

STUDENT HOUSING DEVELOPMENT COLLABORATION AGREEMENT

This Student Housing Development Collaboration Agreement (“Agreement”) is made as of the 15th day of April, 2016, by and between Education Realty Operating Partnership LP, a Delaware limited partnership (“EROP”) and **The Texas A&M University System**, an agency of the State of Texas (“TAMUS”), collectively referred to as “the parties”.

WHEREAS, TAMUS has solicited developers with an established history of providing high quality and cost effective methods to plan, finance, design, develop, construct and/or operate student housing and related TAMUS facilities (“Student Housing Development Services”) on land leased from TAMUS; and

WHEREAS, EROP has responded to RFQ01 SREO-16-011 by providing qualifications for services that are designed to plan, finance, design, develop, construct and/or operate student housing and related TAMUS facilities in response to TAMUS’ request; and

WHEREAS, TAMUS seeks to engage EROP and/or an affiliated entity(ies) approved by TAMUS upon request to provide Student Housing Development Services throughout TAMUS; and

WHEREAS, the parties desire to set forth their agreement with respect to the services to be provided and certain benefits to be derived by both parties in connection therewith.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency and consideration of which is hereby acknowledged by all, the parties agree as follows:

1. Services: EROP hereby agrees to provide Student Housing Development Services to TAMUS, upon request, to include some, all or any of the planning, design, construction, development, financing, operations and maintenance services more particularly described on Exhibit A, attached hereto and made a part hereof, with such services to be potentially provided by EDR Development LLC or other affiliated entities as approved by TAMUS. In performing services hereunder and except as otherwise provided herein, EROP covenants and agrees to comply with all rules and regulations promulgated by TAMUS, as well as all laws of the state of Texas.
2. Collection of Payment: TAMUS and EROP shall negotiate cost based on the Student Housing Development Services listed in Exhibit A. EROP shall be responsible for the collection and remission of all required sales and use taxes to the Comptroller of Public Accounts for the state of Texas.
3. Indemnification. EROP shall indemnify and hold TAMUS harmless against and from all claims, demands, action, and rights of action which shall or may arise by virtue of anything done or omitted to be done (through or by agents, employees, or other representatives) outside the scope of, or in breach of the terms of, this Agreement, provided TAMUS shall promptly notify EROP of the existence of the claim, demand, action, or right of action and TAMUS shall be given reasonable opportunity to participate in the defense thereof.
4. Term. This Agreement is effective as of April 15, 2016 (“Effective Date”) and the term shall

extend through April 14, 2019. TAMUS shall have the option to renew this agreement for two (2) additional one-year terms (“Renewal Terms”) by giving EROP written notice of its intent to renew no later than April 14th of the initial term and each Renewal Term.

5. **Insurance.** EROP shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to TAMUS. By requiring such minimum insurance, TAMUS shall not be deemed or construed to have assessed the risk that may be applicable to EROP under this Agreement. EROP shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. EROP is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without thirty (30) days’ prior written notice TAMUS.

Insurance must be carried to at least the following minimum amounts:

<u>Coverages</u>	<u>Limit</u>
A. Worker’s Compensation	
Statutory Benefits (Coverage A)	Statutory
Employer’s Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit
B. Automobile Liability	
Owned Vehicles \$1,000,000	\$1,000,000
Non-owned Vehicles	\$1,000,000
Hired Vehicles	\$1,000,000
C. Commercial General Liability	
Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Products / Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to Premises	\$ 300,000
Medical Payments	\$ 5,000

Additional Endorsements

Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as additional insureds.

EROP will provide certificates indicating such insurance is in force and effect within ten (10) working days after full execution of this Agreement, and such certificates must state that TAMUS will be notified in the event of cancellation of coverage. Failure to maintain insurance coverage as described above will be considered a default under this Agreement.

Any ultimate agreement resulting from EROP's selection to plan, finance, design, develop, construct, and/or operate a particular housing project may include revised as well as additional insurance requirements.

6. No Authority to Bind. The parties acknowledge that neither the agreements made herein nor the services to be rendered by either party shall constitute a joint venture or partnership and that neither party has any right to bind the other party in any respect.
7. Amendment. The parties acknowledge and agree that amendments to this Agreement may be necessary as experience and further information become available. Any such amendment will not be effective unless made in writing and signed by both parties.
8. Notices. Any notice, demand, or request permitted, required, or desired to be given in connection with this contract shall be in writing and shall be deemed effective if hand delivered or sent by United States Certified or Registered Mail Return-Receipt Requested, postage prepaid, or sent by private, receipted carrier guaranteeing same-day or next-day delivery, addressed as follows:

To EROP:

Education Realty Operating Partnership LP
ATTN: Thomas Trubiana
999 South Shady Grove Road, Suite 600
Memphis, TN 38120
901-259-2500
ttrubiana@edrtrust.com

To TAMUS:

The Texas A&M University System
ATTN: Jeff Zimmermann
301 Tarrow Street, Suite 361
College Station, Texas 77840-7896
979-458-6410
jzimmermann@tamus.edu

9. Governing Law. This Agreement shall be construed and enforced, pursuant to the laws of the state of Texas and is performable in Brazos County, Texas. By statute (Texas Education Code §85.18), mandatory venue for all legal proceedings against TAMUS is to be in the county in which the principal office of the governing officer is located. At execution of this Agreement, such county is Brazos County, Texas
10. Assignment. Neither party may assign its rights or obligations under this Agreement without the express written consent of the other party. Subject thereto, this Agreement shall inure to the

benefit of and be binding upon the successors and assigns of the parties.

11. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and the terms of said Agreement may not be modified, except by a written instrument signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.
12. State of Texas Contracting Clauses. 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.
13. Sovereignty. EROP expressly acknowledges that TAMUS is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
14. Criminal Background Checks. EROP acknowledges that TAMUS may request a criminal background check on any employee and/or representative of EROP who conducts business pursuant to this Agreement on property of TAMUS.
15. Dispute Resolution. EROP must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized representative as of the date first written above.

Education Realty Operating Partnership LP

By: _____

Thomas Trubiana

President

The Texas A&M University System

By: _____

Jeff Zimmermann

Director, Procurement & Business Services

Exhibit A
Student Housing Development Services

In an effort to secure professional Planning, Development, Design, Estimating, Construction and/or Management of New Student Housing on campuses throughout the TAMU System, the following non-exclusive services may be sought, either in part or whole:

OBJECTIVE #1 – Due diligence and Feasibility completion

Carry out the following tasks and present the noted deliverables:

A. Project Planning

- Market Demand Analysis
- Student Preference Analysis
- Enrollment Trend and Projection Analysis
- Student, Faculty, Staff and Stakeholder Surveys
- Program Development – Determine building site, massing, bed count, unit type, construction type, parking and amenity requirements
- Campus and/or Housing Master Plan – review and update where requested
- Develop all Legal Documentation for University, A/E and CM/GC contracts
- Review of ground lease terms and conditions

B. Due Diligence

- Environmental Site Assessment – Engage a qualified firm to prepare an Environmental Site Assessment Study.
- Geotechnical Site Study – Engage a qualified firm to prepare a Geotechnical Site Study.
- Site Survey – Engage a qualified consulting firm to prepare a survey.
- Utilities Assessment – Determine the locations, conditions, capacities and conflicts with existing campus utilities. Coordinate Utility infrastructure requirements with Campus Utilities Plans and Upgrade timetables.
- Traffic Study – Engage a qualified consultant to study vehicular and pedestrian traffic flows/conflicts.
- Conceptual Project Budget – provide a project cost estimate based on the project Program
- Financial Feasibility Analysis – conduct financial modeling of conceptual program to determine the economic viability and sustainability of the project.
- Facility Condition Assessment – Determine the condition of existing housing structures that may be planned for renovation, or demolition.
- Project Schedule

DELIVERABLES

- ✓ Market Study
- ✓ Program Management Agreement, Development Agreement, A/E and CM/GC contracts
- ✓ Environmental Site Assessment Study
- ✓ Geotechnical Site Study
- ✓ Boundary & topographic survey

- ✓ Utilities Plan
- ✓ Traffic Study
- ✓ Conceptual Project Budget
- ✓ Financial Modeling
- ✓ Facilities Condition Assessment
- ✓ Project Schedule

C. Feasibility Report

Review and confirm the following with the University;

- University space programs
- Student housing program
- Sustainability strategy
- List of tenants and their space programs (if University requires ancillary spaces for offices, retail or other campus functions)
- Design concept requirements
- Cost estimates
- Funding type(s), structures /or sources preferred by the University
- Strategy to match project scope with funding
- Pro-forma
- Cash flow requirements
- Authority Having Jurisdiction regulatory requirements
- Time schedule
- Design delivery method

DELIVERABLE

- ✓ A Basis for Design document that contains the developer's position on each of the above bulleted items after they have been reviewed and confirmed. Report to University to explain reasons for any deviation from direction given in Feasibility Report.

OBJECTIVE #2 – Pre-construction Development

Carry out the following tasks and present the following deliverables:

A. Design

- Design facilities consistent with the TAMUS Developer Project Guidelines
- Assist architect and CM/GC with the creation of a Fast-Track project delivery strategy
- Lead the architectural and engineering design and construction documentation process
 - Conceptual Design and University Approval
 - Schematic Design and University Approval
 - Design Development and University Approval
 - Construction Documents and University Approval
- Conduct design and constructability reviews
- Assist Commissioning Agent with taking steps toward obtaining LEED certification if required
- Attend University meetings to present project and solicit feedback

- Obtain all necessary entitlement approvals from Authority Having Jurisdiction (AHJ)
 - Assist with preparation of schedules for furnishings, fixtures and equipment throughout building
 - Assist with preparation of a room and building signage schedule
 - Assist in the development, revision and continual monitoring of project schedule
- B. Financing
- Manage overall project budget
 - Review CM/GC Guaranteed Maximum Price prior to submitting to University
 - Continuous review and adjusting of costing and cash flow analysis
 - Continually revise and update the proforma
 - Arrange for and make funding structure a reality with University input and approvals
 - Develop all necessary closing documents
 - Manage all Draw requests
 - Identify and coordinate construction and permanent financing acceptable to TAMUS
- C. Estimating
- Prequalification of Subcontractors
 - Develop Bid Packages
 - Create and Execute HUB/M/WBE Procurement Plan
 - Solicit and Scope Bids
 - Select and Contract with Subcontractors
- D. Pre-Construction Planning
- Develop staffing plan
 - Develop mobilization plan
 - Develop Storm Water Pollution Prevention Plan (SWPPP)
 - Develop project safety plan
 - Finalize project schedule
 - Conduct Line Locate Testing
 - Plan for Utility relocation if necessary
 - Manage the Buy-out process
- E. Student Housing and Tenant Arrangements
- Determine the property management plan and staffing structure for the facility with University input
 - Make arrangements for management, custodial and maintenance of housing
 - Create Leasing and Marketing Plan

DELIVERABLES

- ✓ Completed sets of contract documents for each Fast –Track package
- ✓ Building permits for each Fast –Track package
- ✓ A description of funding structure providing the sources and conditions for each contributor
- ✓ A Guaranteed Maximum Price from the CM/GC

- ✓ An overall project budget
- ✓ A time schedule showing construction and Move-in periods
- ✓ A cash flow schedule
- ✓ An up-dated proforma
- ✓ Fully executed tenant leases and housing management agreement

OBJECTIVE #3 – Building Construction

Carry out the following tasks and present the noted deliverables

A. Building Construction

- Permit and Construct facilities consistent with TAMUS Developer Project Guidelines
- Manage, supervise and provide executive oversight of the entire construction process
- Attend Owner/Architect/Contractor (OAC) meetings
- Assist CM/GC with obtaining building permits
- Assist Commissioning Agent
- Make periodic inspections of construction to confirm conformance to contract documents
- Work with CM/GC to manage and track design changes
- Arrange for ordering, storage, assembling and installation of new furniture, equipment and fixtures
- Monitor ongoing time schedule and conduct weekly project budget review
- Monitor status of cash flow
- Review and verification of monthly pay applications
- Monthly accounting of all costs

B. Project close-out

- Assist architect and CM/GC to prepare Substantial Completion documentation
- Assist with preparation and completion of punchlist
- Assist Commissioning Agent as required
- Assist with arrangements to train University maintenance workers in all mechanical, electrical, plumbing and renewable energy systems

DELIVERABLES

- ✓ Complete set of As-built drawings, specifications and list of installed equipment
- ✓ Complete set of Operating and Maintenance Manuals
- ✓ Complete set of construction management records
- ✓ TAMUS permit to occupy building

OBJECTIVE #4 – Move in

Carry out the following tasks and present the noted deliverables

A. Move arrangements

- Assist University to identify room occupants, furniture and equipment
- Arrange designated furniture, equipment and fixtures to be moved
- Work with University to arrange for connection of all communication equipment.
- Arrange for testing and calibration of equipment.