

UNT | SYSTEM™

REQUEST FOR PROPOSAL

RFP No.: RFP752-19-230308DH
Title: Patio Canopy for 1500 I-35

Proposal Submittal Deadline: **May 2, 2019 2:00 pm, local time**

Prepared by:
Denise Harpool, Senior Buyer
University of North Texas System Procurement Services
Business Service Center
1112 Dallas Drive, Suite 4000
Denton, Texas 76205
Date Issued: April 9, 2019

REQUEST FOR PROPOSAL

Table of Contents

SECTION 1: INTRODUCTION 3
SECTION 2: NOTICE TO PROPOSER..... 3
SECTION 3: SUBMITTAL OF PROPOSAL..... 4
SECTION 4: GENERAL TERMS AND CONDITIONS..... 5
SECTION 5: SCOPE OF SERVICES..... 6
SPECIFICATION SHEETS A&B

Attachment A: 004100 Proposal & Qualification Forms

Attachment B: Payment Bond

Attachment C: UNT System UGC's

Attachment D: UNTS Construction Contract

SECTION 1: INTRODUCTION

1.1 UNTS System Description

The University of North Texas System (UNTS) is seeking proposals for Purchase and Install Patio Canopy for the UNT Denton Campus (NIGP commodity code-910-52). UNTS is a University system that is composed of the University of North Texas in Denton (UNT), the University of North Texas Health Science Center (UNTHSC) in Fort Worth and the University of North Texas at Dallas (UNTD). The UNT System Administration is based in downtown Dallas. The three independent universities of the UNT System have combined enrollment of just over 42,000 students across five major teaching locations, including each main campus as well as Frisco and downtown Dallas. Proposals submitted in response to this RFP shall be for goods and/or services provided to UNTS, UNT, UNTHSC and/or UNTD, as agreed to in writing by the parties.

1.2 Background

The University of North Texas has a need to purchase and have a certified installer for the required Patio Canopy listed in the attached specifications. By showing a manufactures specification, this is not intended to single source this solicitation. This is merely to give the University's minimum requirement for the Patio Canopy. If your company has a Patio Canopy System, which meets these requirements, please submit the specifications to Denise Harpool prior to the question and answer period deadline.

1.3 Group Purchase Authority

Texas law authorizes institutions of higher education to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer(s) under this Section. Should another institution exercise this option the resulting contract and obligations shall be between that institution and the vendor with UNTS incurring no obligation as a result thereof.

SECTION 2: NOTICE TO PROPOSER

2.1 Submittal Deadline

UNTS will accept proposals submitted in response to this RFP until 2:00 p.m., local time, on May 2, 2019 (the "Submittal Deadline").

2.2 UNTS Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following UNTS contact ("UNTS Contact"):

Denise Harpool, Senior Buyer

The University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications forwarded to the UNTS Contact via the following link: <https://www.untsystem.edu/bid-inquiry>.

The UNTS Contact must receive all questions or concerns no later than 2:00 pm on April 24, 2019. It is UNTS' intent to respond to all appropriate questions and concerns; however, UNTS reserves the right to decline to respond to any question or concern.

Answers to questions will be posted via addendum to this RFP on UNTS Business Service Center Bid Opportunities web page located at: <https://www.untsystem.edu/hr-it-business-services/procurement/purchasing/bid-opportunities>. Vendors are strongly advised to review this page at least four (4) business days prior to the due date for submissions or earlier to ensure that you have received all applicable addenda.

2.3 Criteria for Selection

The successful Proposer(s), if any, will be the Proposer(s) who submit a response to this RFP on or before the Submittal Deadline, and whose response is the best value UNTS, taking into consideration the evaluation criteria contained herein. Selection by UNTS will be in accordance with the requirements and specifications set forth in this RFP. The successful Proposer(s) is/are

referred to as the "Contractor". UNTS reserves the right to make a single award from this solicitation or multiple awards, whatever is in the best interest of the University, with UNTS being the sole judge thereof.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to UNTS as outlined below. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to UNTS in a contract for the services.

An evaluation team from UNTS will evaluate proposals. The evaluation of proposals and the selection of Contractor will be based on the information provided by Proposer in its proposal. Proposers should address, within the response, each of the criteria listed in this section. Failure to respond to these criteria may result in your proposal receiving a negative rating or considered as non-responsive. Proposers should note that the awarded proposal may not be the lowest offer, but the offer(s) deemed most advantageous to UNTS as described in this section.

The criteria to be considered by UNTS in evaluating proposals and selecting awardee(s) will be the following factors:

- 2.3.1 The Contractor's financial proposal including, but not limited to discounts, services and other charges/fees;
- 2.3.2 The Contractor's relevant qualification and experience and availability, key personnel outlined in this RFP, as well as any special services the Contractor may provide;
- 2.3.3 The Contractor's relevant experience, qualifications, and success in providing the goods and services outlined in this RFP.
- 2.3.4 The Contractor's references as outlined in this RFP;
- 2.3.5 The responsibility and reputation of the proposer, including claims and litigation
- 2.3.6 The Contractors safety record
- 2.3.7 Quality and completeness of the submittal

Furthermore, UNTS may consider information related to past contract performance of a respondent including, but not limited to, the Texas Comptroller of Public Accounts Vendor Performance Tracking System.

2.4 Schedule of Key Events

Issuance of RFP	4/9//2019
Pre-Proposal Meeting.....	4/16/2019, 10:00 am
Deadline for Questions/Concerns	4/19/2019, 2:00 pm, local time (Ref. Section 2.2 of this RFP)
Answers to Questions posted	4/24/2019, 2:00 pm, local time
Submittal Deadline	5/2/2019, 2:00 pm, local time (Ref. Section 2.1 of this RFP)

Note: This events schedule is for planning purposes only and may be changed at the sole discretion of UNTS.

SECTION 3: SUBMITTAL OF PROPOSAL

3.1 Number of Copies

Proposer must submit one (1) complete original copy of its *entire* proposal. An *original* signature by an authorized officer must appear on the Execution of Offer (ref. Appendix 1, Section 2) of submitted proposal. The Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

The University does not consider electronic signatures to be valid for submittal of competitive solicitation responses. Therefore, there must be an original signature.

In addition to the original proposal, Proposer must submit one (1) complete copy of the *entire* proposal electronically on a USB flash drive. The USB flash drive must include a protective cover and be labeled with Proposer's name and the RFP number.

3.2 Submittal

Proposals must be received by UNTS on or before the Submittal Deadline (ref. Section 2.1 of this RFP) and should be delivered to:

University of North Texas System
Procurement Services
Business Service Center
1112 Dallas Drive, Suite 4000
Denton, TX 76205

Proposals must be typed on letter-size (8.5" x 11") paper. Sections within the proposal may be tabbed for ease of reference. Pre-printed material(s), if included, should be referenced in the proposal and included as labeled attachments.

Request for Proposal number and submittal date should be marked in the lower left-hand corner of sealed bid envelope (box/container). If an HSP is required (refer to Section 2.5), both the proposal and the completed HSP must be in individual sealed envelopes and both envelopes placed in one sealed master container.

Note: Electronic submittals via facsimile or other electronic means will not be accepted.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for UNTS' acceptance for a minimum of one hundred and eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and, any unforeseen delays. Should circumstances arise that require an extension to this period, UNTS reserves the right to provide extensions at its discretion.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Notice to Proposer (ref. Section 2 of this RFP), Proposal Requirements (ref. Section 5 of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1 Specification (ref. Section 5 of this RFP),
- 3.4.1.2 Proposal Requirements (ref. Appendix One),
- 3.4.1.3 Notice to Proposers (ref. Section 2 of this RFP).

3.4.2 UNTS intends to enter into an agreement with the Contractor in substantially the form of the attached Sample Agreement. (refer to Click to enter Attachment name). Award is contingent upon the successful execution of agreement.

3.5 Submittal Checklist

Proposer is to complete, sign, and return the following documents as a part of its proposal. Failure to return each of these items with the proposal may result in rejection of the proposal.

- 3.5.1 Signed and Completed Execution of Offer (ref. Appendix 1, Section 2).
- 3.5.2 Responses to Proposer's General Questionnaire (ref. Appendix 1, Section 3).
- 3.5.3 Signed and Completed Addenda Checklist (ref. Appendix 1, Section 4).
- 3.5.4 Responses to evaluation criteria.

SECTION 4: GENERAL TERMS AND CONDITIONS

UNTS' standard purchase order terms and conditions can be found at:
https://www.untssystem.edu/sites/default/files/bsc_po_terms_12.19.2017.pdf.

Additionally, attached is a sample Services Agreement (refer to Section 3.4.2 of this RFP).

4.1 **Term.**

The term of the contract resulting from this RFP shall be from execution of the Construction Contract agreement until the end the agreed project completion date.

4.2 **Exceptions**

Any exceptions to the terms in either our standard purchase order terms and conditions or those included in the sample agreement should be clearly stated and included in a separate section of the Proposer's response and marked "exceptions". Proposers are advised that should UNTS not accept a stated exception, the result might be in the disqualification of the proposal.

4.3 **Bond & Insurance**

In accordance with Texas Government Code 2253, a Payment Bond is required for all public works agreements over \$25,000.00 and a Performance Bond for all public works agreements over \$100,000.00. It is estimated that this agreement will not be over \$100,000.00, so a Payment Bond is required but a Performance Bond is not required. Please provide only the Payment Bond cost. The Owner will pay bonding costs to the awarded vendor as a pass through amount with proper documentation provided along with an invoice.

The Contractor shall provide and maintain, until the work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage as stated in Division 00, Section 007000, UGC

SECTION 5: SCOPE OF SERVICES

5.1 Vendor Minimum Requirements/Qualifications

Vendor must be an authorized agent of the landscapeform Upfit (Or authorized equal) by showing a manufactures specification, this is not intended to single source this solicitation. This is merely to give the University's minimum requirement for the Patio Canopy. If your company has a Patio Canopy System, which meets these requirements, please submit the specifications to Denise Harpool prior to the question and answer period deadline.

The successful vendor shall procure and install the equipment and labor: landscapeform Upfit (or approved equal) 16'x16'x10'h canopy with gutter up-lights, operable louvers, weather sensor, 36"h wall slat, (2) dining height table landscapeform Upfit (or approved equal) certified installation Provide engineered shop drawings within 2 weeks of purchase order

5.2 Specifications/Deliverables

The successful vendor shall procure and install the equipment and labor:

1. landscapeform Upfit 16'x16'x10'h canopy with gutter up-lights, operable louvers, weather sensor, 36"h wall slat, (2) dining height table
2. landscapeform Upfit certified installation
3. Provide engineered shop drawings within 2 weeks of purchase order

Please see the attached "landscapeforms" "Upfit" specification sheets for minimum requirements. This specification is not intended to single sourced this solicitation, but to show the minimum requirement. If you have an alternate product, you would like to submit for consideration, please do so prior to April 24, 2019.

5.3 Pricing/Fees

Please include in your response an outline of fees and expenses that you will be charging the University for this Service. Total should include installation, shipping costs and warranty. Please list a separate price for Payment Bond as that will be a pass through cost.



adaptive outdoor structure

Product Data Sheet





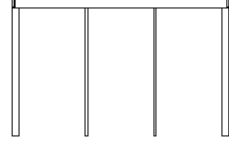



Upfit expands the use of the outdoors by transforming new and existing space into purposeful place designed for a variety of activities. Upfit is an adaptive structure with a sleek, modern style and endless flexibility to create intentional outdoor environments. It provides shelter from the elements, power, light, technology, and surfaces—all of the things people need to live, learn, work, care, play, and travel outdoors. Upfit makes place relevant, useful, and enjoyable at a portion of the cost of indoor real estate.

Standard Upfit Structure

- Basic unit – 16' w X 16' d X 10' h.
- Structure is available with or without lighting.
- Scalable for any space.
- Upfit Structure contains post, beams, gutters, panel dividers, louvered extrusions, pivot parts, and hardware.
- Structure support componets are made of powdercoated extruded aluminum.
- Upfit operation includes Somfy® motors, controllers, wall switch, and weather sensors.
- Units have optional lighting fixtures, electrical capabilities, four different panel options (aluminum louvered, aluminum slatted, glass, or green panels), and accessories (bike rack and tables).
- Electrical wiring can be run anywhere in the structure through the posts and beams, powering lights, accessories, and providing power access.

Note: electrical to be run by third party provided by customer.

LOUVERED ROOF	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	Basic Unit	192"	192"	120"	1,062 lbs
	Basic Unit with Panel Posts	192"	192"	120"	1,249 lbs

PANEL POST OPTION 1	PANEL POST OPTION 2
	
PANEL POST OPTION 3	NO PANELS OPTION 4
	

Product Data Sheet



Louvered Roof

- Louvered roof comes in two sections of 8' x 16' powdercoated extruded aluminum louvers.
- Louvers pivot 170 degrees to completely open and close.
- Structure must have electrical power to operate louvers.
- Louvers are powered by a 24v motor.

Weather Management

- Roof comes standard with weather sensors.
- Rain and wind sensors detect precipitation and close louvers, or detect excessive wind speed and open.
- Louver control options include 3 types of motorized operations: switch, remote control using RF technology, and smart device app using iLouver technology. The motorized controls are UL and CE certified.
- Louvered roof has three weather management benefits:
 1. Wind: Louvers are sensor-enabled to open during high winds to prevent damage and uplift.
 2. Rain: Louvers are sensor-enabled to close during rainfall - or with the press of a button. The louvers are designed to be water-tight when closed to prevent any water leakage. Closed roof louvers direct rainwater to a gutter system designed within the louvers and drains the water through the structure post to the base of unit or into a prepared drain site.
 3. Shade: Louvers can close to provide shade through any of the motorized operations.

Control Specs

- **Motor 24v**
 - Stroke Length: 140
 - Voltage: 24V
 - Speed: Full Load 2, 8 – 4 mm/sec (0.11 in/s)
- **No Load 4mm/sec (0.16 in/s)**
 - Torque: 2500N
 - IP 66
 - Black Cable of 1,5m
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Control Box 24V**
 - Voltage: 24V
 - IP: 65
 - Radio Technology Somfy® embedded
 - Temperature sensor embedded
 - Compatible with range of RTS controls, sensors
 - Default limits management: Fully automatic
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Rain/Freeze/Snow Sensor**
 - Power input: Solar powered
 - Radio frequency: 433.42 Mhz
 - Range: up to 65 feet
 - Protection rating: IP 55
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Wind Sensor**
 - Input: 24V AC/DC transformer
 - Power: 24V DC 20mA
 - Power consumption: 25 mA
 - Radio frequency: 433.42 Mhz
 - Range: up to 65 feet
 - Protection Rating: IP 35
 - Operating T°: -4°F to 122°F (-20°C / +50°C)

Product Data Sheet



Electrical Packages

1. Standard electrical

- Unit comes standard with electrical operation and Somfy® (motor, controller and power supply) for operating louvered roof
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors

2. Standard electrical + lighting

- Unit comes standard with electrical operation and Somfy® (motor, controller and power supply) for operating louvered roof, along with gutter-up-lighting
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors + gutter-up-lights

3. Standard electrical + third party accessories

- Unit comes standard with electrical operation, Somfy® (motor, controller and power supply) for operating louvered roof, and with third party lighting accessories (provided and installed by end-client)
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors + third party lighting accessories

Note: All Upfit units can run electrical through posts and beams. Please note, any electrical work outside of the standard electrical packages is to be done by a customer appointed third party.

Lighting













- Upfit is available either with or without lighting.
- To accommodate lighting, an Upfit with standard electrical + lighting must be specified.
- Every Upfit with lighting includes an LED Wall Controller.
- This control allows you to select color and/or brightness for your lighting accessories.
- Input voltage: 12VDC or 24VDC
- This control is warranted for 1 year.
- Upfit lighting: gutter up-light
 - Accent lighting is positioned around the interior perimeter and directed up toward the roof louvers.
 - Lights are 5.5 watts per ft. (450 lumens per ft.) and available in 24vDC input.
 - Gutter up lights are warranted for 1 year.
 - Certifications: UL Listed, cUL Listed, RoHS
 - IP rating: IP65

Product Data Sheet



Panels

- There are four panel types available; slatted, louvered, glass, and green.
- Slatted panels:
 - Panel frame and slats are powdercoated aluminum extrusions.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Louvered panels:
 - Louvered slats are angled at 45° and panel frame and slats are powdercoated aluminum extrusions.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Glass panels:
 - Glass is laminated tempered glass, available in a variety of colors (white - opaque, red, green, yellow, blue, and dark blue).
 - Glass panels can also function as a markerboard (white being ideal).
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Green panels:
 - Green panels are powdercoated silver steel welded wire.
 - Customer to provide greenery, greenery installation, and greenery care and maintenance.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.





SLATTED PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	1.5"	58.6"	36"	33 lbs.
	72"	1.5"	58.6"	72"	66 lbs.
	108"	1.5"	58.6"	108"	99 lbs.
LOUVERED PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	3.5"	58.6"	36"	57 lbs.
	72"	3.5"	58.6"	72"	115 lbs.
	108"	3.5"	58.6"	108"	170 lbs.
GLASS PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	2"	58.6"	36"	39 lbs.
	72"	2"	58.6"	72"	77 lbs.
	108"	2"	58.6"	108"	116 lbs.
GREEN PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	3"	58.6"	36"	8 lbs.
	72"	3"	58.6"	72"	16 lbs.
	108"	3"	58.6"	108"	24 lbs.

Product Data Sheet



Accessories

- Accessories for Upfit include peninsula tables, an in-line table, and a bike rack (power garage available Spring 2019).
- Peninsula table:
 - Available in standing height and dining height
 - Dining height table is ADA compliant
 - Table frame is mounted to the structure posts by the table attachment bar. The opposite end of the table is supported by a free standing leg with glides.
 - Aluminum legs are available in all of Landscape Forms powdercoat colors.
 - Aluminum table tops available in all of Landscape Forms powdercoat colors.
 - Wood table tops are available in jarrah, ipe and domestically sourced thermally modified ash (DSTMA).
 - Table frame is mounted to the structure and / or panel posts.
- In-line Table:
 - Standing height
 - Extruded aluminum table tops are available in all of Landscape Forms powdercoat colors.
 - Wood table tops are available in jarrah, ipe and domestically sourced thermally modified ash (DSTMA).
 - In-line tables can be mounted above the 36" or 72" louvered or slatted walls and are mounted to the structure and / or wall posts.
- Bike Rack:
 - Available in all of Landscape Forms standard powdercoat colors.
 - Tamper resistant design.
 - Bike rack is mounted to panels of the structure.

ACCESSORIES	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	Bike Rack	6"	3"	57"	Call for Weight
	In-Line Table	58.6"	19.25"	36" or 72"	Call for Weight
	Peninsula Standing Table	72"	34"	41"	Call for Weight
	Peninsula Dining Table	72"	34"	30"	Call for Weight

Product Data Sheet



Finishes

- Structure (posts, beams, and connectors), louvered roof extrusions, and panels are available in Dusk, Obsidian, Onyx, Nutmeg, Matte Black, Mercury, and White.
- Accessories are available in all of Landscape Forms standard powdercoat colors.
- Table tops are also available in wood - Jarrah, Ipe, and Domestically Sourced Thermally Modified Ash (DSTMA).

Specification Process

1. Client downloads design package on product page.
2. Client designs Upfit with downloaded drawing package.
3. Client contacts Landscape Forms Representative and/or Customer Service with drawing and/or request.
4. Specify Upfit
 - a. Select powdercoat color for structure (7 selected colors).
 - b. Select powdercoat color for roof louvers (7 selected colors).
 - c. Specify with or without lighting.
 - d. If lighting is selected then unit comes standard with the controller + power supply + gutter up lights.
5. Specify optional panel configurations (glass, green, louver, and/or slatted panels).
 - a. If glass is specified, select color (blue, dark blue, green, red, yellow, white - opaque) and size (36", 72", 108").
 - b. If green is specified, select size (36", 72", 108"). Welded wire screens comes standard silver.
 - c. If louver or slatted is specified, select powdercoat color (7 selected colors) and size (36", 72", 108").

Visit our landscapeforms.com for more information. Specifications are subject to change without notice. Landscape Forms supports the Landscape Architecture Foundation at the Second Century level. ©2018 Landscape Forms, Inc. Printed in U.S.A.

Product Data Sheet



Specification Process (Cont.)

6. Specify optional accessories (in-line table, peninsula tables, and bike rack).
 - a. If an in-line table is specified, choose either a powdercoated or wood tabletop. If aluminum is selected, choose powdercoat color of the table top. If wood is selected, choose wood type. In-line tables can be mounted above the 36" or 72" louvered or slatted walls and are mounted to the structure and / or panel posts.
 - b. If a peninsula table is specified, select dining or standing height, table top wood type or powdercoated aluminium finish, and powdercoat color for support.
 - c. If a bike rack is specified, select any of the Landscape Forms standard powdercoat colors.
7. The Upfit structure can be either surface mounted or embedded.
8. Site inspection and installation to be completed by the Upfit-certified team.
9. Any third party lighting is to be provided and installed by the customer.

Site Inspection and Installation

- Site inspection to be done before product is built.
- Structure can accommodate slope.
- Installation to be completed by the Upfit-certified team.
- Upfit is embedded/surface mounted to site.

Designed by KEM STUDIO in partnership with StuXure Outdoor

Visit our [landscapeforms.com](https://www.landscapeforms.com) for more information. Specifications are subject to change without notice. Landscape Forms supports the Landscape Architecture Foundation at the Second Century level. ©2018 Landscape Forms, Inc. Printed in U.S.A.



Product Data Sheet



Upfit expands the use of the outdoors by transforming new and existing space into purposeful place designed for a variety of activities. Upfit is an adaptive structure with a sleek, modern style and endless flexibility to create intentional outdoor environments. It provides shelter from the elements, power, light, technology, and surfaces—all of the things people need to live, learn, work, care, play, and travel outdoors. Upfit makes place relevant, useful, and enjoyable at a portion of the cost of indoor real estate.

Standard Upfit Structure

- Basic unit – 16' w X 16' d X 10' h.
 - Structure is available with or without lighting.
 - Scalable for any space.
 - Upfit Structure contains post, beams, gutters, panel dividers, louvered extrusions, pivot parts, and hardware.
 - Structure support componets are made of powdercoated extruded aluminum.
 - Upfit operation includes Somfy® motors, controllers, wall switch, and weather sensors.
 - Units have optional lighting fixtures, electrical capabilities, four different panel options (aluminum louvered, aluminum slatted, glass, or green panels), and accessories (bike rack and tables).
 - Electrical wiring can be run anywhere in the structure through the posts and beams, powering lights, accessories, and providing power access.
- Note: electrical to be run by third party provided by customer.

LOUVERED ROOF	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	Basic Unit	192"	192"	120"	1,062 lbs
	Basic Unit with Panel Posts	192"	192"	120"	1,249 lbs

PANEL POST OPTION 1	PANEL POST OPTION 2
PANEL POST OPTION 3	NO PANELS OPTION 4

Product Data Sheet



Louvered Roof

- Louvered roof comes in two sections of 8' x 16' powdercoated extruded aluminum louvers.
- Louvers pivot 170 degrees to completely open and close.
- Structure must have electrical power to operate louvers.
- Louvers are powered by a 24v motor.

Weather Management

- Roof comes standard with weather sensors.
- Rain and wind sensors detect precipitation and close louvers, or detect excessive wind speed and open.
- Louver control options include 3 types of motorized operations: switch, remote control using RF technology, and smart device app using iLouver technology. The motorized controls are UL and CE certified.
- Louvered roof has three weather management benefits:
 1. Wind: Louvers are sensor-enabled to open during high winds to prevent damage and uplift.
 2. Rain: Louvers are sensor-enabled to close during rainfall - or with the press of a button. The louvers are designed to be water-tight when closed to prevent any water leakage. Closed roof louvers direct rainwater to a gutter system designed within the louvers and drains the water through the structure post to the base of unit or into a prepared drain site.
 3. Shade: Louvers can close to provide shade through any of the motorized operations.

Control Specs

- **Motor 24v**
 - Stroke Length: 140
 - Voltage: 24V
 - Speed: Full Load 2, 8 – 4 mm/sec (0.11 in/s)
- **No Load 4mm/sec (0.16 in/s)**
 - Torque: 2500N
 - IP 66
 - Black Cable of 1,5m
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Control Box 24V**
 - Voltage: 24V
 - IP: 65
 - Radio Technology Somfy® embedded
 - Temperature sensor embedded
 - Compatible with range of RTS controls, sensors
 - Default limits management: Fully automatic
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Rain/Freeze/Snow Sensor**
 - Power input: Solar powered
 - Radio frequency: 433.42 Mhz
 - Range: up to 65 feet
 - Protection rating: IP 55
 - Operating T°: 14°F to 140°F (-10°C / +60°C)
- **Wind Sensor**
 - Input: 24V AC/DC transformer
 - Power: 24V DC 20mA
 - Power consumption: 25 mA
 - Radio frequency: 433.42 Mhz
 - Range: up to 65 feet
 - Protection Rating: IP 35
 - Operating T°: -4°F to 122°F (-20°C / +50°C)

Product Data Sheet



Electrical Packages

1. Standard electrical

- Unit comes standard with electrical operation and Somfy® (motor, controller and power supply) for operating louvered roof
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors

2. Standard electrical + lighting

- Unit comes standard with electrical operation and Somfy® (motor, controller and power supply) for operating louvered roof, along with gutter-up-lighting
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors + gutter-up-lights

3. Standard electrical + third party accessories

- Unit comes standard with electrical operation, Somfy® (motor, controller and power supply) for operating louvered roof, and with third party lighting accessories (provided and installed by end-client)
- Package components include: Upfit unit + motor + controller + wall switch + weather sensors + third party lighting accessories

Note: All Upfit units can run electrical through posts and beams. Please note, any electrical work outside of the standard electrical packages is to be done by a customer appointed third party.

Lighting













- Upfit is available either with or without lighting.
- To accommodate lighting, an Upfit with standard electrical + lighting must be specified.
- Every Upfit with lighting includes an LED Wall Controller.
- This control allows you to select color and/or brightness for your lighting accessories.
- Input voltage: 12VDC or 24VDC
- This control is warranted for 1 year.
- Upfit lighting: gutter up-light
 - Accent lighting is positioned around the interior perimeter and directed up toward the roof louvers.
 - Lights are 5.5 watts per ft. (450 lumens per ft.) and available in 24vDC input.
 - Gutter up lights are warranted for 1 year.
 - Certifications: UL Listed, cUL Listed, RoHS
 - IP rating: IP65

Product Data Sheet



Panels

- There are four panel types available; slatted, louvered, glass, and green.
- Slatted panels:
 - Panel frame and slats are powdercoated aluminum extrusions.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Louvered panels:
 - Louvered slats are angled at 45° and panel frame and slats are powdercoated aluminum extrusions.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Glass panels:
 - Glass is laminated tempered glass, available in a variety of colors (white - opaque, red, green, yellow, blue, and dark blue).
 - Glass panels can also function as a markerboard (white being ideal).
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.
- Green panels:
 - Green panels are powdercoated silver steel welded wire.
 - Customer to provide greenery, greenery installation, and greenery care and maintenance.
 - Available in heights of 36", 72", or 108".
 - Panels are 58.6" wide
 - Panels are attached to structure and / or panel posts.





SLATTED PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	1.5"	58.6"	36"	33 lbs.
	72"	1.5"	58.6"	72"	66 lbs.
	108"	1.5"	58.6"	108"	99 lbs.
LOUVERED PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	3.5"	58.6"	36"	57 lbs.
	72"	3.5"	58.6"	72"	115 lbs.
	108"	3.5"	58.6"	108"	170 lbs.
GLASS PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	2"	58.6"	36"	39 lbs.
	72"	2"	58.6"	72"	77 lbs.
	108"	2"	58.6"	108"	116 lbs.
GREEN PANEL	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	36"	3"	58.6"	36"	8 lbs.
	72"	3"	58.6"	72"	16 lbs.
	108"	3"	58.6"	108"	24 lbs.

Product Data Sheet



Accessories

- Accessories for Upfit include peninsula tables, an in-line table, and a bike rack (power garage available Spring 2019).
- Peninsula table:
 - Available in standing height and dining height
 - Dining height table is ADA compliant
 - Table frame is mounted to the structure posts by the table attachment bar. The opposite end of the table is supported by a free standing leg with glides.
 - Aluminum legs are available in all of Landscape Forms powdercoat colors.
 - Aluminum table tops available in all of Landscape Forms powdercoat colors.
 - Wood table tops are available in jarrah, ipe and domestically sourced thermally modified ash (DSTMA).
 - Table frame is mounted to the structure and / or panel posts.
- In-line Table:
 - Standing height
 - Extruded aluminum table tops are available in all of Landscape Forms powdercoat colors.
 - Wood table tops are available in jarrah, ipe and domestically sourced thermally modified ash (DSTMA).
 - In-line tables can be mounted above the 36" or 72" louvered or slatted walls and are mounted to the structure and / or wall posts.
- Bike Rack:
 - Available in all of Landscape Forms standard powdercoat colors.
 - Tamper resistant design.
 - Bike rack is mounted to panels of the structure.

ACCESSORIES	STYLE	DEPTH	WIDTH	HEIGHT	WEIGHT
	Bike Rack	6"	3"	57"	Call for Weight
	In-Line Table	58.6"	19.25"	36" or 72"	Call for Weight
	Peninsula Standing Table	72"	34"	41"	Call for Weight
	Peninsula Dining Table	72"	34"	30"	Call for Weight

Product Data Sheet



Finishes

- Structure (posts, beams, and connectors), louvered roof extrusions, and panels are available in Dusk, Obsidian, Onyx, Nutmeg, Matte Black, Mercury, and White.
- Accessories are available in all of Landscape Forms standard powdercoat colors.
- Table tops are also available in wood - Jarrah, Ipe, and Domestically Sourced Thermally Modified Ash (DSTMA).

Specification Process

1. Client downloads design package on product page.
2. Client designs Upfit with downloaded drawing package.
3. Client contacts Landscape Forms Representative and/or Customer Service with drawing and/or request.
4. Specify Upfit
 - a. Select powdercoat color for structure (7 selected colors).
 - b. Select powdercoat color for roof louvers (7 selected colors).
 - c. Specify with or without lighting.
 - d. If lighting is selected then unit comes standard with the controller + power supply + gutter up lights.
5. Specify optional panel configurations (glass, green, louver, and/or slatted panels).
 - a. If glass is specified, select color (blue, dark blue, green, red, yellow, white - opaque) and size (36", 72", 108").
 - b. If green is specified, select size (36", 72", 108"). Welded wire screens comes standard silver.
 - c. If louver or slatted is specified, select powdercoat color (7 selected colors) and size (36", 72", 108").

Visit our landscapeforms.com for more information. Specifications are subject to change without notice. Landscape Forms supports the Landscape Architecture Foundation at the Second Century level. ©2018 Landscape Forms, Inc. Printed in U.S.A.

Product Data Sheet



Specification Process (Cont.)

6. Specify optional accessories (in-line table, peninsula tables, and bike rack).
 - a. If an in-line table is specified, choose either a powdercoated or wood tabletop. If aluminum is selected, choose powdercoat color of the table top. If wood is selected, choose wood type. In-line tables can be mounted above the 36" or 72" louvered or slatted walls and are mounted to the structure and / or panel posts.
 - b. If a peninsula table is specified, select dining or standing height, table top wood type or powdercoated aluminium finish, and powdercoat color for support.
 - c. If a bike rack is specified, select any of the Landscape Forms standard powdercoat colors.
7. The Upfit structure can be either surface mounted or embedded.
8. Site inspection and installation to be completed by the Upfit-certified team.
9. Any third party lighting is to be provided and installed by the customer.

Site Inspection and Installation

- Site inspection to be done before product is built.
- Structure can accommodate slope.
- Installation to be completed by the Upfit-certified team.
- Upfit is embedded/surface mounted to site.

Designed by KEM STUDIO in partnership with StuXure Outdoor

Visit our [landscapeforms.com](https://www.landscapeforms.com) for more information. Specifications are subject to change without notice. Landscape Forms supports the Landscape Architecture Foundation at the Second Century level. ©2018 Landscape Forms, Inc. Printed in U.S.A.

**DOCUMENT 004100
RFP752-19-230308DH
Install Patio Canopy at 1500 I-35
PROPOSAL FORM**

Proposal of: _____
(Company Name)

The University of North Texas System (UNTS), on behalf of the University of North Texas (UNT), subsequently referred to as the Owner, is accepting sealed proposals and intends to enter into an agreement with a General Construction contractor in accordance with the terms, conditions and requirements set forth in this Request for Proposal (RFP). This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by the Owner.

UNTS is accepting sealed proposals no later than 2:00p.m. CST on April 9, 2019. Proposals received after the date and hour previously stated will not receive consideration.

The scope of work of this RFP is Install a Patio Canopy on the building at 1500 I-35. A set of the one hundred percent (100%) Construction Documents and Specifications have been included for use in preparation of the proposal. A sample copy of the agreement has been included (Division 00, Section 005200, *Agreement Forms*) for review.

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

Via hand delivery or overnight delivery only (i.e. FedEx, UPS, etc.)

TO: Denise Harpool
Senior Buyer, Procurement UNTS
Business Service Center
Woodhill Square
1112 Dallas Drive, Suite 4000
Denton, Texas 76205

BASE BID

Pursuant to and in compliance with the Contract Documents and any attachments thereto, including the Advertisement for Competitive Sealed Proposal and Instruction for Proposal, the Proposer hereby certifies that it has carefully examined the Contract Document entitled:

Install Patio Canopy at 1500 I-35

and the conditions affecting the Work, and being familiar with the site; and having made the necessary examinations, proposes to furnish all labor, materials, equipment, and services necessary to complete the Work in strict accordance with the Contract Documents for the above referenced project for the following sum (**Not including bond cost**), which is hereby designated as the Base Bid:

\$ _____

PAYMENT TERMS

UNTS shall be billed in accordance with Chapter 2251 of the Texas Government Code and payment shall be made no later than thirty (30) days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to Customer; and (c) interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Payment Applications and any required supporting documents must be presented to: University of North Texas System Facilities; 1155 Union Circle #311040, Denton, Texas 76203-5017.

- a. Payment on any contract will be withheld from Respondent if Respondent is determined to be more than thirty (30) days delinquent for Child Support.
- b. Successful Respondent shall be responsible for referencing the purchase order number(s) resulting from this proposal on any invoice(s), packing list(s), correspondence, etc. Invoicing must correlate to prices quoted either on a unit, hourly, etc. basis.
- c. **DISQUALIFICATION:** Response is subject to disqualification if Respondent provides revisions and/or exclusions to the terms and conditions listed in this solicitation that the Owner is limited by law from accepting (i.e. offers with the laws of a State other than Texas), requirements for prepayment not defined in or allowed for in this Solicitation, limitations on remedies, any revision to stated terms and conditions of the Solicitation, etc.
- d. Respondent agrees that any payments due under this contract may be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

SALES TAX

Purchases made for the Owner's use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in response. Excise Tax Exemption Certificates are available upon request.

INSURANCE

The Contractor shall provide and maintain, until the work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage as stated in Division 00, Section 007000, UGC.

TIME OF COMPLETION

Consecutive Calendar Days needed to complete project: _____ calendar days

LIQUIDATED DAMAGES

Liquidated damages will be in accordance with Division 00, Section 007000, UGC.

BOND

In accordance with Texas Government Code 2253, a Payment Bond is required for all public works agreements over \$25,000.00 and a Performance Bond for all public works agreements over \$100,000.00. It is estimated that this agreement will NOT be over \$100,000.00, so a Payment bond WILL be required. However, a Performance Bond NOT required. (Provided the project does not go over \$100,000) Please provide the amount as a total bond cost. The Owner will pay bonding costs to the awarded vendor as a pass through amount with proper documentation provided along with an invoice.

Payment Bond cost: \$ _____

ADDENDA

Receipt is hereby acknowledged of the following addenda to this RFCSP. (Initial, if applicable)

No. 1: _____ No. 2: _____ No. 3: _____ No. 4: _____ No. 5: _____ No. 6: _____

Dated: _____ Dated: _____ Dated: _____ Dated: _____ Dated: _____ Dated: _____

An incomplete proposal or one having additional information or other modifications inscribed thereon, may be cause for rejections of the entire proposal. This proposal is valid and will be honored for a period of one hundred eighty (180) days following the proposal opening.

QUALIFICATIONS

Refer to Attachment A of this document. Qualifications must be submitted on the enclosed form and no other document will be accepted. Not providing qualifications on the provided form will be cause for disqualification.

An incomplete proposal or one having additional information or other modifications inscribed thereon, may be cause for rejections of the entire proposal. This proposal is valid and will be honored for a period of one hundred eighty (180) days following the proposal opening

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

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

- Supplies, materials, or equipment produced in Texas/offered by Texas bidders
- Agricultural products produced or grown in Texas
- Agricultural products and services offered by Texas bidders
- USA produced supplies, materials, or equipment
- Products of persons with mental or physical disabilities
- Recycled, remanufactured, or environmentally sensitive products, including recycled steel products
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property

- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards

Consistent and continued tie Responses could cause rejection of offers by UNTS and/or investigation for antitrust violations.

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

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

9. By signature hereon, Respondent certifies as follows:

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

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

10. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship, exist between Respondent and an employee of any UNTS component, or Respondent has not been an employee of any UNTS component within the immediate twelve (12) months prior to RFP response. All such disclosures will be subject to administrative review and approval prior to UNTS entering into any contract with Respondent.
11. Respondent certifies that they are in compliance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, respondent will complete the following information in order for the response to be evaluated:

Name of former Executive: _____

Name of State Agency: _____

Date of separation from State agency: _____

Position with Respondent: _____ Date of employment with Respondent: _____

12. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004, Texas Government Code).
13. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
14. **Suspension, Debarment, and Terrorism:** Respondent further certifies that the Respondent and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
15. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

16. By signature hereon, Respondent will comply with and agree to use e-Verify in accordance with State of Texas Executive Order RP-80.
17. Respondent affirmatively states that it does not boycott Israel, pursuant to Texas Gov't Code, Section 2270.001. Additionally, Respondent shall not engage in a boycott of Israel during the term of this Agreement.
18. Respondents should give Payee ID Number, full firm name, and address of Respondent below in the space provided. The Payee ID Number is the taxpayer number assigned and used by the Texas Comptroller of Public Accounts. If this number is not known, complete the Federal Employer's Identification Number

Complete the following:

Payee ID No. _____

If a Corporation
State of Incorporation: _____

FEI No. _____

Charter No: _____

Company Information:

Submitted by:

(Company Name)

(Authorized Signature)

(Street Address Line 1)

(Printed Name/Title)

(Street Address Line 2)

(Date)

(City, State, Zip Code)

(Telephone Number)

(Facsimile Number)

(Email address)

ATTACHMENT A
QUALIFICATIONS
RFCSP752-19-230308DH
Patio Canopy 1500 I-35

ITEMS 1 THROUGH 6 TO BE SUBMITTED WITH PROPOSAL

Proposer's Name: _____

Address: _____

City, State, Zip: _____

Telephone No.: _____ Fax No. _____

State Comptroller Vendor Identification Number: _____

1. GENERAL

- A. Qualification information submitted shall be applicable only to the company entity or branch that will perform this Work.
- B. Attach your Project Organization Chart and resumes of individuals who would be assigned to this project.
- C. Proposed construction schedule (Bar chart acceptable).

2. HISTORY

- A. Corporation Partnership Sole Proprietorship Joint Venture

State of Incorporation: _____

- B. In continuous business since: _____

Remarks (if required):

- C. Corporate Officers, Partners or Owners of Organization:

<u>Name</u>	<u>Branch Manager</u>	<u>Telephone Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. Check box(es) corresponding to the nature of your business:

- Large Business (100 or more employees)
- Small Business (fewer than 100 employees)
- HUB Business
- Other (Define) _____

E. Has your organization ever defaulted or failed to complete any work awarded?

- Yes
- No

If yes, stipulate where and why: _____

F. Has your organization ever paid liquidated damages or a penalty for failure to complete a contract on time?

- Yes
- No

If yes, stipulate where and why: _____

3. EXPERIENCE

A. Normally performs _____ % of the work with own forces. List trades below:

B. Propose to perform _____ % of the work for project with own forces. List trades below:

C. Total number and dollar amount of contracts currently in progress:

Number _____ \$ _____

D. Largest contract currently in-process: _____

Anticipated date of completion: _____

E. Volume of work completed over last 5 years: (Through 12/31)

Year _____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____
 _____ \$ _____

F. Has your organization had any claims and/or litigations in the last 5 years?

G. If yes, list project name, date or project, owner, owner's contact person with telephone number and summary explanation.

4. SAFETY PROGRAM

A. List your organization's Workers Compensation Experience Modification Rate (EMR) for the last three years, as obtained from your insurance agent.

YEAR	EMR
_____	_____
_____	_____
_____	_____

B. Complete matrix for the three past years, as obtained from OSHA N. 200 Log:

Year			
Number of injuries and illness			
Number of lost time accidents			
Number of recordable cases			
Number of fatalities			
Total Injury & illness rate from OSHA 300 log			

Please provide your SIC Code _____

C. Are regular project safety meetings held for Field Supervisor(s)?

Yes No

If yes, frequency:

Weekly Bi-monthly Monthly As Needed

D. Are project safety inspections conducted? Yes No
If yes, who performs inspection? _____ How often? _____

E. Does organization have a written safety program? Yes No
If yes, provide a copy. It will become a compliance document upon contract award.

F. Does your organization have a safety orientation program for new employees? Yes No

For employees promoted to Field Supervisors? Yes No

If yes, does your Supervisor Safety Program include instructions on the following:

	Yes	No
Safety work practices	<input type="checkbox"/>	<input type="checkbox"/>
Tool box safety meetings	<input type="checkbox"/>	<input type="checkbox"/>
First aid procedures	<input type="checkbox"/>	<input type="checkbox"/>
Accident investigation	<input type="checkbox"/>	<input type="checkbox"/>
Fire protection	<input type="checkbox"/>	<input type="checkbox"/>
New worker's orientation	<input type="checkbox"/>	<input type="checkbox"/>

5. FINANCIAL

A. Attach an audited Financial Statement, including a profit and loss statement and other supporting schedules. If the last audited statement is over 12 months old, include the most current unaudited statement.

B. Surety Company: _____
Agent: _____
Name of Contact: _____ Telephone No. _____

C. Bonding Capacity: _____
Limit per project: _____
Unencumbered bonding capacity: _____

D. Trade References (Additional references may be included as attached sheets.)

i. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

ii. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

iii. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

iv. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

E. Bank Reference (Additional references may be included as attached sheets).

i. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

ii. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

iii. Organization: _____
Agent: _____
Name of Contract: _____ Telephone No. _____

6. CSP WRITTEN NARRATIVE RESPONSE

Please provide a written proposal (maximum 15 pages) which should include the following information:

A. List all major projects of your organization has in-progress.

- Name of the project (no project photos)
- Location
- Contract amount
- Percent complete
- Project completion date

B. List three (3) major projects of similar scope your organization has completed in the last five (5) years and include the following information:

- Name of the project
- Location
- Maximum of 3 project photos
- Brief project description
- Contract amount
- Current percent complete
- Anticipated or actual project completion date
- Original completion date vs. anticipated/actual completion date
- Owner reference contact with address and telephone number
- Architect reference contact with address and telephone number

C. List key team members proposed for the project and include the following information for each KEY team member:

- Name, title and role
- Resume
- Number of years experience

- Number of years experience in that role
- Amount of time committed to the project

ATTACHMENT B

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.

(Firm Name)

(Address)

(Signature)

(City, State, Zip)

(Typed Name and Title)

(Telephone)

(Texas Vendor ID No.)

ATTACHMENT C
UNT | SYSTEM™

**UNIFORM GENERAL CONDITIONS
FOR CONSTRUCTION AND DESIGN CONTRACTS
2016**

**ARTICLE 1
DEFINITIONS**

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

- 1.1 “Addendum/Addenda” means formally issued written or graphic modification and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project
- 1.2 “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.
- 1.3 “Application for Payment” means Contractor’s monthly partial invoice for payment that includes any portion of the Work that has been completed and performed in accordance with the requirements of the Contract Documents for which an invoice has not been submitted. The Application for Payment must accurately reflect the progress of the Work, be itemized based on the Schedule of Values, bear the notarized signature of Contractor, and not include subcontracted items for which Contractor does not intend to pay.
- 1.4 “Authority Having Jurisdiction” means a federal, state, local or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 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 Design Professional 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 Design Professional that documents, to the best of Design Professional’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 “Certificate of Substantial Completion” means the certificate executed by the Design Professional, Owner, and Contractor that documents to the best of the Design Professional’s and Owner’s knowledge and understanding, Contractor’s sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.8 “Change Order” means a written modification of the Contract between Owner and Contractor, agreed to and signed by Owner, Contractor, and Design Professional.

- 1.9 “Change Order Request (COR)” means a Contractor generated document which describes a change in the scope of Work, including a detailed description, Drawings and Specifications, and a request for changes to costs or time, as necessary, to inform Owner of the nature of the requested change to the Contract.
- 1.10 “Close-Out Documents” mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavits of payment, releases of liens and claims, and other documents 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 Contract between Owner and Contractor. These may include, but are not limited to: Drawings; Specifications; Uniform General Conditions; Owner’s Special Conditions; Owner’s Design Criteria Package for Design-Build Projects; Guaranteed Maximum Price Proposal executed by Owner and Contractor; all Change Orders; all pre-bid and/or pre-proposal addenda; Owner’s Request for Proposal and/or Request for Qualifications; and Contractor’s response to Owner’s Request for Proposal and/or Request for Qualifications.
- 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 date to achieve Substantial Completion 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, joint venture, 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 but shall be interpreted to include the plural. The term “Contractor” shall also be inclusive of and apply to Design Professional in these Uniform General Conditions when the context does not indicate otherwise.
- 1.18 “Construction Change Directive” means an approved change in the Work issued by the Owner without the complete agreement of Contractor as to cost and/or time.
- 1.19 “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.
- 1.20 “Construction Manager-at-Risk”, in accordance with Tex. Education Code §51.782, 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.
- 1.21 “Coordination Documents” means an ongoing process performed by the Contractor that documents, in a format approved by the Owner, the review of plans and specifications developed by the Design Professional demonstrating the Contractor understands the scope of the project and reviews complex interrelationships among project components.

- 1.22 “Date of Commencement” means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.23 “Day” means a calendar day unless otherwise specifically stipulated.
- 1.24 “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. The Design-Build Project delivery shall be implemented in accordance with Tex. Education Code § 51.780.
- 1.25 “Design-Build Firm”, in accordance with Texas Education Code § 51.780, means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.
- 1.26 “Design Professional” 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.
- 1.27 “Drawings” mean that product and set of documents of Design Professional which graphically depicts the Work.
- 1.28 “Final Completion” means the date determined and certified by Design Professional and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.29 “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 including adjustments to the final Contract Sum resulting from approved change orders and release of Contractor’s retainage.
- 1.30 “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.
- 1.31 “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.
- 1.32 “Notice to Proceed” means written document furnished by the Owner informing Contractor of the date to commence the Work and the date anticipated for Substantial Completion.
- 1.33 “Open Item List” means a list of work activities, Punchlist items, changes, or other issues not expected by Owner, Design Professional, and Contractor to be complete prior to Substantial Completion.
- 1.34 “Owner” means the University of North Texas System and/or its component institutions, as a higher education university system and agency of the State of Texas.
- 1.35 “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 or direct changes to the scope, cost, or time of the Contract.
- 1.36 “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.

- 1.37 "Progress Assessment Report (PAR)" means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.38 "Project" means all activities necessary for realization and completion of Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, fulfillment of all Contract and warranty obligations, and work by Owner's forces or other contractors.
- 1.39 "Project Costs" means all costs necessary for the realization and completion of Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, fulfillment of all Contract and warranty obligations, and work by Owner's forces or other contractors.
- 1.40 "Proposal Request (PR)" means a document that informs Contractor, Owner, and Design Professional of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's pricing for the proposed change.
- 1.41 "Punchlist" means a list of items of Work to be completed or corrected by Contractor before Final Completion, and indicates 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.
- 1.42 "Reasonably Inferable" means a fair, proper, and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.
- 1.43 "Record Documents" mean the Drawings, Specifications, and other materials maintained by Contractor during construction and as corrected by Design Professional, that documents all addenda, Architect's Supplemental Instructions, Change Orders, and postings and markings that record the as-built conditions of the Work and all changes made during construction.
- 1.44 "Request for Information (RFI)" means a written request by Contractor directed to Design Professional and Owner for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work.
- 1.45 "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.
- 1.46 "Schedule of Values" means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work, submitted by Contractor for approval by Owner and Design Professional.
- 1.47 "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.
- 1.48 "Site" means the geographical area of the location of the Work.
- 1.49 "Special Conditions" mean the documents containing terms and conditions which may be unique to the Work or Project.
- 1.50 "Specifications" mean the written product of Design Professional 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.
- 1.51 "Subcontractor" means an individual or 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.

- 1.52 “Submittal Register” means a list provided by Contractor of all items to be furnished for review and approval by Design Professional and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.53 “Substantial Completion” means the date determined and certified by Contractor, Design Professional, 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.
- 1.54 “Unit Price Work” means the Work or a portion of the Work, paid for based on incremental units of measurement.
- 1.55 “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.
- 1.56 “Work Progress Schedule” means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary and appropriate revisions, including a critical path impact analysis, as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

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 storm water run-off. Contractor shall conduct operations consistent with storm water 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, and shall cause subcontractors to, comply with the Texas Prevailing Wage law. Contractor shall pay not 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, as amended. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by Contractor because 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, Contractor shall furnish competent evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 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.
- 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 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.
- 2.2.1.3 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractor. Pursuant to Tex. Penal Code § 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.
- 2.2.1.4 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.

2.2.1.5 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.

2.2.1.6 Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.

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.

2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigation hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.

2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal

2.2.3.5 an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

2.3 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers, and 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.

2.4 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. Provided, however, if Contractor is a Construction Manager-at-Risk, Contractor 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 Design Professional; unless Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent then Contractor shall be responsible for such loss unless notice of such information is promptly furnished to Design Professional.

- 2.5 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.
- 2.6 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 the 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.
- 2.7 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.
- 2.8 Conflicts of Interest. Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors, sub-consultants or others for whom they may be liable, to secure preferential treatment.

ARTICLE 3
GENERAL RESPONSIBILITIES OF OWNER

- 3.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be convened for attendance by Owner, Contractor, Design Professional 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.
- 3.2 OCM. Prior to the start of construction, Owner will identify its OCM, who has the express authority to act on behalf of the Owner to the extent and for the purposes described in the Contract, including responsibilities for general administration of the Contract.
- 3.2.1 Point of Contact. 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.
- 3.2.2 Directives. All directives on behalf of Owner will be conveyed to Contractor and Design Professional by OCM in writing.
- 3.3 Owner Supplied Materials and Information.
- 3.3.1 Surveys. Owner will furnish to Contractor those surveys 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.
- 3.3.2 Drawings and Specifications. Owner will furnish or cause to be furnished, free of charge, the number of complete sets, paper or electronic, of the Drawings, Specifications, and addenda as provided in the Contract.
- 3.3.3 Other Information. Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
- 3.4 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.
- 3.5 Limitation on Owner's Duties.
- 3.5.1 No Control. 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 2.4, 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.

- 3.5.2 No Contravention of Design Professional. Owner will not take any action in contravention of a design decision made by Design Professional in preparation of the Contract Documents, when such actions are in conflict with statutes under which Design Professional is licensed for the protection of the public health and safety.

ARTICLE 4
GENERAL RESPONSIBILITIES OF DESIGN PROFESSIONAL

- 4.1 Role of Design Professional. Unless specified otherwise in the Contract between Owner and Contractor, in addition to design services Design Professional shall provide general administration services for Owner during the construction phase of the project. Written correspondence, RFIs, and Shop Drawings/submittals shall be directed to Design Professional for determination and action. Design Professional 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.
- 4.2 Site Visits. Design Professional will make visits to the Site at intervals as provided in the Design Professional'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.
- 4.3 Inspections. Design Professional 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.
- 4.4 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Such clarifications or interpretations will be provided by Design Professional consistent with the intent of the Contract Documents. Design Professional will issue these clarifications with reasonable promptness to Contractor as Design Professional'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 14.
- 4.5 Limitations on Design Professional Authority. Design Professional is not responsible for:
- Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Work, nor will Design Professional supervise, direct, control, or have authority over the same;
 - The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
 - Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
 - Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 5
GENERAL RESPONSIBILITIES OF CONTRACTOR

- 5.1 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, procedures and protection of the installed work as part of the contract until Substantial Completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where Punchlist items are completed until Final Completion.
- 5.2 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 Design Professional and OCM in accordance with these Uniform General Conditions and other provisions of the Contract, and as outlined in the pre-construction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstruction to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 5.2.1 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. Contractor's management personnel are subject to the approval of OCM, and shall be removed and replaced at the request 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 in which case Contractor shall notify OCM and appoint an approved replacement as soon as reasonably possible. Contractor shall provide additional quality control, safety, and other staff as may be stated in the Contract Documents or as may be necessary or advisable for completion of the Work.
- 5.2.2 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.
- 5.2.3 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.
- 5.2.4 No Substitutions without Approval. Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Design Professional and in accordance with a Change Order.
- 5.3 Owner Equipment or Material. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor will be responsible for any damage or loss.
- 5.4 Non-Compliant Work. Should Design Professional and/or OCM identify Work as noncompliant with the Contract Documents, Design Professional 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 Design Professional or OCM does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

- 5.5 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.
- 5.5.1 Contract Documents. 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.
- 5.5.2 Scheduling. 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 or subcontract with Contractor. Contractor shall 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.
- 5.6 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.
- 5.7 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.
- 5.8 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of its employees and its Subcontractors and their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees or agents whom OCM finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 5.9 Ancillary Areas. Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
- All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by OCM.
 - Contractor may erect, at its own expense, temporary buildings that will remain its property. Contractor will 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.
 - Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by OCM. Contractor will not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures, and other like existing

improvements to prevent damage and will repair any damage thereto at the expense of Contractor.

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

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

- Store materials in a commercial warehouse meeting the criteria stated below.
- 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 must be filed with Owner's representative.
- Inspection by Owner's representative is allowed at any time. OCM must be satisfied with the security, control, maintenance, and preservation measures.
- Materials for this Project must be 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.
- 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.
- With each monthly payment estimate, Contractor must submit a report to OCM and Design Professional listing the quantities of materials already paid for and still stored in the off-site location.
- Contractor must make warehouse records, receipts, and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
- 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 in place or 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.

5.11 Separate Contracts. Owner reserves the right to award other contracts in connection with the Project or other portions of the Project under the 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.

5.11.1 Continuation of Contract. Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by Change Order.

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

5.11.3 Reimbursement. 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, damage to the Work, or defective construction by a separate contractor.

ARTICLE 6
HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

6.1 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).

6.1.1 Good Faith Effort.

6.1.1.1 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.

6.1.1.2 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.

6.2 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:

- 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.
- 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.
- 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.
- Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- 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.
- Submit monthly Progress Assessment Reports (PAR) to Owner, verifying compliance with the HUB subcontracting plan, including the use/expenditures made made/to Subcontractors. (The PAR is available at the following link: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.)
- 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).

6.3 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 7 BONDS

- 7.1 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.
- 7.2 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to Owner, 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.
- 7.2.1 Performance Bonds. 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 Owner. The performance bond shall be effective through Contractor's warranty period.
- 7.2.2 Payment Bonds. A Payment bond is required if the Contract Sum 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 Owner.
- 7.2.3 When Bonds Are Due. Payment and performance bonds are due before Contractor commences any Work.
- 7.2.4 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.
- 7.3 Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder 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 HARMLESS OWNER, AND ITS COMPONENT INSTITUTIONS, REGENTS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, FROM AND AGAINST ANY COSTS, LOSSES, OBLIGATIONS, OR LIABILITIES IT INCURS AS A RESULT.
- 7.3.1 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.
- 7.3.2 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.

- 7.4 Payment of Claims when Payment Bond is 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, and actions necessary to release the lien and satisfaction of such claim.
- 7.5 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.

**ARTICLE 8
INDEMNITY AND INSURANCE**

8.1 Indemnification of Owner. Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS Owner, and its component institutions, Regents, elected and appointed officials, directors, officers, employees, agents, representatives, and volunteers, 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 the Contract, including any acts or omissions of Contractor, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Contractor, and their respective directors, officers, employees, agents, and representatives while in the exercise of performance of the rights or duties under the Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner or separate 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.**

8.1.1 No Third-Party Beneficiaries. 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.

8.1.2 Notice. 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.

8.2 Insurance Requirements. Design Professional shall carry insurance in the types and amounts indicated in the Contract for the duration of the Contract. Unless otherwise provide for in the Contract, Contractor shall carry insurance in the types and amounts indicated in these Uniform General Conditions 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 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.

8.2.1 Period of Coverage. Contractor, consistent with its status as an independent contractor, shall provide and maintain all insurance coverages with the minimum amounts described below until the end of the warranty period unless expressly agreed otherwise. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 17.

8.2.2 Certificates. Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.

8.2.3 Failure to Provide Certificates. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- 8.2.4 Contractor's Liability. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 8.2.5 Insurance Limits. The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
- 8.2.6 Insurers. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

8.3 Insurance Coverage Required.

- 8.3.1 Workers' Compensation Insurance. Coverage with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to Owner, and Employer's Liability Insurance of not less than:

- \$500,000 each accident;
- \$500,000 disease each employee; and
- \$500,000 disease policy limit.
- Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44), and requirements specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

- 8.3.2 Commercial General Liability Insurance. Coverage 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
- \$5,000 Medical Expense each person;
- \$1,000,000 Personal Injury and Advertising Liability
- \$2,000,000 products and completed operations aggregate;
- \$50,000 Damage to Premises Rented by You; 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.

- 8.3.3 Asbestos Abatement Liability Insurance. Coverage 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.

8.3.4 Comprehensive Automobile Liability Insurance. Coverage 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.
- Contractor, or any subcontractor of Contractor, responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include an MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

8.3.5 All-Risk Builder's Risk Insurance. Coverage shall be all-risk (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment), 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:

- This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- 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.
- 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.
- For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary or Special Conditions for possible additional builder's risk insurance requirements.
- For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
- For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
- Builder's risk insurance policy shall remain in effect until Substantial Completion.
- If this Contract is for asbestos abatement only, the foregoing All-Risk Builder's Risk or All-Risk Installation Floater is not required.

8.3.6 "Umbrella" Liability Insurance. Coverage during the Contract term, insuring Contractor that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverage required above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

- “Umbrella” Liability Insurance coverage shall be for the following Contract amounts in the corresponding coverage amounts:

<u>Contract Amount</u>	<u>Occurrence</u>	<u>Annual Aggregate</u>
< \$1,000,000	No Umbrella	
\$1,000,000 up to < \$3,000,000	\$1,000,000	\$2,000,000
\$3,000,000 up to < \$5,000,000	\$5,000,000	\$5,000,000
\$5,000,000 or greater	\$10,000,000	\$10,000,000

8.4 Policy Requirements. Policies must include the following clauses, as applicable:

- This insurance shall not be suspended, voided, canceled, materially changed, or non-renewed except after thirty (30) days, or ten (10) days for non-payment of premium, written notice has been given to Owner.
- 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.
- 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 the Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.
- A waiver of subrogation in favor of Owner shall be provided in all policies.

8.5 Subcontractor Insurance Coverage. 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.

ARTICLE 9
CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD DOCUMENTS

9.1 Drawings and Specifications.

9.1.1 Copies Furnished. Design Professional will furnish, free of charge, the number of complete sets of Drawings, Specifications, and addenda as provided in the Contract. Contractor will be furnished, free of charge, the number of complete sets of Drawings, Specifications, and addenda as provided 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.

9.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by Design Professional shall be property of the Owner. These documents are not to be used by the Design Professional on any other project. 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 Design Professional. 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 Owner has paid for such direct services, shall be the sole property of Owner.

9.2 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.

9.3 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders or other written, signed amendments or addenda; (b) the Contract; (c) Uniform General Conditions; (d) Drawings; (e) Specifications (but Specifications shall control over Drawings as to quality of materials); and (f) 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 Design Professional and Owner for resolution of the issue prior to executing the Work in question.

9.4 Contractor's Duty to Review Contract Documents. In order to facilitate Contractor's responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, Contractor shall, prior to commencing the Work, 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 design phase and construction phase prior to commencing each particular work activity and/or system installation. Updated Coordination Documents shall be provided to the Owner and Design Professional monthly.

9.5 Discrepancies and Omissions in Drawings and Specifications. Contractor shall immediately report to OCM and to Design Professional the discovery of any discrepancy, error, omission, or inconsistency in the Contract Documents prior to execution of the Work. When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with Design Professional for discovery and resolution of discrepancies, errors, omissions, and inconsistencies in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.

9.5.1 Design-Build Firm. 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. When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.

- 9.5.2 Construction Manager-at-Risk Examination and Reporting. When performing as a Construction Manager-at-Risk, Contractor has no liability for discrepancies, errors, omissions, or inconsistencies unless Contractor fails to immediately report in writing a discovered or apparent discrepancy, error, omission, or inconsistency to OCM and Design Professional. 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.
- 9.5.3 Other Limitations. Unless Contractor is performing as a Design-Build Firm or a Construction Manager-at-Risk, Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect discrepancies, errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations.
- 9.6 No Warranty or Representation by Owner. Owner makes no representations, express or implied, about the adequacy or accuracy of the Drawings, 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.
- 9.7 Requirements for Record Documents.
- 9.7.1 Contractor shall:
- 9.7.1.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, Change Orders, and all Project correspondence and one record copy of approved Shop Drawings, Samples, and similar required submittals.
- 9.7.1.2 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 Design Professional access to these documents.
- 9.7.1.3 Keep current and maintain the 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 Design Professional, and their representatives and agents.
- 9.7.1.4 Be responsible for marking the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs. During construction, update the Record Documents, including all related RFI's, ASI's CCD's, and CO's, 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.
- 9.7.1.5 Within thirty (30) days of Substantial Completion, Contractor shall furnish the Design Professional 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. A complete set must be provided to the Design Professional within seven (7) calendar days of Final Completion.

9.7.2 Design Professional shall:

- 9.7.2.1 In coordination with Contractor, shall update Record Documents to accurately depict progress of the Work and “as-built” condition of the Project.
- 9.7.2.2 Be responsible for updating the Record Documents for any addenda, Change Orders, Design Professional supplemental instructions, and any other alterations to the Contract Documents generated by Design Professional or Owner. Design Professional shall provide Owner with an electronic copy of the Auto-CADD files, BIM files, and Record Documents in both native format and a reproducible format within thirty (30) days following Final Completion.
- 9.7.2.3 Upon final completion and as a condition of final payment, once Record Documents are determined acceptable by OCM and with input from the Contractor, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents incorporating all of the above requirements, unless required otherwise.

ARTICLE 10 CONSTRUCTION SAFETY

- 10.1 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. 91-596, 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 OCM and Design Professional 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.
- 10.2 Notices. Contractor shall provide notices as follows:
- 10.2.1 Utilities and Adjacent Properties. Notify owners of adjacent property, including those that own or operate utilities, utility services, and/or underground facilities, 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.
- 10.2.2 MSDS. 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.
- 10.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury, or loss. Contractor shall:
- 10.3.1 On Call Response. 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.
- 10.3.2 Notice.
- 10.3.2.1 Give OCM and Design Professional prompt notice of all such events.
- 10.3.2.2 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.
- 10.3.3 Owner Remedy. 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.
- 10.4 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. Contractor shall:
- 10.4.1 Documentation. 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.
- 10.4.2 Incident Report. Supply OCM and Design Professional 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.

10.5 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.

10.5.1 Subcontractors. Contractor shall bind all Subcontractors to the same duty.

10.5.2 Owner. 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.

10.5.2.1 Owner may hire third-party Contractors to perform any or all such steps.

10.5.2.2 Should compliance with OCM's instructions result in an increase in Contractor's cost of performance or delay the Work, upon Contractor's submission of substantiated costs or an updated Work Progress Schedule and substantiated critical path analysis, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and issue a Change Order accordingly.

10.6 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 11 QUALITY CONTROL

- 11.1 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.
- 11.2 Testing.
- 11.2.1 Owner. 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.
- 11.2.2 Contractor shall provide the following testing:
- 11.2.2.1 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.
- 11.2.2.2 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.
- 11.2.2.3 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.
- 11.2.2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 11.2.3 Standards. 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, Design Professional, and Contractor.
- 11.2.4 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:
- 11.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 11.2.4.2 Acceptance by Owner of the quality and nature of tests.
- 11.2.4.3 All tests taken in the presence of Design Professional and/or OCM, or their representatives.
- 11.2.4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 11.2.4.5 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.
- 11.2.4.6 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.

- 11.2.5 Notice of Testing. Contractor shall give OCM and Design Professional timely notice of its readiness and the date arranged so OCM and Design Professional may observe such inspection, testing, or approval.
- 11.2.6 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with the Work Progress Schedule to avoid delay.
- 11.2.7 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.

11.3 Submittals.

11.3.1 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 Design Professional 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.

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

11.3.1.2 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 Design Professional 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 Design Professional 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.

11.3.1.3 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.

- 11.3.1.4 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.
- 11.3.2 Review of Submittals. Design Professional 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 Design Professional 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.
- 11.3.3 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 Design Professional and OCM, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 11.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 11.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 11.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. Design Professional'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.
- 11.3.5 No Substitutions without Approval. OCM and Design Professional 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 Design Professional 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 Design Professional when:
- 11.3.5.1 The Contract Documents do not require extensive revisions; and
- 11.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of Design Professional and do not result in an increase in cost to Owner; and
- 11.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
- Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;

- The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
- The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and OCM can approve the requested substitution;
- 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;
- 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
- 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.
- The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

11.3.6 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.

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

11.4.1 Minimum. 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.

11.4.2 No Incorporation Unless Approved. 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.

11.4.3 Schedule. Contractor shall include field mock-ups in their Work Progress Schedule and shall notify OCM and Design Professional of readiness for review sufficiently in advance to coordinate review without delay.

11.5 Inspection During Construction. 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 or Design Professional and their agents. Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and Design Professional and their agents an opportunity to perform an inspection of the Work.

11.5.1 Corrected Work. Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.

11.5.2 Notice. Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to OCM of the anticipated need for an inspection so that Contractor may proceed with cover-up of Work. 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 12 CONSTRUCTION SCHEDULES

- 12.1 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 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.
- 12.2 Notice to Proceed. Owner will issue a Notice to Proceed which shall state the dates for commencing Work and for achieving Substantial Completion of the Work.
- 12.3 Work Progress Schedule. Refer to Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit to OCM and Design Professional its 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. 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 Close-out Documents, and acceptance of all Work. When acceptable to Owner, the initially accepted Work Progress Schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

This section applies to construction phase Work Progress Schedules. Requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specifications.

12.3.1 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 completion of all Work. 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.

12.3.1.1 Contractor shall re-submit the initial Work Progress Schedule as required to address comments from Design Professional and Owner until such schedule is accepted as the Baseline Schedule.

12.3.1.2 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.

12.3.2 Work Progress Schedule Updates.

12.3.2.1 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 the original schedule as the Baseline Schedule, and shall submit electronic and paper copies of the update to Design Professional 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.

- 12.3.2.2 Contractor should revise the Work Progress Schedule as necessary or appropriate for the management of the Work. All updated Work Progress Schedules must show the anticipated date of completion and reflect all extensions of time granted through Change Order as of the date of the update.
- 12.3.2.3 Contractor shall identify all proposed changes to schedule logic to Owner and to Design Professional via an executive summary accompanying the updated Work Progress Schedule for review and approval prior to implementation of any revisions to the Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to OCM.
- 12.3.3 Use of Work Progress Schedules. The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the Work Progress Schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning and completing the Work.
 - 12.3.3.1 Owner's acceptance of a Work Progress Schedule, and any update or revision, constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the Work Progress Schedule.
 - 12.3.3.2 Owner's acceptance of the Work Progress Schedule, or update or revision, does not indicate any approval of Contractor's proposed sequences and duration.
 - 12.3.3.3 Owner's 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 so do.
 - 12.3.3.4 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.
- 12.4 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. Before Contractor uses any portion of the float, Contractor must submit a written request to Owner and receive Owner's written authorization to use the portion of float. Owner's approval will not unreasonably be withheld.
- 12.5 Completion of Work. Contractor is responsible and accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
 - 12.5.1 Requirement to Regain Schedule. 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:
 - 12.5.1.1 An increase in working forces.
 - 12.5.1.2 An increase in equipment or tools.
 - 12.5.1.3 An increase in hours of work or number of shifts.

- 12.5.1.4 Expedited delivery of materials.
- 12.5.1.5 Other action proposed if acceptable to Owner.
- 12.5.2 Recovery Schedule. Within ten (10) days after such notice, Contractor shall notify OCM in writing of the specific measures taken and/or plan 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 Work. 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.
- 12.5.3 Owner's Notice Not Acceleration. Owner's notice to Contractor shall not be considered acceleration by Owner and Owner shall not be responsible for any increased costs incurred by Contractor.
- 12.6 Modification of the Contract Time. Delays and extensions of Contract Time are valid only if properly noticed and documented by Change Order.
 - 12.6.1 Extension Request. When a delay is a Weather Day or an Excusable Delay, and such delay prevents Contractor from completing the Work within the Contract Time, Contractor may be granted an extension of Contract Time. Owner will extend Contract Time by the number of days lost due to Weather Days or Excusable Delay, as measured by a substantiated critical path analysis of the Work Progress Schedule; provided, however, in no event will an extension of Contract Time be granted for delays that merely extend the duration of non-critical activities, or concurrent delay or which only consume float. All extensions of Contract Time will be granted in calendar days.
 - 12.6.2 Weather Day. 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. When a Weather Day prevents work at the site from proceeding, Contractor shall: (a) immediately notify OCM for confirmation of the conditions; and (b) at the end of each calendar month, submit to OCM and Design Professional a list of Weather Days occurring in that month along with documentation of the impact on critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension granted will be issued by Weather Change Order. If Contractor and Owner cannot agree on the Contract Time extension, Owner may issue a CCD for fair and reasonable time extension.
 - 12.6.3 Excusable Delay. An "Excusable Delay" is a delay to Contractor's current schedule caused by circumstances listed below that prevents Contractor from completing the Work within the Contract Time. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension will be issued by Change Order. Excusable Delay may be caused by the following:
 - 12.6.3.1 Discrepancies, errors, omissions, and inconsistencies in design, which Design Professional corrects by means of changes in the Drawings and Specifications; provided, however, that this does not apply if (a) Contractor is a Design-Build Firm, or (b) Contractor is a Construction Manager-at-Risk and failed to promptly report a discovered or apparent discrepancy, error, omission, or inconsistency during the pre-construction phase.
 - 12.6.3.2 Unanticipated physical conditions at the Site, which Design Professional corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

- 12.6.3.3 Changes in the Work that delay activities identified in Contractor's Work Progress Schedule as "critical" to completion of the entire Work, if such changes are directed by ODR or recommended by Design Professional and directed by ODR.
 - 12.6.3.4 Suspension of Work for unexpected natural events, civil unrest, strikes or other events which are not within the reasonable control of Contractor.
 - 12.6.3.5 Suspension of Work for convenience of Owner, which prevents Contractor from completing the Work within the Contract Time.
- 12.7 No Damages for Weather Days. An extension of Contract Time shall be the sole remedy of Contractor for delays in performance of the Work due to Weather Days, and Contractor shall not be entitled to any compensation or recovery of any direct or indirect costs or damages.
- 12.8 Costs for Excusable Delay. In the event that Contractor incurs additional direct costs because of an Excusable Delay (other than described in Subsection 12.6.3.4) within the reasonable control of Owner, in addition to an extension of Contract Time the Contract Sum will be equitably adjusted by Owner pursuant to the provisions of Article 14.
- 12.9 No Damages for Other Delay. Except for direct costs for Excusable Delay as provided above, Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act other than the sole intentional interference of Owner that continues after notice, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, direct and indirect costs, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.
- 12.10 Concurrent Delay. Notwithstanding anything herein to the contrary, when the completion of the Work is simultaneously delayed by a Weather Day or an Excusable Delay and a delay arising from a cause not designated as excusable, Contractor will not be entitled to an extension of Contract Time for the period of concurrent delay.
- 12.11 Time Extension Requests for Changes to the Work or Excusable Delay. Extensions to Contract Time requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. If Contractor believes that the completion of the Work is delayed by Excusable Delay, Contractor 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 Excusable Delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time should be made in numbers of whole or half days.
- 12.11.1 Content of Request. Within ten (10) days after the cessation of the Excusable Delay, Contractor shall formalize in writing its request for extension of Contract Time to include substantiation of the excusable nature of the delay and a complete analysis of impact to critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension granted will be issued by Change Order.

12.11.2 No Release. 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.

12.11.3 Critical Path Analysis. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on completion of the Work and Contract Time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

12.11.3.1 The nature of the delay and its cause due to a change in the Work or an Excusable Delay and the basis of Contractor's claim of entitlement to an extension of Contract Time.

12.11.3.2 Documentation of the actual impacts of the claimed delay on the critical path in Contractor's Work Progress Schedule, and any concurrent delays.

12.11.3.3 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.

12.11.4 Owner 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.

12.11.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.

12.11.4.2 Owner will respond to each properly submitted Time Extension Request within a reasonable time following receipt. If Owner does not have enough information to make a determination or cannot reasonably make a determination within forty-five (45) days, Owner will notify Contractor in writing. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to an extension of Contract Time in the amount requested.

12.12 Failure to Complete Work in 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 12.13 below or elsewhere in the Contract Documents.

12.13 Liquidated Damages. Unless otherwise stated in the Contract, for each consecutive calendar day beyond the Contract Time that Substantial Completion of the Work is not achieved, Contractor shall pay Owner, within ten (10) days following written demand, an amount determined by the following schedule:

<u>Project Cost</u>		Liquidated Damage Per Day
From	To	
	< \$1,000,000	\$250
\$1,000,000	< \$25,000,000	\$1,000
\$25,000,000	< \$50,000,000	\$2,500
\$50,000,000	< \$75,000,000	\$5,000
\$75,000,000	< \$100,000,000	\$7,500
>\$100,000,000		\$10,000

- 12.13.2 Reasonable Estimate. 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 Substantial Completion of Work. The parties stipulate and agree that the actual damages sustained by Owner for late Substantial Completion of the Work 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.
- 12.13.3 Offset. 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 Contract.
- 12.13.4 No Waiver. Payment or offset of the liquidated damages does not preclude recovery under 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 or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay liquidated damages.

ARTICLE 13. PAYMENTS

- 13.1 Schedule of Values. Contractor shall submit to OCM and Design Professional 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.
- 13.1.1 Requirements.
- 13.1.1.1 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 Sum. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 13.1.1.2 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.
- 13.1.1.3 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, and shall make the worksheets available to Owner 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.
- 13.2 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 its designee of a correct and complete Pay Application in electronic and/or hard copy format as required by the Contract Documents, and certified by Design Professional. 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.
- 13.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to Design Professional and OCM a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
- 13.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished, and materials incorporated into the Work, using the established Schedule of Values;
- 13.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
- 13.2.1.3 HUB subcontracting plan Progress Assessment Report;

13.2.1.4 Such additional documentation as Owner may require in the Contract Documents; and

13.2.1.5 Construction payment affidavit.

13.2.2 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, Design Professional 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 Design Professional 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 Design Professional and/or OCM, and must attach all additional documentation required by OCM and/or Design Professional, 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.

13.2.3 Certification by Design Professional. Within five (5) days or earlier following Design Professional's receipt of Contractor's formal Application for Payment, Design Professional will review the Application for Payment for completeness, and forward it to OCM. Design Professional 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.

13.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by OCM of: (a) a complete Application for Payment certified by Design Professional; and (b) Contractor's updated Work Progress Schedule.

13.3.1 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 Contract Documents. Retainage will be managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.

13.3.1.1 Contractor shall provide written consent of its surety and concurrence of Design Professional for any request for reduction or release of retainage.

13.3.1.2 At least sixty-five percent (65%) of the Contract, or such other discrete Work phase as set forth in Subsection 15.1.8 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release, and only if permissible by law.

13.3.1.3 Contractor shall not withhold retainage from its 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.

13.3.2 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:

13.3.2.1 Defective or incomplete Work not remedied;

13.3.2.2 Damage to Work of a separate Contractor;

13.3.2.3 Failure to maintain scheduled progress;

- 13.3.2.4 Reasonable evidence that the Work will not be completed within the Contract Time;
- 13.3.2.5 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 13.3.2.6 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
- 13.3.2.7 Assessment of fines for violations of prevailing wage rate law; or
- 13.3.2.8 Failure to include the appropriate amount of retainage for that periodic progress payment.

13.3.3 Title.

- 13.3.3.1 Title to all material and Work covered by progress payments transfers to Owner upon payment.
- 13.3.3.2 Transfer of title to Owner does not: (a) 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; (b) diminish the responsibility of Contractor and its Subcontractors to restore any damaged Work; or (c) waive the right of Owner to require the fulfillment of all the terms of the Contract.

13.3.4 Contracts with No Payment Bond. 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 Punchlist items and change orders.

13.3.5 No Release. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

13.3.6 Documentation.

- 13.3.6.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
- 13.3.6.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
- 13.3.6.3 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. 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.

13.4 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022. Upon Contractor's receipt of payment from Owner, Contractor shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date the Contractor receives the payment. The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

ARTICLE 14 CHANGES

- 14.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and Design Professional, 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 14.9 or other contract provisions.
- 14.1.1 Owner Ordered Changes. 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 CCD, 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 Work, an adjustment to Contract Sum or Contract Time shall be made and authorized by a Change Order.
- 14.1.2 Corrections. It is recognized by the parties hereto and agreed by them that the Drawings and Specifications may not be complete or free from discrepancies, errors, omissions, or inconsistencies, 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 discrepancies, errors, omissions, or inconsistencies in such Drawings and Specifications, or any changes in or additions to Drawings and Specifications 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 discrepancies, errors, omissions, or inconsistencies 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 Contractor will be entitled to the time or sum stated to be due Contractor in any Change Order approved and signed by all parties, which shall constitute full compensation to Contractor for all costs, expenses, and damages to Contractor.
- 14.2 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 agreed to by the parties and incorporated into a Change Order.
- 14.3 Claims for Additional Costs.
- 14.3.1 Claim with no Requested Change. If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, Contractor shall give Owner and Design Professional 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 Section 10.3. 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 18. Any change in the Contract Sum resulting from such claim must be authorized by a Change Order.

- 14.3.2 Miscellaneous Claims. 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 17 where Contractor was not at fault; or (3) any written order for a minor change in the Work issued pursuant to Section 14.4, Contractor shall make such claim as provided in Section 14.3.1.
- 14.3.3 Failure to Notify. Should Contractor fail to call to the attention of Owner and Design Professional to discrepancies, errors, omissions, or inconsistencies in the Contract Documents, but claim additional costs for corrective Work after Contract award or after Owner's acceptance of Contractor's Construction Manager-at-Risk guaranteed maximum price, Owner may assume intent to circumvent competitive bidding for the necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a CCD to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies, errors, omissions, or inconsistencies will not be considered by Owner.
- 14.4 Minor Changes. Design Professional, 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.
- 14.5 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 Design Professional shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, Design Professional, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as deemed necessary to conform to the different conditions. 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.
- 14.6 Extension of Time. All changes to the Contract Time made as a consequence of requests as required under Section 12.6, must be documented by Change Order.
- 14.7 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.
- 14.7.1 Procedures.
- 14.7.1.1 Procedures for administration of Change Orders shall be established by Owner and stated in the Contract Documents.
- 14.7.1.2 No oral order, oral statement, or oral direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 14.7.2 Routine Changes. Routine changes shall be formally initiated by Design Professional or Owner by means of a Proposal Request form detailing requirements of the proposed change for pricing by Contractor, or may be initiated by Contractor by means of a Change Order Request form detailing proposed work, pricing, and time. This action may be preceded by communications between Contractor, Design Professional, 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 Design Professional 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.

- 14.7.3 Documentation. All proposed costs or time 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, and be supported by documented impact to critical path activities, to permit analysis by Design Professional 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.
- 14.7.4 Emergencies. Emergency changes to save life or property may be initiated by Contractor alone 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.
- 14.7.5 Coordination with Schedule of Values. 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.
- 14.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor includes in 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.
- 14.8.1 Self-Performance. For Work performed by its forces, Contractor will be allowed its 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.
- 14.8.2 Overhead and Profit. For contracts not based on a Guaranteed Maximum Price (GMP), Contractor will be allowed to include a percentage not to exceed five percent (5%) of the total Change Order amount. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
- 14.8.3 GMP Limitation. For Contracts based on a GMP, the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up or additional fee on any Change Order Work unless the Change Order increases the GMP. If the GMP increases, the Construction Manager-at-Risk or Design Builder will allowed additional fee at the rate specified in the Contract. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
- 14.8.4 Net Amount. 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.
- 14.9 Construction Change Directive (CCD). Owner may issue a written CCD directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Sum and/or the Contract Time. Owner retains sole discretion whether or not to issue any CCD. Owner's issuance of a CCD does not require Owner to issue subsequent CO's. Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a CCD. Contractor shall not submit its costs for CCD Work with its Application for Payment until a CO has been issued. The Parties reserve their rights as to the disputed amount, subject to Article 18.

ARTICLE 15
PROJECT COMPLETION AND ACCEPTANCE

15.1 Closing Inspections.

15.1.1 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 the 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.

15.1.2 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.

15.1.5 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.

15.1.5.1 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.

15.1.5.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, Design Professional, OCM, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by OCM or Owner's representative. If Owner and Design Professional determines that the Work is Substantially Complete, Design Professional will issue a Certificate of Substantial Completion to be signed by Design Professional, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security and maintenance. Design Professional 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.

15.1.6 Final Inspection. Contractor shall correct or complete all items on the final Punchlist before requesting a Final Completion inspection and Final Payment. Unless otherwise agreed to in writing by the parties, Contractor shall complete this work within thirty (30) days of receiving the final Punchlist. Upon completion of the final Punchlist, Contractor shall notify Design Professional and OCM in writing stating the disposition of each final Punchlist item. Design Professional, 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 Design Professional 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.

15.1.7 Additional Inspections.

15.1.7.1 If Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion inspection, Owner or Design Professional 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. Owner's or Design Professional's failure to include items as causes of rejection does not constitute a waiver of Owner's right under the Contract or relieve Contractor of its responsibility for performance.

15.1.7.2 If Owner's inspection team determines that the Work is not complete at the Final Completion inspection, Owner or Design Professional 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. Owner's or Design Professional's failure to include items as causes of rejection does not constitute a waiver of Owner's right under the Contract or relieve Contractor of its responsibility for performance.

15.1.7.3 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 CO 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.

15.1.8 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.

15.2 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.

15.3 Acceptance and Payment.

15.3.1 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 Design Professional and OCM for review and approval.

15.3.2 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.

15.3.3 Design Professional Approval. Design Professional 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, Design Professional will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note approval, and send to Owner.

15.3.4 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 CCD as may be applicable.

15.3.5 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.

15.3.6 Effect of Final Payment. Final Payment shall not constitute a waiver of claims by Owner relating to the condition of the Work including those arising from:

15.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);

- 15.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 15.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 15.3.6.4 Claims arising from personal injury or property damage to third parties.
- 15.3.7 Waiver of Claims. Acceptance of 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.
- 15.3.8 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 16
WARRANTY AND GUARANTEE

- 16.1 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 Sum 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, or lack thereof, by Owner, Design Professional, 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.
- 16.1.1 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, the warranty period for that particular Work begins on the date of Substantial Completion of that phase, or as otherwise stipulated on the Certificate of Substantial Completion for that particular Work.
- 16.1.2 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 16.1.2.1 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.
- 16.1.2.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 16.1.3 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:
- 16.1.3.1 Observations, or lack thereof, by Owner and/or Design Professional;
- 16.1.3.2 Recommendation to pay any progress or final payment by Design Professional;
- 16.1.3.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- 16.1.3.4 Use or occupancy of the Project or any part thereof by Owner;
- 16.1.3.5 Any acceptance by Owner or any failure to do so;
- 16.1.3.6 Any review by Owner of a Shop Drawing or sample submittal; or
- 16.1.3.7 Any inspection, test or approval by others.

- 16.2 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 and Contractor shall assume any duty to repair not otherwise covered by those warranty agreements. Owner will certify the date of service commencement in the Substantial Completion certificate.
- 16.2.1 Assumption. 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.
- 16.2.2 Assignment. 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.
- 16.3 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.
- 16.4 Certification of No Asbestos Containing Materials or Work. Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

Contractor shall warrant and ensure compliance with the following Acts by Contractor or Contractor's Subcontractors and assigns:

- Asbestos Hazard Emergency Response Act (AHERA-40 CFR 763-99 (7));
- National Emission Standards for Hazardous Air Pollutants (NESHAP-EPA 40 CFR 61, Subpart M-National Emission Standard for Asbestos; and
- Texas Asbestos Health Protection Rules (TAHPR-Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection)

ARTICLE 17
SUSPENSION AND TERMINATION

- 17.1 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.
- 17.1.1 Cease Work. 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.
- 17.1.2 Investigation. 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. Contractor shall cooperate with Owner's investigation.
- 17.1.3 Outcome. If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of Contract 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 shall be considered an Excusable Delay and an extension of Contract Time will be granted through a Change Order.
- 17.1.4 Time. Suspension of Work under this provision will be no longer than is reasonably necessary to investigate and remedy the conditions giving rise to the suspension.
- 17.2 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 shall be considered 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.
- 17.3 Termination by Owner for Cause.
- 17.3.1 Cause. 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:
- 17.3.1.1 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;
- 17.3.1.2 Persistent disregard of laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, including Owner;
- 17.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the Contract Time;
- 17.3.1.4 Failure to remedy defective work;
- 17.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;

- 17.3.1.6 Persistent endangerment to the safety of labor or of the Work;
 - 17.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance pursuant to the Contract;
 - 17.3.1.8 Any material breach of the Contract; or
 - 17.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 17.3.2 No Waiver. 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.
- 17.3.3 Notice. Owner may immediately terminate the Contract under the provisions of this Section 17.3 upon written notice to Contractor and Contractor's sureties. Owner may also give notice to Contractor and Contractor's sureties of Owner's intent to terminate the Contract under the provisions of this Section 17.3 at any later date upon written notice to Contractor and its sureties.
- 17.3.4 Cure. Should Contractor or its surety, after having received notice of Owner's intent to terminate at a later date, 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 intent to terminate was based, the notice of intent to terminate may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of Contract Time.
- 17.3.5 Failure to Cure. Should Contractor or its surety fail, after having received notice of Owner's intent to terminate, to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within the date specified by Owner, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 17.3.5.1 This amount includes the cost of additional Owner costs such as Design Professional services, other consultants, and contract administration.
 - 17.3.5.2 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.
 - 17.3.5.3 This obligation for payment survives the termination of the Contract.
 - 17.3.5.4 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.
- 17.3.6 Conversion to Termination for Convenience. In the event that any termination of the Contract for cause under this Section 17.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience of Owner and Contractor's recovery for termination shall be strictly limited to the payments allowable under Subsection 17.4.3.

- 17.4 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:
- 17.4.1 Notice. Owner will immediately notify Contractor and Design Professional 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.
- 17.4.2 Contractor Action. 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:
- 17.4.2.1 Stop all work.
- 17.4.2.2 Place no further subcontracts or orders for materials or services.
- 17.4.2.3 Terminate all subcontracts for convenience.
- 17.4.2.4 Cancel all materials and equipment orders as applicable.
- 17.4.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
- 17.4.3 Contractor Remedy. When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work completed including the corresponding pro rata portion of Contractor's overhead and profit. Contractor may not claim lost profits on other work or lost business opportunities.
- 17.5 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 completed including the corresponding pro rata portion of Contractor's overhead and profit, 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.
- 17.6 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 as final payment.

ARTICLE 18 DISPUTE RESOLUTION

- 18.1 Contracts Less Than \$250,000. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by Contractor or Design Professional to attempt to resolve any claim for breach of Contract made by Contractor or Design Professional that is not resolved under procedures described throughout the Uniform General Conditions or any Supplementary or Special Conditions of the Contract, *where the amount in controversy is less than \$250,000.*
- 18.2 Contracts \$250,000 or Greater. Contractor or Design Professional and Owner shall use the following dispute resolution process prior to initiating any litigation or filing suit in a court of competent jurisdiction.
- 18.2.1 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.
- 18.2.1.1 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.
- 18.2.1.2 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.
- 18.2.1.3 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.
- 18.2.1.4 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.
- 18.2.1.5 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.

- 18.2.1.6 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.
- 18.3 Owner Retained Rights. 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.
- 18.4 No Waiver. 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.
- 18.5 No Attorney's Fees. In any litigation between Owner and Contractor or Design Professional arising from the Contract or Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless of which is deemed the prevailing party.
- 18.6 Interest. Pre-judgment and post-judgment interest shall be limited to the rate of one and a half percent (1.5%) per annum.

ARTICLE 19 MISCELLANEOUS

- 19.1 Right to Audit. Owner, or any of its duly authorized auditors or representatives, shall during regular business hours and upon reasonable notice have access to and the right to examine, and be permitted to audit and copy, any directly pertinent books, documents, papers, and records of Contractor, including, without limitation, complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's quotes, proposals, purchase order, vouchers, memoranda, schedules, electronic data, pictures, videos, logs, minutes, notes, reports and other data relating to the Project. Further, Contractor or Design Professional agree to include in all 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 and subcontract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein shall continue until the later of three years after Final Payment or final disposition of any disputes, claims, litigation, or appeals arising out of the Contract.
- 19.2 Supplementary or 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 or Special Conditions as described below:
- 19.2.1 Supplementary Conditions. Supplementary Conditions may describe the standard procedures and requirements of contract administration. Supplementary 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 Conditions are of such a character that it is to be anticipated that Owner may normally use the same, or similar, conditions to supplement each of its several projects.
- 19.2.2 Special Conditions. 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.
- 19.3 Federally Funded Projects. On federally funded projects, Owner may waive, suspend, or modify any provision 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.
- 19.4 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.
- 19.4.1 Accessibility and Administration.
- 19.4.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 19.4.1.2 Owner shall administer the software.

- 19.4.2 Training. When used, Owner shall provide training to the Project team members.
- 19.5 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.
- 19.6 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.
- 19.7 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.
- 19.8 Governing Law and Venue. This Contract shall be governed by the laws of the State of Texas. Venue for any suit arising from the Contract will be in a court of competent jurisdiction subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code, or if mandatory venue is not applicable in the county in which the Project is located.
- 19.9 Captions and Catch Lines. The captions and catch lines used throughout the Uniform 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.
- 19.10 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.
- 19.11 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.
- 19.12 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.
- 19.13 No 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.
- 19.14 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.
- 19.15 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.
- 19.16

- 19.17 Public Information. Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Contractor shall make public information available to Owner in an electronic format.
- 19.18 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 constitute the entire agreement.

UNT | SYSTEM™

GENERAL CONSTRUCTION AGREEMENT

This Agreement made and entered into the {Day} day of {Month}, {Year}, by **University of North Texas System**, 1155 Union Circle #311040, Denton, Texas 76203-5017 (“Owner”), and by **{Firm Name}** (“Contractor”), duly authorized by the laws of the State of Texas to act as contractor for construction, rehabilitation, alteration, or repair services. The capitalized term “Party” refers to either Owner or Contractor individually and the term “Parties” refers to Owner and Contractor collectively.

ARTICLE 1 PROJECT

1.1 Owner does hereby engage Contractor and Contractor does hereby agree to provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents to construct the {Project Name} (“Project”), on the {Campus}, to be completed in accordance with the requirements herein, and generally described as follows:

{General Description of the Project}

1.2 Contractor has overall responsibility for and shall furnish all materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with Owner’s requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work. The Drawings, Specifications, and addenda have been prepared for Owner by {Architect/Engineer} (“Design Professional”).

2.2 The Contract Documents consist of:

- 2.2.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- 2.2.2 The Uniform General Conditions for Construction and Design Contracts for the University of North Texas System (“Uniform General Conditions” or “UGC”);
- 2.2.3 Supplementary General Conditions or Special Conditions, if any;
- 2.2.4 Owner’s Specifications;
- 2.2.5 All Addenda issued prior to the Effective Date of this Agreement;
- 2.2.6 All Change Orders issued after the Effective Date of this Agreement;
- 2.2.7 The Drawings, Specifications, details and other documents developed by Design Professional to describe the Project and accepted by Owner;
- 2.2.8 The Drawings and Specifications developed or prepared by Owner’s other consultants, if any, and accepted by Owner; and
- 2.2.9 The Historically Underutilized Business (HUB) subcontracting plan submitted or amended by Contractor and approved by Owner for this Project.

- 2.3 The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 DEFINITIONS

- 3.1 Terms, words, and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions.
- 3.2 The following terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the Uniform General Condition, the more specific given in this Agreement shall control.
- 3.2.1 “Design Professional” means licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent architects or engineers for design of all or a portion of the Project and to prepare Drawings and Specifications for the construction of the Project. More than one such professional or firm may be employed by Owner, and all such professionals or firms, regardless of number, are referred to in the singular herein.
- 3.2.2 “Self-Perform” includes Contractor, any division of Contractor, any separate entity that is wholly or partially owned by Contractor, or any of their employees or persons related to employees within the second degree of consanguinity or affinity.
- 3.2.3 “Subcontractor” means a person or entity who has an agreement with Contractor to perform any portion of the Work. The term Subcontractor does not include the Design Professional or any person or entity hired directly by Owner.
- 3.2.4 “Work” means the provision of all services, labor, materials, supplies, and equipment that are required of Contractor to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

ARTICLE 4 CONTRACTOR’S RESPONSIBILITIES

- 4.1 Contractor's responsibilities include but are not limited to supervision, furnishing labor, materials, equipment, employment of and responsibility for subcontractors, payment of taxes where applicable, patent fees, royalties, license fees, permit fees, and other governmental charges.
- 4.2 Contractor represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking. Contractor shall furnish construction administration and management services and use Contractor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents.
- 4.3 Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or unless authorized in writing by Owner's Representative.
- 4.4 Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the

Contract Documents give other specific instructions. In such case, Contractor shall not be liable to Owner for damages resulting from compliance with such instructions unless Contractor recognized and failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

- 4.5 Contractor shall perform Work only within locations allowed by the Contract Documents, applicable laws and regulations, and applicable permits. Laws and regulations include federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Constructor must comply that are enacted as of the Agreement date.
- 4.6 Owner may perform work at the site directly or by others. Contractor and Owner shall coordinate the activities of all forces at the site and agree upon fair and reasonable schedules and operational procedures for site activities.
- 4.7 Contractor shall: (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or others or cause the work of Owner or others to become defective; (b) afford Owner or others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Contractor's Work with the work of Owner and others.
- 4.8 Before proceeding with any portion of the Work affected by the construction or operations of Owner or others, Contractor shall give Owner prompt written notification of any defects Contractor discovers in Owner's or other's performance or work, which will prevent the proper execution of the Work. Contractor's obligations in this subsection do not create a responsibility for the performance or work of Owner or others, but are for the purpose of facilitating the Work. If Contractor does not notify Owner of defects interfering with the performance of the Work, Contractor acknowledges that the performance or work of Owner or others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Contractor of defects, Owner shall promptly inform Contractor what action, if any, Contractor shall take with regard to the defects.
- 4.9 Prior to commencing the Work, Contractor shall examine and compare the Drawings and Specifications with information furnished by Owner that are Contract Documents, relevant field measurements made by Contractor, and any visible conditions at the site affecting the Work.
- 4.10 Should Contractor discover any discrepancies, errors, omissions, or inconsistencies in the Contract Documents, Contractor shall promptly report them to Owner. It is recognized, however, that Contractor is not acting in the capacity of a licensed design professional, and that Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect discrepancies, errors, omissions, or inconsistencies or to ascertain compliance with applicable laws and regulations, including building codes. Following receipt of written notice from Contractor of defects, Owner shall promptly inform Contractor what action, if any, Contractor shall take with regard to the defects.
- 4.10.1 Contractor shall have no liability for discrepancies, errors, omissions, or inconsistencies discovered under this section unless Contractor fails to promptly report a discovered or apparent discrepancy, error, omission, or inconsistency to Owner. This does not relieve Contractor of responsibility for its own discrepancies, errors, inconsistencies, or omissions.
- 4.11 Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after giving it, Contractor shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the site. Contractor's superintendent(s) and project manager shall possess full authority to receive instructions from Owner and to act on those instructions. If Contractor changes its

- superintendent(s) or project manager or their authority, Contractor shall immediately notify Owner in writing.
- 4.12 Contractor shall be responsible to Owner for acts or omissions of parties or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.
- 4.13 Contractor shall permit only qualified persons to perform the Work. Contractor shall enforce safety procedures, strict discipline, and good order among persons performing the Work.
- 4.14 Contractor shall submit to Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in accordance with the Uniform General Conditions. Contractor shall be responsible for the accuracy and conformity of its submittals to the Contract Documents requirements.
- 4.15 Contractor acknowledges that it has visited, or has had the opportunity to visit, the site to visually inspect the general and local conditions which could affect the Work.
- 4.16 The Work shall be executed in accordance with the Contract Documents in a competent manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work.
- 4.17 If the Work includes installation of materials or equipment furnished by Owner or others, it shall be the responsibility of Contractor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Contractor shall be the responsibility of Contractor and may be deducted from any amounts due or to become due Contractor. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Contractor of defects, Owner shall promptly inform Contractor what action, if any, Contractor shall take with regard to the defects.
- 4.18 Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work or for compliance with applicable laws and regulations.
- 4.18.1 Contractor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the site; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the site and adjacent to Work areas, whether or not the property is part of the site.
- 4.18.2 Contractor's site safety representative shall have a duty to prevent accidents. The safety representative shall perform their duty in accordance with the Uniform General Conditions.
- 4.18.3 If Owner deems any part of the Work or site unsafe, Owner, without assuming responsibility for Contractor's safety program, may require Contractor to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Contractor does not adopt corrective measures, Owner may perform them and deduct their cost from the Contract Price. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, Contractor shall immediately reassign the person upon receipt of Owner's written notice to do so. Contractor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on Contractor's compliance with Owner's reasonable request.

- 4.19 If the conditions encountered at the site are: (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents; or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, then Contractor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and the Design Professional.
- 4.20 Contractor shall regularly remove debris and waste materials at the site resulting from the Work. Prior to discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the site all construction equipment, tools, surplus materials, waste materials, and debris.
- 4.20.1 If Contractor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due Contractor in the next payment period.
- 4.21 Contractor shall facilitate the access of Owner, Design Professional, and others to Work in progress.
- 4.22 Contractor shall comply with all applicable laws and regulations at its own costs. Contractor shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Contractor, its employees, subcontractors, and agents for failure to comply with applicable laws and regulations, including fines, penalties, or corrective measures.
- 4.23 Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty shall commence on the Date of Substantial Completion of the Work.
- 4.23.1 Contractor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. Contractor's liability for such warranties shall be limited to a one-year period. After that period, Contractor shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.
- 4.23.2 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Work not complying with the contract requirements (Defective Work) is found, Owner shall promptly notify Contractor in writing. Unless Owner provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional Work required for correction of any Defective Work for which it is responsible.
- 4.23.3 With respect to any portion of Work first performed after Substantial Completion, the one-year period shall be extended by the period between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by Contractor.
- 4.23.4 If Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from Owner prior to final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments

then or thereafter due Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

- 4.23.5 If Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

ARTICLE 5 SUBCONTRACTS

- 5.1 With the prior written approval of Owner, Contractor may subcontract such services as Contractor deems necessary to meet its obligations under this Agreement. Subcontractors shall be qualified and experienced in the type of work they will be performing. Owner shall have the right to reject any subcontractor but such right shall not relieve the responsibility of Contractor for his work and the work of the subcontractors. Contractor expressly assumes such responsibility and liability.
- 5.2 Contractor shall be responsible for the management of the Subcontractors in the performance of the Work.
- 5.3 If this Agreement is terminated, each subcontract agreement shall be assigned by Contractor to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to Section 11.1; and (b) Owner accepts such assignment, after termination by notifying the Subcontractor and Contractor in writing, and assumes all rights and obligations of Contractor pursuant to each subcontract agreement.
- 5.4 Contractor agrees to bind every Subcontractor and material supplier (and require every Subcontractor to so bind its sub-subcontractors and material suppliers) to all provisions of this Agreement as they apply to the Subcontractors' or material Suppliers' portions of the Work.

ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1 Owner shall provide Contractor with reasonable access to the site to assist Contractor in its performance of all tasks reasonably necessary for the completion of Work.
- 6.2 Owner hereby expressly reserves the right from time to time to designate by notice to Contractor one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Contractor shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.
- 6.3 Owner's representative shall: (a) be fully acquainted with the Project, Work, and site; (b) agree to furnish the information and Work required of Owner in a timely manner; and (c) have the authority to bind Owner (to the extent of their authority) in all matters requiring Owner's approval or authorization. If Owner changes its representative, Owner shall promptly notify Contractor in writing.
- 6.4 Owner will furnish the site plan to document existing conditions to the extent requested by Contractor and as reasonably necessary for the completion of Contractor's Work.
- 6.5 Owner shall examine, or cause its representative(s) to examine documents submitted by Contractor and render decisions pertaining thereto promptly or within a reasonable time to avoid unreasonable delay in the progress of Contractor's Work. Review and approval of a document by Owner shall not waive the contractual responsibility or liability of Contractor.
- 6.6 Owner shall furnish information required as expeditiously as necessary for the orderly progress of Contractor's Work.

- 6.7 Except for those permits and fees related to the Work which are the responsibility of Contractor, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

**ARTICLE 7
COMMENCEMENT AND COMPLETION**

- 7.1 Owner shall provide a Notice to Proceed in which a date for commencement of the Work to be performed shall be stated. Contractor shall achieve Substantial Completion of the work no later than {Written Number} ({#}) calendar days from the date of the Notice to Proceed, subject to extension only by approved Change Orders. Final Completion, including correction of deficiencies, shall be achieved no later than thirty (30) calendar days from the date of the Substantial Completion. Contractor understands that the Substantial Completion and Final Completion dates shall not be extended regardless of weather, strikes, or for any other reason unless Change Orders so approve. The time set forth for completion of the Work is an essential element of this Agreement.

- 7.1.1 Time is of the essence for this Agreement and the Contract Documents.

- 7.1.2 Unless instructed by Owner in writing, Contractor shall not knowingly commence the Work before the effective date of insurance to be provided by Contractor.

- 7.2 Contractor shall submit to Owner and Design Professional, a Schedule of the Work showing the dates on which Contractor plans to commence and complete various parts of the Work, including dates on which information and approvals are required from Owner. Contractor shall comply with the approved Schedule of the Work, unless otherwise directed by Owner. Contractor shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

- 7.2.1 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Owner may require Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or others. To the extent such changes increase Contractor's costs or time, the Contract Price and Contract Time shall be equitably adjusted.

**ARTICLE 8
COMPENSATION AND PAYMENT**

- 8.1 In full consideration of Contractor's performance of the Work and services under this Agreement, Owner shall pay to Contractor, subject to additions and deductions provided herein, the sum of {Amount} and No/100 Dollars ({#.00}), in periodic progress payments as hereinafter provided.

The Contract Sum is the total of the following:

Base Bid	\${Amount}
Alternate 1 -	\${Amount}
Alternate 2 -	\${Amount}
Alternate 3 -	\${Amount}
Payments and Performance Bonds	\${Amount}
 TOTAL	 <hr/> \${Amount}

- 8.1 On a monthly basis and subject to procedures set forth in the Uniform General Conditions, Contractor shall submit an Application for Payment, in accordance with Division 01 Specifications. Supporting documentation should include, without limitation: a certified statement as to the Work completed and current schedule of values; a project-to-date job cost report and a current period job cost report; a breakdown of materials and labor; supporting subcontractor invoices and sworn statements and waivers of lien for all amounts paid to Contractor for materials, labor, equipment, and other costs; and copies of third-party invoices, receipts, and other third-party supporting documentation.
- 8.2 Based on the Application for Payment, Owner shall make a periodic progress payment to Contractor for the cost of labor, materials, and equipment incurred by Contractor in relation to the Work during the previous month, except that the percentage of the total amount paid shall not exceed the percentage amount of the Work that has been completed as determined in the reasonable judgment of Owner. Upon verification of costs incurred and percentage of Work completed, Owner will make payment to Contractor within thirty (30) working days or will notify Contractor of any objection to the invoiced amount.
- 8.3 Owner shall have the right to withhold from payments due Contractor such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Contractor or failure of Contractor to perform Contractor's obligations under this Agreement as set forth in the Uniform General Conditions.
- 8.4 The final request for payment shall not be made until Contractor delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that so far as Contractor has knowledge or information, the release includes and covers all materials and Work over which Contractor has control for which a lien could be filed, but Contractor may, if any agent or consultant refuses to furnish a release in full, furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.
- 8.5 In addition to the procedures contained in the Uniform General Conditions, Owner shall have no obligation to make Final Payment until a final accounting of the Work has been submitted by Contractor and has been verified by Owner or Owner's representatives. The aggregate total of payments to Contractor shall not exceed the total of the actual Work as verified by Owner or Owner's representative from Contractor's final accounting, as certified for payment in accordance with the Agreement. If payments made to Contractor exceed that which is due and owing pursuant to this Article, then Contractor shall promptly refund such excess to Owner.
- 8.6 Nothing contained herein shall require Owner to pay Contractor an aggregate amount exceeding the Agreement or to make payment if in Owner's belief the cost to complete the Work would exceed the Agreement less previous payments to Contractor. Any provision to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a periodic progress payment or Final Payment) to Contractor hereunder if any one or more of the following conditions precedent exist:
- 8.6.1 Contractor is in breach or default under this Agreement;
 - 8.6.2 Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
 - 8.6.3 Contractor has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Contractor;

- 8.6.4 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due Contractor hereunder unless and until Contractor, at Contractor's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services; or
- 8.6.5 To the extent Liquidated Damages or actual damages are imposed by Owner for failure of Contractor to complete the Work within the Contract Time.
- 8.7 No partial payment made hereunder shall be, or shall be construed to be, final acceptance or approval of that part of the services to which such partial payment relates, or a release of Contractor of any Contractor's obligations hereunder or liabilities with respect to such services.
- 8.8 Contractor shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the construction of the Work.
- 8.9 Owner shall have the right to verify and audit the details set forth in Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment therefore, by: (a) inspecting the books and records of Contractor during normal business hours; (b) examining any reports with respect to this Project; (c) interviewing Contractor's business employees; (d) visiting the Project site; and (e) other reasonable action.
- 8.10 The acceptance by Contractor or Contractor's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Contractor or Contractor's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Contractor as unsettled at the time of the final request for payment.
- 8.11 UNTS shall be billed in accordance with Chapter 2251 of the *Texas Government Code* and interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the *Texas Government Code*. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.
- 8.12 All invoices submitted for payment must include a HUB Progress Assessment Report (PAR). The PAR should document compliance with the HUB Plan.

ARTICLE 9 BONDS

- 9.1 Prior to commencing work, Contractor shall provide performance and payment bonds in accordance with the requirements set forth in the Uniform General Conditions. The penal sum of the payment and performance bonds shall be for 100% of the Contract Sum. Any increase in the Contract Price shall require a rider to the Bonds increasing penal sums accordingly. Contractor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price. Owner will pay Contractor the bonding costs as a pass through amount not to exceed {Amount} (\$#{#}.00) with proper documentation provided along with an Application for Payment. No retainage is to be withheld with respect to the cost of the required bonds.
- 9.2 Contractor shall not cause or allow any of its bonds to be canceled nor permit any lapse during the term of this Agreement.

**ARTICLE 10
INDEMNITY AND INSURANCE**

- 10.1 Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS Owner, and its component institutions, Regents, elected and appointed officials, directors, officers, employees, agents, representatives, and volunteers, 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 the Contract, including any acts or omissions of Contractor, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Contractor, and their respective directors, officers, employees, agents, and representatives while in the exercise of performance of the rights or duties under the Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner or separate 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.
- 10.1.1 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.
- 10.1.2 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.
- 10.2 Insurance.
- 10.2.1 Contractor shall not commence work under the Agreement until it has obtained all insurance required in accordance with this Agreement and the Uniform General Conditions and until such insurance has been reviewed and approved in writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Contractor hereunder. Prior to commencing any of the Preconstruction Services, Contractor shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability as set forth in the Uniform General Conditions are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in the Uniform General Conditions shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.
- 10.2.2 Contractor shall include Owner, {Campus} and the Board of Regents of the University of North Texas System as loss payees and Additional Insured's on General Liability and Business Automobile Liability. The Commercial General Liability, Business Automobile Liability, and Worker's Compensation policies shall include a waiver of subrogation in favor of Owner.
- 10.2.3 Insurance policies required under this Article shall contain a provision that the insurance company must give Owner written notice transmitted in writing: (a) thirty (30) calendar days before coverage is non-renewed by the insurance company and (b) within ten (10) business days after cancellation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, Contractor shall furnish Owner with certificates of insurance until one year

after acceptance of the Services. If any insurance policy required under this Article is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor will give Owner prompt written notice upon actual or constructive knowledge of such condition.

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

10.2.5 Owner shall be entitled, upon request, and without expense, to receive copies of the policies, all endorsements thereto and documentation to support costs and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, exclusions and costs, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Any price credits determined in the insurance review will be refundable to Owner. Actual losses not covered by insurance as required by this Article shall be paid by the Contractor.

ARTICLE 11 TERMINATION AND SUSPENSION

11.1 With or without cause, Owner reserves and has the right to terminate this Agreement or to cancel, suspend or abandon execution of all or any Services in connection with this Agreement at any time upon written notice to Contractor. Contractor may terminate this Agreement upon seven days written notice to Owner only if Owner substantially fails to perform its obligations under Article 6 of this Agreement or fails to timely pay Contractor as required under Article 8, and after adequate written notice is delivered to Owner and Owner has failed to take action within 30 (thirty) days in order to begin to correct the problem.

11.1.1 In the event of termination, cancellation, suspension, or abandonment that is not the fault of Contractor, Owner shall pay to Contractor as full payment for all services performed and all expenses incurred under this Agreement, the appropriate portion of Contract Sum due under Article 8 as shall have become payable because of the progress in the Work as the services actually rendered hereunder by Contractor bear to the total services necessary.

11.1.2 In ascertaining the services actually rendered hereunder up to the date of termination, cancellation, suspension, or abandonment of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete Drawings, and to other related documents, whether delivered to Owner or in possession of Contractor.

11.1.3 For any said sum paid under this Article, Contractor agrees to accept same in full settlement of all claims for services rendered under this Agreement.

11.2 If, upon payment of the amount required to be paid under this Article following the termination of this Agreement, Owner thereafter should determine to complete the original project or, substantially, the same project without major change in scope; Owner, for such purposes, shall have the right of utilization of any and all original tracings, Drawings, calculations, design analysis, Specifications, estimates, related data, and other documents including Construction Documents, prepared under this Agreement by Contractor who shall make them available to Owner upon request, with compensation to Contractor limited to actual reproduction costs. Owner agrees to credit Contractor with such authorship as may be due to him but is not required to renew this Agreement.

- 11.3 Upon request at the termination, cancellation, suspension, or abandonment of this Agreement, Contractor agrees to furnish to Owner copies of the latest documents prepared by Contractor for the Project.
- 11.4 A termination, cancellation, suspension, or abandonment under this Article shall not relieve Contractor or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Contractor. In the event of a termination under this Article, Contractor hereby consents to employment by Owner of a substitute Contractor to complete the services under this Agreement, with the substitute Contractor having all rights and privileges of the original Contractor of the Project.

ARTICLE 12 MISCELLANEOUS

- 12.1 The terms and conditions of this Agreement shall be binding upon the Parties, their partners, successors, permitted assigns, and legal representatives. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of Owner or a branch or agency of the State of Texas.
- 12.2 If Contractor transacts business as an individual, his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder; and Owner shall pay him or his estate the compensation payable under the Agreement for any services rendered prior to such termination. If Contractor is a firm comprised of more than one principal and any one of the members thereof dies or becomes incapacitated and the other members continue to render the services covered herein, Owner will make payments to those continuing as though there had been no such death or incapacity, and Owner will not be obliged to take any account of the person who died or became incapacitated or to make any payment to such person or his estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Contractor; and if death or incapacity befalls the last one of such group before this Agreement is fully performed, then the rights shall be as if there had been only one Contractor. In any event, notice of the death or incapacity of any principal shall be given to Owner by any surviving principal within a reasonable time.
- 12.3 Certifications.
- 12.3.1 Pursuant to Texas Family Code, Section 231.006, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 12.3.2 Pursuant to Texas Government Code, Section 2155.004, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 12.3.3 If a corporate or limited liability company, Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Texas Tax Code, Chapter 171, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

- 12.3.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 12.4 This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas and venue shall be as provided in Texas Education Code Section 105.151 for any legal proceeding pertaining to this Agreement.
- 12.5 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- 12.6 Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be kept on a generally recognized accounting basis and shall be made available to Owner or its authorized representative during business hours for audit or other purposes as determined by Owner. Such records shall be maintained by Contractor and shall be available to Owner or his authorized representative for a period of at least three (3) years after the provision of Contractor's Services.
- 12.7 All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. Mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:
- | | |
|---|---|
| <p><u>If to Owner:</u>
 Director, System Facilities Administration
 University of North Texas System
 1155 Union Circle #311040
 Denton, Texas 76203-5017</p> | <p><u>If to Contractor:</u>
 {Contact Name}
 {Firm Name}
 {Street Address}
 {City, State Zip}</p> |
|---|---|
- or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.
- 12.8 It is acknowledged and agreed that Contractor's services to Owner are unique, which gives Contractor a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.
- 12.9 Contractor recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Contractor hereby agrees to make its own arrangements for any of such

benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

- 12.10 Financial records shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by Owner or Owner's authorized representative on reasonable notice.
- 12.11 Performance by Owner under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of North Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate the Agreement in accordance with Article 11. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 12.12 All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, shall be confidential and Contractor shall not, beginning on the date of first association or communication between Owner and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Contractor shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Contractor shall obtain assurances similar to those contained in this subparagraph from persons, contractors, and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 12.13 Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Contractor shall make public information available to Owner in an electronic format.

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

OWNER:

CONSTRUCTION MANAGER-AT-RISK:

UNIVERSITY OF NORTH TEXAS SYSTEM

{FIRM NAME}

By: _____
(signature)

By: _____
(signature)

[Authorized Signatory Name]
[Authorized Signatory Title]

(typed name and title)

Street/PO Box

City, State, ZIP

Telephone

State of TX Vendor ID Number

SAMPLE



EXHIBIT A

SPECIFICATIONS, DRAWINGS, AND ADDENDA

SPECIFICATIONS

As listed in project manual titled [Title], prepared by [Professional], issued for construction on [Date].

DRAWINGS

Entitled [Title], as prepared by [Professional], issued for construction on [Date], consisting of the following pages:

Sheet Number

Title

ADDENDA

Number

Title

SAMPLE