion of the Work.
- .2 A list of the Construction Documents, including all other information used as the basis for the GMP proposal;
- .3 A list of the assumptions and clarifications made by CM in the preparation of the GMP Proposal, which list is intended to supplement the information regarding the scoping and requirements of the Work contained in the Construction Documents;
- .4 If applicable, a list of Allowances or any other open pricing terms and a statement of their basis;
- .5 If applicable, a schedule of Unit Prices;
- .6 The Contract Time Requirements for the designated portion of the Work, including the Milestone dates and the required Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established hereunder,
- .7 A Schedule of Values based upon the Contract Time Requirements;
- .8 Any other information requested in the attached form of the GMP Proposal.

The GMP Proposal must be prepared with a breakdown of estimated costs organized by trade, allowances, contingencies, etc. following the format presented in **Exhibit 6**. The GMP Proposal must include a description of how the estimated Cost of the Work was derived and prepared in accordance with the requirements of this Agreement and the other Contract Documents. If directed by Owner, in formulating the estimated Cost of the Work in the GMP Proposal, CM shall provide for a construction contingency ("Construction Contingency") as provided in Section 7.4.5 below.

**7.4.3 Negotiation of IGMP and GMP Proposals.** After submission of each of the IGMP and the GMP Proposals for the entire Work or any Work Package, CM and Owner shall promptly meet to discuss and review the respective Proposals. To the extent that the estimated Cost of the Work component of a GMP Proposal exceeds the Construction Costs Fixed Limit established in an agreed IGMP, the CM shall exercise best efforts (as measured by its applicable standard of care under the Contract) to propose Value Engineering solutions and other cost-cutting measures to bring such construction costs within the applicable Limit. In the event that the estimated Cost of the Work

component exceeds the applicable Construction Costs Fixed Limit and such cost increase is not due to a change in the scope of the Work, CM shall not be entitled to any reimbursement for the time or expenses required to bring such construction costs within the applicable Limit. If Owner has any comments regarding the respective Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to CM of such comments or findings. If appropriate, CM shall, upon receipt of Owner's notice, make appropriate adjustments to the respective Proposal. If Owner accepts a GMP Proposal, as may be amended by Owner and CM, the Proposal and its basis shall be set forth in a Work Authorization Amendment to this Agreement. Notice to Proceed on a Work Authorization Amendment may be issued immediately upon full approval and execution and receipt of all required bonds and insurance. The Notice to Proceed on a Work Authorization Amendment may be phased in two or more phases, if approved by Owner, with each phase being issued its own Notice to Proceed. CM agrees that to the best of its knowledge that the Contract Documents at the time of the execution of the respective Work Authorization Amendment are sufficient to enable it to determine the GMP for all the Work covered by such Amendment and that such Work can be completed in accordance with the Contract Documents for the GMP. By agreeing to a GMP, CM agrees with Owner that the Work required by the Contract Documents for the Work covered by the respective Work Authorization Amendment, including, without limitation, construction means, methods, procedures, and techniques necessary to perform the Work, will be consistent with (i) good and sound practices within the construction industry; (ii) generally prevailing and accepted industry standards applicable to the Work, and (iii) requirements of any warranties applicable to the Work.

**7.4.4 Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal for the entire Work or any Work Package (which it may do in its sole discretion), or fails to notify CM in writing within thirty (30) calendar days of receipt of the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and CM shall meet and confer as to how the Project will proceed, with Owner having the following options, the selection of which option Owner may make in its sole discretion:

- .1 Owner may suggest modifications to the GMP Proposal and consider CM's additional VEP and other suggestions for cost reduction, whereupon, if such modifications are accepted in writing by Owner and CM, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 7.4.3 above;
- .2 Owner may authorize and direct, in writing, the CM to proceed with the specified Work on the basis of reimbursement as provided in Sections 7.2 (CM Fee) and 7.3 (Cost of Work) hereof without a GMP, in which case all references in this Agreement to the GMP will not be applicable; or
- .3 Owner may terminate this Agreement or the portion thereof relating to the Work Package for convenience in accordance with the Contract Documents; provided, in such event, CM will be entitled to the payment as provided in the Contract Documents for termination for convenience.

**7.4.5 Construction Contingencies.** Each IGMP and GMP for the Work or any Work Package shall include a Construction Contingency in the amount as expressly authorized in this Agreement. Such Construction Contingency shall be shown in the respective Schedule of Values and clearly identified as the "Construction Contingency". The Construction Contingency shall not be allocated to any particular item of the Cost of the Work and is established for increases in Cost of the Work incurred by the CM for unforeseen causes or details not capable of reasonable anticipation at the time of the execution of this Agreement or the respective Work Authorization Amendment and is not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as Cost of the Work under Article 7 of this Agreement. It is understood that the amount of any such Construction Contingency, except as

otherwise provided in this Agreement, is the maximum sum available to the CM to cover cost incurred as a result of such unforeseeable causes or details and that cost overruns in excess of the amount of the Construction Contingency will be borne by the CM. The CM will not be allowed to use any part of the Construction Contingency without prior written approval from the Owner, such approval not to be unreasonably withheld.

**7.4.6 Allowances.** "Allowance" is defined as "a not-to-be-exceeded amount", either individually or in the aggregate, which is established between the OWNER and the CM as part of a GMP Proposal when the precise scope of a particular line item(s) has not been defined to a level which is adequate for the CM to provide a definitive line item pricing for that particular scope of Work. The use of any Allowances by the CM in any GMP Proposal will be subject to the OWNER's sole approval and it is the OWNER's intent to minimize the use of Allowances to the fullest extent possible. For any Allowances which the OWNER allows the CM to use, the following rules shall apply: (i) Allowances shall cover the cost to the CM of the Cost of Work, as defined in the Agreement; (ii) CM's portion of the Fee for overhead and profit associated with the stated Allowance shall be included in the GMP Proposal; and (iii) upon completion of the portion of the Work subject to an Allowance, the Contract Amount for that portion of the Work will be adjusted based upon the approved actual Cost of the Work, including the proportionate fee, which will not exceed the approved aggregate amount of the Allowances.

**7.4.7 Adjustments to GMP and Schedule.** Once an IGMP or GMP has been agreed upon and incorporated into the Contract, such GMP is subject to adjustments only as provided in the Contract Documents, including Article 11 of the General Conditions. The Contract Time Requirements applicable to the entire Work or a Work Package is subject to adjustments only as provided in the Contract Documents, including Articles 10 -- 12 of the General Conditions.

## **ARTICLE 8. PROCEDURE FOR PAYMENT**

### **8.1 Progress Payments**

**8.1.1** CM shall submit applications for Progress Payments to Owner no more than once a month and in accordance with the Contract Documents, unless the Project is designated by Owner as a "Super Prompt Payment" Project, in which case, the Application for Payment and the payment process will be governed by the Owner's Super Prompt Payment process set forth in the General Conditions.

**8.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 14 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under the Contract Documents.

**8.1.3** The CM's Fee shall be paid as provided in Section 7.2.2 above.

**8.1.4** In addition to any provisions which must be also included in the CM's subcontracts under other requirements of the Contract Documents, the subcontracts must specifically provide that the submittals of Applications for Payment by the Subcontractors to the CM will constitute a release of any and all claims for the amount of any previous payments and for the amount of the payment requested to the extent of the subsequent payment.

### **8.2 Retainage on Progress Payments**

**8.2.1** Owner will retain five percent (5%) of each Application for Payment until final payment, except as otherwise expressly provided in this Section 8.2.

**8.2.2** Notwithstanding the foregoing, retainage will not be withheld from payments to the CM for its Preconstruction Phase Fee, Preconstruction Phase Reimbursables, or the CM's General Conditions Costs. Additionally, with Owner's consent, such consent not to be unreasonably withheld, retainage shall not be withheld from payments to the CM with regard to payments for direct purchases of materials, appliances, and equipment by the CM when such retainage is not commercially feasible.

**8.2.3** The parties may agree to the early release of retainage for selected Subcontractors upon the satisfactory completion and acceptance of the Work of the respective Subcontractor, or at such other time as agreed by the Owner and the CM.

**8.2.4** Any reduction or release of retainage, or portion thereof, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the CM or (2) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

**8.2.5** Retainage under Subcontracts shall be included in CM's Application and Certificate for Payment for the purpose of indicating the value of the Work performed; however, CM shall not request payment thereof from Owner until such retainage is actually paid or payable.

**8.2.6** Such retained amounts shall not be due and payable to CM until Substantial Completion of the entire Work as certified by the A/E, at which time Owner shall pay all retainage to CM, withholding only 150% of the reasonably estimated cost to complete all remaining Work, to fulfill CM's remaining obligations under the Contract, and to cover any outstanding, unpaid claims.

**8.3 Payments to Subcontractors From CM.** CM shall pay each Subcontractor an amount equal to the percentage of completion allowed to CM on account of the work of such Subcontractor, less the percentage retained from payments to CM and any other amounts properly withheld by CM. CM shall also require each Subcontractor to make similar payments to its sub-subcontractors.

**8.4 Final Payment.** CM shall submit its Final Application for Payment to Owner in accordance with the General Conditions of Contract. Owner shall make payment on CM's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that CM has satisfied all of the requirements for Final Payment.

**8.5 Interest.** Payments due and unpaid by Owner to CM, whether progress payments or final payment, shall bear interest commencing thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment is due at the rate established in the General Conditions of Contract, which will fully liquidate any injury to CM growing out of any such delay in payment.

**8.6 Record Keeping and Financial Controls.** CM acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work and all other amounts included in the Contract Price. CM shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants and other designees shall be afforded reasonable access from time to time, to audit in accordance with the General Conditions of the Contract.

**8.7 Payments for Professional Services.** The CM will be compensated for Preconstruction Phase Services as provided in Section 7.2.1.2 above.

## ARTICLE 9. INSURANCE AND BONDS

**9.1 Insurance.** CM shall procure, in accordance with Article 5 of the General Conditions of Contract and the Supplemental General Conditions, the following insurance coverage:

The specific insurance coverage requirements applicable to this Project as set forth in the Supplemental General Conditions, provided that there shall be no exclusions for the Construction Manager at Risk method described herein in any of the policies provided hereunder or any such exclusions shall be specifically deleted.

### 9.2 Bonds and Other Performance Security.

**9.2.1** CM shall provide the following performance bond and labor and material payment bond or other performance security:

**9.2.2** CM shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material change required by the Surety. Owner may, in its sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

## ARTICLE 10. REPRESENTATIVES OF THE PARTIES

### 10.1 Owner's Representatives

**10.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract:

Name: Janice White  
Title: City Architect, Public Works Division Manager  
Department: Public Works Department, Architectural Project Management Division  
Address: 6800 Burleson Rd, Bldg 312, Ste 200 Austin, TX 78744  
Phone Number: (512) 974-7997

**10.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 8.1 of the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

Name: Kevin Johnson  
Title: Project Manager,  
Department: Parks and Recreation Department  
Address: 919 W. 28<sup>th</sup> ½ St., Austin, TX 78705  
Phone Number: (512) 974-9506

### 10.2 CM's Representatives

**10.2.1** CM designates the individual listed below as its Senior Representative ("CM's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 16.2.2 of the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

**CM's Senior Representative**

Company Name  
Address  
Phone Number

**10.2.2** CM designates the individual listed below as its CM's Representative, which individual has the authority and responsibility set forth in Section 6.1.2 of the General Conditions of Contract:

**Name of CM's Project Manager and Title**

Company Name  
Address  
Phone Number

**ARTICLE 11. EXHIBIT**

**11.1** The following exhibits are incorporated by reference into this Agreement and the Contract Documents for all purposes as if fully set forth:

- Exhibit 1 Site Plan
- Exhibit 2 Project Schedule
- Exhibit 3 List of CM Key Staff/Personnel and List of Subcontractors and consultants and their respective Key Staff/Salaried Specialists
- Exhibit 4 CM's Supervisory and Administrative Personnel Cost Schedule
- Exhibit 5 CM's General Conditions Costs Schedule
- Exhibit 6 Form of GMP Proposal, including Cost of the Work with Construction Trade Package Schedule of Values
- Exhibit 7 Reserved
- Exhibit 8 Agreement Clarifications
- Exhibit 9 CM's Preconstruction Phase Fee Breakdown

In executing this Agreement, Owner and Construction Manager at Risk each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

Executed in multiple counterparts, to be effective as of the later date set forth below.

**Construction Manager-at-Risk**

\_\_\_\_\_  
(Entity status as applicable - eg., Inc., a Texas corporation)

By: \_\_\_\_\_

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

Title: \_\_\_\_\_, Authorized Representative

Date: \_\_\_\_\_, 20\_\_

**Owner  
City of Austin, Texas**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_, Authorized Representative

Date: \_\_\_\_\_, 20\_\_