



Request for Qualifications

Qualifications due May 3, 2019 – 2:00 PM

Energy Efficiency and Capital Reinvestment Project

**at University of North Texas Health
Science Center**

RFQ763-19-136936DH

Prepared By:

Denise Harpool

University of North Texas System Procurement Services

Business Service Center

1112 Dallas Drive, Suite 4000

Denton, Texas 76205

Email: denise.harpool@untsystem.edu

Date: April 4, 2019

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RFQ763-19-136936DH

Energy Efficiency and Capital Reinvestment Project

SECTION I - NOTICE TO PROPOSERS

Sealed qualifications for **RFQ763-19-136936DH** will be received by the **UNTS at the Business Service Center (BSC), Woodhill Square, 1112 Dallas Drive, Suite 4000, Denton, Texas 76205**. A campus map can be found online at https://transportation.unt.edu/sites/default/files/UNT_Campus_Parking.pdf parking for Woodhill Square is campus parking and permits are required. There is guest parking at the door to Suite 4000 and only those spaces can be utilized for submitting the response. Respondents are responsible for all parking costs and for complying with parking regulations. Failure to comply with parking regulations may result in citation and possible impound of vehicle.

The Qualifications will be received up to **2:00PM** Local Time on **May 3, 2019**. Responses received after the date and hour above stated will be returned to the sender unopened and will not receive consideration.

All questions should be directed to **Denise Harpool Senior Buyer** for Procurement Services at denise.harpool@untsystem.edu and must be received no later than **2:00PM on April 17, 2019**. All questions and answers will be posted to the website by **5:00PM on April 22, 2019**.

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

Online - Bidders can view bid documents : UNT System website at <http://www.untsystem.edu/hr-it-business-services/procurement/purchasing/bid-opportunities> as well as the State of Texas Electronic State Business Daily (ESBD) at <http://www.txsmartbuy.com/sp> .

A **Pre-submittal Conference** will be held at **10:00 am on April 11, 2019** in the University of North Texas HSC Location at **3400 Camp Bowie Blvd - Center for Bio Health, Room 230, Ft. Worth, Texas 76107**. Vendors should park in **Parking Lot 6 - Visitor spaces - 3500 Camp Bowie Blvd**. Although attendance at this conference is not mandatory, it is highly encouraged.

SECTION II - SELECTION PROCESS/DESCRIPTION OF PROCESS

1. Qualifications

Qualifications are due **on or before 2:00PM Local Time on May 3, 2019**. Responses must be limited to no more than thirty (30) pages. Covers, signed cover letters, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. All documents should be printed one-sided and submitted in 8½" X 11" page size, portrait style. Proposals received that are late or exceed the number of pages listed above will not be accepted. Provide two (2) copies of your submittal in the form of one (1) paper copy loose and one (1) virus free CD ROM or flash drive. Both formats must contain the exact same information. Missing information from either format may result in the Owner's rejection of the response.

SUBMIT RESPONSES BY May 3, 2019, 2:00PM Local time as follows:

Overnight carrier or personal delivery to:

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

Email, faxed responses, or responses sent via any other electronic means except as directed herein will not be accepted.

The short-listed firms will be notified on or about the date listed in Selection Schedule.

SELECTION SCHEDULE

RFQ Posted	April 4, 2019
Pre-Proposal Meeting	April 11, 2019 @ 10:00AM
Deadline for inquiries	April 17, 2019
Answers posted	April 22, 2019
Qualifications received	May 3, 2019 @ 2:00PM
HSP received no later than	May 3, 2019 @ 2:00PM
Notify short listed firms if Owner elects, on or about	May 15, 2019
Walk thru with Short-listed Firms, on or about	May 20, 2019
Interview short listed firms, if Owner elects to interview on or about	May 22, 2019
Notify selected firms, on or about	June 01, 2019

Note: Progress towards the schedule noted above is solely at the discretion of UNTS.

UNTS expects to reach a contractual agreement with the top-rated firm shortly after notification.

UNTS reserves the right to reject any or all qualifications at any point during this selection process for any reason.

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

2. Historically Underutilized Businesses (HUB)

In accordance with Texas Gov't Code §2161.252 and Texas Administrative Code §20.14, each state agency (including institutions of higher education) as defined by §2151.002 that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

If subcontracting opportunities are probable, each state agency's invitation for bids or other purchase solicitation documents for construction, professional services, other services, and commodities with an expected value of \$100,000 or more shall state that probability and require a HUB Subcontracting Plan (HSP).

FAILURE TO SUBMIT AN HSP WITH YOUR RESPONSE MAY RESULT IN THE DISQUALIFICATION OF YOUR PROPOSAL. Information regarding the UNTS's HUB Program and associated forms are attached and additionally may be found at: [.https://www.untsystem.edu/hr-it-business-services/hub-forms](https://www.untsystem.edu/hr-it-business-services/hub-forms). For questions regarding the HUB Program or submittal of your HSP, vendors may contact either Greg Obar, Associate Director, HUB Program at Greg.Obar@untsystem.edu or Lisa Tovar HUB Specialist at hub@untsystem.edu. **Note, the HSP must be submitted in a separate envelope marked "HSP RFQ 763-19-136936DH"**

The HSP must be sent in the same clearly marked, sealed envelope separate from the RFQ response. The envelope must be labeled "**HUB Subcontracting Plan for RFQ763-19-136936DH**". The envelope for the RFQ response must be labeled "**RFQ763-19-136936DH Response**". Both envelopes and electronic media must be mailed or hand delivered in the same package.

Plan for participation of Historically Underutilized Businesses (HUB).

1. It is the policy of the Owner to promote and encourage contracting and subcontracting opportunities for HUB in all contracts. A HUB Subcontracting Plan (HSP) must be submitted with this proposal as specified in "3" below.

2. The Owner has determined subcontracting opportunities are possible and have identified the following areas:

- Mechanical Engineering, Electrical Engineering, Plumbing Engineering, Code Consultation, Civil Engineering

3. Subcontracted work, whether identified by the Owner or not, is required to be identified in the HSP. Please complete the attached HSP for all subcontracting opportunities to be utilized in the project. Failure to complete the HSP correctly will disqualify the firm's RFQ response.

Only responses with approved HSP's will be evaluated. Failure to return the HSP in a separate, clearly marked envelope, separate from your RFQ response, will prevent the Owner from evaluating your response. Firms are encouraged to contact Greg Obar at 940-369-5647 or email hub@untsystem.edu with questions regarding completing the HSP.

SECTION III - QUALIFICATIONS/SCOPE OF WORK UNTHSC

A. UNT HEALTH SCIENCE CENTER BACKGROUND INFORMATION

1. Purpose of Solicitation

The University of North Texas System (UNTS) on behalf of the University of North Texas Health Science Center (UNTHSC) is seeking qualified firms and intends to enter into a contract to perform Energy Service Companies (ESCOs) that describe their capabilities to identify, design, install, maintain, monitor, and arrange financing of an energy efficiency and capital reinvestment project NIGP (918-76). This project includes the services listed in this request pursuant to the provisions of Texas law. For the purpose of this RFQ, "ESCO" refers to any entity that is qualified to provide an energy efficiency and capital reinvestment project that includes the services listed in this request and meets the requirements of the Texas Energy Performance Contracting Guidelines. UNTHSC intends to select an ESCO and to award a single or multiple contract(s) to perform cost-effective utility conservation retrofits.

2. UNTHSC Background

The University of North Texas Health Science Center is a values-based graduate university located on 33 acres in Fort Worth's Cultural District. It has approximately 2,300 graduate students across its five (5) existing colleges: Texas College of Osteopathic Medicine, Graduate School of Biomedical Sciences, School of Public Health, School of Health Professions and UNT System College of Pharmacy. A sixth college, the Texas Christian University (TCU) and UNTHSC School of Medicine, is scheduled to open in 2019. The university's future providers, researchers and scientists train and learn across programs and schools, modeling a team approach to health care and science that will transform lives. To learn more, visit www.unthsc.edu.

3. Procurement Process

a. UNT System Publishes RFQ

The Request for Qualifications (RFQ) is the first step in a multi-step process aimed at identifying one (1) or more qualified ESCOs. The RFQ or notice of availability of the RFQ must be published in accordance with state law. The RFQ details the requirements for response, deadlines, and directions for submittal in subsequent sections. This process must conform to provisions of Texas Government Code 2254.004, and State Energy Conservation Office Energy Savings Performance Contracting for Public Higher Education: Title 3, §51.927.

b. Selection of Qualified Provider or Short-list of Providers

A committee has been formed to review responses submitted. Based on the selection criteria described in this document, the committee may select a short-list of the most qualified respondents. (Note: UNTHSC retains the right to select only one (1) respondent at this stage and skip the next two (2) stages to negotiate a contract. UNT System and UNTHSC may also determine that no qualified submittals have been received and reject all submittals.)

c. (Optional) Walk-through Site Visit

The short-listed respondents may be provided an opportunity to separately walk through one (1) or more facilities with UNTHSC to develop an understanding of those facilities and the opportunities for improvements in energy and water efficiency equipment or practices. UNTHSC may also choose to have the respondents conduct a Preliminary Utility Audit (PUA) during this step. (Note: Even if UNTHSC selected a short-list of respondents rather than only one (1), UNTHSC may choose to skip this stage and enter into an initial utility assessment contract with more than one (1) ESCO in order to obtain some experience with each of the respondents considered most qualified.)

d. (Optional) Oral Presentation - Interviews

Oral presentations - Interviews may be required of each of the interested short-listed respondents covering their general qualifications in the field of performance contracting for utility efficiency improvements. This presentation will include each stage of work required, the firm's initial impression of UNTHSC's facility status, and a likely conceptual approach to improving the efficiency of the facility.

e. Negotiate Utility Assessment Contract

UNT System and UNTHSC will select one (1) respondent to provide detailed utility audits of one (1) or more facilities (or all facilities).

f. Prepare Utility Assessment Report (UAR) for Final Project Proposal

UNT System, UNTHSC, and the selected respondent will negotiate a contract in which UNTHSC assigns a facility for the respondent to audit and agrees to pay a negotiated fee for performance of this work. The selected respondent will agree to perform the UAR (detailed audit) according to the State Energy Conservation Office's Energy Performance Contracting Guidelines.

UNT System and UNTHSC expects the ESCO to perform the UAR on a contingent basis (i.e. not bill for the audit until the UAR is completed and the project is developed) and roll the agreed upon cost of the UAR into the final project cost. UNTHSC reserves the right to pay for the UAR or finance it with the rest of the project. UNTHSC may expect a minimum level of savings to be guaranteed based on preliminary utility audits that the ESCO performed.

g. Submittal of Final Project Proposal

The selected respondent will provide a final proposal for UNTHSC's energy efficiency and capital improvement project. The final proposal will include the completed Utility Assessment Report, documentation of potential utility and operational savings, and all associated implementation costs. It must also include a Measurement and Verification Plan and a Sample Periodic Savings Report.

h. Review and Recommendation of Final Proposal

UNTHSC's review committee will review the final proposal and either accepts the proposal, accept the proposal with exceptions or modification, or reject the proposal.

i. Negotiate Energy Services Contract

After the Final Proposal is accepted, the selected respondent and UNT System and UNTHSC will negotiate an energy services contract. The Contract will include authority to proceed with final design and installation/construction and detail the payment schedule to the ESCO.

j. Contract Approval and Review

State law requires that the UAR be reviewed by an independent, licensed third party engineer prior to contract execution. The UAR review by the third party Engineer will ensure that the essential elements of the enabling statute are covered and accounted for in the contract.

k. Perform Project

Once the Contract is approved and executed, and funding has been secured, the ESCO may proceed with the detailed project engineering design and construction/installation.

4. Submission Format

a. Page Size, Font Size, Binding, Dividers and Tabs

- i. Qualifications shall be a MAXIMUM OF FIFTY (50) PRINTED PAGES. The cover, table of contents, divider sheets, and appendices do not count as printed pages.
- ii. Minimum font size allowed is ten (10).

- iii. Qualifications shall be printed on letter-size (8-1/2" x 11") paper, portrait style
- iv. Separate and identify each criteria response by use of a divider sheet with an integral tab for ready reference.
- b. Table of Contents - Submittals shall include a "Table of Contents" and give page numbers for each part of the Qualifications.
- c. Pagination - Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.).
- d. Provide two (2) copies of the submittal in the form of one (1) in paper format, loose bound and one (1) electronic format on a virus free CD ROM or flash drive. Both formats must contain the exact same information. Missing information from either format may result in the Owner's rejection of the response. Overnight carrier or personal delivery to:

Denise Harpool
University of North Texas System
Business Service Center
Woodhill Square
1112 Dallas Drive, Suite 4000
Denton, Texas 76205
Email of faxed responses will not be accepted.

The HSP is due on or before **May 3, 2019 at 2:00PM Local Time**. The HSP must be in a clearly marked envelope separate from your RFQ response as previously outlined in the HUB section.

B. RESPONDENT'S SUBMITTAL

1. Business Qualifications

- a. Please provide a brief history of your firm and number of years in the ESCO business.
- b. The ESCO must prove extensive experience in Texas as a company and with its key personnel with analysis, design, and implementation of energy efficiency and facility improvement measures.
- c. Describe your firm's in-house resources and expertise in the areas described above, as this will be considered a strong point for leveraging best practices and for ensuring a single point of accountability.
- d. Provide National Association of Energy Service Companies (NAESCO) accreditation and proof of current Texas Professional Engineering Registration.
- e. Provide a list of pertinent certifications, awards and credentials (including safety and EPA or DOE affiliations).
- f. Provide a description of the ESCO business unit dedicated to implementing Energy Savings Performance Contracting projects.
- g. Provide the location(s) where this project will be managed and ESCO's division headquarters.
- h. Describe your willingness to include other manufacturers' products.
 - i. Identify and describe any business associations with equipment manufacturers or suppliers that might be specified for this project;
 - ii. Provide five (5) Texas based project examples where you have installed or integrated other manufacturers' products.
- i. List the complete range of energy/utility services and capabilities the ESCO offers, such as:

building/facility energy analysis, engineering, design, installation, commissioning, monitoring and performance verification, and related training.

- j. Provide a list of all projects implemented by the ESCO and its key personnel in the last ten (10) years:
 - i. That have canceled or non-appropriated a performance contract with the respondent (list reason);
 - ii. Or, that have past lawsuits, arbitration or litigation regarding a performance contract (list reason).
- k. Provide examples of customers who have completed a performance contract to the end of the term performance guarantee and give results on actual dollar savings achieved.

2. Financial Information

Describe the financial soundness and stability of the ESCO (ability to support the performance guarantee).

- a. Provide Financial Statements for the two (2) most recently completed fiscal years. UNTHSC may, during the course of the evaluation process, request additional financial information to supplement and clarify the information provided.
- b. Provide information-documenting sources of financing and financing methods available to UNTHSC and UNT System.
- c. Provide a letter from its surety company demonstrating the ESCO's capability to provide payment and performance bond associated with construction projects. The letter should also state the bonding capacity of the ESCO.
- d. Provide a letter of recommendation from a financial institution.

3. Participants/Personnel

Identify known participants in the project and provide information regarding capabilities and experience of personnel directly assigned to this project that include the following:

- a. Organizational chart that clearly describes your ESCO's project organization with supervisory reporting.
- b. A list of key personnel and their responsibilities for the duration of the project contract terms should be listed. Include in this list the number of years each individual has been in the industry and what state they are based out of. Resumes should be provided in the Appendix. In the resumes, indicate the education and professional licensing of each person as it relates to this project. Also, include a list of previous projects in which each team member has played a significant role.

4. Project Management Plan

Describe your firm's methodology of developing and implementing comprehensive energy efficiency and conservation projects for UNTHSC. Address in detail the following key components, if provided by your firm or team, and how you would approach each one:

- a. Facility Surveys
- b. Energy modeling and analysis
- c. Project development
- d. Non-construction related energy conservation strategies

- e. Engineering and design
- f. Construction and project management
- g. Commissioning
- h. Training
- i. Safety and quality program
- j. Measurement and verification of results
- k. Guarantee of energy savings

5. Project Experience Summary

Provide a project experience summary for five (5) energy savings performance contracts implemented over the past ten (10) years with Texas higher education (through PHE 51.927). Of the project experience summaries, at least three (3) must have utilized an “Option C” savings guarantee in compliance with International Performance Measurement & Verification Protocol (IPMVP) for at least three (3) years. If a client has done multiple phases, provide in the experience summary the information requested below that is unique to each phase.

Each project experience summary must contain:

- a. Project cost
- b. Annual savings guaranteed
- c. Project term of the contract in years
- d. List of improvements
- e. Type of measurement and verification protocol(s) utilized for performance guarantee; include a list of measurement protocols with the percentage of energy savings (including water) from each IPMVP option type
- f. Client contact information

Describe any additional partnership benefits that have been provided to existing clients.

All project experience summaries must be for the “responding ESCO” operating under its existing name and must be for the “responding ESCO” as a firm. Project experience summaries will be for the firm as a whole, not for an individual.

Failure to provide project experience summaries that meet the minimum requirements noted above will result in the responding firm being deemed nonresponsive to this request for qualifications, and that firm will not be considered for this project award.

6. Services Requested

UNTHSC proposes to address all utility and water consumption in all of its facilities for this conservation project. Additionally, UNTHSC intends to upgrade outdated and obsolete building equipment and perform utility-related facility improvements through the project.

UNTHSC anticipates a major reduction in annual utility consumption and associated operational costs through the implementation of this project. As part of the process, a contract must include provision for monitoring and verification of utility savings and any guaranteed operational savings. If requested, the ESCO shall arrange financing or assist UNTHSC in procuring the most cost effective funding for the

project. The term is not-to-exceed twenty (20) years from the final date of installation.

UNTHSC intends to structure the project's implementation schedule in a manner to minimize its financed capital needs.

Respondents to this RFQ shall identify their experience and qualifications to perform analysis, design engineering, preparation of engineering plans and specifications, installation, commissioning, measurement and verification of savings, and management of a major energy efficiency and capital reinvestment project that has involved Energy Conservation Measures (ECM) which address facility components and applications. Such components and applications shall include: lighting, space heating, ventilation, air-conditioning, building envelope, heat recovery, energy and water management systems, environmental system controls, motors, domestic water heating, fuel switching, air distribution systems, or other energy and water conservation related improvements or equipment including improvements or equipment related to renewable energy. UNTHSC also requires a description of the ESCO's qualifications and experience related to training facility occupants and maintenance workers in energy and water conservation awareness.

7. Buildings/Project Description

The successful respondent would have the capabilities to address the following energy conservation measures, although this is not intended to be a comprehensive list:

- Central chilled / heating plant
- Power factor improvement
- Water well
- Renewable energy
- Exhaust fan improvements
- Laboratory pressurization and temperature controls
- Lighting retrofits and controls

8. Evaluation Criteria

Firms will be selected on the basis of experience and qualifications using the following criteria (many of the criteria are subjective):

- a. Relevant successful experience will be evaluated on the basis of the experience of those key individual(s) names to the project team:
 - i. perform analysis, design engineering, preparation of engineering plans & specifications, commissioning, measurement & verification of savings;
 - ii. management of major energy efficiency involving Energy Conservation Measures (ECM)
 - iii. experience related to training facility occupants and maintenance workers in energy and water conservation awareness.
- b. Firm's methodology of developing and implementing comprehensive energy efficiency and conservation projects.
- c. Firm performance and quality of past and current projects as included in response.
- d. Sufficiency of proposer's financial resources.
- e. Quality of references of similar projects completed by proposer within last ten (10) years.
- f. Proposer's number of years in ESCO business

i. Confirmation firm has NAESCO accreditation & proof of current Texas Professional Engineering registration, EPA or DOE affiliations

g. Quality and responsiveness of the RFQ submittal – if applicable, the interview.

h. Local representation will be evaluated on ability to respond quickly to issues during project and throughout contract term.

Questions

Please address your questions concerning this RFQ to:

Denise Harpool – Senior Buyer
University of North Texas System
Procurement Services

Please submit solicitation questions to:

Denise.harpool@untsystem.edu

All questions must be received no later than April 17, 2019, at 2:00PM, local time. All questions and answers will be posted to the website by 5:00PM, local time April 22, 2019.

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

Do not contact any other individuals from the UNT System or UNT Health Science Center regarding this solicitation, this may result in your firms' disqualification.

END OF SECTION

ATTACHMENT A - HUB Sub Contracting Plan Form
ATTACHMENT B - Payment & Performance Bond
ATTACHMENT C - Sample ESCO Contract
ATTACHMENT D - UGC's UNT System

ATTACHMENT A

Rev. 2/17



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

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

➤ **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract.

Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.

Section 2 c. - Yes

Section 4 - Affirmation

GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract.

Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.

Section 2 c. - No

Section 2 d. - Yes

Section 4 - Affirmation

GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

Section 1 - Respondent and Requisition Information

Section 2 a. - Yes, I will be subcontracting portions of the contract.

Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.

Section 2 c. - No

Section 2 d. - No

Section 4 - Affirmation

GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

Section 1 - Respondent and Requisition Information

Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.

Section 3 - Self Performing Justification

Section 4 - Affirmation

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



HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

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

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

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

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

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

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

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

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

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

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

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

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

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		- Yes - No
		- Yes - No

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

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

SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

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

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

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 Oblige, in the sum of Dollars (\$ _____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, by the terms and conditions herein.

The conditions of this obligation are such that whereas the Principal entered into a certain contract with the Oblige, as an entity of the State of Texas, dated the ____ day of ___, 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 Oblige.

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

Provided further, that 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.)

PERFORMANCE BOND

Surety Bond No.

STATE OF TEXAS §
COUNTY OF §

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

The conditions of this obligation are such that whereas the Principal entered into a certain contract with the Obligee, as an entity of the State of Texas, dated the _____ day of _____, 20 ("Contract"), which is hereto attached and made a part hereof for all purposes, for the purpose of _____

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

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

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

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

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

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

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____ day of _____ in the year 20____, the name and corporate seal of each corporate party being hereto affixed, and these present duly signed by its undersigned representative pursuant to authority of its governing body.

ATTEST:

(Principal)

(Signature)

(Signature)

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

ATTEST:

(Surety)

(Signature)

(Signature)

(Typed Name and Title)

(Typed Name and Title)

(SEAL)

Surety's Texas Local Recording
Agent or Resident Agent:

Surety's Home Office Agent or
Servicing Agent:

(Signature)

(Name)

(Typed Name)

(Title)

(License No.)

(Address)

(File No)

(City, State, Zip)

(Address)

(Telephone)

(City, State, Zip)

(Telephone)

******SAMPLE******

ENERGY SAVINGS PERFORMANCE CONTRACT

BETWEEN

UNIVERSITY OF NORTH TEXAS

AND

<<ESPC>>

*******SAMPLE*******

ENERGY SAVINGS PERFORMANCE CONTRACT

BETWEEN

UNIVERSITY OF NORTH TEXAS

AND

<<ESPC>>

The University of North Texas (“UNT” or “Owner”), a Texas state agency and institution of higher education, located at <<_ >>, and <<ESPC>> (“Contractor”), a Texas corporation, located at << >>, enter into the following agreement for utility cost reduction measures (“Contract”) pursuant to Tex. Gov’t Code Ann. § 2166.406, as of the Effective Date. Nothing in this Contract shall be interpreted or construed to make Contractor a third-party beneficiary hereunder.

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise herein, all words and phrases in this Contract in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in this Contract, the UNT Uniform General Conditions (“UGC”), or in any other Contract Document that is referenced herein and incorporated for all purposes, the definitions used in this Contract shall control to the extent of the conflict.

1.1.1. *Actual Savings* is defined as the sum of the total savings realized using the procedures defined in the Sample Periodic Savings Report incorporated herein for all purposes as “Exhibit J” plus all adjustments and non-measured savings.

1.1.2. *Annual Savings Guarantee* is the amount of energy savings guaranteed by Contractor for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.

1.1.3. *Application for Final Payment* has the same meaning as defined in the UGC.

1.1.4. *Baseline Schedule* has the same meaning as defined in the UGC.

1.1.5. *Bid Bond* has the same meaning as Security Bond, which is defined in the UGC.

1.1.6. *Not Used*

1.1.7. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.

1.1.8. *Certificate of Final Completion* has the same meaning as defined in the UGC.

1.1.9. *Certificate of Substantial Completion* means the certificate signed by Contractor and UNT establishing the date of Substantial Completion and identifying responsibilities for security and maintenance as set out in the UGC.

- 1.1.10. *Change Order* has the same meaning as defined in the UGC.
- 1.1.11. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between UNT, Contractor, and Subcontractors.
- 1.1.12. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article V of this Contract.
- 1.1.13. *Construction Documents* has the same meaning as defined in the UGC that in UNT's sole opinion are in satisfactory quality and detail.
- 1.1.14. *Construction and Utility Cost Reduction Services* means the construction and design services to be provided to UNT by Contractor with respect to Utility Cost Reduction Measures, as defined in Section 1.1.75 below, as specified in the UGC and as further specified in this Contract.
- 1.1.15. *Contract Documents* means those documents identified in Article III of this Contract.
- 1.1.16. *Contract Sum* has the same meaning as defined in the UGC.
- 1.1.17. *Contract Time* has the same meaning as defined the UGC.
- 1.1.18. *Deliverables* means the construction services, which are specified to be delivered by Contractor pursuant to the terms of this Contract.
- 1.1.19. *Drawings* has the same meaning as defined in the UGC.
- 1.1.20. *Effective Date* means the date that the last signature of a party is affixed hereto.
- 1.1.21. *Energy Savings* means the reduction in use of water, sewer, natural gas, and electricity realized to UNT based on the baseline energy usage before the scope of work performed in this contract versus the measured energy usage after the scope of work has been performed for the equivalent season and period of time.
- 1.1.22. *EPMCS* means electronic project management control system.
- 1.1.23. *Contractor* has the same meaning as "Contractor" as defined in the UGC.
- 1.1.24. *Excess Savings* is the amount of Actual Savings achieved above the amount in the Performance Guarantee to date including any savings achieved during construction.
- 1.1.25. *Final Completion* has the same meaning as defined in the UGC.
- 1.1.26. *Final Inspection* means the same process and procedure as is described in the UGC.
- 1.1.27. *Final Inspection Deadline* means the date that is thirty (30) days after the Substantial Completion Inspection, and by which date UNT must conduct a Final Inspection.

- 1.128. *Final Payment* has the same meaning as defined in the UGC.
- 1.129. *Governmental Authorities* means the State of Texas, the Federal Emergency Management Agency, the United States Army Corps of Engineers, the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental or quasi-governmental agency or authority having jurisdiction over any development or construction activities on the Project or Contractor.
- 1.130. *Guaranteed Savings* means an amount of money that UNT is guaranteed to save in the form of reduced expenditures and rebates on utility bills.
- 1.131. *Guarantee Year* is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.
- 1.132. *Implementation Contract* means those portions of this Contract that refer to the Project.
- 1.133. *Interagency Agreement* means the financing arrangement that UNT will utilize to pay the Contract Sum and shall be in the form of funds administered by the State Energy Conservation Office (hereinafter referred to as "SECO").
- 1.134. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders including those governing labor, equal employment opportunity, safety, and environmental protection, including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act and the Texas Architectural Barriers Act and the Texas Accessibility Standards found in Texas Government Code, Chapter 469, of any and all Governmental Authorities.
- 1.135. *M&V Consultant* means the third-party engineer with whom UNT has entered into a professional services agreement for the Project to review the Utility Cost Reduction Measures and the measurement and verification of savings.
- 1.136. *MEP Systems* mean mechanical, electrical, and plumbing systems.
- 1.137. *Notice to Proceed* or *NTP* means the written notice to be issued to Contractor by UNT, which shall inform Contractor of, among other things, the date to begin commencement of Work and the date anticipated for Substantial Completion.
- 1.138. *Open Items List* means a list of work activities, punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.139. *Operational Savings* means an amount of actual savings achieved through reduced power factor charges, Denton Municipal Electric guaranteed rebates, Denton Municipal Electric load cooperative incentives and avoided costs of materials, greater than the Energy Savings defined in 1.1.21.
- 1.140. *Owner* or *UNT* means and includes the University of North Texas and the University of North Texas System.

- 1.141. *PAR* means the progress assessment report in such form as is prescribed by UNT and which has the same meaning as defined in the UGC.
- 1.142. *Pay Application* has the same meaning as “Application for Payment” as is defined and discussed in the UGC.
- 1.143. *Performance Guarantee* is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in the Performance Guarantee Agreement, incorporated herein for all purposes as “Exhibit I,” or unless terminated earlier in accordance with the Contract Documents.
- 1.144. *Performance Period* is defined as the period beginning on the Savings Guarantee Commencement Date and extending through the time period as defined in the Performance Guarantee.
- 1.145. *Person* means an individual, firm, partnership, corporation, association and any other legally recognized entity.
- 1.146. *Post-Final Inspection Punchlist* means the punchlist of items that UNT will deliver to Contractor that sets out any part of the Work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.
- 1.147. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Final Inspection, and by which date UNT shall deliver any Post-Final Inspection Punchlist to Contractor.
- 1.148. *Pre-Construction Tasks* means the mobilization and pre-construction services to be provided to UNT as part of the pre-construction phase of the Project as described in Article II below.
- 1.149. *Pre-Construction Tasks Deadline* means the date that is twenty-one (21) days after delivery of a Notice to Proceed, and by which date Contractor shall complete all Pre-Construction Tasks.
- 1.1.49. *Pre-Final Inspection Punchlist* means the list of final punchlist items as defined in the UGC that UNT will deliver to Contractor along with a Certificate of Substantial Completion.
- 1.1.50. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Substantial Completion Inspection, and by which date UNT shall deliver a Pre-Final Inspection Punchlist to Contractor.
- 1.1.51. *Project* means the scope of work, as set forth in Article II, Section 2.1 of this Contract.
- 1.1.52. *Project Manager* means the individual designated by Contractor, and who must be approved by UNT, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of Contractor, on behalf of Contractor, pursuant to the

terms and conditions of this Contract, and who shall have decision-making authority to bind Contractor with respect to the construction services and the Project.

1.1.53. *Punchlist* means, except as may be specifically provided otherwise below, a list of items of Work to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

1.1.54. *Record Documents* has the same meaning as defined in the UGC.

1.1.55. *RFI* means a request for information as defined in the UGC.

1.1.56. *RFI Response* means a written clarification, instruction, and/or interpretation, including, but not necessarily limited to, an architect's supplemental instructions issued in response to an RFI, which response must be consistent with the intent of the Construction Documents.

1.1.57. *Sample(s)* has the same meaning as defined in the UGC.

1.1.58. *Savings Guarantee Commencement Date* means the first day of the first utility billing period following the month in which Contractor delivers to UNT the project warranty letter.

1.1.59. *Schedule of Values* has the same meaning as defined in the UGC.

1.1.61. *Scope of Services* means the construction services as set out in Section 2.2. below.

1.1.62. *Security Bond* has the same meaning as described in the UGC, and shall be in the form of an approved surety bond, cash or other immediately available funds.

1.1.63. *Shop Drawings* means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

1.1.64. *Site* means lands or areas indicated in the Contract Documents as being furnished by UNT upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by UNT which are designated for the use of Contractor.

1.1.65. *Special Conditions* has the same meaning as defined in the UGC.

1.1.66. *Specifications* has the same meaning as defined in the UGC.

1.1.67. *Subcontract* means any agreement between Contractor and a Subcontractor.

1.1.68. *Subcontractor* means a Person, including a supplier that enters into an agreement with Contractor to perform any part of the construction services.

1.1.69. *Substantial Completion* has the same meaning as defined in the UGC.

1.1.70. *Substantial Completion Inspection* means the process and procedure described in the UGC.

1.1.71. *Substantial Completion Inspection Deadline* means the date that is a fixed number of days after proper written notification is delivered to UNT by Contractor that Contractor has fully satisfied the requirements of the UGC, and by which UNT must conduct a Substantial Completion Inspection.

1.1.72. *UNT Project Manager* means the individual designated by UNT as the Owner's designated representative with the direct responsibility to properly supervise the design and construction of the project, as defined in Section 2.1 below, and the services being provided pursuant to this Contract on behalf of UNT, including, but not limited to, supervising UNT's review and approval of the construction services.

1.1.73. *Unilateral Change Order* or *ULCO* has the same meaning as defined in the UGC.

1.1.74. *Utility Cost Reduction Measures* or *UCRM* means those items that are identified in the Utility Assessment Report, incorporated herein for all purposes as "Exhibit E."

1.1.75. *Wage Rate Notifications* means the wage rate notifications described in the UGC.

1.1.76. *Work* has the same meaning as defined in the UGC unless specifically provided otherwise herein, and includes all furniture, fixtures, appliances, and other improvements made at, or incorporated into, the Work.

1.1.77. *Work Progress Schedule* has the same meaning as defined in the UGC that sets out the critical path and deadlines for completion of discrete portions of the progress of construction of the Project beginning with the pre-construction phase and ending with final and unconditional acceptance by UNT.

II. DESCRIPTION OF PROJECT AND SCOPE OF SERVICES.

21. Description of Project. The Project for which Contractor agrees to provide Construction and Utility Cost Reduction Services is defined in Article II and Exhibit E, the Utility Assessment Report, and is generally described as Utility Cost Reduction Measures for the Buildings, all in Denton, Texas. Contractor shall provide all materials, equipment, labor, and supervisory activities necessary to complete the construction for this Project.

22. Scope of Services. Contractor agrees to timely deliver the Construction and Utility Cost Reduction Services described in this Contract. In the event of any material conflict between the duties and responsibilities of Contractor as set out in this Contract, the UGC, or in any other Contract Documents, the priorities as set out in the UGC shall control to the extent of any such material conflict.

2.2.1. Pre-Construction Phase. Upon receipt of a Notice to Proceed, Contractor shall commence, and soon as reasonably practicable, but in no event later than the Pre-Construction Tasks Deadline, timely complete the following Pre-Construction Tasks for the Project:

2.2.1.1. consult with staff of UNT, and become thoroughly familiar with: (i) the Site; and (ii) any and all relevant and existing Site and facilities studies;

2.2.1.2. attend a pre-construction conference between UNT, and any other representatives as deemed appropriate by UNT, before any Work at the Site is commenced, at such time and location as may be determined by UNT. The Communication Protocol, initial Work Progress Schedule, procedures for handling Shop Drawings and other submittals, processing Pay Applications, maintaining required records, designation of Project Manager, and any other subject as may be determined by UNT to be appropriate, shall be the subject of said conference;

2.2.1.3. reaffirm the assignment and identity of Contractor's Project Manager;

2.2.1.4. if requested by UNT, assign appropriate Contractor staff to receive instruction regarding the use of EPMCS to be utilized by UNT;

2.2.1.5. prepare, for UNT's review and acceptance, a procurement schedule for items that must be ordered well in advance of commencement of construction; Contractor shall timely expedite and coordinate the ordering and delivery of products and materials that must be ordered well in advance of commencement of construction;

2.2.1.6. prepare a safety plan as specified in the UGC, and deliver same to UNT for review and approval;

2.2.1.7. designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be, at a minimum, the prevention of accidents and the maintenance and supervision of said safety plan; and

2.2.1.8. prepare, deliver, and periodically update as specified herein, the initial Work Progress Schedule.

2.2.1.8.1. When acceptable to UNT, this initial Work Progress Schedule shall become the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

2.2.1.8.2. Contractor shall update the Work Progress Schedule as per the provisions of the UGC. All updated Work Progress Schedules shall include: (i) the components of the Work; (ii) times of commencement and completion required of each Subcontractor; (iii) ordering and delivery of products, including those that must be ordered well in advance of construction; (iv) a clear delineation of the critical path; and (v) the occupancy requirements of UNT.

2.2.1.8.3. On a monthly basis, or as otherwise agreed in writing by UNT, Contractor shall submit written progress reports to UNT, showing percentages of completion and other information

2.2.2. Construction Phase. Contractor shall timely deliver to UNT the construction services for the Project as follows:

2.2.2.1. Adhere to the Work Progress Schedule established in accordance with the terms and conditions of this Contract, as it may be amended from time to time.

2.2.2.2. Requirements for the safety or protection of building occupants, workers, the Work or property at the Site or adjacent thereto, shall be accommodated when coordinating with UNT the

work schedules for performance of this contract. Contractor shall not permit the performance of Work on any other day or time than previously agreed to without UNT's prior written consent, which consent shall not be unreasonably withheld.

2223. All requests for clarification of information provided in the Contract Documents or for direction concerning information necessary in order to perform the Work must be copied to the UNT Project Manager.

2224. On a monthly basis, or as otherwise agreed in writing by UNT, submit written progress reports to UNT, reporting Contractor's assessment of percentages of completion and other information required by UNT.

2225. Unless and until instructed otherwise in writing by UNT, Contractor shall also prepare a daily log containing: (i) a statement of which days since the previous monthly report are claimed by Contractor to be subject to Force Majeure portions of the Work in progress; (ii) number of workers on site; (iii) identification of all equipment on site; (iv) problems that might affect progress of the work; and (v) all accidents, injuries, and any other information that may be requested by UNT from time-to-time, and upload said daily log into EPMCS as directed by UNT, by the end of each next business day.

2226. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris must be in compliance with all applicable Laws and Regulations.

2227. Contractor shall plan for and develop the schedule to accommodate necessary inspections and testing of electrical systems. Contractor is strictly prohibited from: (i) de-energizing or otherwise deactivating; or (ii) energizing or otherwise activating, any electrical systems or equipment at the Site without a minimum of twenty-four (24) hour advance notice to, and written approval of, UNT. Any provision in the Contract Documents to the contrary notwithstanding, UNT reserves the right to deny and/or revoke Contractor's authority to energize or otherwise activate any electrical systems or equipment at the Site. Contractor will not be entitled to receive additional compensation for any such denial or revocation.

2228. Prior to Substantial Completion of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by UNT. At the Substantial Completion of the Work, Contractor shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the end user, and shall restore all property not designated for alteration by the Contract Documents to original condition.

2229. Confine all construction operations within the limits of construction indicated on the Drawings or otherwise agreed to in writing by UNT, and use due care in placing construction tools, equipment, materials, and supplies so as to cause the least possible damage to property and interference with traffic. If additional easements for its operations are needed, Contractor is solely responsible for acquisition and maintenance of the easement.

22210. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

222.11. In order for an Application for Final Payment to be considered complete and subject to review and approval, Contractor must submit to UNT a Final Payment Punchlist in such form as prescribed by UNT, jointly executed by Contractor and UNT. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

222.12. Contractor must achieve substantial completion within the period of time specified in the proposal as accepted by UNT, and which shall be stated in the NTP.

222.12.1. At such time that Contractor considers the entire Work or a portion thereof Substantially Complete, Contractor must notify UNT in writing that said Work will be ready for a Substantial Completion Inspection on a specific date.

2.2.2.12.1.1. Contractor shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by UNT, the following: (i) a list of those portions of the Work that are to be the subject of the Substantial Completion Inspection; and (ii) the Open Items List, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

2.2.2.12.1.2. The delivery of the foregoing notice by Contractor shall constitute Contractor's certification that it has, in fact, inspected each and every portion of the Work that is to be the subject of the Substantial Completion Inspection and that they are completed in conformity with the Contract Documents.

2.2.2.12.2. No later than ten (10) days prior to the date of the Substantial Completion Inspection, Contractor must deliver to UNT a copy of Contractor's 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 for the Work that is the subject of the Substantial Completion Inspection.

2.2.2.12.3. Subject to the provisions of the UGC, and no later than the Substantial Completion Inspection Deadline, UNT shall conduct a Substantial Completion Inspection to determine whether said portion of the Work has achieved Substantial Completion.

2.2.2.12.3.1. In the event UNT determines that the Work, or any portion thereof, has not been performed or completed in accordance with the Contract Documents, and no later than the Pre-Final Inspection Punchlist Deadline, UNT shall prepare and deliver to Contractor a Pre-Final Inspection Punchlist.

2.2.2.12.3.2. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, UNT by reason of Contractor's failure to timely correct and/or complete the items that are the subject of the Substantial Completion Inspection, Contractor shall be liable to UNT for such fees and/or damages for which UNT may issue a ULCO and deduct those costs from the Final Payment.

2.2.2.12.4. Contractor shall achieve substantial completion within the time frame that Contractor and UNT mutually agree upon prior to issuance of the NTP and the timeframe shall begin on the date documented in the NTP.

2.2.2.13. Subject to the provisions of the UGC, and no later than the Final Inspection Deadline, and prior to requesting a Final Inspection, Contractor must complete and/or correct all Work specified in the Pre-Final Punchlist.

2.2.2.13.1. Issuance of a Certificate of Substantial Completion is a condition precedent to Contractor's right to issue notice that the Work will be ready for Final Inspection.

2.2.2.13.2. By requesting a Final Inspection, Contractor thereby certifies that it has, in fact, inspected each and every portion of the Work that is set out in the Pre-Final Punchlist, and that they are completed in conformity with the Contract Documents.

2.2.2.13.3. No later than the Final Inspection Deadline, UNT shall conduct a Final Inspection, to determine whether all of the items set out in the Pre-Final Punchlist have been fully completed in accordance with the Contract Documents.

2.2.2.13.4. In the event UNT determines that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Contract Documents, UNT shall prepare and deliver to Contractor, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist.

2.2.2.13.5. No later than ten (10) days after receipt of the Post-Final Inspection Punchlist, and prior to submitting a request for Final Payment, Contractor must complete and/or correct all Work specified in the Post-Final Inspection Punchlist.

2.2.2.13.6. In the event any fees and/or other consequential damages are charged to, or incurred by, UNT by reason of Contractor's failure to timely correct and/or complete the items that are the subject of the Final Inspection, Contractor shall be liable to UNT for such fees and/or damages.

2.2.2.13.7. At final completion, Contractor shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

2.2.2.14. In order for an Application for Final Payment to be considered complete and subject to review and approval, Contractor must deliver to UNT:

2.2.2.14.1. a fully completed and executed Final Payment Checklist in such form as is prescribed by UNT;

2.2.2.14.2. all test reports; and

2.2.2.14.3. all Close-out Documents.

2.2.2.14.3.1. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirements are fully satisfied.

2.2.2.14.3.2. Issuance of a Certificate of Final Completion is a condition precedent to Contractor's right to receive Final Payment.

2.2.3. Contractor Services during all Phases. Contractor shall timely deliver to UNT the following services, as applicable, during all phases for which Contractor is obligated to provide construction services:

2.2.3.1. participate in all explanatory presentations as may be requested by UNT;

2.2.3.2. critically review and closely scrutinize all documents submitted by all Subcontractors, suppliers, and all other third-parties;

2.2.3.3. thoroughly review and closely scrutinize the performance, constructability, schedules, and costs of all of its Subcontractors and suppliers;

2.2.3.4. critically review and evaluate Subcontractor's proposed means, methods, schedule, and costs as relevant to each Subcontractor's discipline;

2.2.3.5. maintain work progress and products consistent with the schedules;

2.2.3.6. promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties;

2.2.3.7. actively participate in all meetings and/or teleconferences to bring the full measure of Contractor's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment;

2.2.3.8. ensure that each Subcontractor includes thorough examinations of all documents they author, for accuracy, intended completeness, and constructability as their standard of care for the Project;

2.2.3.9. ensure that its Project Manager, and any other representative of Contractor whose presence is requested by UNT, attend all meetings and participate in all conference calls that are scheduled by UNT; and

2.2.3.10. cooperate with any third party or commissioning agent that may be engaged by UNT.

224. UNT Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or approvals by UNT shall be in its sole and absolute discretion, and must be in writing.

2.2.4.1. No changes to: (i) the scope of the construction services; or (ii) the Consideration, shall be valid or enforceable unless evidenced by a fully executed written amendment to this Contract.

2.2.4.2. To the extent that UNT approval is required to authorize incurring any costs, such approval must be acquired prior to incurring any such costs.

2.2.4.3. Contractor is not authorized to commence providing any construction services to UNT with respect to the Project unless and until an appropriate Notice to Proceed is delivered by UNT.

2.2.4.4. UNT, including by and through the UNT Project Manager, reserves the right, if deemed appropriate by UNT in its sole discretion, to extend any of the deadlines set out in this Contract.

2.2.4.5. UNT hereby reserves the right, if deemed appropriate by UNT in its sole discretion, to conduct reviews of inspections during the course of design and construction of the Project. However, Contractor shall not be relieved of any of its obligations arising pursuant to this Contract.

2.2.4.6. No inspections of the Project conducted by UNT during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of Contractor's responsibilities arising pursuant to this Contract. Neither the approval and/or final acceptance of the Project or any Deliverables, the payment of any Pay Application, or the issuance of any Certificates of Final or Substantial Completion by UNT shall constitute, nor be deemed, a release of Contractor's obligation to perform and timely deliver the construction services in a manner consistent with: (i) that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

III. CONTRACT DOCUMENTS.

3.1. Contract Documents. In performing its design and construction services for the Project, Contractor shall be bound by, and comply with, the following Contract Documents:

3.1.1. Contract. This Contract.

3.1.2. UGC. The UNT Uniform General Conditions.

3.1.3. Special Conditions. Special Conditions, if any, to this Contract and the UGC.

3.1.4. Contractor's Response to RFQ. Any additional services or provisions depicted in Contractor's Response to Request For Qualifications ("RFQ") No. <<??>>, a digital copy of which is incorporated herein by reference for all purposes in PDF on the CD and labeled therein as "Exhibit D," to the extent any warranties, representations, and/or promises of additional services are made therein, and only to that extent.

3.1.5. Utility Assessment Report. The Utility Assessment Report, Exhibit E, prepared by Contractor and approved by UNT.

3.1.6. Improvement List. The Improvement List developed by Contractor and approved by UNT, incorporated herein for all purposes as "Exhibit F."

3.1.7. Specifications. Any Specifications or Drawings prepared by Contractor, and any addenda issued with any request for proposal ("RFP") issued to subcontractors, incorporated herein for all purposes as "Exhibit G."

3.1.8. Measurement and Verification Plan. The Measurement and Verification Plan prepared by Contractor and approved by UNT that measures and verifies the savings for each UCRM, incorporated herein for all purposes as "Exhibit H."

3.1.9. Performance Guarantee Agreement. The Performance Guarantee Agreement prepared by Contractor and approved by UNT, Exhibit I.

- 3.1.10. Sample Periodic Savings Report. A sample of the Periodic Savings Report in the format approved by UNT, Exhibit J.
- 3.1.11. Certification Regarding Wage Rate Notifications. Exhibit K
- 3.1.12. List of Project Manager and Subcontractors. A list of who will be assigned as Project Manager and Subcontractors, Exhibit L.
- 3.1.13. Criminal Background Check Criteria. Exhibit M.
- 3.1.14. HUB Subcontracting Plan form. Exhibit N.
- 3.1.15. HUB Subcontracting Plan PAR Form. Exhibit O.
- 3.1.16. Tier 1 Product and Manufacturer's List. Exhibit P. Prepared by Contractor and approved by UNT.
- 3.1.17. Schedule of Values Proposed Payment Schedule. Exhibit Q. Prepared by Contractor and approved by UNT.
- 3.1.18. Required Checklists and Certifications. Exhibit R. Approved by UNT.
- 3.1.19. Payment and Performance Bonds [SAMPLE]. Exhibit S. Prepared by UNT and approved by Contractor.

IV. TERM, SUSPENSION, AND TERMINATION.

4.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on <<??>>, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.

4.2. Suspension of Work.

4.2.1. For Cause. UNT may suspend all or any part of the Work, for cause, without prior notice, as more specifically provided in the UGC.

4.2.2. For Convenience. UNT may suspend all or any part of the Work for the convenience of UNT for a period of up to thirty (30) days, without breach of this Contract, upon seven (7) days written notice, as more specifically provided in the UGC.

4.2.3. Suspension of Work. Upon receipt of a Notice of Suspension pursuant to this Section 4.2, Contractor shall, subject to the provisions of the UGC, immediately stop all Work.

4.3. Termination.

4.3.1. For Cause. Upon written notice to Contractor and its surety, UNT may, without prejudice to any right or remedy, terminate this 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, each one of which shall be considered a material breach of this Contract:

4.3.1.1. Failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;

4.3.1.2. A violation, whether discovered or asserted before or after the Effective Date, of any Laws and/or Regulations of any Governing Authority;

4.3.1.3. The failure of Contractor to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents;

4.3.1.4. Failure to timely remedy defective work;

4.3.1.5. Failure to pay Subcontractors, laborers, and material suppliers pursuant to Texas Government Code, Chapter 2251;

4.3.1.6. Creating endangerment to the safety of employees, Subcontractors, or any other members of the public or of the Work;

4.3.1.7. Failure to timely obtain and deliver, or maintain any required bonds or any required proof of insurance, pursuant to the Contract Documents;

4.3.1.8. The falsity of any material statement, warranty or representation when given or made by Contractor to UNT, whether in this Contract, in Contractor's response to the RFP, or otherwise, or any such statement, warranty or representation becoming materially false at any time during the term of this Contract, or any fraud committed by Contractor or its members, officers, agents, or principals in connection with the procurement of this Contract or the delivery of the Construction Management Services;

4.3.1.9. Contractor (i) makes an assignment for the benefit of creditors; (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law; (iii) is the subject of an involuntary proceeding under any bankruptcy or other similar law and such proceeding is not dismissed within sixty (60) days; or (iv) makes any admission of its inability to pay its debts generally as they become due;

4.3.1.10. The appointment of a trustee, receiver, or liquidator for Contractor;

4.3.1.11. The use of or otherwise incorporating an item of material or equipment into the Project that is not specified by the Drawings or Specifications, or otherwise approved pursuant to the procedures set out in the Requirements for Substitutions and Equivalents; and

4.3.1.12. Failure to timely comply with any other requirements of the Contract Documents.

4.3.1.13. Upon receipt of a Notice of Termination pursuant to this subsection, Contractor shall immediately stop all Work, and shall continue to cease Work activities, unless and until UNT and Contractor agree on the method and means of satisfying the UGC.

4.3.2. Termination for Convenience of Owner. UNT may terminate this Contract for any reason and at any time during the performance of the Work as more particularly provided in the UGC. Upon receipt of a Notice of Termination pursuant to this subsection, Contractor shall immediately: (i) stop all Work; and (ii) comply with the provisions of the UGC.

V. CONSIDERATION.

5.1. Contract Value. The initial value of this contract shall be << >> and No/100 Dollars (\$<< >>.00). Upon approval and execution of a SECO Interagency Agreement, the value of this contract shall consist of three components:

5.1.1. Utility Assessment Report Sum. Utility Assessment Report (“UAR”) for a contract sum of << >> and No/100 Dollars (\$<< >>.00). UNT is not obligated to compensate Contractor until a SECO Interagency Agreement is awarded and executed.

5.1.2. Scope of Utility Cost Reduction Measures Sum. Scope of Utility Cost Reduction Measures for a contract sum of <<_ >> and No/100 Dollars (\$<< >>.00).

5.1.3. Measurement and Verification Sum. Measurement and Verification for a contract sum of << >> and No/100 Dollars (\$<< >>.00). UNT may stop Measurement and Verification payments at any time during the Contract Term.

5.2. Payment of the Contract Sum. The Contract Sum shall be paid in accordance with the UGC, subject to any Special Conditions, or as provided below.

5.2.1. Initial Pay Application. At least twenty-one (21) days prior to the submission of the initial Pay Application, the Schedule of Values must be submitted and approved by UNT, as per the UGC.

5.2.2. Subsequent Pay Applications. In addition to the requirements of the UGC, each Pay Application must also include the following additional documentation:

5.2.2.1. the Certification Regarding Wage Rate Notification, the form of which is incorporated herein by reference for all purposes as “Exhibit K,” wherein Contractor shall certify that, among other things, it is in full compliance with the UGC, Wage Rates;

5.2.2.2. an updated Work Progress Schedule, including the executive summary and all required schedule reports, including any time Change Orders, as per the UGC;

5.2.2.3. a PAR monthly compliance report, as per the UGC;

5.2.2.4. all test results and reports from all Subcontractors and/or otherwise under Contractor’s possession or subject to Contractor’s control;

5.2.2.5. a duly executed Conditional Waiver and Release on Progress Payment from each Subcontractor that complies with Texas Property Code Section 53.284(b); and

5.2.2.6. any other information or documents as may be requested by UNT.

5.2.3. Payment Application Certifications. Each submission of a Payment Application shall also constitute Contractor's certification that:

5.2.3.1. Contractor has updated all expired insurance policies as required by the UGC;

5.2.3.2. Contractor has updated all the Record Documents, as per the UGC;

5.2.3.3. Contractor has updated all the Submittal Register, as per the UGC; and

5.2.3.4. the sums contained in the Payment Application that represent amounts owed to Subcontractors and/or suppliers are, in fact, due and owing to said Subcontractors and/or suppliers, without any deductions or offsets.

5.2.4. Prompt Payment. All payments shall be governed as follows:

5.2.4.1. Contractor shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act" and the provisions set out in the UGC, subject to any Special Conditions.

5.2.4.2. For all services rendered, Contractor's payment to Subcontractors is due within ten (10) days after receipt of payment from UNT and, when appropriate, in the sole discretion of UNT, UNT may issue joint checks to Contractor and Subcontractor(s).

5.3. Initial Year. For the initial one (1) year beginning at the Savings Guarantee Commencement Date, UNT shall receive the services as described in the Measurement and Verification Plan, Exhibit H. Thereafter, the Measurement and Verification Plan shall automatically renew for a period of one (1) year, whereby UNT can maintain the current service or upgrade the level of service as provided for in Exhibit H.

5.4. Final Payment. Final payment shall not become due until Contractor has delivered to UNT a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to UNT to indemnify UNT against such lien.

5.5. SECO Funding. The contract sum and any amendments thereto shall be paid for from an approved SECO Interagency Agreement. The agreement to the Consideration for this contract and any adjustments thereto are subject to the review and approval of those amounts to be funded by SECO and/or their third party reviewer. In accordance with Tex. Gov't Code §2166.406(f-1), UNT may not use money borrowed from this state to pay the provider of energy or water conservation measures under this Agreement.

5.6. Periodic Partial and Final Payment. Periodic partial payments and final payment of this contract sum are subject to the review and approval of SECO or their third party reviewer as they relate to their assessment of the value, stage of completion and efficacy of the energy cost reduction measures as executed by Contractor.

VI. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS.

6.1. Acknowledgements, Covenants, and Agreements of UNT. UNT acknowledges, covenants, and agrees as follows:

6.1.1. UNT Deliverables to Contractor. UNT shall have provided Contractor with a copy of, or reasonable access to, the following information and documentation regarding the Project:

6.1.1.1. This Contract.

6.1.1.2. The UGC.

6.1.1.3. Any Special Conditions.

6.1.1.4. Sample copies of the following:

6.1.1.4.1. bond forms;

6.1.1.4.2. construction payment voucher; and

6.1.1.4.3. time change order form.

6.1.1.5. HUB Subcontracting Plan forms and instructions.

6.1.1.6. Minimum wage rates.

6.1.1.7. The PAR.

6.1.1.8. The communication protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project.

6.1.2. UNT Services to Contractor. UNT shall timely provide, or cause to be provided, to Contractor the following services for the Project:

6.1.2.1. assuming satisfactory completion of all criminal background checks, assist Contractor in obtaining such access to the Project Site as is reasonably necessary to enable Contractor to provide the construction services;

6.1.2.2. designate the UNT Project Manager who will manage the construction of the Project and the services being provided pursuant to this Contract and the other Contract Documents; and

6.1.2.3. provide intermediate reviews of the work product of Contractor as necessary to allow Contractor to proceed with delivery of the construction services in a timely manner.

6.1.2.4. UNT shall provide ordinary and customary maintenance of UNT's existing equipment and systems that are related to UCRM implemented by Contractor, take reasonable measures to protect and maintain new equipment and systems installed by Contractor and promptly report any known damage or failures of new equipment or systems installed by Contractor to Contractor.

6.1.3. UNT Information. Information under UNT's control shall be furnished by UNT with reasonable promptness as requested by Contractor.

6.1.4. Written Notification. UNT shall notify Contractor in writing of any or all uses or restrictions in usage of all areas of UNT's facility.

6.2. Acknowledgements, Covenants, and Agreements of Contractor. Contractor acknowledges, covenants, and agrees as follows:

621. Timely Delivery of Conforming Services. Contractor will, subject to Force Majeure events, as defined in Article XII below, timely provide the construction services and construct the Project in conformity with, and as specified in, this Contract, the UGC, the Supplementary General Conditions, any Special Conditions, and the other Construction Documents.

622. Risk of Loss. Apart from weather delays, errors, omissions or other misrepresentations of the work scope or existing conditions in the construction documents and/or concealed unforeseen conditions, Contractor shall bear all losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done are different from what were estimated or anticipated by Contractor, or because of weather, floods, elements or other causes.

623. Limitation of Authority. Contractor agrees that the UNT Project Manager shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Contract in any way, or waive strict compliance with the terms and conditions of this Contract, any deviation from which must be evidenced by the UNT Project Manager in writing.

624. Cooperation. All Project managers, employees, and associated Subcontractors shall cooperate with and assist each other and all other Contractors and design professionals retained by UNT.

625. Identification of Project Manager and All Subcontractors. The Project Manager identified in the initial List of Project Manager and Subcontractors, incorporated herein by reference for all purposes as "Exhibit L," will supervise the efforts of Contractor to timely provide UNT with the construction services.

625.1. The Project Manager must be committed to the Project on a full-time basis meaning that it is Contractor's intent that a Project Manager will be assigned to ensure that the work is completed in a timely manner and will work the hours necessary to complete the project. UNT reserves the right to approve the appointment of the Project Manager and to demand that the Project Manager, and any of Contractor's employees or Subcontractors, be removed and replaced if, in the sole opinion of UNT, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation or ordinance of any city, county, the State of Texas, or the United States, or any other Laws and Regulations; (ii) UNT's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other UNT projects; and (v) any other like reasons.

625.2. The Project Manager and Subcontractors identified in Exhibit L shall not be removed or replaced by Contractor, nor shall any other Subcontractors be engaged by Contractor, unless prior

written consent is obtained from UNT, which consent shall not be unreasonably withheld, conditioned, or delayed.

626. Texas Construction Fund Trust Act. All payments to Contractor shall be subject to the provisions of the Texas Construction Fund Trust Act, Tex. Prop. Code Ann. §162.001, etseq.

627. Buy Texas and Tier One Products. If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155. Furthermore, Contractor will use UL listed, LED Products supplied by established and reputable manufacturers with a 10 year or longer proven track records in the USA. Contractor will use products from the attached list, the Tier 1 Product and Manufacturer's List incorporated herein for all purposes as "Exhibit P." In the event that a product, fixture or other equipment needed to complete a section or sections of a the project is not available to be used from Exhibit P, Contractor must provide UNT a written explanation of why the product, fixture, or equipment is unable to be procured from the vendors listed in Exhibit P, and Contractor must receive written approval from UNT for the substitute item or items to be used. UNT will provide written approval on substitution requests in a reasonable amount of time and will not unreasonably withhold consent.

628. No Assumption. No approvals or acceptances by, or on behalf of, UNT shall be deemed to be an assumption of any responsibility by UNT for any defect, error or omission in said Deliverables or Construction Management Services.

629. Debts or Delinquencies Owed to the State. Any payment due under this Contract may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055.

62.10. General and Criminal Background Checks.

62.10.1. Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, Contractor has fully advised UNT as to the facts and circumstances surrounding the conviction.

62.10.2. All of Contractor's employees and Subcontractors that will perform any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor.

62.10.2.1. All criminal background check forms for all of Contractor's employees and Subcontractors that will initially commence any work on-site must be fully completed and submitted to UNT within fifteen (15) days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by Contractor.

62.10.2.2. All criminal background checks must be completed before any employee or Subcontractor performs any services at the Site.

62.1023. All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or Subcontractors, DPS, or UNT, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the Criminal Background Check Criteria and Information, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the CD, and named therein as "Exhibit M." Contractor's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Work Progress Schedule.

6.2.11. Equal Opportunity. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. Contractor shall include the above provisions in all Subcontracts pertaining to Work.

6.2.12. No Advertising. Contractor shall not advertise that it is doing business with UNT or use this Contract as any sort of marketing or sales tool without the prior written consent of UNT.

6.2.13. **NO WARRANTIES BY UNT. CONTRACTOR ACKNOWLEDGES THAT ANY AND ALL TESTS, MAPS, REPORTS, AND DRAWINGS IN THE POSSESSION OF UNT THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, AND UTILITY LOCATIONS WERE PREPARED SOLELY FOR UNT'S BENEFIT AND FOR INFORMATION ONLY PURPOSES, AND THAT Contractor SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT CONTRACTOR'S OWN RISK.**

6.2.14. Encountering Different Conditions. Apart from weather delays, errors, omissions or other misrepresentations of the work scope or existing conditions in the construction documents and/or concealed unforeseen conditions, Contractor agrees that it shall make no claims for damages, additional compensation or extension of time against UNT because of encountering actual conditions in the course of the Work which vary or differ from conditions or information contained in the Contract Documents.

6.2.15. Sequencing of Construction. UNT reserves the right to: (i) direct the Construction Phase to commence prior to completion of the Pre-Construction Phase, in which case the phases will proceed concurrently; or (ii) to complete the Project in phases.

6.2.16. Warranties and Guarantees. All warranties and guarantees required by the Specifications shall expressly run to the benefit of UNT. If required by UNT, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. In addition to any warranties in this contract, Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor or any of Contractor's

subcontractors or supplier at any tier. The warranty shall be for the period of 2 years. Contractor's warranty with respect to work repaired or replaced will run for 2 years from the date of repair or replace. The Owner shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. If Contractor fails to remedy any failure, defect or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Contractor's expense.

6.2.17. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for the building permit and other permits, licenses and inspections necessary for proper execution and completion of the Work.

6.2.18. Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

6.2.19. Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall remove from and about Project waste materials, rubbish, Contractor's tools, equipment, machinery and surplus material.

6.2.20. Contractor shall provide Owner access to the Work in preparation and progress wherever located.

6.2.21. Contractor shall pay all royalties and license fees, shall defend suits or claims for infringement or patent rights, and shall hold Owner harmless from loss on account thereof.

6.2.22. Subcontracts:

6.2.22.1. A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site.

6.2.22.2. Unless otherwise stated in the Contract Documents or the bidding requirements Contractor, if requested in writing by Owner, shall furnish in writing to Owner the names of the Subcontractors to whom Contractor plans to award Work. Contracts between Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward UNT, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to Contractor by these Contract Documents.

VII. WARRANTIES AND REPRESENTATION BY Contractor.

7.1. Warranties and Representations by Contractor. Contractor hereby makes the following warranties, representations and certifications, all of which are true, accurate and complete at the time of the Effective Date and throughout the term of the Contract, and which shall be true, accurate and complete with respect to each Deliverable. All representations and warranties discussed below shall survive the expiration or termination of this Contract.

7.1.1. Compliance with All Laws. Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit,

qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor agrees to be responsible for payment of any such government obligation not paid by its Subcontractors during the performance of this contract. Contractor agrees to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. As part of its delivery of the Construction Management Services, and apart from responsibility for the compliance of the design with all applicable codes and regulations, Contractor shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Contract.

7.1.1.1. Neither Contractor, nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the Request for Proposals for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.1.2. UNT reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary to address UNT's or Contractor's required compliance with all Laws and Regulations. The parties shall mutually agree to reasonable adjustments to the Contract Sum and to the Contract Time with respect to any such modifications.

7.1.1.3. Contractor has determined what licenses, patents and permits are required under the Contract and will have acquired all such licenses, patents and permits prior to commencement of construction.

7.1.1.4. Neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.2. Responses to RFQ. All statements, representations and certifications contained in, or otherwise set out in, Contractor's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Contract.

7.1.3. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees provide proof of identity and employment eligibility before they can work in the United States. UNT is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. TSP shall not place any employee of TSP at a worksite, nor shall TSP permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, UNT without first ensuring said employee's authorization to lawfully work in the United States.

7.1.4. Proficiency in Systems. Contractor is proficient in the use of CAD systems and EPMCS utilized by UNT.

7.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; (ii) conform to or exceed the specifications set forth in the Contract Documents; and (iii) be fit for ordinary use, of good quality, and with no material defects. Contractor warrants that all equipment installed as a part of this agreement is new, will be materially free from defects in materials and workmanship, will be installed properly in good workmanlike manner and will function properly. Contractor further warrants that equipment will be installed properly so that all manufacturer's warranties will be valid after Contractor completes the scope of their work under the contract. Contractor shall notify UNT whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by Contractor.

7.1.5.1. Where a Shop Drawing or Sample is required by the Contract Documents or the Submittal Register, any related Work performed prior to UNT's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

7.1.5.2. Any provisions in the UGC to the contrary notwithstanding, the creation of Contractor's general two (2) year warranty shall not be construed to constitute a waiver of Contractor's obligation to correct, or otherwise be responsible for, any latent defects beyond the above-mentioned two (2) year corrective period.

7.1.5.3. Any provision in the UGC to the contrary notwithstanding, no warranty periods shall commence unless and until a Certificate of Substantial Completion has been issued for the corresponding Work or portion thereof.

7.1.6. Warranty of Improvements. Any provisions herein to the contrary notwithstanding, Contractor expressly warrants that all improvements, including workmanship and materials incorporated into the Project, shall be free from defects.

7.1.7. Eligibility. The individual or business entity named in this 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 pursuant to Texas Government Code, Section 2155.004(b).

7.1.8. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006, regarding delinquent child support, the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided, prior to its execution of this Contract, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Contract. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

7.1.9. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. Contractor represents and warrants that it has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. Contractor further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court

suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either Contractor or any of Contractor's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Contractor has disclosed all such matters to UNT and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

7.1.10. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, no Person who, in the past four (4) years served as an executive of UNT or any other state agency was involved with or has any interest in this Contract or any Contract resulting from this Contract. If Contractor employs or has used the services of a former executive head of UNT or any other state agency, then Contractor has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

7.1.11. Financial Interests/Gifts. Neither Contractor nor any of its principals, officers, directors, employees, other agents, or relatives within the second degree of consanguinity or affinity have given, offered to give, 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 this Contract pursuant to Texas Government Code, Sections 572.051, 2255.001 and Texas Penal Code, Section 36.09.

7.1.12. Prior Employment. Contractor knows of no officer or employee of UNT, nor any relative within the second degree of consanguinity or affinity of an officer or employee of UNT, that has a financial interest in Contractor's firm or corporation. Contractor further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of UNT pursuant to Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, Contractor certifies and agrees that if it employs any former employee of UNT, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at UNT.

7.1.13. Affirmation as to Submittals. Upon submittal to UNT of any documentation or data that was created or modified by Contractor, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

7.1.14. Site Inspection. Contractor has had an opportunity to examine, and has carefully examined, all of the Contract Documents including, but not limited to, the Drawings and the Specifications, and has fully acquainted itself with the Scope of Work, design, availability of materials, existing facilities, obstructions, and all other conditions pertaining to the Work, the site of the Work and its surroundings; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in any of the Contract Documents or in any representations, statements or information made or furnished by UNT or its representatives notwithstanding, Contractor will regardless of any such conditions pertaining to the Work, the site of the Work or its surroundings, apart from errors, omission and concealed unforeseen conditions, complete the Work for the compensation stated in this Contract,

and pursuant to the extent of Contractor's liability under this Contract, assume full and complete responsibility for any such conditions pertaining to the Work, the site of the Work or its surroundings, and all risks in connection therewith.

VIII. STATE FUNDING.

8.1. State Funding. This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or UNT in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of UNT hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination. Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year Budget in existence at the time of the breach.

IX. COPYRIGHTS AND TRADEMARKS.

9.1. Copyrights. Contractor agrees that all Deliverables provided pursuant to this Contract are subject to the rights of UNT in effect on the date of execution of this Contract. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by Contractor are subject to copyright protection, Contractor hereby grants to UNT a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. Contractor shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

9.1.1. Disclaimers. All such Deliverables furnished by Contractor pursuant to this Contract shall be considered instruments of its services in respect to the Project. It is understood that Contractor does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If UNT verifies or adapts Contractor's Deliverables for UNT's use on another study, Contractor shall be compensated for redesign or new design, bidding, and construction administration services.

9.1.2. Delivery to UNT. Contractor shall promptly provide copies of the Deliverables to UNT upon completion, termination, or cancellation of this Contract for any reason, including all copies of the Deliverables in any form or medium specified by UNT in this Contract, whether written, digital, or electronic.

9.2. No Use of Name or Trademark. Contractor agrees not to make any written use of or reference to UNT's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of UNT's facilities for any activity related to the express business purposes and interests of UNT pursuant to this Contract, without the prior written consent of UNT, which consent may be withheld or granted in UNT's sole discretion.

X. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE.

10.1. Books and Records. Contractor shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to UNT or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

10.2. Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.003, the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation. Contractor will fully disclose all costs of materials and labor purchased and subcontracted and a list of hourly rates and position descriptions for labor or services provided by Contractor upon UNT's request. Contractor will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford UNT access to these records. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices.

10.3. Records Retention. All records relevant to this Contract shall be retained for a minimum of seven (7) years. This retention period runs from the date of payment for the relevant goods or services by UNT, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

10.4. Confidentiality Provisions Applicable to Contractor.

10.4.1. Protection of Confidential Information. Contractor hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of Construction Management Services to UNT, certain Confidential Information (as defined below) will be disclosed to Contractor; and (ii) that whether developed by UNT or others employed by or associated with UNT, all Confidential Information is, and shall remain, the exclusive and confidential property of UNT, and shall be at all times regarded, treated and protected as such by Contractor in accordance with this Contract. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

10.4.2. Definition of Confidential Information. “Confidential Information” shall mean all information, whether or not originated by UNT, which is used in, or a part of, UNT’s business and operations and is: (i) proprietary to, about, or created by UNT; (ii) gives UNT some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of UNT; (iii) designated as “Confidential Information” by UNT, or from all the relevant circumstances should reasonably be assumed by Contractor to be confidential and proprietary to UNT; or (iv) not generally known by Contractor. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as confidential):

10.4.2.1. work product resulting from, or related to, work, projects, or services performed or to be performed by UNT for Contractor and/or for actual and potential Using Agencies that are related to the business and/or operations of UNT, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used in connection therewith;

10.4.2.2. computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs;

10.4.2.3. information relating to UNT’s proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);

10.4.2.4. internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting UNT’s business;

10.4.2.5. marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of UNT which have been or are being discussed;

10.4.2.6. any information obtained from UNT regarding its pursuit or negotiation of agreements with any potential “Contracting Person” regarding a potential “Qualifying Project” as those terms are defined in Chapter 2267 of the Texas Government Code, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, “Business Customers”); the parties to and substance of any agreements between UNT and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers; and

1043. Exclusions. “Confidential Information” shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by Contractor in breach of the terms of this Contract; (ii) becomes available to Contractor from a source (other than

UNT) which source is not, to the best of Contractor's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by Contractor.

1044. Covenants. As a consequence of Contractor's acquisition or anticipated acquisition of Confidential Information, Contractor will occupy a position of trust and confidence to UNT with respect to UNT's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, Contractor agrees that it is reasonable and necessary that it make the following covenants:

1044.1. No Disclosure. Both during and forever after the performance of its due diligence investigation, Contractor will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of UNT and/or due diligence investigation, without first obtaining UNT's prior, written consent, and Contractor will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Contractor's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and Contractor understands that such similarity does not excuse Contractor from abiding by its covenant or other obligations pursuant to this Contract.

1044.2. No Use, Copying, or Transfer. Both during and after the conduct of its due diligence investigation, Contractor will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of UNT and/or due diligence investigation, without first obtaining prior written consent of UNT, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Contractor's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information.

1044.3. No Use of Name or Trademark. Contractor agrees not to make any written use of or reference to UNT's name or registered or unregistered trademarks (or any names under which UNT conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of UNT's facilities for any activity related to the express business purposes and interests of UNT pursuant to this Contract, without the prior written consent of UNT, which consent may be withheld or granted in UNT's sole and absolute discretion.

1044.4. Non-Circumvention. Contractor agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of UNT.

105. Confidentiality Provisions Applicable to UNT. Subject to the provisions of Section 10.6 below, UNT shall keep confidential all information, in whatever form, produced, prepared, or observed by Contractor to the extent that such information is: (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than 14 point, by Contractor; or (iii) information that UNT is otherwise required to keep confidential by this Contract.

106. Public Records. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that UNT will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. If contacted by UNT, Contractor will cooperate with UNT in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format specified by UNT. Contractor may request that UNT seek an opinion from the Attorney General of the State of Texas. However, UNT will not honor Contractor's request for an opinion if the request is not based upon a reasonable interpretation of the Texas Public Information Act. Additionally, Contractor will notify UNT's General Counsel within twenty-four (24) hours of receipt of any third-party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

107. Electronic and Information Resources Accessibility Standards, as required by Title 1 of the Texas Administrative Code, Chapter 213. Effective September 1, 2006, all State agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the Federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

XI. BONDS AND INSURANCE.

11.1. Bonds. For all phases of the Project, Contractor shall timely obtain and deliver to UNT the bonds required by the UGC for each such phase.

11.2. Insurance Requirements. Contractor shall timely obtain and maintain insurance in the following types and amounts for the duration of this Contract (unless specifically provided otherwise herein), and must timely comply with the following additional insurance requirements:

11.2.1. Amounts and Types of Insurance Coverages. The amounts and types of required insurance coverages are as follows:

11.2.1.1. Workers' Compensation and Employers' Liability Coverage. Contractor hereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that Contractor provides or will provide at, or prior to, execution of the Guaranteed Maximum Price Amendment, Workers' Compensation and Employers' Liability insurance for employees employed on this public project with limits of not less than: (i) \$1,000,000 each accident; (ii) \$1,000,000 disease each employee; and (iii) \$1,000,000 disease policy limit.

11.2.1.1.1. Coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44).

11.2.1.1.2. As per Tex. Lab. Code §406.096(b), Contractor shall require each Subcontractor to certify in writing to Contractor that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. Contractor shall forward said certifications to UNT within ten (10) days of the Effective Date of the Contract.

11.2.1.1.3. The policy must include Other States Endorsement to include the State of Texas if Contractor's business is domiciled outside the State of Texas.

11.2.1.2. Commercial General Liability. Commercial general liability insurance coverage including premises; operations; blanket contractual liability coverage assumed under the Contract and all contracts relative to the Project, including independent Contractor's liability pursuant to un-amended ISO (also known as "Insurance Services Office, Inc."), or its equivalent; products and completed operations; and extended to include explosion, collapse, and underground hazards, with a combined single limit of \$1,000,000 per occurrence and a general aggregate of \$2,000,000.

11.2.1.2.1. The general aggregate shall apply on a per Project basis.

11.2.1.3. Business Automobile Liability Insurance. Business automobile liability coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per occurrence, and at least \$1,000,000 property damage liability per accident.

11.2.1.3.1. No aggregate shall be permitted.

11.2.1.3.2. Such insurance must include coverage for loading and unloading hazards.

11.2.1.4. All-Risk Builder's Risk Insurance. Contractor shall obtain and maintain All-Risk Builder's Risk Insurance, or all-risk installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

11.2.1.4.1. Coverage shall be all-risk, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm.

11.2.1.4.2. Builder's risk and installation floater limits shall be equal to one hundred percent (100%) of the Contract Sum.

11.2.1.4.3. For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of \$1,000,000. Existing Property and UNT-furnished equipment, if any, specified by UNT.

11.2.1.4.3.1. For purposes herein, "Existing Property" means existing buildings or structures, [OPTIONAL] as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by CMR or any Subcontractors.

11.2.1.4.4. For UNT furnished equipment or materials that will be in care, custody or control of Contractor, Contractor shall be responsible for any and all damages and losses thereto.

11.2.1.4.5. The policy must be written jointly in the names of UNT and Contractor. Subcontractors must be named as additional insureds.

11.2.1.4.6. The policy shall have endorsements as follows:

11.2.1.4.6.1. this insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

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

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

11.2.1.4.6.4. Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

11.2.1.4.7. Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

11.2.1.5. Umbrella Liability Insurance. Umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring Contractor for an amount of not less than One Million and No/100 Dollars (\$1,000,000.00), which provides coverage at least as broad as, and applies in excess and follows form of, the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss.

11.2.2. General Requirements for All Insurance. The following provisions shall apply to all insurance requirements:

11.2.2.1. Deductibles and Self-Insured Retentions. Contractor shall be responsible for all deductibles and self-insured retentions, if any, stated in policies. All deductibles and self-insured retentions shall be disclosed on the certificates of insurance.

11.2.2.2. Occurrence Policies. Unless specifically provided otherwise herein, all policies must be written on an occurrence basis.

11.2.2.3. Claims-Made Policies. If coverage is underwritten on a claims- made basis, the retroactive date for the policy and all renewals shall be coincident with the Effective Date of this Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. Any premiums for this extended reporting period shall be paid by Contractor.

11.2.2.4. Additional Policy Requirements. In the event the primary insurance policy does not so provide, Contractor shall obtain and maintain endorsements as to each deficient policy, or provide such other document(s) as may be approved in advance by UNT, that satisfy all of the following requirements:

11.2.2.4.1. naming “**University of North Texas System and University of North Texas, << >>, its regents, officials, directors, employees, representatives, and volunteers,**” as additional insureds, provided however, this requirement does not apply to workers’ compensation insurance;

11.2.2.4.2. the policy, or such other document(s) as may be acceptable to UNT, must obligate the insurer, or a third-party acceptable to UNT, notify the University of North Texas, Attn: << >>, << >>, of any: (i) non-renewal; (ii) cancellations; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation or change;

11.2.2.4.2.1. “Material Change” means any of the following changes to the policy during the term of the Policy:

11.2.2.4.2.1.1. a change in the policy period;

11.2.2.4.2.1.2. a material revision to, or removal of, a coverage section;

11.2.2.4.2.1.3. a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or

11.2.2.4.2.1.4. an increase of the amount of any self- insured retentions; and

11.2.2.4.3. as to those policies wherein UNT is an additional insured, said insurance coverages must be primary and non-contributing with respect to insurance or self-insurance carried by UNT, if any; and

11.2.2.4.4. the policy must provide a waiver of subrogation rights to UNT for the workers’ compensation, employers’ liability, commercial general liability, and business automobile liability policies.

11.2.2.5. No Commencement of Work. Contractor shall not, nor allow any Subcontractor(s) to commence Work until the proof of satisfaction of the insurance requirements has been received and approved by UNT. However, any approval of the insurance requirements by UNT shall not relieve or reduce the liability of Contractor hereunder.

11.2.2.6. Qualifications of Insurer. All insurance must be written by a company licensed to do business in the State of Texas at the time the policy and any renewals are issued, and must be written by a company with an A.M. Best rating of A- or better.

11.2.3. No Cancellation or Lapse. Contractor shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for builder's risk (or as applicable, an installation floater) is not governed by this provision.

11.2.4. Notice of Erosion. Contractor shall provide UNT thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Contract.

11.2.5. Right to Review. UNT reserves the right to review the insurance requirements of Article XII during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by UNT based upon changes in statutory law, court decisions or the claims history of the industry and/or of Contractor, provided however, such modifications must be commercially available to Contractor. UNT shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

11.2.6. Losses Paid by Contractor. Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

11.2.7. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Contract may subject Contractor to, among other remedies, the following:

11.2.7.1. disqualification from eligibility to participate in any other or future projects with UNT;

11.2.7.2. suspension of Work for cause pursuant to the UGC;

11.2.7.3. in the event Contractor fails to timely renew or pay any of the renewal premiums for any expiring policies, UNT shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to Contractor under the Contract or under any other contract between UNT and Contractor; and/or

11.2.7.4. UNT may withhold of any payments due to Contractor from this Project or any other UNT project until satisfaction is achieved.

11.2.8. UNT a Third-Party Beneficiary. It is hereby acknowledged and agreed that UNT is a third-party beneficiary of any agreement(s) between Contractor and any and all Persons who procure, or cause to be procured, the above-described insurance coverages, and all renewals thereof, for the Project.

XII. MISCELLANEOUS.

12.1. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, Contractor SHALL INDEMNIFY AND HOLD HARMLESS THE UNIVERSITY OF NORTH TEXAS, THE UNIVERSITY OF NORTH TEXAS SYSTEM, AND THE STATE OF TEXAS, ITS REGENTS, OFFICIALS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, AND VOLUNTEERS, FROM ALL LIABILITY AND DAMAGES FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE

PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (CHAPTER 101, TEX. CIVIL PRACTICE AND REMEDIES CODE), OR ANY OTHER SUCH LAWS. CONTRACTOR SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, CAUSES OF ACTION, INJURIES, DAMAGES, LOSSES, COSTS, ATTORNEY'S FEES AND EXPENSES (INCLUDING EXPERT'S AND ATTORNEY'S FEES AND EXPENSES AT ALL LEVELS OF PROCEEDINGS), TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE PRODUCT OR SERVICES; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS CONTRACT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO UNT.

12.1.1. Notice to UNT. In the event Contractor becomes aware of any claim that may be subject to the above-described indemnification, Contractor shall notify UNT of such claim within five (5) business days of becoming aware.

12.1.2. Settlement Authority. No settlement of any such claim shall be made by Contractor without UNT's prior written approval.

12.2. Historically Underutilized Businesses ("HUB"). In accordance with state law, it is UNT's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. UNT encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling Contractor's obligations with UNT. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. Contractor shall submit a *HUB Subcontracting Plan*, the form of which is incorporated herein by reference for all purposes as "Exhibit N." Contractor shall provide the Internal Procurement Division of UNT with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the *HUB Subcontracting Plan PAR*, the form of which is incorporated herein by reference for all purposes as "Exhibit O." PARs shall be submitted monthly with each invoice and are a condition of payment.

12.3. Relationship of the Parties. Contractor is associated with UNT only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. UNT has no right or obligation to control the methods and means of performing the Work except as to the obligation to ensure compliance with the Contract Documents. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint

venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for UNT whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and UNT shall have no obligation with respect to the following:

- 12.3.1. withholding of income taxes, FICA, or any other taxes or fees;
- 12.3.2. industrial or workers' compensation insurance coverage;
- 12.3.3. participation in any group insurance plans available to employees of the State of Texas;
- 12.3.4. participation or contributions by the State to the State Employees Retirement System;
- 12.3.5. accumulation of vacation leave or sick leave; or
- 12.3.6. unemployment compensation coverage provided by the State.

124. No Assignment & Subcontracts. Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of UNT. Notwithstanding the foregoing, it is mutually understood and agreed that Contractor may subcontract with third parties for some or all of the Construction Management Services to be performed. In any approved Subcontracts, Contractor shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of Contractor specified herein. Nothing herein shall be construed to relieve Contractor of the responsibility for ensuring that the goods delivered and/or the services rendered by Contractor and/or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to UNT of any such Subcontractor performing work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

125. Drug Free Work Place. Contractor, Contractor's employees and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

126. Notices. All notices, demands and requests required in this Contract shall be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (ii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to UNT:

With a Copy to:

If to Contractor:

Either party hereto may change its address by giving the other party written notice thereof at least five (5) business days in advance of the Effective Date for such new address.

127. Governing Law and Venue. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Contract shall be in a court of competent jurisdiction in Denton County, Texas.

128. Proper Authority. The parties hereto represent and warrant that the Person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

129. Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation for payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such Party is unable to prevent (hereinafter referred to as "Force Majeure") including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster or governmental actions.

129.1. In any such event, the party claiming Force Majeure shall notify the other party of the Force Majeure event in writing within forty-eight (48) hours of the commencement of the Force Majeure event, and within forty-eight (48) hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above-described notices, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event.

129.2. If possible, the notice shall set forth the extent and duration thereof.

129.3. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, UNT may terminate this Contract immediately upon written notification to Contractor. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of Contractor's services under this Contract require a written amendment to this Contract.

12.10. Dispute Resolution. Subject to Texas Government Code, Chapter 2260, the dispute resolution process set out in the UGC shall be used by the parties to attempt to resolve all disputes arising under this Contract.

12.11. Legal Construction and Severability. In the event any one or more of the provisions

contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in



**UNIFORM GENERAL CONDITIONS
FOR CONSTRUCTION AND DESIGN CONTRACTS
2017**

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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 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 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.
- 7.6 Bond Costs. The costs of bonds are a pass through amount to the Owner. No markup amounts are to be included and documentation of bond costs are required in requests for payment. Any costs associated with subcontractor bonds or SubGuard-related items are not paid by the Owner in General Conditions or Cost of Work.

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 critical path activities for seven (7) consecutive hours between the hours of 7:00 a.m. and 6:00 p.m. When a Weather Day prevents critical path activities at the site from proceeding, Contractor shall: (a) immediately notify OCM for confirmation of the conditions and provide a detailed list of critical path activities impacted; 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, Owner will issue a Weather Day Confirmation for any Contract Time extension to be documented by Change Order pursuant to Section 14.6.

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>		<u>Liquidated Damages</u>
<u>From</u>	<u>To</u>	<u>Per Day</u>
	< \$ 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 Reimbursable expenses incurred solely and directly in support of the Project within one of the following categories:

- Travel expenditures at State of Texas reimbursement rates, provided that reimbursement will not be granted for travel 1) within the Denton-Dallas-Fort Worth metroplex or 2) involving less than 150 miles round-trip; or
- Reproductions, printing, printing supplies, plotting, photographs, renderings, postage, binding, collating, delivery and handling of reports; Drawings and Specifications or other project-related work product other than that used solely in-house by Contractor at actual expense incurred; or
- Fees and associated reimbursable expenses paid to Consultants hired in accordance with prior written approval from Owner.

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

13.2.1.6 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.
- 14.8.1.1 To the total of the above costs, Contractor will be allowed to add a percentage to cover overhead and profit combined. Allowable percentages for overhead and profit on changes will not exceed fifteen percent (15%) if the total sum of

self-performed Work is less than or equal to \$10,000, ten percent (10%) if the total sum of self-performed Work is between \$10,000 and \$20,000 and five percent (5%) if the total sum of self-performed Work is over \$20,000, for any specific change priced.

- 14.8.2 Overhead. Overhead shall be considered to include insurance beyond the scope of Article 8, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens, and general home office expenses. No separate allowance will be made.
- 14.8.3 Subcontractor Performed. For subcontracted Work, each affected Subcontractor shall be allowed to figure costs, overhead, and profit as described in 14.8.1 for Self-Performance.
- 14.8.4 Subcontractor Coordination. Subcontractor costs shall be combined and Contractor will be allowed to add a maximum mark-up of ten percent (10%) if the total sum of all subcontracted Work is less than or equal to \$10,000, seven and one-half percent (7.5%) if the total sum of all subcontracted Work is more than \$10,000 and less than or equal to \$20,000, and five percent (5%) if the total sum of all subcontracted Work is more than \$20,000. This markup will apply to subcontractor's coordination of lesser tier subcontractor Work performed.
- 14.8.5 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 be allowed additional fees at the rate specified in the Contract.
- 14.8.6 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 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.
- 19.17 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.