

UNIVERSITY OF NORTH TEXAS SYSTEM™

REQUEST FOR PROPOSALS

for

CONSTRUCTION MANAGER-AT-RISK

RFP769-9-2399JB

**University of North Texas
Dallas Campus Building 2**

Issued: December 15, 2008

TABLE OF CONTENTS

1. Introduction
 - 1.1 Description of the University of North Texas Dallas Campus
 - 1.2 Definitions, Background, and Special Concerns
 - 1.3 Objective
2. Notice to Respondents
 - 2.1 General
 - 2.2 Submittal Deadline
 - 2.3 University of North Texas System Contacts
 - 2.4 Type of Contract
 - 2.5 Inquiries and Interpretations
 - 2.6 Contract Award Process
 - 2.7 Criteria for Award
 - 2.8 Respondent's Acceptance of Evaluation Methodology
 - 2.9 Commitment
 - 2.10 Historically Underutilized Business (HUB)
 - 2.11 Pre-Proposal Meeting
 - 2.12 Proposed Project Key Events Schedule
 - 2.13 Eligible Respondents
3. Proposal Requirements
 - 3.1 General Instructions
 - 3.2 Preparation and Proposal Instructions
 - 3.3 Bonding
 - 3.4 Pricing
 - 3.5 Submittal Checklist
4. General Terms and Conditions
 - 4.1 Compliance with Law
 - 4.2 University's Right to Audit
 - 4.3 Access to Documents
 - 4.4 Insurance and Bonds
 - 4.5 Other Benefits
 - 4.6 Non-Disclosure
 - 4.7 Publicity
 - 4.8 Assignment
 - 4.9 Assignment of Overcharge Claims
 - 4.10 Patent and Copyright
 - 4.11 Texas Public Information Act
 - 4.12 Freedom of Access and Use of Facilities
 - 4.13 Observance of University Rules and Regulations
 - 4.14 Section Headings
 - 4.15 Governing Law
 - 4.16 Owner's Special Conditions
 - 4.17 Prevailing Wage Schedule, UNTS

- 4.18 Performance Bond
 - 4.19 Payment Bond Documents
 - 4.20 Project Scope
 - 4.21 UNTS Uniform General Conditions and Supplementary General Conditions 2005 Amended
 - 5. Specifications
 - 5.1 General
 - 5.2 Project Description
 - 5.3 Delivery
 - 5.4 Miscellaneous Provisions
 - 5.5 Liquidated Damages
 - 6. Execution of Offer
 - 7. Pricing, Scheduling and Proposal Particulars
 - 7.1 Pricing Schedule
 - 7.2 Delivery Schedule
 - 7.3 Payment Terms
 - 7.4 Addenda Checklist
 - 8. Respondent Questionnaire
- Exhibit A: HUB Subcontracting Plan Form
- Exhibit B: Performance Bond
- Exhibit C: Payment Bond
- Exhibit D: Construction Manager-at-Risk Agreement

SECTION 1 INTRODUCTION

1.1 Description of the University of North Texas Dallas Campus

The University of North Texas at Dallas, located at 7300 Houston School Road, operates under the authority of the University of North Texas in Denton, the state's fourth largest university, and is a component institution of the University of North Texas System. The Campus currently offers junior, senior and graduate level courses leading to bachelor's and master's degrees and has a full-time equivalent (FTE) enrollment of 959 students. The Campus will become freestanding and open as UNT Dallas, the city's first and only public university, by 2010.

1.2 Definitions, Background, and Special Concerns

- A. Construction Manager-at-Risk (CMAR): A Construction Manager-at-Risk, herein referred to as "Construction Manager", is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for pre-construction services, construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides coordination and consultation to the University of North Texas System (UNTS) regarding construction during and after the design of the facility.
- B. Architects and Engineers: Before selecting a Construction Manager, UNTS shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with the Texas Engineering Practice Act (Article 3271a, *Texas Revised Civil Statutes* [Vernon]), and /or the Texas Architectural Practice Act (Article 249a, *Texas Revised Civil Statutes* [Vernon]), as applicable.
- C. Trade Contractors and Subcontractors: The Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of necessary major elements of the work other than the minor work that may be included in general conditions. The Construction Manager may seek to perform portions of the work itself if the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if UNTS determines that the Construction Manager's bid proposal provides the best value for the institution. UNTS determination in such matters is final.
- D. Receipt of Bids or Proposals: The Construction Manager and UNTS shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, engineer, architect or Owner. All bids and proposals shall be made public within seven (7) days after the date of final selection of bids or after the award of the contract, whichever is later.
- E. Acceptance of Recommendations for Trade Contractors and Subcontractors: If the Construction Manager reviews, evaluates, and recommends to UNTS a bid or proposal from a trade contractor or subcontractor, but UNTS requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, UNTS shall compensate the Construction Manager by a change in cost, time, or guaranteed maximum cost for any additional cost and risk, which has been demonstrated to UNTS's satisfaction and as required by the Contract, that the Construction Manager may incur.

- F. Schedule, Scope, Budget: Detailed information about schedule, scope and budget, are contained in section 2.12 and herein below.
- G. Purchasing and Payment Services of the University of North Texas may respond on behalf of the University of North Texas System.

1.3 **Objective**

To complete the preconstruction services and if UNTS so elects, to complete the construction project, in accordance with the projected schedule provided in Section 2.12 or as otherwise agreed to by the UNTS.

SECTION 2 NOTICE TO RESPONDENTS

- 2.1 UNTS is accepting sealed proposals from respondents for a construction management-at-risk contract, pursuant to Sec. 51.782, *Texas Education Code*, using the one-step process in accordance with the terms, conditions and requirements set forth in this Request for Proposals (“RFP”). This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by UNTS.

RESPONDENTS ARE CAUTIONED TO READ THE INFORMATION CONTAINED OR REFERRED TO IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

2.2 Submittal Deadline

UNTS will accept proposals until 2:00 pm on the proposal date indicated in Section 2.12, to be received at:

University of North Texas
Purchasing and Payment Services
University Services Building
2310 N I35E
Denton, TX 76205

Please be advised the above-referenced address receives overnight or hand delivery only and does not receive US Postal Mail.

2.3 University of North Texas System Contacts

Any questions or concerns regarding this Request for Proposals shall be directed to:

Jason Bodine
University of North Texas
Purchasing and Payment Services
Telephone: 940-565-3200 FAX: 940-369-7852

Please submit solicitation questions to: [Solicitation Questions](#) located at <http://pps.unt.edu> Bids Listing Page.

NOTICE: The University will be closed from December 24, 2008, through January 4, 2009. All questions submitted during the University closure will be answered and posted by January 6, 2009, on or before 3:00 pm.

2.4 Type of Contract

After proposals are received in response hereto, and notice of intent to award a contract is made, the successful Respondent will be required to enter into a contract in the form of UNTS's standard Construction Manager-at-Risk Agreement. The Construction Manager must include proposed exceptions, exclusions and/or additions to the contract with their response to this proposal. Significant requested changes or modifications to the standard contract may affect the

Owner's decision to consider the Respondent's submittal (this will not be part of the 50 page response). A copy of the contract is contained in Exhibit D.

2.5 **Inquiries and Interpretations**

Responses to inquiries which directly affect an interpretation or changes to this RFP will be issued electronically by addendum (amendment) and posted at pps.unt.edu and <http://esbd.cpa.state.tx.us/>. All such addenda issued by UNTS prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall be required to consider and acknowledge receipt of such in his proposal. Firms receiving this RFP other than directly from UNTS are responsible for notifying UNTS that they are in receipt of a proposal package and are to provide a name and address in the event an amendment is issued. Inquiries will be accepted by UNTS up to five business days before the submission is due.

Only those inquiries UNTS replies to which are made by formal written addenda shall be binding. Oral and other interpretations or clarification will be without legal effect. The Respondent must acknowledge all addenda in Section 7.4 of this RFP.

NOTICE: The University will be closed from December 24, 2008, through January 4, 2009. All questions submitted during the University closure will be answered and posted by January 6, 2009, on or before 3:00 pm.

2.6 **Contract Award Process**

An award for construction management services specified herein will be made following an evaluation utilizing the criteria in Section 2.7 based on best value. Proposals will be opened publicly to identify the names of the Respondents who submitted proposals and pricing. Other contents of the proposals will be afforded security sufficient to preclude disclosure of the contents of the proposal prior to award. Within 21 days after the date of opening the proposals, UNTS will evaluate and rank each proposal with respect to the selection criteria contained herein. UNTS shall select the respondent that submits the proposal that offers the best value for the institution based on the selection criteria set forth in Section 2.7 and on the ranking evaluation. UNTS shall first attempt to negotiate a contract with the selected respondent. If UNTS is unable to negotiate a satisfactory contract with the selected respondent, UNTS shall formally and in writing, end negotiations with that respondent and proceed to negotiate with the next respondent in the order of the selection ranking until a contract is reached or negotiations with all ranked respondents end. UNTS may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. UNTS reserves the right to reject any and all proposals if deemed to be in the best interests of UNTS, and to re-solicit for proposals, and to temporarily or permanently abandon the procurement.

2.7 **Criteria for Award**

UNTS shall select the respondent that submits the proposal that offers the best value for the institution based on the selection criteria below and on the ranking evaluation.

Responses will be evaluated. The criteria for evaluation of proposals and selection of the qualified respondent(s) will be based on the factors listed (in no order of importance) below:

- A. Respondent's comments regarding exceptions, exclusions or additions to the UNTS Standard CMAR Agreement.
- B. Respondent's proposed fees set forth in Section 7.1.
- C. Respondent and proposed team's experience and capability to perform preconstruction services and construction management services for the project.
- D. Respondent's project execution plan, schedule, and technical competence as a Construction Manager.
- E. Respondent's utilization of project scheduling throughout the design and construction phases.
- F. Respondent's utilization of a project cost control plan, in construction management, which will assure the Owner's construction budget shall not be exceeded.
- G. Respondent's capability to perform and maintain quality control during the entire project duration.
- H. Respondent's job site safety program and record.
- I. Respondent's HUB Subcontracting policies and approach.
- J. Respondent's capability to construct, at a minimum, a building that achieves Leadership in Energy and Environmental Design (LEED) Silver Certification as recognized by the US Green building Council (USGBC).

2.8 **Respondent's Acceptance of Evaluation Methodology**

Submission of proposals indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective judgments must be made by UNTS during the determination of ranking order and award.

2.9 **Commitment**

The Respondent understands that funds are available for the pre-construction work to be performed as a result of this RFP. An increase in the current Tuition Revenue Bond authorization is being requested to fully fund the construction of this project. Construction shall not be authorized until funds are approved; other necessary approvals as required by State law are authorized; the GMP is negotiated as required hereunder and the Owner has issued a notice to proceed.

2.10 **Historically Underutilized Business (HUB)**

If Owner elects to award the future Construction Phase Services to the Construction Manager, the Guaranteed Maximum Price (GMP) for the proposed contract resulting from the extension of this Contract is expected to exceed \$100,000.00. Therefore, a Good Faith Effort Program in the form of a HUB Subcontracting Plan, (HSP) is a mandatory condition precedent to the award of any such extension of the contract. The HUB Subcontracting Plan will become Exhibit A of the Construction Manager-at-Risk Agreement and need not be submitted until such time as the GMP is submitted for review and acceptance by Owner. Refer to Exhibit A herein for HSP Forms.

FAILURE TO MEET HUB REQUIREMENTS MAY RESULT IN THE TERMINATION OF THE CONTRACT.

2.11 Pre-Proposal Meeting:

A pre-proposal meeting will be conducted to answer any questions regarding the scope of the project and the submission of the HUB Subcontracting Plan. Attendance is not mandatory but highly recommended. The pre-proposal meeting will be held:

**December 19, 2008 2:00 PM
University of North Texas Dallas Campus
7300 Houston School Road – Room 262
Dallas, TX**

2.12 Proposed Project Key Events Schedule

NOTICE: The University will be closed from December 24, 2008, through January 4, 2009. All questions submitted during the University closure will be answered and posted by January 6, 2009, on or before 3:00 pm

12/19/08	2:00 PM	Pre-proposal Meeting
01/13/09	2:00 PM	Receive CM at Risk Proposals
01/13/09	3:00 PM	Public Opening
01/20/09		Issuing request for Interviews to Short-listed Firms
01/28/09		Anticipated CM Interviews
02/12/09		Anticipated Formal Contract Award Notification
(TBD) – Owner/CM		CM Pre-Construction Services Agreement Authorized
06/01/09		GMP from CM
07/01/09		Anticipated Notice to Proceed
07/15/09		Anticipated Construction Start
07/15/10		Substantial Completion
08/15/10		100% Construction Complete/Final Inspection

Public Opening will occur on January 13, 2009, at 3:00 PM CST. The opening will be held at the University of North Texas, University Services Building, PPS Conference Room located at 2310 N. I-35E, Denton, Texas 76205.

2.13 Eligible Respondents

Only individual firms or formal joint ventures may apply. Two firms may not apply jointly unless they have formed a joint venture. Any associates will be disqualified. (This does not preclude an applicant from having consultants.)

SECTION 3 PROPOSAL REQUIREMENTS

3.1 General Instructions

- A. Respondents should carefully read the information contained herein, and submit a complete response to all requirements and questions as directed.
- B. Proposals and any other information submitted by Respondents in response to this RFP shall become the property of UNTS.
- C. UNTS will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for proposal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit qualifications and proposals at their own risk and expense.
- D. Submittals which are qualified with conditional clauses, or alterations, or items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by UNTS, at its option.
- E. Each proposal should be prepared simply and economically, providing a straightforward, concise description of your firm's ability to meet the requirements of this RFP with a limitation of 50 pages. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of UNTS' needs.
- F. UNTS makes no guarantee that an award will be made as a result of this RFP, and reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP or contract when deemed to be in UNTS' best interest. Representations made within any subsequent proposal will be binding on a responding firm. UNTS will not be bound to act by any previous communication or proposal submitted by the firms other than this RFP.
- G. Failure to comply with the requirements contained in this RFP will result in a finding that the respondent is not qualified to submit a proposal in response to this RFP and therefore considered ineligible.

3.2 Preparation and Proposal Instructions

- A. Respondents must complete, sign and return the attached Execution of Offer, Section 6, as part of their qualifications proposal response. Proposals must be signed by Respondent's company official(s) authorized to commit such proposals. Failure to sign and return these forms will subject your proposal to disqualification.
- B. Responses to this RFP should consist of answers to required questions in Section 8 Respondent Questionnaire. It is not necessary to repeat the question in your response; however, it is essential that you reference the question number with your corresponding response. In cases where a question does not apply or if unable to respond, reference the question number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.

C. Page Size, Binders and Dividers

Proposals must be on letter-size (8-1/2" X 11") paper. UNTS requires that proposals be submitted in a binder with no fold-out sheets. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections should be divided by tabs for ease of reference. Number each side of each page consecutively, including letter of interest, brochures, licenses, resumes, supplemental information, etc. Proposals must be limited to 50 pages including brochures and all other documents. Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Provide the number of copies of the proposal specified herein. Any submittals exceeding the 50 page limit will be disqualified.

D. Table of Contents

Include with the proposal a Table of Contents that includes page number references. The Table of Contents should be in sufficient detail to facilitate easy reference of the sections of the proposal as well as separate attachments (which should be included in the main Table of Contents). Supplemental information and attachments included by your firm (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section.

E. Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately. Divider tabs do not require numbering.

F. Submission

1. Please submit one (1) bound original, ten (10) bound copies plus two (2) unbound copies. An original signature must appear on the Execution of Offer (ref. Section 6) on at least one (1) of the submittals. A copy of the entire response shall also be submitted on a CD, including any supplemental printed material referenced with the RFP.

All documents must be submitted and delivered on or before the time and date specified, pursuant to the Notice to Respondents (ref. Subsection 2.2) and delivered to the address below:

University of North Texas
Purchasing and Payment Services
University Services Building
2310 N I35E
Denton, TX, 76205

NOTE: Show the Request for Proposal name and submittal date in the lower left hand corner of your sealed proposal envelope (box/container).

2. The materials submitted must be enclosed in a sealed envelope, box, or container; the package must show clearly the proposal deadline; the RFP name must be clearly visible; and name and the return address of the Respondent must be clearly visible.

3. All late proposals will not be publicly opened, nor returned to Respondent(s), but will be appropriately destroyed. Late proposals will not be considered under any circumstances.
4. Telephone proposals are not acceptable.
5. Facsimile ("FAX") or emailed proposals are not acceptable.

3.3 **Bonding**

Attach a letter of intent from a surety company indicating the applicant's bond ability for this project. The surety shall acknowledge that the firm may be bonded for the project, with an estimated construction cost of \$32,200,000.00. Bonding requirements are set forth in section 4.4E of this RFP.

3.4 **Pricing**

Respondent must complete Pricing and Delivery particulars, Section 7.

- A. Pricing reflects the full Scope of Work defined herein; inclusive of all associated cost for delivery, labor, insurance, taxes, overhead and profit, or as otherwise defined, as appropriate.
- B. UNTS will not recognize or accept any charges or fees to perform this work that are not specifically stated in the Respondent's proposal.

3.5 **Submittal Checklist**

Firms are instructed to complete, sign and return the following documents as a part of their proposal submittal. Failure to return these documents may subject your proposal to disqualification.

Bonding letter (ref. Section 3.3)
Signed and Completed Execution of Offer (ref. Section 6)
Pricing and Delivery Schedule (ref. Section 7)
Responses to Respondent's Questionnaire (ref. Section 8)

SECTION 4

GENERAL TERMS AND CONDITIONS

4.1 Compliance with Law

Contractor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991, all other laws and regulations and executive orders as are applicable.

4.2 Right to Audit

At any time during the term of any Contract resulting from this solicitation and for a period of four (4) years thereafter UNTS or a duly authorized audit representative of UNTS, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided under this Contract. In the event such an audit by UNTS reveals any errors/overpayments by UNTS, Contractor shall refund UNTS the full amount of such overpayments within thirty (30) days of such audit findings, or UNTS, at its option, reserves the right to deduct such amounts owing UNTS from any payments due Contractor.

4.3 Access to Documents

To the extent applicable to this procurement, in accordance with Public Law 99-499 under TEFRA, Contractor agrees to allow, during and for a period of not less than four (4) years after the Contract term, access to this Contract and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

4.4 Insurance and Bonds

A. For any Contract resulting from this procurement which requires the Contractor to provide on-site services, the Contractor shall, prior to commencement of work, provide UNTS with Certificates of Insurance in the amounts required by the General and Supplemental Conditions, and shall maintain such coverage in effect for the full duration of the Contract, unless such Contract specifies different coverage or amounts.

B. Construction Manager shall deliver to UNTS:

1. Certificates evidencing the existence of all such insurance promptly after the execution and delivery hereof and prior to the continued or additional performance of any services to be performed by Contractor hereunder from or after the date of any agreement or purchase order; and

2. Replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Contractor fails to pay any of the renewal premiums for the expiring policies, UNTS shall have the right to make such payments and offset the amount thereof against the next payment coming due to Contractor under any purchase order or agreement; and
3. Such Certificates shall name UNTS and the University of North Texas ("UNT") and the University of North Texas Dallas Campus as Additional Insured, with the exception of Workers' Compensation and Employer's Liability, and shall provide that the policies will not be canceled until after thirty (30) days' unconditional, unqualified written notice to UNTS, giving UNTS the right to pay the Premium to maintain coverage.

C. The insurance policies specified herein shall be kept in force for the periods specified below:

1. Commercial General Liability Insurance, Auto Liability, Builder's Risk and Owner's and Contractor's Protective Liability shall be kept in force until receipt of final payment by the Contractor.
2. Workers' Compensation Insurance shall be kept in force until the Contractor's obligations have been fully performed, including warranty work.

D. Contractor shall provide UNTS a full and complete copy of any insurance policy promptly upon request by UNTS, and without charge to UNTS.

E. Bonding

1. Respondent shall provide evidence satisfactory to Owner of bonding capacity in the total estimated maximum amount of the Construction Manager's contract along with Respondent's response to this Request for Proposal.
2. Since the total contract price is expected to exceed \$25,000, the Construction Manager shall execute in accordance with the provisions of Chapter 2253, Texas Government Code, a Payment Bond (Refer to Exhibit C) in the amount of the contract.
3. Since the total contract price is expected to exceed \$100,000, the Construction Manager shall execute in accordance with the provisions of said Chapter 2253, Texas Government Code, a Performance Bond (Refer to Exhibit B) in the amount of the total contract price conditioned upon the faithful performance of the contract, solely for the protection of the University of North Texas System.
4. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, and on the Owner's form (Exhibits B & C). If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety of a bond loses its authority to do business in the

State, the Construction Manager shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.

5. Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
6. Each bond with a penal sum in excess of \$100,000 shall be executed by a corporate surety or sureties listed on the then-current version of U.S. Treasury Department circular 570 and which hold a certificate of authority from the U.S. Secretary of the Treasury as a surety, or obtain reinsurance from a reinsurer authorized as a reinsurer in Texas and which is listed on the then-current U.S. Treasury Department circular 570 and holds a certificate of authority from the U.S. Secretary of the Treasury as a surety or reinsurer.

4.5 Other Benefits

It is understood and agreed that no benefits, payments or considerations received by Construction Manager for the performance of services associated with and pertinent to the resultant Contract shall accrue, directly, or indirectly, to any employees, elected or appointed officers or representatives, or any other person identified as agents of, or who are, by definition, an employee of the State.

4.6 Non-Disclosure

Construction Manager and UNTS acknowledge that they or their employees may, in the performance of the resultant Contract, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with Construction Manager or UNTS, unless (i) required by law, (ii) by order of any court or tribunal, (iii) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other part hereto, or (iv) such information has been acquired from other sources.

4.7 Publicity

Construction Manager agrees that it shall not publicize this potential Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of UNTS employees or use UNTS' name in connection with any sales promotion or publicity event without prior written approval by UNTS Administration.

4.8 Assignment

The potential agreement with Construction Manager resulting from this RFP is a personal service contract for the services of Construction Manager, and Construction Manager's interest in such agreement, duties thereunder and/or fees due thereunder may not be assigned or delegated to a third party without Owner's written consent. The benefits and burdens of such agreement are, however, assignable by UNTS.

4.9 Assignment of Overcharge Claims

Construction Manager hereby assigns to UNTS any and all claims for overcharges associated with the Contract arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973), or arising under the antitrust laws of the State of Texas, Texas Business and Commerce Code Annotated, Sec. 15.01, et seq. (1967).

4.10 Patent and Copyright

Construction Manager shall pay for any royalties, license fees, copyrights or trade and service marks required to perform the services required by any resulting Contract.

4.11 Texas Public Information Act

UNTS considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after a contract is awarded.

Respondents are hereby notified that UNTS strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General regarding the disclosure of RFP information.

4.12 Freedom of Access and Use of Facilities

Construction Manager's employees shall have reasonable and free access to use only those facilities of UNT that are necessary to perform services under a resulting Contract and shall have no right of access to any other facilities of UNT.

4.13 Observance of University Rules and Regulations

Construction Manager agrees that at all times its employees will observe and comply with all regulations of the facilities, including but not limited to, no smoking, and parking and security regulations.

4.14 Section Headings

All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this RFP.

4.15 Governing Law

This RFP, and any resulting Contract, agreement or purchase order, shall be construed and governed by the laws of the State of Texas.

4.16 Owner's Special Conditions

The Owner requires full compliance with Division 1 Specifications, Contract and General Requirements. The UNTS Uniform General Conditions and Supplementary General Conditions, 2005 Amended shall be a part of this RFP and the Contract.

4.17 Prevailing Wage Schedule, University of North Texas System

Prevailing wage schedule shall be in accordance with Texas Government Code, Chapter 2258. The hourly wage rate for work over 40 hours a week and work on legal holidays shall be not less than one and one-half (1.5) times the hourly rates.

Bidders shall base their bids on rates they expect to pay. The Owner will not consider claims for extra payment to the Construction Manager on account of payment of wages higher than those required by Texas Government Code, Chapter 2258.

4.18 Performance Bond

(Forms included as Exhibit B to this RFP is provided for information only. Submit with the GMP.)

4.19 Payment Bond

(Forms included as Exhibit C to this RFP is provided for information only. Submit with the GMP.)

4.20 Project Scope

The work included under this project consists of pre-construction services during the Design stage of the University of North Texas Dallas Campus Building 2. Upon completion of that phase of the work, Owner may elect to extend the contract to include construction phase services for the facility using a Construction Manager-at-Risk construction delivery technique. Such Construction Phase work will include: furnishing all labor, materials, tools, equipment, services, and supervision for the construction of the new facility.

As currently planned, the new University of North Texas Dallas Campus Building 2 is proposed to be approximately 100,000 gross square feet and include classrooms, science classroom laboratories, support offices, food services, and a library. It will be located at -7300 Houston School Road in Dallas, Texas.

The total construction budget is estimated at \$32,200,000.

4.21 UNTS Uniform General Conditions and Supplementary General Conditions 2005 Amended

A copy of the UNTS Uniform General Conditions and Supplementary General Conditions, 2005 Amended is available upon request from:

Carrie Stoeckert
University of North Texas
Purchasing and Payment Services
Telephone: 940/565-3203 FAX: 940/369-7852
Email: carrie.stoeckert@unt.edu

SECTION 5 SPECIFICATONS

5.1 General

The University of North Texas System requests proposals from qualified and experienced firms for Building 2 at the University of North Texas Dallas Campus meeting the minimum specifications contained in this section.

5.2 Project Description

The work included this project consists of pre-construction services during the Design stage for Building 2 at the University of North Texas Dallas Campus. Upon completion of that phase of the work, Owner may elect to extend the contract to include construction phase services for the facility using a Construction Manager-at-Risk construction delivery technique. Such work will include furnishing all labor, materials, tools, equipment, services, and supervision for the construction of a new facility.

5.3 Delivery

Time is of the essence in the performance of the Construction Manager's duties. Failure of the Construction Manager to notify UNTS sufficiently in advance of inability to complete the project within the delivery schedule shall grant UNTS the option of canceling the Contract, purchasing from the best available source, and charging the Construction Manager the difference between the Contract price and actual purchases, if any, plus cost of handling. Notwithstanding the foregoing, UNTS shall have no obligation to accept late performance or to waive timely performance by Construction Manager.

5.4 Miscellaneous Provisions

Construction Manager shall maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Contract. No changes to the proposed team including consultants and key members of the Construction Manager-at-Risk firm or the responsibilities of team members may be made without written consent of UNTS. Construction Manager shall assign to UNTS a designated representative who will be responsible for the coordination and administration of UNTS's requirements.

UNTS shall contract for and provide independently of the construction manager the inspection services, the testing of construction materials engineering, and verification testing services necessary for acceptance of the facility by UNTS.

5.5 Liquidated Damages

Liquidated damages will be in accordance with the UNTS Uniform General Conditions and Supplementary General Conditions, 2005 Amended and as set forth in Section 13.01 of the Agreement attached as Exhibit D.

SECTION 6 EXECUTION OF OFFER

THIS SECTION MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S PROPOSAL. FAILURE TO SIGN AND RETURN THIS SECTION WILL RESULT IN DISQUALIFICATION OF YOUR FIRM.

1. By signature hereon, Respondent offers and agrees to furnish the products and/or services in compliance with all terms, conditions, requirements set forth per the RFP documents and contained herein.
2. By signature hereon, Respondent affirms that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted proposal. Failure to sign hereon, or signing with a false statement, shall void the submitted proposal or any resulting contracts, and the Respondent shall be removed from all proposal lists of the Owner.
3. By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporation is exempt from the payment of such taxes, or that the corporation is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. A false certification shall be deemed a material breach of contract and, at UNTS' option, may result in cancellation of any resulting contract or purchase order.
4. By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
5. By signature hereon, Respondent certifies that all statements and information prepared and submitted in response to this solicitation are current, complete and accurate.
6. By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this proposal
7. By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in Texas Administrative Code (TAC) Title 34. In the case of a tie, the award will be made in accordance with TAC, Title 34. Check below preference claimed under TAC, Title 34:
 - ☐ Supplies, materials, or equipment produced in Texas/offered by Texas bidders
 - ☐ Agricultural products produced or grown in Texas
 - ☐ Agricultural products and services offered by Texas bidders
 - ☐ USA produced supplies, materials, or equipment
 - ☐ Products of persons with mental or physical disabilities

- ☐ Recycled, remanufactured, or environmentally sensitive products, including recycled steel products
- ☐ Energy efficient products
- ☐ Rubberized asphalt paving material
- ☐ Recycled motor oil and lubricants
- ☐ Products produced at facilities located on formally contaminated property
- ☐ Products and services from economically depressed or blighted areas
- ☐ Vendors that meet or exceed air quality standards

8. By signature hereon, Respondent certifies it is a small business and/or minority/female owned business as defined by the State of Texas. Check status below:

- () Historically Underutilized Business
- () Small Business (House Bill 366, 64th Legislature)
- () Minority/Female Owned Business (House Bill 2626, 73rd Legislature)
- () Certified by Texas Department of Commerce
- () Status not claimed

9. By signature hereon, Respondent certifies as follows:

“Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

“Under Section 2155.004, *Texas Government Code*, the vendor or applicant certifies that the individual or business entity names in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

10. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of the University of North Texas System or its component, or Respondent has not been an employee of any University of North Texas System component within the immediate twelve (12) months prior to your RFP response. All such disclosures will be subject to administrative review and approval prior to UNTS entering into any contract with Respondent.
11. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004, Texas Government Code).
12. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
13. By signature hereon, Respondent signifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

Complete the following:

VIN No. _____

FEI No. _____

If a Corporation

State of Incorporation: _____

Charter No: _____

Submitted By:

(Company Name)

(Authorized Signature)

(Printed Name/Title)

(Date)

(Street Address)

(City, State, Zip Code)

(Telephone Number)

(Facsimile Number)

SECTION 7
PRICING, SCHEDULING AND PROPOSAL PARTICULARS

Proposal of: _____
(Company Name)

To: Associate Vice Chancellor for System Facilities
University of North Texas System
2204 West Prairie Street
Denton TX 76201

Ref: University of North Texas Dallas Campus Building 2

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the construction management-at-risk services as required pursuant to the aforementioned documents at the below quoted terms.

7.1 Pricing Schedule

A lump sum not to exceed amount for preconstruction phase services fee:

A percentage of construction cost amount, which will be converted to a "not to exceed" construction phase services fee:

A "not to exceed" fee not to exceed amount for General Conditions associated with the construction of this project:

7.2 Delivery Schedule

Respondent, having carefully examined the Owner's delivery schedule as described in Sections 2.12 and 5.3 herein, agrees to furnish the Construction Management services based on the aforementioned delivery schedule. Any proposed revision or modification to the delivery schedule, or listed deliverables are as listed below:

7.3 **Payment Terms**

UNTS shall be billed in accordance with Chapter 2251 of the Texas Government Code and payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to Customer; and (c) interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas—Payment Services; System Facilities Planning and Construction; 1155 Union Circle #311040; Denton, Texas 76203-5017.

- A. Payment on any contract will be withheld from Respondent if Respondent is determined to be more than 30 days delinquent for Child Support.
- B. Successful respondent shall be responsible for referencing the purchase order number(s) resulting from this proposal on any invoice(s) packing list(s), correspondence etc. Invoicing must coincide to prices quoted either on a unit, hourly, etc. basis.
- C. **DISQUALIFICATION:** Response is subject to disqualification if respondent provides revisions and/or exclusions to the terms and conditions listed in this solicitation that the University is limited by law from accepting (i.e. offers with the laws of a State other than Texas), requirements for prepayment not defined in or allowed for in this RFP, limitations on remedies, any revision to stated terms and conditions of RFP, etc.

7.4 **Addenda Checklist**

Receipt is hereby acknowledged of the following addenda to this RFP. (initial if applicable)

No. 1 _____	No. 2 _____	No. 3 _____	No. 4 _____
Dated:_____	Dated:_____	Dated:_____	Dated:_____

Respectfully submitted,

By: _____
Authorized Signature)

Date: _____

SECTION 8 RESPONDENT QUESTIONNAIRE

Respondents are required to submit a complete response to each of the items listed below. Responses requiring additional space should be brief, keeping in mind that these responses are included in the 50-page limit cited in Section 3.1.E. These responses are to be submitted as an attachment to your proposal package. Please reference each response by its item number indicated below.

- **CRITERION: Respondent and proposed teams' experience and capability to perform the pre-construction services and construction management services for this project:**

1. Describe the pre-construction and construction phase services to be provided by your firm for this type of project. Specifically discuss what services are included in the pre-construction phase fee.
2. Describe your management plan for performing the work required of this project and include your program for managing subcontractors and material providers.
3. Describe your method of subcontractor contract award process including review/approval by Owner.
4. Describe your cost estimating and price verification procedure.
5. List separately all key personnel to be employed on site and those to be employed in home office for this project. Include resumes for the entire proposed pre-construction and construction team including relevant experience on similar project.
6. Describe your plan for partnering and team building at all levels for this project.
7. Describe how you propose to interface with the design team and influence the design process.
8. Describe your approach to value engineering, identifying constructability issues, costing options, and cost projections.
9. Describe your firm's start-up and commissioning (closeout) procedures for this project.
10. Describe the types of regular monthly reporting you propose to provide for this project to the project team.

- **CRITERION: Respondent's project execution plan, schedule, and technical competence as a Construction Manager:**

11. Provide an organizational chart showing the Project Team and their specific duties.
12. Describe your project execution plan and schedule for this project.
13. Describe the types of records, reports, monitoring systems, and information management systems, which your firm will utilize on this project.

14. Describe your plan for assuring that the project design meets the Owner's contract requirements.
15. Describe your procedures and objectives for reviewing the design and construction documents and providing feedback to the A/E and Owner.
16. Describe your method of assuring that materials, equipment, and construction methods meet the Owner's design requirements.
17. Describe your constructability methodology for this project and how you would implement it.
18. Comment on the quality/schedule/cost criteria established in this RFP and recommend any improvements and identify any concerns.
19. Describe your firm's procedures for implementing the industry's "best practices" as defined by the Construction Industry Institute and similar organizations;
 - a. Establishing project objectives;
 - b. Project scope definitions, such as the Project Definitions Rating Index (PDRI) in assisting the Owner to obtain complete and accurate construction documents from the A/E;
 - c. Partnering;
 - d. Change (order) management system;
 - e. Total quality management for each phase, including close-out and commissioning;
 - f. Dispute Resolution among Owner, Construction Manager, and subcontractor, or suppliers; and
 - g. Any others not listed.
20. List the volume of work your firm has completed over the last 5 years. Also attach an audited Financial Statement, including a profit and loss statement and other supporting schedules. If the last audited statement is over 12 months old, include the most current unaudited statement.

• **CRITERION: Respondent's utilization of project scheduling throughout the design and construction phases.**

21. Describe in detail the project scheduling system, or methodology you propose to use on this project. Describe any phased construction you anticipate.
22. Identify all process steps, phases, milestones, approvals, and project meetings you commonly anticipate.

23. Describe your execution plan for meeting or shortening the Owner's schedule:
 - a. During design; and
 - b. During construction.
24. Describe your ability to provide a scheduling system and proposed software.
- **CRITERION: Respondent's utilization of a project cost control plan, in construction management, which will assure that the Owner's construction budget shall not be exceeded.**
 25. Describe your cost control methods and what procedures you will utilize to maintain the GMP within the Owner's construction budget for this project.
 26. Describe your project financial plan and the projected monthly cash flow (draw-down) during the design and construction phases.
 27. Describe your cost control method for confirmation of subcontractor pricing with Owner.
 28. Describe your firm's plans for cost reporting and tracking and change order management systems.
 29. Describe the contingencies you would propose to be contained within the GMP and during what phase.
 30. Describe your payment plan to the subcontractors and material suppliers.
 31. Describe your cost estimating system using CSI format.
- **CRITERION: Respondent's capability to perform a quality control process during the entire project duration.**
 32. Describe your firm's quality control program for each phase of this project in detail.
 33. Describe your quality control objectives for this project.
 34. Identify the quality control team for this project and their duties.
 35. Describe how you will affect the quality control of the project during Pre Construction Services including the design phase and construction documents phase.
 36. Describe how you propose to control the quality of construction performed by your subcontractors on this project.
- **CRITERION: Respondent's job site safety program.**
 37. Describe your job site safety program plan for this project and specific safety policies in which employees must be in compliance.
 38. Identify the safety team, and their duties for this project.

39. List your EMR rating for the past 3 years.

- **CRITERION: HUB Subcontracting Policies Approach**

40. Describe your approach to maximizing opportunities for HUB participation on this project at the Construction Manager, Subcontractor, Sub-subcontractor, Supplier and Materialman levels. In addition, describe your knowledge of unique or innovative programs designed to maximize opportunities for HUB participation.

41. Describe your commitment to implementing the UNTS' HUB initiatives throughout the preconstruction and construction phases of the project .

42. Describe any contractor insurance program, including an Contractor Controlled Insurance Program, and how it is utilized to assist small and HUB firms.

- **CRITERION: Respondent's capacity to construct, at a minimum, a USGBC's LEED certified Silver Building**

The owner desires to construct the building with a minimum USGBC LEED "Silver" certification level. Describe your approach, experiences, and methodology for assisting the Owner and Design Team in achieving this goal. Identify proposed personnel and their previous experience on LEED certified projects.

Exhibit A

HUB Subcontracting Plan Form



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 34 TAC §20.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Solicitation #: _____

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 34 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portion(s) of the contract.
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☐ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.
(If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1) -	(#11) -
(#2) -	(#12) -
(#3) -	(#13) -
(#4) -	(#14) -
(#5) -	(#15) -
(#6) -	(#16) -
(#7) -	(#17) -
(#8) -	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

*If you have more than twenty subcontracting opportunities, a continuation page is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage1.doc>

Enter your company's name here: _____ Solicitation #: _____

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage2.doc>.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # _____ Description: _____

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☐ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☐ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	☐ - Yes ☐ - No
_____	_____	____/____/____	☐ - Yes ☐ - No
_____	_____	____/____/____	☐ - Yes ☐ - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	%	\$	☐ - Yes ☐ - No*
_____	_____	%	\$	☐ - Yes ☐ - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

- ☐ - **Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.
- ☐ - **No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

SECTION 10 - AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

Signature

Printed Name

Title

Date

Exhibit B

PERFORMANCE BOND

Surety Bond No.

STATE OF TEXAS
COUNTY OF

§
§

LET IT BE KNOWN BY THIS INSTRUMENT: That we, _____, as Principal, and _____ a corporation duly authorized to do business in the State of Texas, as Surety, are hereby held and firmly bound unto the University of North Texas System, as Obligee, in the sum of _____ Dollars (\$_____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, by the terms and conditions herein.

The conditions of this obligation are such that whereas the Principal entered into a certain contract with the Obligee, as an entity of the State of Texas, dated the ____ day of _____, 200_ (“Contract”), which is hereto attached and made a part hereof for all purposes, for the purpose of _____.

NOW THEREFORE, the condition of this obligation is such that this Performance Bond shall remain in full force and effect unless and until the Principal has faithfully performed the Contract in accordance with the Plans, Specifications and Contract documents. Further, under the terms of this Performance Bond, Principal shall fully indemnify and save harmless the Obligee from all cost and damage which the Obligee may suffer by reason of Principal’s default or failure to perform and shall fully reimburse and repay the Obligee all outlay and expense which the Obligee may incur in making good any such default.

In the event that the Principal’s failure as defined by the Contract Documents, to faithfully perform the Contract, Surety will within fifteen (15) days of determination of default, assume full responsibility for completion of said Contract and become entitled to payment of the balance of the Contract amount. Conditioned upon the Surety’s faithful performance of its obligations, the liability of the Surety for the Principal’s default shall not exceed the penalty of this Bond.

The Surety agrees to pay to the Obligee upon demand all loss and expense, including attorney’s fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Principal or the Surety.

Provided further, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the said Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the said Contract or to the work or to the Specifications.

Provided further, that if any legal action be filed upon this Bond, venue shall lie in Denton County, Texas.

The liabilities, rights, limitations and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, pursuant to which this Bond is executed.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____ day of _____ in the year 200__, the name and corporate seal of each corporate party being hereto affixed, and these present duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Principal

ATTEST:

By: _____

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety

ATTEST:

By: _____

(Typed Name and Title)

(Typed Name and Title)

Surety's Texas Local Recording
Agent or Resident Agent:

Surety's Home Office Agent or
Servicing Agent:

(Signature)

Name: _____

(Typed Name)

Title: _____

License No. _____

Address: _____

File No. _____

Address: _____

Telephone No. _____

Telephone No. _____

Exhibit C

PAYMENT BOND

Surety Bond No.

STATE OF TEXAS

COUNTY OF

KNOW ALL MEN BY THESE PRESENT: That we, _____, as Principal, and _____, as Surety, are hereby held and firmly bound unto the University of North Texas System, as Obligee, in the sum of _____ Dollars (\$_____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, by the terms and conditions herein.

The conditions of this obligation are such that whereas the Principal entered into a certain contract with the Obligee, as an entity of the State of Texas, dated the ____ day of ___, 200_ ("Contract"), which is hereto attached and made a part hereof for all purposes, for the purpose of _____.

NOW THEREFORE, the condition of this obligation is such that this Payment Bond shall remain in full force and effect unless and until 120 days after Principal has faithfully performed the Contract in accordance with the Contract documents and Principal has executed a copy of the attached Payment Affidavit and provided it to Obligee.

In the event that the Principal fails to promptly pay when due any amount owed to persons who have supplied labor, materials, or supplies used in Principal's performance of the said Contract, the Surety will, upon receipt of notice from the Obligee or a claim in the form required by law, satisfy all undisputed balances due, and make arrangements satisfactory to the interested parties to resolve all amounts disputed in good faith, but in no event shall the liability of the Surety for the Principal's failure to promptly pay for labor, materials, or supplies exceed the amount of this bond.

The Surety agrees to pay to the Obligee upon demand all loss and expense, including attorney's fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Principal or the Surety.

Provided further, that this bond is made and entered into for the protection of all parties supplying labor or materials in the prosecution of the work provided for in the said Contract, and all such parties shall have a direct right of action under this bond as provided in Chapter 2253 of the Texas Government Code. If any legal action is filed upon this bond, venue shall lie in Denton County, Texas.

The liabilities, rights, limitations and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, pursuant to which this bond is executed.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____ day of _____ in the year 200_, the name and seal of each party being hereto affixed, and duly signed by its undersigned representative pursuant to authority of its governing body.

Firm Name:

CONSTRUCTION MANAGER-AT-RISK

By:

(original signature)

(name and title typed)

(Street/P.O. Box)

(City, State, Zip)

(11 Digit Texas Vendor Identification No.)

(Telephone)

Exhibit D

CONSTRUCTION MANAGER-AT-RISK AGREEMENT

CONSTRUCTION MANAGER-AT-RISK AGREEMENT

This Construction Manager-at-Risk Agreement ("Agreement") is entered into effective as of the ____ day of _____, 20__, (the "Effective Date"), by and between UNIVERSITY OF NORTH TEXAS SYSTEM, P O Box 311040, Denton, Texas 76203-1040, hereinafter called "Owner," and _____ hereinafter called "Construction Manager". (also hereinafter referred to as "Party" individually or Parties collectively). Both hereby agree as follows:

ARTICLE I **PROJECT**

1.01 Owner intends to construct University of North Texas Dallas Campus Building 2 (the "Project") for which Owner intends to achieve Substantial Completion, as defined in §1.29 of the University of North Texas System, Uniform General Conditions and Supplementary General Condition 2005 Amended, for all stages of construction to be completed in accordance with the requirements set forth herein. The Contract Time and the date by which Substantial Completion shall be achieved will be established when and if Owner accepts Contract Manager's Guaranteed Maximum Price Amendment (GMP Amendment) Exhibit A and Historically Underutilized Business Plan ("HUB plan") Exhibit B.

ARTICLE II **DEFINITIONS**

2.01 The terms, words and phrases used in this Agreement and throughout the Contract Documents shall have definitions given in the University of North Texas System, Uniform General Conditions and Supplementary General Conditions 2005 Amended, hereby incorporated by reference for all purposes ("UNTS UGC/SGC").

2.02 Certain definitions:

(a) **CONTRACT DOCUMENTS**: The Contract Documents consist of this Agreement and all exhibits attached hereto as well as all other documents included in the definition of "Contract Documents" provided in the UNTS UGC/SGC. The Contract Documents form the entire and integrated Contract between Owner and Construction Manager and contain all of the promises, agreements, conditions, representations and understandings between Owner and Construction Manager in respect to the Project. All prior promises, agreements, conditions, representations and understandings, whether written or oral, express or implied, between the Owner and Construction Manager are superseded by those set forth in the Contract Documents. "Construction Manager" shall be substituted for "Contractor" or "General Contractor" in UNTS UGC/SGC. Construction Manager shall perform all of its services and construct

the Work (as defined below) pursuant to the entire Contract. Duties and obligations of Construction Manager, which are described in this Agreement, may be expanded or further defined by additional provisions of the other Contract Documents.

(b) CONSTRUCTION COST LIMITATION: The cost limit for construction which must not be exceeded as a result of the design of the Design Consultant and which may be stipulated in a contract with a Design Consultant.

(c) CONSTRUCTION PHASE: The implementation and execution of the construction work required by the Contract Documents. The construction of the Project may be divided into different stages each with different dates for implementation and completion (referred to as a "Stage").

(d) DESIGN CONSULTANT: Licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent consultants for design of all or a portion of the Project and to prepare drawings and specifications for the construction of the Project (the "Drawings and Specifications"). More than one such professional or firm may be employed by Owner. (All such professionals or firms, regardless of number, may be referred to in the singular herein.)

(e) GENERAL CONDITIONS WORK: As defined in *Texas Education Code* subsection 51.776(7), as amended.

(f) HUB GOALS: The Historically Underutilized Business ("HUB") goals set forth in Exhibit B and incorporated herein by reference and the plan to implement such goals, as currently stated or as updated.

(g) PRECONSTRUCTION PHASE: The programming, schematic design, design development, construction documents and bidding phases.

(h) PRELIMINARY PROJECT COST ("PPC"): The total estimated cost of all project development, including design, construction, and other associated costs, which are, established prior to the commencement of design.

(i) PROJECT CONSTRUCTION BUDGET ("PCB"): The budget established for the site preparation and construction of all the Project improvements and facilities relating to and being a part of the Project, which includes the Construction Cost Limitation and other costs specified by Owner.

(j) PROJECT: If the Contract Documents call for the construction of a building and/or other improvements, then the Project shall be the construction of such building and/or other improvements; or if the Contract Documents call for the alteration, expansion or renovation of an existing building and/or other improvements on the Site, then the Project shall be the alternation, expansion or renovation of such building and/or improvements, as the case may be.

(k) PROJECT TEAM: The Owner, Construction Manager, Design Consultant(s), any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.

(l) STANDARDS AND STANDARD SPECIFICATIONS: The construction and design requirements and standards of the University of North Texas System, and various building and life safety codes as specified by the Associate Vice Chancellor for System Facilities which are hereby incorporated by reference.

(m) SUBCONTRACTORS: All trade contractors, separate contractors and subcontractors entering into contracts ("Subcontracts") with the Construction Manager for the performance of the Work. The relationship between the

Construction Manager and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by Owner, or except when Owner enters into a separate contract directly with a Subcontractor.

(n) TOTAL PROJECT COST ("TPC"): The total budget established for the Project by the Owner at the end of the design development phase (subject to subsequent modification by Owner), which includes but is not limited to professional services costs, Construction Manager's costs, the costs of the General Conditions items, furniture, fixtures and equipment costs, landscaping costs, moving costs, and other miscellaneous costs.

(o) WORK: The provision of all services, labor, materials, supplies and equipment, which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the parties hereto that not every detail will be shown in the Contract Documents. The Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price ("GMP") due to the absence of any detail or specification the Construction Manager may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Construction Manager shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes.

ARTICLE III

DESIGNATION OF CONSTRUCTION MANAGER AND DUTIES

3.01 The Owner hereby designates and appoints the Construction Manager and authorizes the Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement.

3.02 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's special and unique abilities with respect to performing its obligations hereunder, and Construction Manager's special and unique abilities with respect to construction management. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders, local utility companies and with those of any other body having jurisdiction. Construction Manager warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.

3.03 The Construction Manager warrants, represents, covenants, and agrees that all of the services to be performed by the Construction Manager under or pursuant to this Agreement shall

be of the standard and quality which prevail among similar business and organizations of superior knowledge and skill engaged in providing similar services in the same or similar locale, under the same or similar circumstances and involving a project such as the Project.

3.04 The Construction Manager's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Construction Manager be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

3.05 The Construction Manager warrants, represents, covenants, and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

3.06 The Construction Manager warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Construction Manager's responsibilities or obligations hereunder in a case where such document or data is furnished unless the Construction Manager advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes the Construction Manager to proceed in accordance with the data as originally given.

3.07 The Construction Manager warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.

3.08 The Construction Manager warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Preconstruction Phase services as soon as the Construction Manager becomes aware of such defects or is notified of such defects. Should the Construction Manager refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the Owner shall be entitled to make good such defective services at the expense of the Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective Services which the Owner may have at law or in equity. Construction Manager's obligations with respect to Construction Phase Services are set forth in UNTS UGC/SGC and elsewhere as may be noted.

3.09 Construction Manager warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and

perform all its obligations hereunder; and the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

3.10 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Construction Manager is bound, or any agreement by which Construction Manager is bound or to the best of the Construction Manager's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Construction Manager.

3.11 Except for the obligation of Owner to pay Construction Manager certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, the University of North Texas System, or of the components comprising the University of North Texas System, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

3.12 The Construction Manager has provided a Historically Underutilized Business Subcontracting Approach ("HUB Subcontracting Approach") in Construction Manager's Response to the Owner's Request for Proposals ("RFP Response"). Construction Manager agrees to comply with the established HUB Subcontracting Approach and shall make no changes to the HUB Subcontracting Approach without the prior written approval of Owner.

3.13 The Owner requires a HUB Subcontracting Plan (HSP) as described in Exhibit B attached hereto and incorporated by reference for all purposes. Construction Manager agrees to comply with the requirements of the HSP and provide the Owner with an HSP when the GMP is submitted. The Construction Manager may make no changes to the HSP without the prior written approval of Owner.

Because construction may be phased or staged, it may not be possible for Construction Manager to determine HUB participation for all projected Work until the scope of such Work is defined. Accordingly, Construction Manager shall update Exhibit B and resubmit Owner's Good Faith Effort Program documentation for each phase, stage, or bid package.

ARTICLE IV

CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

4.01 The Construction Manager's personnel, and the Construction Manager's associated Subconsultants, to be employed in the Project, were identified in the Construction Manager's response to the RFP. The personnel and entities identified shall not be changed except with the Owner's prior written agreement.

4.02 All subcontracts shall be awarded in accordance with the applicable provisions of *Texas Education Code* section 51.782, as amended. Construction Manager shall notify Owner in advance in writing of the identities of all Subcontractors with which it intends to subcontract. Construction Manager shall not subcontract with any Subcontractor to which Owner has a

reasonable objection. Such notice shall be given sufficiently in advance to permit Owner adequate time for review without delay to the Project, and allowing time for Construction Manager to make substitute selections, but in no event shall such notice be given less than ten (10) days before the intended subcontract date. Construction Manager shall not be required to subcontract with any Subcontractor to which it has reasonable objection, or if such subcontract is not, except as may be required otherwise by the applicable provisions of *Texas Education Code* section 51.782, as amended. If Construction Manager intends to submit a proposal for subcontract work, it shall notify Owner in writing prior to soliciting proposals from potential subcontractors. When Construction Manager's Subcontractors for constructing the Work have been identified, they shall not be changed without Owner's prior written approval. Construction Manager shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

4.03 Should Construction Manager propose the deletion of a Historically Underutilized Business ("HUB") classified/certified subconsultant or Subcontractor firm from its employ, the Construction Manager shall substitute a subconsultant or Subcontractor firm of like classification/certification. Construction Manager is required to amend the HUB Subcontracting Plan are required by Texas Government Code §2161 when substituting a subcontractor regardless of classification/certification and shall obtain approval from the University for such substitution.

ARTICLE V
CONSTRUCTION MANAGER'S SERVICES:
PART 1: PRECONSTRUCTION PHASE SERVICES

5.01 In implementation of the responsibilities and duties of the Construction Manager as set forth herein, the Construction Manager shall perform, in accordance with the Schedule (as defined in Section 5.01(b)), the following Preconstruction Phase Services:

(a) General Coordination.

- (1) Attend regular meetings with other members of the Project Team during the development of the design of the Project to advise them on site usage and site improvements, selection of materials, building systems and equipment, and methods of delivery of materials, systems, and equipment.
- (2) 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; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents, and any other matters necessary to accomplish the Project in accordance with the Schedule (as defined below) and Project Construction Budget.
- (3) At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

- (4) Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.
- (5) Develop and update a "Constructability Review" report which is a report resulting from frequent communication with the Project Team and which will outline items that in the Construction Manager's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences.
- (6) Creation and continuous updating of a decision tracking system in a format acceptable to Owner.
- (7) Attend and participate in Owner's "Partnering" Program for all phases of the Project.

(b) Scheduling.

- (1) Develop a critical path Project schedule ("Schedule") for the other Project Team members' review and the Owner's approval, that coordinates and integrates the Construction Manager's services, the Design Consultant's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors.
- (2) Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including, without limitation:
 - a) commencement, milestone and completion dates for Facility Program Phase, Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding/Proposals Phase, construction phasing and Project Stages;
 - b) times of commencement and completion for each Subcontractor;
 - c) required activity sequences and durations;
 - d) contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;
 - e) processing of shop drawings and samples;
 - f) a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Consultant.

A separate Schedule shall be prepared for each Stage and each set of bidding documents.
- (3) Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date set forth hereinabove, so that the Owner can occupy and utilize the entire Project facilities on such date; and

- (4) Create and maintain the Schedule in a format acceptable to Owner (the license and training for which shall be at Construction Manager's sole expense).

(c) Budget and Cost Consultation.

- (1) Obtain from Owner all Project service, materials and property costs and expenses not known directly by the Construction Manager, such costs to include, without limitation, Owner's personnel costs, force account labor and special consultants.
- (2) Prepare and update a Construction budget during the schematic design phase, design development phase, and construction documents phase at fifty percent (50%) and one hundred percent (100%) completion (for each Stage), for written approval by the Owner, such budget to include estimating, updating and reporting of all construction costs. The design development phase and construction documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit, in Construction Specifications Institute Division format for each portion of the Work.
- (3) Provide throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the other members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established PPC, TPC, PCB, or Schedule will not be met, and make recommendations to the Project Team for corrective action.
- (4) At the completion of the Construction Contract Documents (for any Stage of the Project), update and refine a comparison of actual and projected costs to the Project Construction Budget, and in the event such actual and projected costs exceed the original Project Construction Budget, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project.

(d) Coordination of Design and Construction Contract Documents.

- (1) Review all plans, specifications, and other design documents during the schematic design phase, design development phase, and construction documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming Design Consultants' professional responsibility.
- (2) Coordinate the incorporation of the Owner's Design Guidelines and Standard Specifications and procedures, including, without limitation, Site Construction Guidelines, all of which are hereby incorporated by reference, into the Construction Contract Documents, and use of the Owner's format as directed by the Owner.

- (3) Assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion.
- (4) At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Design Consultants' professional responsibility).
- (5) Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable State of Texas and The University of North Texas System procurement requirements (without assuming any of the Owner's responsibility therefore).
- (6) Consult with Owner and Design Consultant to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the GMP.

(e) Construction Planning.

- (1) Identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"), and expedite the procurement of such items to ensure their delivery by the required dates. Participate with Design Consultant, as requested by Owner and subject to Owner's prior approval, in the preparation of performance specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.
- (2) Make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB contractor participation, and other constraints.
- (3) Review the Drawings and the Project Manual with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- (4) Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, Owner and equipment suppliers, and record minutes of same.
- (5) Coordinate, develop and review with Owner Design Consultant bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.

- (6) In accordance with *Texas Education Code* section 51.782, as amended, Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Construction Manager may seek to perform portions of the work itself if Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if Owner determines that Construction Manager's bid proposal provides the best value for Owner. Owner's determination in such matters is final. If Construction Manager intends to submit a proposal for such work, it shall notify Owner in writing prior to soliciting proposals. Owner shall provide criteria for determination of best value. Construction Manager and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, engineer, architect or Owner. All bids and proposals shall be made public within seven (7) days after the date of final selection. If Construction Manager reviews, evaluates, and recommends to Owner a bid or proposal from a trade contractor or subcontractor, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, Owner shall compensate Construction Manager by a change in price, time, or GMP for any additional cost and risk, which has been demonstrated to Owner's satisfaction and as required by the Contract, which Construction Manager may incur because of Owner's requirement that another trade contractor or subcontractor bid or proposal be accepted.
- (7) Assist the Owner, the appropriate separate Owner's contractor, the appropriate Design Consultant or other consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, and the fire department providing fire protection.
- (8) Refine, implement and monitor the HUB Goals including the Good Faith Effort Program (included at Exhibit B) which promote equal employment opportunity in the provision of goods and services to the Owner for the Project.
- (9) Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- (10) Construction Manager shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
- (11) In accordance with UNTS UGC/SGC, Construction Manager is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide information to Owner and Design Consultant with

respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that such assignments with respect to the Subcontractors is included in the Contract Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall in no way lessen or reduce the foregoing responsibilities set forth in this subparagraph of Construction Manager.

- (12) Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions which will minimize adverse effects of labor shortages.

- (f) Furniture, Fixtures and Equipment. Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate the Owner's purchase and installation of such items with the Owner as may be required to meet the Schedule.

- (g) Guaranteed Maximum Price.

- (1) At sixty percent (60%) completion of the Construction Document phase, Construction Manager shall submit the GMP Amendment to Owner in accordance with the GMP Amendment form attached hereto as Exhibit A or in such other form as required by Owner at Owner's sole option and discretion. If accepted by Owner, the parties shall execute a GMP Amendment and the fully executed Amendment shall become a part of the Contract Documents.
- (2) Owner, at its sole option and discretion may reject the GMP Amendment, attempt to renegotiate the GMP Amendment with Construction Manager (with the right to cease negotiations at any time and reject the GMP Amendment), or increase the Project Construction Budget. Construction Manager shall not withdraw its GMP Amendment for ninety (90) days after submission to Owner.
- (3) The GMP Amendment must be prepared in the format specified by Owner which shall require a breakdown of estimated costs organized by trade, allowances, contingencies, Construction Manager's Construction Phase Fee, General Conditions and other approved items.
- (4) The GMP Amendment must include a written statement describing how it was derived and prepared, which shall include, at a minimum, Drawings and Specifications, addenda, UNTS UGC/SGC, allowances, all clarifications and assumptions made by the Construction Manager due to the incompleteness of the Drawings and Specifications, and assumptions as to when Contract Documents will be issued.
- (5) In formulating the GMP Amendment, Construction Manager shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope, and the GMP Amendment shall include a Construction

Manager's contingency up to a maximum of 1% of the estimated costs for construction, to allow for costs arising out of such development and completion which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the GMP Amendment.

ARTICLE VI
CONSTRUCTION MANAGER'S SERVICES:
PART 2: CONSTRUCTION PHASE SERVICES

6.01 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after approval by Owner of a GMP for the Work or portion of the Work specified in such Notice to Proceed, (ii) the issuance of a purchase order by Construction Manager for materials or equipment for the Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract and after prior written authorization by Owner. Preconstruction Phase Services may overlap Construction Phase Services. In implementation of the responsibilities and duties of the Construction Manager for the Construction Phase, the Construction Manager shall provide the following services:

(a) Project Control.

- (1) Construction Manager shall construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner and as required by UNTS UGC/SGC, and Division I Specifications. Construction Manager shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and other Work which has been awarded to Construction Manager in accordance with the requirements of *Texas Education Code* section 51.782 and this Contract. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.
- (2) Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Project Construction Budget and GMP, and to attain Substantial Completion by the date set forth in the GMP Amendment entered into by the Parties.
- (3) When requested, attend Owner's Project progress meetings scheduled by Owner no less often than once per month, and fully advise by written report the Project Team at such meetings as to Project status.
- (4) Schedule, direct and attend weekly construction meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems and scheduling in a format described in Division 1 of the specifications. Prior to each meeting, the Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities which require immediate action

- and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting electronically within two (2) days.
- (5) Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
 - (6) Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team. At a minimum, Construction Manager's site personnel shall include a project manager, project superintendent, project engineer, and appropriate administrative support personnel.
 - (7) In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
 - (8) Expedite and coordinate delivery and installation of Owner-procured material and equipment.
 - (9) Construction Manager shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work.
 - (10) In accordance with UNTS UGC/SGC, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.
 - (11) Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Consultant in obtaining all approvals required from authorities having jurisdiction over the Project.
 - (12) Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.

(b) Scheduling.

Perform Project scheduling in compliance with Owner's criteria as set forth in the Contract documents, if included therein, otherwise provide regular monitoring, updating, and reissuing of all Project Schedules as construction progresses, including, without limitation, the Schedule, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules; identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in construction schedules. Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of shop drawings, data, and samples, delivery of long lead-time items. Include Owner's occupancy requirements and occupancy priorities. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any Subcontract requirements are not met, or appear unlikely to be met.

(c) Cost Control.

- (1) Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of four (4) years after final payment is made by the Owner to the Construction Manager.
- (2) Prepare and administer, and provide to Owner, Subcontractors' schedule of values, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner.
- (3) Construction Manager shall promptly identify all variances between estimated costs and actual costs, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event, no more than two (2) business days after acquiring such information.

(d) Change Orders. Develop and implement a system acceptable to the Owner for the preparation, review and processing of Change Orders, change order requests, construction change directives and requests for information, in accordance with UNTS UGC/SGC.

(e) Wage Rates. Maintain strict enforcement of State of Texas prevailing wage laws in accordance with UNTS UGC/SGC. Cooperate with Owner in monitoring the submission to the Owner of payroll records by the various Subcontractors when requested.

(f) Special Consultants. Assist the Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at the owner's request in order to meet the Schedule, without, however, assuming direct responsibility for the work of these consultants.

(g) Documents, Shop Drawings, and Submissions.

- (1) The Design Consultant shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Design Consultant and the Owner, provided, however, the Construction Manager shall request such interpretations from the Design Consultant, with Owner consent, from time to time in order to facilitate the Construction Manager's accomplishment of its duties under this Agreement.
- (2) In collaboration with the other members of the Project Team, the Construction Manager shall establish and implement procedures for expediting the processing and Design Consultants' approval of shop drawings and other submissions, and in accordance with Division I Specifications, as applicable. Receive from the Subcontractors, and review, all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions

with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

- (3) The Construction Manager shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with UNTS UGC/SGC; and each member of the Construction Manager's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, which daily logs shall be submitted to the Owner no less frequently than weekly for the immediately preceding week.
 - (4) The Construction Manager shall maintain at the Project site and make available to Owner, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record drawings and project manual.
 - (5) Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees.
 - (6) Provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.
 - (7) Submit to Owner all documents substantiating payments to all subcontractors as well as qualifying HUB's in a format designated by Owner.
- (h) Safety. Construction Manager is solely responsible for all safety precautions and programs in connection with the Work. Construction Manager shall review the safety programs developed by each of the Subcontractors and prepare and submit to Owner a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations, and with any Owner-controlled insurance program. Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Construction Manager's responsibilities under this paragraph.
- (i) Bonds. When the GMP is established, Construction Manager shall provide performance and payment bonds as required by UNTS SGC/UGC. The form to be used for such bonds shall be as specified in the Division I Specifications. If construction is phased or staged with different GMP established at different times, then the penal sum of the bonds shall be increased based on the cumulative total value of all GMP in effect.

ARTICLE VII
PAYMENTS TO THE CONSTRUCTION MANAGER

7.01 For Preconstruction Phase Services:

- (a) In full consideration of Construction Manager's Services during the Preconstruction Phase of this Agreement, Owner will pay to Construction Manager the Preconstruction Phase Fee which is:

A stipulated sum of _____ payable proportionately on a monthly basis based on the amount of effort expended by Construction Manager.

- (b) To receive payment, Construction Manager shall send monthly invoices with supporting documentation to Owner. Construction Manager's invoices shall specify the amount of Work completed and other information as required by Owner for payment purposes.

- (c) In addition to the stipulated sum, the following expenses of Construction Manager, incurred solely and directly in support of the Project:

- (1) Actual out-of-pocket coach class air travel and other expenses previously approved in writing by Owner for travel outside the Project area and incurred solely in connection with Construction Manager's performance of its services hereunder; provided, however, that the cost of travel between Construction Manager's offices and Owner's local offices or the Project shall not be reimbursed.
- (2) Reproductions, printing, binding, collating and handling of reports, drawings and specifications or other project-related work product, other than that used solely in-house by Construction Manager.
- (3) Fees and associated reimbursable expenses paid to Consultants hired in accordance with prior written approval from Owner.

Owner shall only be responsible for payment of actual amount of such reimbursables. Payment of reimbursable expenses shall not exceed \$5,000 without the prior written consent of Owner. Construction Manager shall invoice for reimbursement and shall submit receipts necessary to verify reimbursable expenses along with any reimbursement request.

- (d) Additional Services:

- (1) From time to time Owner may request that Construction Manager perform services in addition to those Services required or reasonably inferable herein (such services in addition are hereinafter called "Additional Services"). Each time that Construction Manager is requested to perform services which Construction Manager deems to be Additional Services, and prior to performing such Additional Services, Construction Manager shall complete and forward to Owner for acceptance by Owner an Additional Services Requisition in the form of standard Change Order, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Construction Manager has determined

that the requested services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Construction Manager is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Services. Construction Manager shall proceed only after written approval by Owner of the Additional Services Requisition Change Order.

- (2) If Owner concludes that all or part of the services described in the Additional Services Requisition are Services already required to be performed by Construction Manager pursuant to this Agreement or are reasonably inferable therefrom, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services.
- (3) Upon acceptance by Owner, each Additional Services Requisition and the services performed by Construction Manager pursuant to such Additional Services Requisition shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a required Service at the original execution of this Agreement.

- (e) Construction Manager shall not be entitled to any increase in the Preconstruction Phase Fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its reasonable discretion.

7.02 Construction Phase

- (a) Owner shall compensate Construction Manager for Construction Phase services on the basis of the sum of the Cost of the Work as defined herein plus the Construction Manager's Construction Phase Fee (such sum is referred to as the "Contract Sum") as set forth below. The Contract Sum shall not exceed the GMP set forth in the GMP Amendment entered into by the Parties, subject to changes authorized by the terms and conditions of the Contract Documents. Any cost which is not authorized by the terms and conditions of the Contract Documents, but which would cause the GMP to be exceeded shall be paid by Construction Manager without reimbursement by Owner. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on income) with respect to its forces and/or its performance of the Work (not including the forces of and Work performed by Subcontractors) as a result of any statute, court decision, written ruling, or regulation taking effect after the effective date of this Agreement, the GMP shall be increased by the amount of the new tax or tax increase.
- (b) In a format acceptable to Owner, the Contractor must provide an estimated cost for General Conditions to be negotiated with the Owner and with the costs

broken down by line item. The Owner may accept or reject each line item of the estimated costs.

- (c) The Owner has afforded the Construction Manager with unrestricted access to the existing improvements and conditions on the construction site and has given the Construction Manager the opportunity to thoroughly investigate the existing conditions, which the Construction Manager represents it has done. The results of Construction Manager's investigation shall be taken into account in establishing the GMP of the Work. Construction Manager shall not be entitled to a claim for an adjustment in time or price under UNTS UGC/SGC for conditions which Construction Manager discovered or ought to have discovered in Construction Manager's investigation. Before proceeding with the Work, the Construction Manager shall review the Drawings and Specifications and notify the Design Consultant and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work, if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Construction Manager to exist in the Drawings or Specifications or other Contract Documents, and if Construction Manager nevertheless proceeds to perform the Work then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications, the Construction Manager shall immediately submit a written request for an explanation or decision to the Design Consultant and the Owner.
- (d) If the actual Cost of the Work plus Construction Manager's Construction Phase Fee is less than the GMP, then such amount shall be returned to Owner. For items in the Contract Documents and on the GMP Amendment entered into by the Parties which are noted as "Allowances" or "Contingency", 100% of any savings shall be the Owner's.
- (e) In full consideration of Construction Manager's services during the Construction Phase of this Agreement, Owner shall pay Construction Manager a Construction Phase Fee as stipulated in the GMP Amendment entered into by the Parties and shall be calculated as follows: _____ percent of the cost of construction to be converted to fixed fee at the establishment of the GMP Amendment.
- (f) If the GMP increases by more than ten percent from the amount originally set forth in the GMP Amendment entered into by the Parties, then Construction Manager shall be entitled to an equitable increase in the Construction Manager's Construction Phase Fee which shall be calculated in direct proportion to the Cost of the Work.
- (g) In UNTS UGC/SGC, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined herein below, and references to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.

- (h) The Construction Manager's Fee shall cover the Construction Manager's profit, general overhead and the following costs and expenses:

All expenses in connection with maintaining and operating Construction Manager's main office and any branch or field offices, including (except as otherwise provided hereinafter):

- (1) Salaries of Construction Manager's officers, project manager(s), estimators, and schedulers.
 - (2) Salaries of persons employed in the main or branch offices of the Construction Manager whose time is devoted to the general conduct of the Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
 - (3) Overhead or general expenses of any kind except those specifically included herein.
 - (4) Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in Construction Manager's office and even if at the site, except as specifically identified herein.
 - (5) Interest on the Construction Manager's capital or on money borrowed by the Construction Manager, including the capital employed by the Construction Manager in the performance of the Work.
 - (6) Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.
 - (7) Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Design Consultants or any other person or entity relating to the Project or otherwise.
- (i) In addition to the payment procedures described in UNTS UGC/SGC, Construction Manager shall submit with each application for payment all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or Design Consultant shall deem necessary to support the amount requested. The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the schedule of values. In determining the percentage of completion, Construction Manager shall use the lesser of the percentage of the Work actually completed for each classification on the schedule of values, or the percentage of the GMP allocable to that item which has been actually incurred and demonstrated as an expense by the Construction Manager. If the Construction Manager's Construction Phase Fee is a fixed fee then the amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current GMP. Retainage as specified in UNTS UGC/SGC will be applied to the entire amount requested including the Cost of the Work and the Construction Manager's Construction Phase Fee except insurance premiums, performance and payment bonds. Each schedule of values submitted shall maintain the originally established value for each work classification line item or subcontractor,

and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner and Design Consultant. If at any time, the amount shown on the schedule of values exceeds the GMP allocable to that classification or subcontractor, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Manager's overhead and profit) shall not exceed the unpaid balance of the GMP (less retainage on Work previously completed). Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective schedule of values classification which has been actually completed.

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

7.04 The final request for payment shall not be made until Construction Manager delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that so far as Construction Manager has knowledge or information, the release includes and covers all materials and services over which Construction Manager has control for which a lien could be filed, but Construction Manager may, if any agent or consultant refuses to furnish a release in full, furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Construction Manager shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

7.05 In addition to the procedures contained in UNTS UGC/SGC, Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Construction Manager and has been verified by Owner or Owner's representatives. The aggregate total of payments to Construction Manager shall not exceed the total of the actual Cost of the Work as verified by Owner or Owner's representative from Construction Manager's final accounting plus the applicable Construction Manager's Construction Phase Fee, as certified for payment in accordance with the Contract, but in no event more than the GMP. If payments made to Construction Manager exceed that which is due and owing pursuant to this Article VII, then Construction Manager shall promptly refund such excess to Owner.

7.06 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Construction Manager hereunder if any one or more of the following conditions precedent exist:

- (a) Construction Manager is in breach or default under this Agreement;
- (b) Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;

- (c) Construction Manager has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Construction Manager; or
- (d) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at Construction Manager's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services.
- (e) Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount exceeding the GMP or to make payment if in the Owner's belief the cost to complete the Work would exceed the GMP less previous payments to Construction Manager.

7.07 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Construction Manager of any of Construction Manager's obligations hereunder or liabilities with respect to such services.

7.08 Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Preconstruction Phase Services and the construction of the Work.

7.09 Owner shall have the right to verify and audit the details set forth in Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment therefore, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's business employees; (4) visiting the Project site; and (5) other reasonable action.

7.10 The acceptance by Construction Manager or Construction Manager's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Construction Manager or Construction Manager's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Construction Manager as unsettled at the time of the final request for payment.

7.11 UNTS shall be billed in accordance with Chapter 2251 of the Texas Government Code and payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to Customer; and (c) interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.

ARTICLE VIII

COST OF THE WORK

8.01 The term Cost of the Work means actual costs that the Construction Manager must necessarily incur to properly perform the Work in strict compliance with the Contract Documents. Cost of the Work includes only the items set forth in this Article VIII.

(a) Labor and Administrative:

- (1) Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Work.
- (2) Reasonable and customary wages or salaries of Construction Manager's supervisory and administrative personnel who were previously identified, but only when stationed full-time at the site with the Owner's prior consent, unless otherwise approved in advance by Owner.
- (3) Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.
- (4) Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.
- (5) Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

(b) Materials, Equipment, Tools, Rentals:

- (1) Costs of materials and equipment to be incorporated (or incorporated) into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Construction Manager shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to UNTS UGS/SGC.
- (2) Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.
- (3) Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal, all so long as

Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the Construction Manager, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the Association of General Contractors (AGC), approved by the Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Construction Manager shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value.

- (4) Site debris removal and disposal costs in accordance with all applicable laws and regulations.
- (c) Subcontracts: Payments made to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.
- (d) Other costs:
 - (1) Governmental sales and use taxes directly attributable to the Work. Owner is a state agency and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on Owner's status.
 - (2) Permit and inspection fees, except that as a state agency, Owner is typically exempt from such fees.
 - (3) Premiums for insurance and bonds to the extent directly attributable to this Contract.
 - (4) Testing fees pursuant to the terms and conditions of UNTS UGC/SGC.
 - (5) Intellectual property royalties and licenses for items specifically required by the Contract Documents which are, or will be, incorporated into the Work.
 - (6) Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Construction Manager.
 - (7) Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

8.02 Costs Not Included in the Cost of the Work

The following shall not be included in the Cost of Work to be paid by Owner:

- (a) Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
- (b) Legal and administrative costs to review and negotiate these Contract Documents.

- (c) Travel and subsistence expense of Construction Manager, its officers or employees incurred while traveling between the Project and Construction Manager's principal or branch offices, and travel in the metropolitan area of the Project.
- (d) Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.
- (e) Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.
- (f) Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
- (g) Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.
- (h) Any and all overhead expense, or office expense at any location, except site office expense to the extent specifically included herein.
- (i) Costs related to Construction Manager's indemnification obligations pursuant to Article X hereof.
- (j) The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- (k) Any cost arising out of the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected or nonconforming work, materials or equipment, and damage to persons or property.
- (l) Liquidated or actual damages imposed by Owner.
- (m) Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.

8.03 Discounts, Rebates and Refunds

The Cost of the Work to be paid by Owner shall be credited with the following items:

- (a) Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the Construction Manager, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the

Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.

- (b) If Owner makes funds available to Construction Manager, discounts earned by the Construction Manager through advance or prompt payments. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.
- (c) Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the Construction Manager.
- (d) Rebates, discounts, or commissions allowed to and collected by the Construction Manager from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
- (e) Construction Manager shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager. Should Construction Manager not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

ARTICLE IX **OWNER'S RESPONSIBILITIES**

9.01 The Owner shall be fully acquainted with the Project and shall facilitate and coordinate the Owner's Project issues with the Construction Manager. Upon request, the Owner will furnish in writing the authorization of each representative of the Owner to represent it in connection with the Project.

9.02 The Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.

9.03 Owner shall furnish for the site of the Project any necessary surveys describing the physical characteristics, soil reports and subsurface investigations, known legal limitations, utility locations and the legal description to the extent such items may be required by agreements between Owner and Design Consultant or other consultants. Owner shall inform all special consultants retained by the Owner that they shall coordinate their services through the Construction Manager. Owner shall provide special testing and inspection services to the extent required by *Texas Education Code* section 51.782, as amended.

9.04 If the Owner has actual knowledge of any fault or defect in the Project or non conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the Construction Manager.

ARTICLE X

INDEMNITY

10.01 The Contractor agrees to indemnify, defend and hold Owner, University of North Texas ("UNT") and University of North Texas Dallas Campus ("UNT Dallas Campus") and the Owner's, UNT's and UNT Dallas Campus' Board of Regents, employees and agents harmless from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify, defend and hold Owner, UNT and UNT Dallas Campus and the Owner's, UNT's and UNT Dallas Campus Board of Regents, employees and agents harmless against any damage or claim of any type arising from the negligent or intentional acts or omission of the Contractor, its employees, agents, subcontractors, or assigns.

ARTICLE XI

HAZARDOUS MATERIAL

11.01 To the best of its knowledge, the Owner represents that all material containing asbestos or polychlorinated biphenyl (PCB) in or around the area in which the Work is to be performed will be removed or rendered harmless before the Construction Manager commences with the Work. In the event the Construction Manager encounters on the site material reasonably believed to be asbestos or PCBs which has not been rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not be resumed until the PCBs or asbestos has been removed or rendered harmless. All reasonable and verifiable costs incurred by the Construction Manager as a result of encountering asbestos or PCBs shall be allowable as costs of performing the Work and the GMP shall be increased by the amount of any such costs incurred.

ARTICLE XII

CONSTRUCTION MANAGER'S BOND AND INSURANCE

12.01 Upon acceptance by the Owner of a Guaranteed Maximum Price Amendment, Construction Manager shall provide performance and payment bonds in accordance with the requirements set forth in the UNTS UGC/SGC. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

12.02 The Construction Manager shall not commence work under the Agreement until it has obtained all insurance required in accordance with this Agreement and the UNTS UGC/SGC and until such insurance has been reviewed and approved in writing by the Owner. Approval of the insurance by the Owner shall not relieve nor decrease the liability of the Construction Manager hereunder. Prior to commencing any of the Preconstruction Services, Construction Manager shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Owner's and Contractor's Protective Liability as set forth in the UNTS UGC/SGC are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in the UNTS UGC/SGC shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.

12.03 The Construction Manager shall not cause or allow any of its insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

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

12.05 The Owner shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Actual losses not covered by insurance as required by this Article shall be paid by the Construction Manager.

ARTICLE XIII

LIQUIDATED DAMAGES

13.01 For each consecutive calendar day after the completion period set forth in a GMP Amendment executed by the Parties that any Work, including the correction of deficiencies found during the final testing and inspection is not completed, then the Construction Manager agrees to pay the Owner the sum of: \$1,500 per day for each day in which such Work is not completed. This amount shall be paid not as a penalty, but as liquidated damages representing the Parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion. Further, the Owner is entitled to deduct amounts assessed as liquidated damages from any money due or that becomes due the Construction Manager.

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

ARTICLE XIV

TERMINATION

14.01 In addition to the termination procedures set forth in UNTS UGC/SGC, Owner may terminate the Contract at the following times:

- (a) At the conclusion of the Schematic Design Phase.
- (b) At the conclusion of the Design Development Phase.
- (c) At the conclusion of the Construction Documents Phase.
- (d) If any GMP Amendment from Construction Manager is not accepted by Owner.
- (e) If any HUB plan from Construction Manager is not accepted by Owner.

- (f) If Construction Manager is in default or breach under this Agreement and does not cure such default or breach within fourteen (14) days after written notice from Owner specifying the nature of the default.
- (g) Prior to the commencement of construction, Owner may terminate for convenience upon fourteen (14) days' written notice to Construction Manager.

If the Contract is terminated under subparagraphs 14.01(a), (b), (c), (d), (e) or (g), then Construction Manager shall be compensated for the Preconstruction Phase Services which it has completed in accordance with this Agreement prior to the date of termination as provided hereunder. No expenses relating to the effectuation of the termination will be paid to Construction Manager. The date of the conclusion of the Schematic Design Phase, Design Development Phase, and Construction Documents Phase is determined by the date of Owner's acceptance of the respective submittals from the Design Consultant.

14.02 A termination under this Contract above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, any act or omission, or negligence of Construction Manager.

14.03 As of the date of termination of this Contract, Construction Manager shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Construction Manager in connection with Construction Manager's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of Owner or Design Consultant, as set forth in the terms and conditions of the agreement between Owner and the Design Consultant. They are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner.

ARTICLE XV

MISCELLANEOUS PROVISIONS

15.01 Exhibits. All exhibits hereto are hereby incorporated herein by reference for all purposes.

15.02 Assignment. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of the Owner or a branch or agency of the State of Texas.

15.03 Certifications.

- (a) Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

- (b) Eligibility Certification. "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- (c) Franchise Tax Certification. If a corporate or limited liability company, Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

15.04 Entire Agreement; Modifications; Conflicts. This Contract, as defined in Provision 2.02(a) herein, supersedes all prior agreements, written or oral, between Construction Manager and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The terms and conditions of this Agreement and of all of the other documents that are part of the Contract Documents are binding on the parties and may not be waived, modified, amended or altered except by a subsequent written document signed by the Contractor and Owner. In the event of a conflict between documents making up the Contract Documents, the terms and conditions of this Agreement shall take precedence and then precedence shall be established as provided in the UNTS UGC/SGC.

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

15.06 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Denton County shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which Owner is a party.

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

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

15.09 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Construction Manager one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Construction Manager shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

15.10 Records. Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during

business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

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

If to Owner:

Associate Vice Chancellor for System Facilities
University of North Texas System
P O Box 311040
Denton, Texas 76203-1040

If to Construction Manager:

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

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

15.13 Enforcement. It is acknowledged and agreed that Construction Manager's services to Owner are unique, which gives Construction Manager a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Construction Manager acknowledges and agrees that a breach by Construction Manager of the provisions hereof will cause Owner irreparable injury and damage. Construction Manager, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement. In addition, the Owner shall be entitled to other relief as allowed by law and as allowed under the terms of this Agreement.

15.14 Independent Contractor. Construction Manager recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Construction Manager hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

ARTICLE XVI
DISPUTE RESOLUTION

16.01 All disputes to which the Owner is a party, that arise from this Agreement or the Project shall be resolved in accordance with the dispute resolution process set forth in the UNTS UGC/SGC.

ARTICLE XVII
EXHIBITS

17.01 EXHIBITS. The following exhibits are incorporated by reference and made a part of this Agreement for all purposes and the Parties agree to abide by the terms and conditions of the attachments as if set forth herein:

Exhibit A	Guaranteed Maximum Price (GMP) Amendment
Exhibit B	Historically Underutilized Business Subcontracting Plan

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

ON BEHALF OF THE CONSTRUCTION MANAGER-AT-RISK:

By: _____ (signature)	_____ Street/P.O. Box
_____ Name and Title (typed)	_____ City, State, Zip
_____ 11 Digit State of TX Vendor ID Number	_____ Telephone

ON BEHALF OF THE UNIVERSITY OF NORTH TEXAS SYSTEM:

By: _____
(signature)

Richard Escalante
Vice Chancellor for Administrative Services

EXHIBIT A
Guaranteed Maximum Price (GMP) Amendment

In accordance with Section 5.01 (g) (1) of the Agreement dated _____ between the University of North Texas System (Owner) and _____ (Construction Manager) for construction of the University of North Texas –Dallas Campus Building 2 (Project), the Owner and Construction Manager establish a Guaranteed Maximum Price (GMP) and Contract Time for the Work set forth herein.

ARTICLE 1
GUARANTEED MAXIMUM PRICE

The Construction Manager's GMP for the Work, including the estimated Cost of the Work as defined in Article 8 of the Agreement and the Construction Manager's Fee as defined in Section 7.02 (h) of the Agreement, is

_____ (_____)

The GMP is for the performance of the Work in accordance with the list of drawings and specifications listed and attached to this Amendment and marked Attachment A. Attachment A is hereby incorporated for all purposes.

ARTICLE 2
PAYMENT AND PERFORMANCE BONDS

The Payment Bond, attached hereto as Attachment B, and the Performance Bond, attached hereto as Attachment C, are hereby incorporated by reference for all purposes.

ARTICLE 3
SUBSTANTIAL COMPLETION

The date of Substantial Completion established by this Amendment is: _____

This Amendment is attached to and made part of the Agreement between Owner and _____.

OWNER

CONSTRUCTION
MANAGER

(signature)

(signature)

Richard Escalante
Vice Chancellor for Administrative Services

Name and Title (typed)

(date)

(date)

EXHIBIT B
HISTORICALLY UNDERUTILIZED BUSINESS
SUBCONTRACTING PLAN

HUB SUBCONTRACTING PLAN TO BE SUBMITTED WITH GMP

This Exhibit contains the forms for the Historically Underutilized Business Subcontracting Plan, all of which will be made part of the Agreement between Owner and Construction Manager-at-Risk

Initialed by Owner

Initialed by Construction Manager
