

DOCUMENT 001100

NOTICE TO DESIGN PROFESSIONALS

The University of North Texas System (UNTS) Facilities, subsequently referred to as the Owner, requests firm's qualifications for Architectural and Engineering Design Services for **[Type]** located on the **[Campus]** in **[Location]**, Texas. The selected firm will be expected to implement a well-coordinated design process that will result in **[Project]** best suited to the site, in compliance with the community and academic goals of the Owner and consistent with the programming document. This request for qualifications covers the design, bidding assistance and construction administration phases.

The firm's submittal to the Request for Qualifications (RFQ) will be the basis of determining the competence and qualifications to perform the design services as required by the proposed project.

Sealed qualifications for **[RFQ Number]** will be received by the UNTS at the Business Service Center (BSC), Woodhill Square, 1112 Dallas Drive, Suite 4000, Denton, Texas 76205. A campus map can be found online at <http://maps.unt.edu/?code=WHS>. Parking for Woodhill Square is campus parking and permits are required. There is guest parking at the door to suite 4000 and only those spaces can be utilized for submitting the bid. Bidders are responsible for all parking costs and for complying with parking regulations. Failure to comply with parking regulations may result in citation and possible impound of vehicle.

The Qualifications will be received up to 2:00 p.m. CST on **[Date]**, Bids received after the date and hour above stated will not receive consideration.

Project Description

The selected architectural firm will be responsible for reviewing site conditions and alternatives, and developing the most suitable design for **[Project Scope]**.

Questions

Questions concerning this proposal should be directed to:

Delon Greene

Bid Inquiry located at <http://bsc.untssystem.edu/content/bid-inquiry> Bids Opportunity Page.

All questions must be received no later than 2:00 p.m. CST on **[Date]. All questions and answers will be posted to the website by 5:00 p.m. CST on **[Date]**.**

The Owner may in its sole discretion respond in writing to questions concerning this RFQ. Only the Owner's responses made by formal written Addendum to this Proposal shall be binding and shall be posted on the BSC's website located at <http://bsc.untssystem.edu/bid-listing>. Oral or other written interpretations or clarifications shall be without legal effect.

Pre-Solicitation Meeting

A pre-solicitation meeting will be held at **[Time]** on **[Date]** at **[Place]**. Attendance is not mandatory, but highly recommended.

Online - Bidders can view bid documents at Electronic State Business Daily (<http://esbd.cpa.state.tx.us/>) or at the UNT System website (<http://bsc.untssystem.edu/bid-listing>).

Historically Underutilized Business (HUB)

It is the policy of the Owner to promote and encourage contracting and subcontracting opportunities for HUB in all contracts. A HUB Subcontracting Plan (HSP) must be submitted with this proposal. The Owner **[has/has not]** determined sub-contracting opportunities are possible and have identified the following areas:

[List All Areas]

All subcontracted work whether identified by the Owner or not, are required to be identified in the HSP. The Plan should reflect all subcontracting opportunities to be utilized in this project and can be found online at (<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan--allfms.pdf>). Complete, print, sign and submit the HUB Subcontracting Plan form with the bid response. **Failure to complete the HSP correctly will disqualify your RFQ response. Please return the HSP in a clearly marked envelope, separate from your RFQ response.** Only one (1) hard copy of the HSP is required with your response.

The Owner is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by the Owner. The Owner reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Proposal with one or more respondents; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of the Owner.

END OF SECTION

DOCUMENT 002400

SCOPE FOR QUALIFICATIONS

The University of North Texas System (UNTS) Facilities, subsequently referred to as the Owner, requests firms' qualifications for Architectural and Engineering Design Services for **[Project & Campus]**. The selected firm will be expected to implement a well-coordinated design process that will result in **[Project]** best suited to the site, in compliance with the community and academic goals of the University and consistent with the programming document. This request for qualifications covers the design, bidding assistance and construction administration phases.

The firm's response to the Request for Qualifications (RFQ) will be the basis of determining the competence and qualifications to perform the design services as required by the proposed project.

Project Description

1. Project Design

- A. **[Design Description]** The Owner has engaged the services of a programming firm for this project. The successful architect will be expected to incorporate the program developed by this firm into their design after validation. The firm should have the expertise, experience, and depth of support staff to meet the Owner's very aggressive schedule. A key factor in the development of the design will be the incorporation of the principles and guidelines contained in the Campus Master Plan and the programming document.

Deliverables should include (but are not limited to) program validation, schematic design, design development, construction documents and specifications needed for the project to be delivered via construction manager-at-risk. In addition, the architect's design services must include preparation of construction cost estimates at the end of schematic design, design development, and 60 percent construction documents for the Owner's review and comparison with the contractor's construction cost estimates. It is imperative that the architect monitor the design along the various stages of the project so the established owner's construction budget is not exceeded.

The programming for this project is anticipated to be completed in **[Date]**, with architectural design to begin immediately following its completion. The **[Project]** construction must be completed and ready for occupancy by no later than **[Date]**. Please include in the response a proposed schedule for this project.

- B. Contractor/Subcontractor Bidding – The selected architectural firm is to attend all contractor pre-proposal meetings and provide any additional documentation required by the contractor during the bidding and selection of the subcontractor trades.
- C. Construction Administration – The selected firm will attend weekly construction meetings and provide any construction and post-construction documentation, such as submittal approvals, shop drawing approvals, issuance of architectural supplemental instructions (ASI), compilation of punch lists, and completion of same.

Submission Requirements

The responses should address each of the following areas in the same order in which they are set forth below:

1. Firm Data
 - A. General Qualifications
 - B. Name and Address(es) of each key sub-consultant firm proposed for the team
 - C. Firm profile, i.e.:
 - i. Age
 - ii. Type of firm (partnership, professional corporation, etc.)
 - iii. Firm history
 - iv. Firm size (professionals by discipline), current and one year ago
 - v. Areas of specialty/concentration
2. Description of the Design Team:
 - A. Identification of the single point of contact for the design team to include name, email address, and phone number
 - B. Identification of key firm personnel to be assigned to the project
 - C. Organizational chart illustrating reporting lines, responsibilities, names, and titles for key participants proposed by the firm and each of its key sub-consultants.
 - D. Resumes for each key individual on the team and identification of that person's role in this project. List any education and registrations that may be relevant to this project.

Relevant Experience and Capabilities

1. Relevant experience and capabilities will be assessed through a review of both completed and ongoing projects; however, information desired is on completed projects similar in scope, size, and complexity. Provide detailed data for no more than five (5) projects on which the firm and team members have been involved in providing services and which best illustrate current experience and capabilities relevant to this project. For each project, please provide the following information:
 - A. Project name and location
 - B. Brief project description, including:
 - i. Size and scope
 - ii. Firm's role in project
 - iii. Key firm strengths exhibits by project and relevant to this Project
 - C. Owner's name, address, contact person, and telephone number
 - D. Identification of proposed personnel involved in the submitted project, along with explanations of their role in that project(s).
 - E. No more than five (5) color photographs (or renderings) per project:

- i. Images should not be selected to facilitate evaluation of design
 - ii. Images need not be submitted for every project for which data is provided, but project data must be provided for all project images included.
- F. Schedule Data (any unusual events or occurrences that affected the schedule should be explained)
 - i. Date design began
 - ii. Design complete date
 - iii. Construction complete date
- G. Construction Cost Data
 - i. Pre-design construction budget
 - ii. Pre-construction construction budget
 - iii. Actual construction budget
- H. Method of Construction Procurement Utilized
- 2. For no more than five (5) other projects relevant to the project scope and for each member of the Design team (as appropriate), provide a list of project names, project sizes, project dates, and owner contact information which further illustrates experience and capabilities relevant to this project.
- 3. Approach:
 - A. Most pertinent consideration in designing project – State briefly what you believe to be the most pertinent consideration(s) and challenge(s) that must be addressed in the design of a project of this type. You may wish to include sketches, diagrams, analyses or other tools that will help illustrate the team's points.
 - B. Unique qualifications – State why you believe your team is qualified to address the issues that you feel will be relevant to this project.
 - C. Methods of team organization and communication – Discuss how your firm would coordinate the development of design solutions, the production of contract documents, and construction administration. Be specific with regard to internal and external communications, quality control, cost estimating capabilities, proposed construction specification system, and responsible individuals including their location (e.g., on-site or specific office). Also discuss your firm's commitment to attending scheduled project meetings.
 - D. Experience with and/or ability to work within an interactive design review process. Present how your proposed team has performed on past projects in which key project decisions were provided by this process.
 - E. Schedule – Show an aggressive but realistic proposed schedule for the project. Develop a schedule of each phase of work to include:
 - i. Programming
 - ii. Schematic Design
 - iii. Design Development
 - iv. Construction Drawings
 - v. Construction Administration
 - vi. Substantial Completion
 - vii. Owner Occupancy

Historically Underutilized Businesses

Plan for participation of Historically Underutilized Businesses (HUB):

1. It is the policy of the Owner to promote and encourage contracting and subcontracting opportunities for HUB in all contracts. A HUB Subcontracting Plan (HSP) must be submitted with this proposal as specified in "C" below.
2. The Owner has determined subcontracting opportunities are possible and have identified the following areas:
 - **[List Opportunities]**
3. Subcontracted work, whether identified by the Owner or not, is required to be identified in the HSP. Please complete the attached HSP for all subcontracting opportunities to be utilized in the project. Failure to complete the HSP correctly will disqualify the firm's RFQ response. Please return the HSP in a clearly marked envelope, separate from your RFQ response.

Only responses with approved HSPs will be evaluated. Failure to return your HSP in a separate, clearly marked envelope, separate from your RFQ response, will prevent The Owner from evaluating your response.

Questions regarding completing the HSP should be directed to Amy Woods at 940-369-5528 or Claire Anderson at 940-369-5529. Additional information can also be found at the Texas Comptroller for the Public Accounts website at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

Contract

Under a separate tab, include a copy of any modifications proposed to the Owner's standard Professional Services Agreement (Division 00, Section 005200, *Agreement Forms*). These pages will not be included in the page limitation set forth in Selection Process section. Any proposed modification will be taken into consideration during the selection process. Only proposed modifications clearly noted on the attached agreement will be considered during contract negotiations. References to changes on prior agreements will not be allowed.

Selection Process/Description of Process

The selection process starts after the RFQ is posted on the Electronic State Business Daily on the date listed in Selection Schedule. Following this stage, the selection process is as follows:

1. A pre-solicitation meeting will be held at 2:00 PM (CDT) on the date and time listed in Selection Schedule to answer any questions the potential bidders may have before completing their response. The pre-proposal meeting will be held at:

UNT System Business Service Center
Woodhill Square
1112 Dallas Drive
Suite 4200
Denton, Texas 76205
Conference Room 4202

2. Qualifications are due on or before 2:00 PM on **[Date]** at **[Time]**. Responses must be limited to no more than twenty-five (25) pages. Covers, table of contents and divider tabs will not count as pages,

provided no additional information is included on those pages. All documents should be printed one-sided and submitted in 8½" X 11" page size. Proposals received that are late or exceed the number of pages listed above will not be accepted. Provide two (2) copies of your submittal, one (1) paper copy loose and one (1) virus free CD ROM through overnight carrier or personal delivery to:

Delon Greene
University of North Texas System
Business Service Center
Woodhill Square
1112 Dallas Drive, Suite 4000
Denton, TX 76205

Email or faxed responses will not be accepted.

The HSP is due on or before 2:00 PM (CDT) on **[Date]** at **[Time]**. The HSP must be in a clearly marked envelope, separate from your RFQ response as previously outlined in the HUB section.

3. The Owner may conduct formal interviews.
4. The top-ranked firm will be notified on or about the date listed in Selection Schedule.
5. The Owner expects to reach a contractual agreement with the top-rated firm shortly after notification and will expect the design work to begin immediately thereafter. All documents related to this Project shall be and become the property of the Owner.
6. The Owner reserves the right to reject any or all qualifications at any point during this selection process for any reason.

Selection Schedule Summary

The schedule for selection is as follows:

RFQ posted on the Electronic State Business Daily
Pre Solicitation Meeting
Qualifications received no later than
HSP received no later than
Notify short listed firms, if Owner elects to interview
Interview short listed firms, if Owner elects to interview
Notify selected firm
Approve Contract/Notice to Proceed

[Date]	
[Date]	[Time]
[Date]	[Time]
[Date]	[Time]
[Date]	[Time]
[Date]	[Time]
[Date]	[Time]
[Date]	[Time]

Additional information and amendments may be posted on <http://pps.unt.edu/bid-listing>.

Evaluation Criteria

Architectural firms will be ranked and selected on the basis of experience and qualifications using the following equally-weighted criteria (many of the criteria are subjective):

1. Relevant successful experience will be evaluated on the basis of the design experience of those key individual(s) named to the project team as a designer. Demonstrated successful experience in the design of other projects of similar character to this project best meets the intent of these criteria.
2. Quality of past and current similar projects

3. Current capabilities will be evaluated on the basis of the experience and capacity (current workload and availability) of the individuals assigned to your team.
4. Project management procedures and the design process will be evaluated based on the information presented in this RFQ. In addition, the quality assurance process, specific project approach (work plan/schedule), and technical support capabilities will be reviewed.
5. Quality and responsiveness of the RFQ submittal
6. Local representation will be evaluated on the ability to respond quickly to issues during the duration of the project, especially throughout the construction phase.
7. Proposed modifications to the Owner's standard Professional Services Agreement
8. Architect's ability to monitor construction cost estimates during the design process to ensure UNTS's construction budget is not exceeded.

Questions

Please address your questions concerning this RFQ to:

Delon Greene
University of North Texas System
Business Service Center

Please submit solicitation questions to:

Solicitation Inquiry located at <http://bsc.untssystem.edu/content/bid-inquiry> on the Bids Opportunities Page.

All questions must be received no later than [Date] , at [Time] CST. All questions and answers will be posted to the website by [Time] CST, [Date] .

The Owner may in its sole discretion respond in writing to questions concerning this RFQ. Only Owner's responses made by formal written Addendum to this RFQ shall be binding and shall be posted on the BSC's website located at <http://bsc.untssystem.edu/bid-listing>. Oral or other written interpretations or clarifications shall be without legal effect

Do not contact any other individuals from the UNTS. This may result in disqualification.

END OF SECTION

DOCUMENT 003132

GEOTECHNICAL DATA

1.1 SUMMARY

- A. This document includes information pertaining to geotechnical data.

1.2 INVESTIGATION

- A. An investigation of subsurface soil conditions at the building site was authorized by the Owner, and was subsequently performed by **[Firm Name]**, project number **[Number]**, dated **[Date]**.

1.3 REPORT

- A. The Geotechnical Investigation Report is for information only, and is not a warranty of subsurface conditions.
- B. The Report is made available for information only.
- C. The information contained in the Report represents design criteria, recommendations, and guidelines that were utilized as the basis of design for the engineering of the earthwork operations, paving design, and foundation design indicated in the Contract Documents. No changes in these design criteria will be considered or permitted.

1.4 RESPONSIBILITY

- A. Bidders are expected to examine the site and subsurface investigation reports.
- B. The Architect and Owner assume no responsibility for variations in subsoil conditions, quality, or stability, or for the presence, level, and extent of underground water.
- C. The Architect and Owner assume no responsibility for Bidder's interpretation of data contained in the Report.

END OF DOCUMENT

DOCUMENT 004300
PROCUREMENT FORMS

SAMPLE

DOCUMENT 005200

AGREEMENT FORMS

SAMPLE

DOCUMENT 006000

PROJECT FORMS

SAMPLE

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 Oblige, 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 Oblige, as an entity of the State of Texas, dated the _____ day of _____, 20____ (“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 Oblige from all cost and damage which the Oblige may suffer by reason of Principal’s default or failure to perform and shall fully reimburse and repay the Oblige all outlay and expense which the Oblige 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 Oblige upon demand all loss and expense, including attorney’s fees, incurred by the Oblige 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 20____, 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.

ATTEST:

(Signature)

(Typed Name and Title)

(SEAL)

ATTEST:

(Signature)

(Typed Name and Title)

(SEAL)

Surety's Texas Local Recording
Agent or Resident Agent:

(Signature)

(Typed Name)

(License No.)

(File No)

(Address)

(City, State, Zip)

(Telephone)

(Principal)

(Signature)

(Typed Name and Title)

(Surety)

(Signature)

(Typed Name and Title)

Surety's Home Office Agent or
Servicing Agent:

(Name)

(Title)

(Address)

(City, State, Zip)

(Telephone)

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 20____, the name and seal of each party being hereto affixed, and duly signed by its undersigned representative pursuant to authority of its governing body.

CONSTRUCTION MANAGER-AT-RISK

(Firm Name)

(Address)

(Signature)

(City, State, Zip)

(Typed Name and Title)

(Telephone)

(Texas Vendor ID No.)



HUB SUBCONTRACTING PLAN (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- ❖ If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - ☐ Section 1 – Respondent and Requisition Information
 - ☐ Section 2 a. – Yes, I will be subcontracting portions of the contract
 - ☐ Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - ☐ Section 2 c. – Yes
 - ☐ Section 4 – Affirmation
 - ☐ GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the “Agency Special Instructions/Additional Requirements”, complete:
 - ☐ Section 1 – Respondent and Requisition Information
 - ☐ Section 2 a. – Yes, I will be subcontracting portions of the contract
 - ☐ Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - ☐ Section 2 c. – No
 - ☐ Section 2 d. – Yes
 - ☐ Section 4 – Affirmation
 - ☐ GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- ❖ If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the “Agency Special Instructions/Additional Requirements”, complete:
 - ☐ Section 1 – Respondent and Requisition Information
 - ☐ Section 2 a. – Yes, I will be subcontracting portions of the contract
 - ☐ Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - ☐ Section 2 c. – No
 - ☐ Section 2 d. – No
 - ☐ Section 4 – Affirmation
 - ☐ GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- ❖ If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
 - ☐ Section 1 – Respondent and Requisition Information
 - ☐ Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - ☐ Section 3 – Self Performing Justification
 - ☐ Section 4 – Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into “new” contracts.



HUB SUBCONTRACTING PLAN (HSP)

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

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas 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 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

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

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- ☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

a. This page can be used as a continuation sheet to the HSP Form's page 2, SECTION 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

[illegible]

Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains 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(s)/section(s)** of your proposal which explains 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 4 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 is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (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 its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- 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 being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

- REMINDER:** ➤ If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

IMPORTANT: If you responded “Yes” to SECTION 2, Items c or d of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-A.doc>

Item #:	Description:
1	100% Cotton T-Shirt
2	100% Cotton T-Shirt
3	100% Cotton T-Shirt
4	100% Cotton T-Shirt
5	100% Cotton T-Shirt
6	100% Cotton T-Shirt
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98	100% Cotton T-Shirt
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100	100% Cotton T-Shirt

HSP Good Faith Effort - Method B (Attachment B)

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

IMPORTANT: If you responded "**No**" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, to continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "**A**" signifies that the company is a Texas certified HUB.
- List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) *Cont.*

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

SECTION B-4 SUBCONTRACTOR SELECTION

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item #: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A	PRIME CONTRACTOR'S INFORMATION
Company Name:	State of Texas VID #:
Point-of-Contact:	Phone #:
E-mail Address:	Fax #:

Section B	CONTRACTING STATE AGENCY AND REQUISITION INFORMATION
Agency Name:	
Point-of-Contact:	Phone #:
Requisition #:	Bid Open Date: (mm/dd/yyyy)

Section C	SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION
1. Potential Subcontractor's Bid Response Due Date:	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: <input type="text" value="Date (mm/dd/yyyy)"/></p> <div><p><i>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</i></p><p><i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i></p></div>
2. Subcontracting Opportunity Scope of Work:	
3. Required Qualifications: <input type="checkbox"/> - Not Applicable	
4. Bonding/Insurance Requirements: <input type="checkbox"/> - Not Applicable	
5. Location to review plans/specifications: <input type="checkbox"/> - Not Applicable	

DOCUMENT 007000

UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION AND DESIGN CONTRACTS (UGC/SGC)
(AMENDED 2013)

Article 1 - Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 **Agreement** means the specific written Agreement between the Owner and the Contractor or Architect/Engineer.
- 1.2 **Application for Payment** means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 **Application for Final Payment** means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 **Architect/Engineer (A/E)** means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.5 **Baseline Schedule** means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and Owner), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.6 **Certificate of Final Completion** means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.7 **Change Order** means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.
- 1.8 **Change Order Proposal Evaluation (CPE)** means a Contractor-generated document in response to a Change Order Request (COR) which states the adjustment necessary to Contract Amount and Time, if any, in response to the changed work described in the Change Order Request (COR).
- 1.9 **Change Order Request (COR)** means an Owner generated document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the change.
- 1.10 **Close-out Documents** mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.11 **Contract** means the Agreement, including all attachments thereto, and all of the Contract Documents between Owner and Contractor.

- 1.12 **Contract Date** is the date when the agreement between Owner and Contractor becomes effective.
- 1.13 **Contract Documents** mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; *Uniform General, Supplementary General, and Special Conditions; Owner's Design Criteria Package for Design Build Projects, Owner's Request for Proposal and/or Request for Qualifications; Contractor's response to the Owner's Request for Proposal and/or Request for Qualifications, the Guaranteed Maximum Price Proposal executed by the Owner and Contractor, all change orders executed by the Owner and Contractor* and all pre-bid and/or pre-proposal addenda.
- 1.14 **Contract Duration** means the period between the start date identified in the Notice to Proceed and the end of the Warranty Period.
- 1.15 **Contract Sum** means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.16 **Contract Time** means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.17 **Contractor** means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.18 **Construction Documents** mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.19 **Construction Manager-at-Risk** in accordance with Tex. Gov't Code, Chapter 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.20 **Date of Commencement** means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.21 **Day** means a calendar day unless otherwise specifically stipulated.
- 1.22 **Design-Build** means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code §2166.2531.
- 1.23 **Drawings** mean that product of A/E which graphically depicts the Work.
- 1.24 **Final Completion** means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.25 **Final Payment** means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.26 **Float** means the period in the Critical Path schedule that allows an excusable delay when the original schedule allows more than enough time to perform the work.
- 1.27 **Historically Underutilized Business (HUB)** pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.

- 1.28 **Notice to Proceed** means written document *furnished by the Owner* informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.29 **Open Item List** means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner, A/E and Contractor to be complete prior to Substantial Completion.
- 1.30 **Owner** means the *University of North Texas System, as an entity of the State of Texas*, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner. *The University of North Texas System is the party identified in the Contract as the Owner.*
- 1.31 **Owner's Construction Manager (OCM)** means the individual assigned by the Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. *The OCM does not have the authority to bind the Owner in regards to changes in the schedule, scope or project costs.*
- 1.32 **Owner's Designated Representative (ODR)** means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. *The ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.*
- 1.33 **Project** means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.34 **Progress Assessment Report (PAR)** means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.35 **Proposed Change Order (PCO)** means a document that informs Contractor, Owner and A/E of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.36 **Punchlist** means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlist indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.37 **Reasonably Inferable** means a fair, proper and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.
- 1.38 **Record Documents** mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.39 **Request for Information (RFI)** means a written request by Contractor directed to A/E and Owner for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.40 **Samples** mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.41 **Schedule of Values** means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.42 **Shop Drawings** mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents, which detail a portion of the Work.
- 1.43 **Site** means the geographical area of the location of the Work.
- 1.44 **Special Conditions** mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.45 **Specifications** mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

- 1.46 **Subcontractor** means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.47 **Submittal Register** means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.48 **Substantial Completion** means the date determined and certified by Contractor, A/E and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.49 **Supplementary General Conditions** mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.50 **Unit Price Work** means the Work or a portion of the Work, paid for based on incremental units of measurement.
- 1.51 **Unilateral Change Order (ULCO)** means a Change Order issued by Owner without the complete agreement of Contractor as to cost and/or time.
- 1.52 **Work** means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.53 **Work Progress Schedule** means the continually updated time schedule prepared and monitored by Contractor that accurately indicated all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.
- 1.54 ***The terms "bid", "bidder", or similar terms used in the Uniform General Conditions and Supplementary General Conditions also mean "proposal", "proposer", or "respondent", as appropriate for the type of project for which these General Conditions are used.***

Article 2 - Wage Rates and Other Laws Governing Construction

- 2.1 **Environmental Regulations** - Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, *Contractor* is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 **Wage Rates** - Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule *as established by the United States Department of Labor in accordance with the Davis-Bacon Act*. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. *When requested, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished.*
- 2.2.1 **Notification to Workers** - Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 2.2.1.1 Contractor shall submit a copy of each worker's wage-rate notification to *Owner* with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.
- 2.2.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform *Owner* of the proposed wage to be paid for the skill along with a justification for same and *Owner* shall promptly concur with or reject the proposed wage and classification.
- Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.
- 2.2.2 **Penalty for Violation** - Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.
- 2.2.3 **Complaints of Violations**
- 2.2.3.1 **Owner's Determination of Good Cause** - Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.
- 2.2.3.2 **No Extension of Time** - If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

- 2.3 **Venue for Suits** - The venue for any suit arising from the Contract will be in a court of competent jurisdiction in *the county in which the Project is located*, or as may otherwise be designated in the Supplementary General Conditions, *the Special Conditions or the Contract*.
- 2.4 **Licensing of Trades** - Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.
- 2.5 **Royalties, Patents, and Copyrights** - Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.6 **State Sales and Use Taxes** - Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax-exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.
- 2.7 **Antiquities** - *Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the OCM and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the Owner a Notice of Claim as described in § 21.1.2.2.*
- 2.8 **Franchise Tax Status.** *Upon request, the Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.*

Article 3 - General Responsibilities of Owner and Contractor

- 3.1 **Owner's General Responsibilities** - Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 **Preconstruction Conference** - Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 **OCM** - Prior to the start of construction, Owner will identify *OCM*, who has the express authority to act *on behalf of the* Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, *OCM* is the single point of contact between Owner and Contractor. Notice to *OCM*, unless otherwise noted, constitutes notice to Owner under the Contract.
- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by *OCM* in writing.
- 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, *up to ten (10)* complete sets and an *electronic* set of the Drawings, Specifications, and addenda.
- 3.1.3 **Owner Supplied Materials and Information**
- 3.1.3.1 Owner will furnish to Contractor those surveys *the Owner possesses* describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
- 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
- 3.1.4 **Availability of Lands** - Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.
- 3.1.5 **Limitation on Owner's Duties**
- 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
- 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.
- 3.2 **Role of Architect/Engineer** - Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for

action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by OCM, upon request.

3.2.1 Site Visits

- 3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to OCM.
- 3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 Clarifications and Interpretations - It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by OCM, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.

3.2.3 Limitations on Architect/Engineer Authority - A/E is not responsible for:

- 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
- 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
- 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
- 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.

3.3 Contractor's General Responsibilities - Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

3.3.1 Project Administration - Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and OCM in accordance with these general conditions and other provisions of the Contract, and as outlined in the pre-construction conference.

3.3.2 Contractor's Management Personnel - Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of OCM. Contractor shall not change approved staff during the course of the project without the written approval of OCM unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

3.3.3 Labor - Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.

3.3.4 Services, Materials, and Equipment - Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the

construction, performance, testing, start-up, inspection and completion of the Work. *The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even if not particularly specified or indicated in the Contract Documents.*

- 3.3.5 **No Substitutions Without Approval** - *The Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the A/E and in accordance with a Change Order.*
- 3.3.6 **Contractor General Responsibility** - For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.
- 3.3.7 **Non-Compliant Work** - Should A/E and/or OCM identify Work as noncompliant with the Contract Documents, A/E and/or OCM shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or OCM does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.8 **Subcontractors** - Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.
- 3.3.8.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.
- 3.3.8.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.9 **Continuing the Work** - Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.10 **Cleaning** - Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.11 **Acts and Omissions of Contractor, its Subcontractors and Employees** - Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom OCM finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.12 **Indemnification of Owner** - Contractor covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS, Owner, the University of North Texas System and their Regents, elected and appointed officials, employees, officers, directors, volunteers, and representatives, individually or collectively, from and against any and all costs, claims, liens, damages,**

losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death or property damage, made upon Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, or any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. **IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

3.3.12.1 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.3.12.2 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.

3.3.13 **Ancillary Areas** - Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:

3.3.13.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by OCM.

3.3.13.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.

3.3.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by OCM. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.

3.3.13.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

3.3.14 **Separate Contracts** - Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.

3.3.15 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.

3.3.16 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.

3.3.17 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, and damage to the Work or defective construction by a separate contractor.

Article 4 - Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 **General Description** - The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).
- 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.
- 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.
- 4.2 **Compliance with Approved HUB Subcontracting Plan** - Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
- 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
- 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
- 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.
- 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, 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/>).
- 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).
- 4.3 **Failure to Demonstrate Good-Faith Effort** - Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5 - Bonds and Insurance

5.1 **Construction Bonds** - Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.

5.1.1 **Bond Requirements** - Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's *approved* form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.

5.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. *For Design-Build Projects the performance bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents.* The form of the bond shall be approved by the Owner. The performance bond shall be effective through Contractor's warranty period.

5.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. *For Design-Build Projects the payment bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents.* The form of the bond shall be approved by the Owner.

5.1.2 When Bonds Are Due

Payment and performance bonds are due *before the Contractor begins work.*

5.1.3 **Power of Attorney** - 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.

5.1.4 **Bond Indemnification** - The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER AND THE ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

5.1.5 **Furnishing Bond Information** - Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.

5.1.6 **Claims on Payment Bonds** - Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.1.7 **Payment Claims when Payment Bond not Required** - The rights of Subcontractors regarding payment are governed by Tex. Prop. Code § 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

- 5.1.8 **Sureties** - A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570). *The Owner will consider acceptable any corporate surety which is qualified under this paragraph and which has a rating of at least B in Best's Insurance Reports – Property – Casualty. If any surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall within thirty (30) days after the date of insolvency or lack of authority furnish equivalent security to protect the interests of the State of Texas and of persons supplying labor, materials and/or equipment in the prosecution of the Work contemplated by the Contract.*
- 5.2 **Insurance Requirements** - *Architect shall carry insurance in the types and amounts indicated in the Agreement for the duration of the Contract. Unless otherwise provide for in the Supplementary General Conditions, or Special Conditions or elsewhere in the Contract, the Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.*
- 5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.
- 5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.
- 5.2.2.1 **Insurance Coverage Required**
- 5.2.2.1.1 **Workers' Compensation** - Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to Owner, employer's liability insurance of not less than:
- \$100,000 each accident;
- \$100,000 disease each employee; and
- \$500,000 disease policy limit.
- 5.2.2.1.2 **Commercial General Liability Insurance** - Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage with a minimum limit of:
- \$1,000,000 per occurrence
- \$2,000,000 general aggregate
- \$2,000,000 products and completed operations aggregate; and
- Coverage shall be on an "occurrence" basis.
- The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

- 5.2.2.1.3 **Asbestos Abatement Liability Insurance** - including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$500,000 disease policy limit.

If this Contract is for asbestos abatement only, the all-risk builder's risk or all-risk installation floater (e) is not required.

- 5.2.2.1.4 **Comprehensive Automobile Liability Insurance**, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

- 5.2.2.1.5 **All-Risk Builder's Risk Insurance**, if applicable (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be all-risk, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

5.2.2.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

- 5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- 5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
- 5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
- 5.2.2.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.

5.2.2.1.6 **"Umbrella" Liability Insurance** - Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverage required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.3 Policies must include the following clauses, as applicable:

- 5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.
- 5.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract with Owner.
- 5.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.
- 5.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.

5.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

5.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

Article 6 - Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications

- 6.1.1 **Copies Furnished** - Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions, or *Project Manual prepared by the A/E or elsewhere in the Contract*. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 6.1.2 **Ownership of Drawings and Specifications** - All Drawings, Specifications and copies thereof furnished by A/E *shall be considered by the Owner as property of the Owner*. These documents are not to be used *by the A/E* on any other project. *The Owner may use the Contract record set and electronic versions as needed for warranty operations or future renovations or additions without written approval of the A/E. All additional or confirmatory land survey field notes, sketches and related data and additional or confirmatory soils engineering or investigations, samples, calculations, test results and reports, for which the Owner has paid for such direct services, shall become the sole property of the Owner.*
- 6.1.3 **Interrelation of Documents** - The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 **Resolution of Conflicts in Documents** - Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and Owner for resolution of the issue prior to executing the Work in question.
- 6.1.5 **Contractor's Duty to Review Contract Documents** - In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.6 **Discrepancies and Omissions in Drawings and Specifications**
- 6.1.6.1 *Contractor shall promptly report to OCM and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.*
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.

- 6.1.6.6 *With the exception of the Contractor in a Design Build Contract, the Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.*
- 6.1.6.7 *Owner makes no representations, express or implied, about the adequacy or accuracy of the drawing, specifications or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the Construction Documents are adequate, accurate or suitable for their intended use.*

6.2 Requirements for Record Documents - Contractor shall:

- 6.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence *and one record copy of approved Shop Drawings, Samples and similar required submittals*. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.
- 6.2.2 Maintain this record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 *Within thirty (30) days of substantial Completion* inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents.
- 6.2.5 Once determined acceptable by OCM with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 7 - Construction Safety

- 7.1 **General** - It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to *Owner* and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2 **Notices** - Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 **Emergencies** - In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give *OCM* and A/E prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 7.4 **Injuries** - In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify *OCM* and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation, which describes the event.
- 7.4.2 Supply *OCM* and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide *OCM* with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5 **Environmental Safety** - Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify *OCM* immediately.
- 7.5.1 *Contractor shall bind* all Subcontractors to the same duty.

- 7.5.2 Upon receiving such notice, *OCM* will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, *OCM* will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 7.5.3 Owner may hire third party Contractors to perform any or all such steps.
- 7.5.4 Should compliance with *OCM's* instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 7.6 **Trenching Plan** - When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to *OCM* prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

Article 8 - Quality Control

- 8.1 **Materials & Workmanship** - Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 **Testing**
- 8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:
- 8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to OCM, A/E, and Contractor.
- 8.2.3 **Non-Compliance (Test Results)** - Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
- 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
- 8.2.3.3 All tests taken in the presence of A/E and/or OCM, or their representatives.
- 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which OCM determines appropriate, including complete removal and replacement of noncompliant work or material.
- 8.2.4 **Notice of Testing** - Contractor shall give OCM and A/E timely notice of its readiness and the date arranged so OCM and A/E may observe such inspection, testing, or approval.
- 8.2.5 **Test Samples** - Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 8.2.6 **Covering Up Work** - If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by OCM, uncover and recover the work at Contractor's expense.

8.3 Submittals

8.3.1 **Contractor's Submittals** - Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.

8.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to OCM and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.

8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) days duration after receipt by A/E and OCM for review and approval. If re-submittal required, allow a minimum of an additional seven (7) days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to OCM the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.2 **Review of Submittals** - A/E and OCM review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and OCM of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

8.3.3 **Correction and Resubmission** - Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and OCM, when applicable, to any new revisions other than the corrections requested on previous submissions.

- 8.3.4 **Limits on Shop Drawing Review** - Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and OCM's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 8.3.5 **No Substitutions Without Approval** - OCM and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, OCM and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by OCM and A/E when:
- 8.3.5.1 The Contract Documents do not require extensive revisions; and
 - 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
 - 8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 8.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - 8.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - 8.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
 - 8.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
 - 8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and OCM can approve the requested substitution;
 - 8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
 - 8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
 - 8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.6 **Unauthorized Substitutions at Contractor's Risk** - Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 **Field Mock-Up**

- 8.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

- 8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer/finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.
- 8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to *OCM*. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.
- 8.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify *OCM* and *A/E* of readiness for review sufficiently in advance to coordinate review without delay.

8.5 Inspection During Construction

- 8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.
- 8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.
 - 8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.
 - 8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to *OCM* of the anticipated need for a cover-up inspection. Should *OCM* fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 9 - Construction Schedules

- 9.1 **Contract Time - TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion *within 30 calendar days* after Substantial Completion, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.
- 9.2 **Notice to Proceed** - Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 **Work Progress Schedule** - Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Closeout Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.
- 9.3.1 **Schedule Requirements** - Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 9.3.1.1 Contractor shall re-submit initial schedule as required to address review comments from A/E and Owner until such schedule is accepted as the Baseline Schedule.
- 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.
- 9.3.2 **Schedule Updates** - Contractor shall update the Work Progress Schedule and the Submittal Register monthly, at a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and OCM as directed, but at a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to OCM and shall not be incorporated into the revised Baseline Schedule without ODR's consent.
- 9.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.
- 9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- 9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or

waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

- 9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

9.4 **Ownership of Float** - Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5 **Completion of Work** - Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

9.5.2 Within ten (10) days after such notice from OCM, Contractor shall notify OCM in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should Owner deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with Owner's approval.

9.6 **Modification of the Contract Time**

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify OCM for confirmation of the conditions. At the end of each calendar month, submit to OCM and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

- 9.6.2.2 **Excusable Delay** - Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:
- 9.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.
 - 9.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.
 - 9.6.2.2.3 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.
 - 9.6.2.2.4 Suspension of Work for unexpected natural events, civil unrest, strikes or other events which are not within the reasonable control of Contractor.
 - 9.6.2.2.5 Suspension of Work for convenience of *Owner*, which prevents Contractor from completing the Work within the Contract Time.
- 9.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.
- 9.7 **No Damages for Delay** - Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of Owner.
- 9.8 **Concurrent Delay** - When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.
- 9.9 **Other Time Extension Requests** - Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give *OCM* written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.
- 9.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
 - 9.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
 - 9.9.3 **Contents of Time Extension Requests** - Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
 - 9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
 - 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.

- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 **Owner's Response** - Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
- 9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
- 9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.
- 9.10 **Failure to Complete Work Within the Contract Time - TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in *Section 9.11 below or elsewhere in the Contract Documents. Notwithstanding the foregoing, the Owner may waive the requirement for liquidated damages with an explicit written statement of waiver in the Contract Documents or amendments.*
- 9.11 **Liquidated Damages** - *For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially complete, Contractor shall pay the Owner, within ten (10) days following written demand, an amount determined by the following schedule:*

<i>Project Cost</i>		<i>Liquidated Damages</i>
<u>From</u>	<u>To</u>	<u>per day</u>
Under \$1,000,000		\$ 250
\$1,000,000	\$24,999,999.99	\$ 1,000
\$25,000,000	\$49,999,999.99	\$ 2,500
\$50,000,000	\$74,999,999.99	\$ 5,000
\$75,000,000	\$99,999,999.99	\$ 7,500
\$100,000,000 and over		\$10,000

Not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that Owner will sustain for late completion. Owner may also recover the liquidated damages from any money due or that becomes due Contractor. The amount of liquidated damages may be adjusted by the terms of the Agreement.

The parties stipulate and agree that the actual damages sustained by Owner for late completion of the Project will be uncertain and difficult to ascertain, that calculating Owner's actual damages would be impractical, unduly burdensome and cause unnecessary delay and that the amount of daily liquidated damages set forth above is a reasonable estimate.

Payment of the liquidated damages does not preclude recovery of the Contract, except for claims related to delays in Substantial Completion or Final Completion. Owner's right to receive liquidated damages shall not affect Owner's right to terminate the Contract as provided in these Uniform General Conditions and Supplementary General Conditions or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay liquidated damages.

Article 10 - Payments

- 10.1 **Schedule of Values** - Contractor shall submit to OCM and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to OCM. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by OCM, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions; costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 10.1.1.1 *Except for Construction Manager at Risk and Design Build projects* Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes, which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
- 10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to OCM at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2 **Progress Payments** - Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by Owner or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
- 10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and OCM a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
- 10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
- 10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
- 10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;
- 10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents; and
- 10.2.1.5 Construction payment affidavit.
- 10.2.2 **Contractor's Application for Payment** - As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and OCM will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, OCM and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or OCM. Attach all additional documentation required by OCM and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted

work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

- 10.2.3 **Certification by Architect/Engineer** - Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to OCM. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 10.3 **Owner's Duty to Pay.** Owner has no duty to pay the Contractor except on receipt by OCM of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule.
- 10.3.1 **Retainage** - Owner will withhold from each progress payment, as retainage, *whichever is more of the following three options: (a) five (5) percent of the total earned amount; (b) the amount authorized by law; or (c) as otherwise set forth in the Supplementary General Conditions or Special Conditions.* Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
- 10.3.1.1 Contractor shall provide written consent of its surety *and concurrence of A/E* for any request for reduction or release of retainage.
- 10.3.1.2 At least *fifty (50)* percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release. *Release of retainage must be permissible by law.*
- 10.3.1.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
- 10.3.2 **Price Reduction to Cover Loss** - Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
- 10.3.2.1 Defective or incomplete Work not remedied;
- 10.3.2.2 Damage to Work of a separate Contractor;
- 10.3.2.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
- 10.3.2.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 10.3.2.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
- 10.3.2.6 Assessment of fines for violations of prevailing wage rate law; or
- 10.3.2.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
- 10.3.3 Title to all material and Work covered by progress payments transfers to Owner upon payment.
- 10.3.3.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.
- 10.3.4 *For a Contract in any amount less than \$25,000.00, payment will be made in one lump sum at the Final Completion of the Work, including punch list items and change orders.*

10.4 **Progress Payments** - Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.

10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

10.5 **Off-Site Storage** - With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.

10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.

10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. OCM must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.

10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by OCM. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

9.7 **Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022**

10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date the Contractor receives the payment.

10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 11 - Changes

- 11.1 **Change Orders** - A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.
- 11.1.1 Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.
- 11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by all parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Chapter 2260.
- 11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
- 11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 **Unit Prices** - If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 11.3 **Claims for Additional Costs**
- 11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in

the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.

- 11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.
- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.
- 11.4 **Minor Changes** - A/E, with concurrence of OCM, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor shall carry out promptly, and record on as-built record documents.
- 11.5 **Concealed Site Conditions** - Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, OCM and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
- 11.6 **Extension of Time** - All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 **Administration of Change Order Requests** - All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and OCM concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.3 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.4 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to Owner.

- 11.8 **Pricing Change Order Work** - The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
- 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined.
- Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.
- 11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.
- 11.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 11.9 **Unilateral Change Order (ULCO)** - Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
- 11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 15.
- 11.10 **Final Resolution of Changes** - Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to adjustment.

Article 12 - Project Completion and Acceptance

12.1 Closing Inspections

- 12.1.1 **Substantial Completion Inspection** - When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify *OCM* in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.
- 12.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.
- 12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, *A/E*, *OCM*, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by *OCM* or their delegate. If *Owner and A/E* determines that the Work is Substantially Complete, *A/E* will issue a Certificate of Substantial Completion to be signed by *A/E*, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security and maintenance. *A/E* will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.
- 12.1.2 *Contractor shall correct* or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify *A/E* and *OCM* in writing stating the disposition of each final Punchlist item. *A/E*, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents *A/E* will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.
- 12.1.3 **Annotation** - Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.
- 12.1.4 **Purpose of Inspection** - Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.
- 12.1.5 **Additional Inspections**
- 12.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, *Owner* or *A/E* will give Contractor written notice

listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to *Owner*. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.

12.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, *Owner* or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to *Owner*. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 **Phased Completion** - The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

12.2 **Owner's Right of Occupancy** - Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, *Owner* will notify Contractor in writing and identify responsibilities for security and maintenance Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

12.2 **Acceptance and Payment**

12.3.1 **Request for Final Payment** - Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and OCM for review and approval.

12.3.2 **Final Payment Documentation** - Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

12.3.3 **Architect/Engineer Approval** - A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.

- 12.3.4 **Offsets and Deductions** - Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 12.3.5 **Final Payment Due** - Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 12.3.6 **Effect of Final Payment** - Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:
- 12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 12.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 12.3.6.4 Claims arising from personal injury or property damage to third parties.
- 12.3.7 **Waiver of Claims** - Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 12.3.8 **Effect on Warranty** - Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

Article 13 - Warranty and Guarantee

- 13.1 **Contractor's General Warranty and Guarantee** - Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.
- 13.2 **Warranty Period** - Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 13.3 **Limits on Warranty** - Contractor's warranty and guarantee hereunder exclude defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
- 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 13.4 **Events Not Affecting Warranty** - Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of defective Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E;
- 13.4.2 Recommendation to pay any progress or final payment by A/E;
- 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
- 13.4.5 Any acceptance by Owner or any failure to do so;
- 13.4.6 Any review of a Shop Drawing or sample submittal; or
- 13.4.7 Any inspection, test or approval by others.
- 13.5 **Separate Warranties** - If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. Owner will certify the date of service commencement in the Substantial Completion certificate.
- 13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
- 13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner, which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

- 13.6 Correction of Defects - Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 13.7 **Certification of No Asbestos Containing Materials or Work** - Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

Article 14 - Suspension and Termination

- 14.1 **Suspension of Work for Cause** - Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
- 14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 14.2 **Suspension of Work for Owner's Convenience** - Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 14.3 **Termination by Owner for Cause**
- 14.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
- 14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
- 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including *Owner*;
- 14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;
- 14.3.1.4 Failure to remedy defective work condemned by *Owner*;
- 14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 14.3.1.6 Persistent endangerment to the safety of labor or of the Work;
- 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
- 14.3.1.8 Any material breach of the Contract; or
- 14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

- 14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.
- 14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
 - 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.
 - 14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 14.3.5.3 This obligation for payment survives the termination of the Contract.
 - 14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. *Owner* will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 **Conversion to Termination for Convenience** - In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 **Termination for Convenience of Owner** - Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
 - 14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all work.
 - 14.5.2.2 Place no further subcontracts or orders for materials or services.
 - 14.5.2.3 Terminate all subcontracts for convenience.
 - 14.5.2.4 Cancel all materials and equipment orders as applicable.
 - 14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
 - 14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

- 14.6 **Termination By Contractor** - If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 14.7 **Settlement on Termination** - When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 15 - Dispute Resolution

- 15.1 **Unresolved Contractor Disputes** - The dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 **Alternative Dispute Resolution Process** - Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.
- 15.2.1 *Mediation. If a dispute arises out of or relates to the Contract or the breach thereof in which the amount in controversy is \$250,000 or greater, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute by mediation using the procedures specified in this section prior to the commencement of any legal action. The parties commit to participate in the proceedings in good faith with the intention of resolving the dispute if at all possible.*
- 15.2.1.1 *The party seeking to initiate mediation of a dispute shall give written notice to the other party describing the nature of the dispute, the initiating party's claim for relief and identifying one or more individuals with authority to settle the dispute on such party's behalf. The party receiving such notice shall have five (5) business days to designate by written notice one or more individuals with authority to settle the dispute on such party's behalf.*
- 15.2.1.2 *The parties shall then have ten (10) business days to submit to each other a written list of acceptable qualified mediators not affiliated with any of the parties. The mediator shall possess the qualifications required under Civil Practice and Remedies Code, § 154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable. The parties shall mutually agree on the mediator.*
- 15.2.1.3 *In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than (45) days after selection of the mediator.*
- 15.2.1.4 *The parties agree to participate in the mediation to its conclusion. The mediation shall be terminated (i) by the execution of a settlement agreement by the parties, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a party to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. Even if the mediation is terminated without a resolution of the dispute, the parties agree not to terminate negotiations and not to commence any legal action or seek other remedies prior to the expiration of five (5) days following the mediation. Notwithstanding the foregoing, any party may commence litigation within such five (5) day period if litigation could be barred by an applicable statute of limitations or in order to request an injunction to prevent irreparable harm.*
- 15.2.1.5 *The parties shall share the cost of the mediation process equally although each party's attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.*
- 15.2.1.6 *The entire mediation process is confidential, and no stenographic, visual or audio record shall be made. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any party, their agents, employees, representatives or other invitees and by the mediator are confidential and shall, in addition and where appropriate, be deemed to be privileged and shall not be discoverable or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties.*
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 *Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice & Remedies Code, nothing herein shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or the University of North Texas System.*

15.5 *Pre-judgment and post-judgment interest shall be limited to the rate of one and a half percent (1.5%) per annum.*

Article 16 - Miscellaneous

- 16.1 **Supplementary General and Special Conditions** - When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 **Federally Funded Projects** - On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions, which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 **Internet-Based Project Management Systems** - At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
- 16.3.1 **Accessibility and Administration**
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 **Training** - When used, Owner shall provide training to the Project team members.
- 16.4 **Computation of Time** - *In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.*
- 16.5 **Survival of Obligations** - *All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.*
- 16.6 **No Waiver of Performance** - *The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.*
- 16.7 **Governing Law** - *This Contract shall be governed by the law of the State of Texas.*
- 16.8 **Captions and Catch Lines** - *The captions and catch lines used throughout the Uniform General Conditions and the Supplementary General Conditions and elsewhere in the Contract Documents are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.*
- 16.9 **Independent Contractor Status** - *The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.*

- 16.10 **No third party beneficiaries** - *The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.*
- 16.11 **Child Support Obligor** - *Notwithstanding anything to the contrary within the Contract Documents, it is understood and agreed between the parties that in accordance with the laws of the State of Texas, a child support obligor who is more than thirty (30) days delinquent in paying child support, and a business entity in which an obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%), is not eligible to receive payments from state funds under a contract to provide property, materials or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement.*
- 16.12 **Entire Agreement** - *These Contract Documents supersede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitutes the entire agreement.*
- 16.13 **Assignment** - *This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future Affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to do business with the State of Texas.*
- 16.14 **Severability** - *If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as if the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.*
- 16.15 **Parties Bound** - *Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.*

Refer to Document 008000 for Special Conditions.

END OF DOCUMENT