

UNT | SYSTEM™

Request for Proposal

Construction Manager at Risk

UNT RESIDENCE HALL 2018

RFP752-16-876ER

DIVISION 00

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**DOCUMENT 001100
RFP752-16-876ER**

ADVERTISEMENT FOR PROPOSALS

University of North Texas System
UNT Residence Hall 2018
Date of Bid Opening: **May 20, 2016**

In accordance with Education Code 51.783, the University of North Texas System (UNTS), subsequently referred to as Owner, is accepting proposals and intends to enter into an agreement with a vendor that specializes in Construction Manager-at-Risk services in accordance with the terms and conditions and requirements set forth in this Request for Proposal (RFP). Sealed bids for **RFP752-16-876ER** will be received by the Owner at the Business Service Center (BSC), Woodhill Square, 1112 Dallas Drive, Suite 4000, Denton, Texas 76205. A campus map can be found online at <http://maps.unt.edu/?code=WHS>. Parking for Woodhill Square is campus parking and permits are required. There is guest parking at the door to Suite 4000 and only those spaces can be utilized for submitting the bid. Bidders are responsible for all parking costs and for complying with parking regulations. Failure to comply with parking regulations may result in citation and possible impound of vehicle.

The Proposal Form will be received up to 2:00p.m CDT on **May 20, 2016**. Proposals received after the date and hour above stated will not receive consideration. Proposals will then be publicly opened and read aloud promptly at 3:00p.m. CDT on **May 20, 2016**. **Location shall be at the UNT System BSC, Woodhill Square, Conference Room 4202A, 1112 Dallas Drive, Suite 4200, Denton, TX 76205.**

Project Description

The project will be to construct new facilities of 1,000 beds on the main UNT campus. The 1,000 beds may be constructed in multiple facilities and locations in accordance to the UNT Campus Master Plan. It is anticipated that the construction will be in multiple phases with initial phase constructing approximately 500 beds.

Questions

Questions concerning this proposal should be directed to:

Elaine Robbins – Construction Solicitation Coordinator
elaine.robbs@untsystem.edu.

All questions must be received no later than 2:00p.m. CDT on May 10, 2016. All questions and answers will be posted to the website by 5:00p.m. CDT on May 13, 2016.

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

Pre-Bid Meeting

A pre-bid meeting will be held in Denton at **10:00a.m. on April 22, 2016 at the UNT System Business Service Center, Suite 4202A, 1112 Dallas Drive, TX 76205.**

Historically Underutilized Business (HUB)

In accordance with Texas Government Code 2161, if Owner elects to award the future Construction Phase Services to the Construction Manager, the Guaranteed Maximum Price (GMP) for the proposed contract resulting from the extension of this Contract is expected to exceed \$100,000.00. Therefore, a Good Faith Effort Program in the form of a HUB Subcontracting Plan (HSP) is a mandatory condition precedent to the award of any such extension of the contract. The HSP will become a part of the Construction Manager-at-Risk Agreement and need not be submitted until such time as the GMP is submitted for review and acceptance by Owner. Refer to Division 00, Section 006000 herein for HSP Forms.

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

END OF SECTION

DOCUMENT 002100

INSTRUCTIONS TO PROPOSERS

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

1. DEFINITIONS, BACKGROUND, AND SPECIAL CONCERNS

- 1.1 Construction Manager-at-Risk – A construction manager-at-risk, herein referred to as Construction Manager is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for pre-construction services, construction, rehabilitation, alteration, or repair of a facility at or below the Guaranteed Maximum Price (GMP) as a general contractor and provides coordination and consultation to the Owner regarding construction during and after the design of the facility.
- 1.2 Architects and Engineers – Before selecting a Construction Manager, the Owner shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with the Texas Engineering Practice Act (Education Code 51.776; Occupation Code; Chapter 1001), and/or the Texas Architectural Practice Act (Education Code 51.776; Occupation Code; Chapter 1051), as applicable.
- 1.3 Trade Contractors and Subcontractors – The Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors, subcontractors, or suppliers for the performance of necessary major elements of the work, other than the minor work that may be included in general conditions. A representative of the Owner shall participate with the Construction Manager during this process. The Construction Manager may seek to perform portions of the work itself if the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the Owner determines that the Construction Manager's bid or proposal provides the best value for the institution. The Owner's determination in such matters is final.
- 1.4 Receipt of Bids or Proposals – The Construction Manager and the Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, engineer, architect or Owner. All bids or proposals shall be made public by the Construction Manager within seven (7) days after the date of final selection.
- 1.5 Acceptance of Recommendations for Trade Contractors and Subcontractors – If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor, but the Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, then, pursuant to the terms of the Contract, the Owner shall compensate the Construction Manager by a change in cost, time, or guaranteed maximum cost for any additional cost and risk, which has been demonstrated to the Owner's satisfaction and as required by the Contract, that the Construction Manager may incur.
- 1.6 Schedule, Scope, Budget – Detailed information about schedule, scope and budget, are contained in Section 3 and herein below.

2. PRE-PROPOSAL MEETING:

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

April 22, 2016 at 10:00a.m.
University of North Texas System
Business Service Center, Suite 4202A
Denton, Texas 76205

3. PROJECT PROPOSED SCHEDULE

4/22/16	10:00 am	Pre-proposal Meeting
5/20/16	2:00 pm	Deadline for Construction Manager-at-Risk Proposals
5/20/16	3:00 pm	Public Opening of Proposals Received
5/27/16		Issue request for Interviews to Short-listed firms on or about (if necessary)
6/2/16		Construction Manager Interviews on or about (if necessary)
June 2016		Formal Contract Award Notification of Selected Firm
June 2016 – Owner/CM		Construction Manager Pre-Construction Services Authorized
TBD – Owner/Architect		Complete Constructability Review
November 2016		GMP from Construction Manager, or earlier
February 2017		Anticipated Notice to Proceed and Begin Construction
May 2018		Substantial Completion
June 2018		Furniture, Fixtures & Equipment Installation Move-in, and staffing
July 2018		100% Construction Complete/Final Inspection

4. PREPARATION OF BIDS

Bidder shall comply with the following instructions in preparing its bid.

4.1 General Instructions

- A. Respondents should carefully read the information contained herein and submit a complete response to all requirements and questions as directed. Respondents must comply with all the rules, regulations and statutes relating to purchasing in the State of Texas, to the rules and regulations of the Owner and the requirements of this form. UNTS consists of the UNTS Building at Dallas, University of North Texas at Denton, University of North Texas at Dallas, University of North Texas Health Science Center at Fort Worth.
- B. Proposals and any other information submitted by Respondents in response to this RFP shall become the property of the Owner.
- C. The Owner will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for proposal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit qualifications and proposals at their own risk and expense.
- D. Submittals which are qualified with conditional clauses or alterations, items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by the Owner, at its sole option.
- E. Each proposal should be prepared simply and economically, providing a straightforward, concise description of your firm's ability to meet the requirements of this RFP with a limitation of twenty-five (25) pages. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner's needs.
- F. The Owner makes no guarantee that an award will be made as a result of this RFP, and reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP or contract when deemed to be in the Owner's best interest. Representations made within any proposal will be binding on responding firms. The Owner will not be bound to act by any previous communication or proposal submitted by the firms other than this RFP.
- G. Failure to comply with the requirements contained in this RFP will result in a finding that the respondent failed to submit a responsive proposal to this RFP and is therefore considered disqualified.

- H. Any quotation number referenced is for pricing purposes only. In addition, the Owner's solicitation terms and mutually acceptable written revisions, if any, shall apply. Any terms and conditions not accepted through BSC Purchasing in writing are not binding on either party.
- I. The Owner will not be bound by any oral statement or representation contrary to the written specifications of this Response.
- J. Responses should be submitted on the form in Division 00, Section 004100, *Proposal Form*. Responses cannot be altered or amended after opening time. Alterations made before opening time should be initialed by Respondent or his authorized agent. No response can be withdrawn after opening time without approval by the Owner based on an acceptable written reason.

4.2 Preparation and Proposal Instructions

- A. Respondents must complete, sign and return the attached Division 00, Section 004100, *Proposal Form*, as part of their qualifications proposal response. Proposals must be signed by Respondent's company official(s) with authority to bind the firm in a contract. Failure to sign and return these forms will subject your proposal to disqualification. Unsigned responses will not be considered under any circumstances.
- B. Responses to this RFP should consist of answers to required criterion in Division 00, Section 002400, *Scope of Proposal*. It is not necessary to repeat the criterion in your response; however, it is essential that you reference the criterion number with your corresponding response. In cases where a criterion does not apply or if you are unable to respond, reference the criterion number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.

4.3 Page Size, Binders and Dividers

Proposals must be on letter-size (8½" X 11") paper. The Owner requires that proposals be submitted per Section 5. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections should be divided by tabs for ease of reference. Number each side of each page consecutively, including letter of interest, brochures, licenses, resumes, and supplemental information. Proposals must be limited to twenty-five (25) pages, including brochures and other documents. Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Provide the number of copies of the proposal specified herein. Any submittals exceeding the twenty-five (25) page limit may be disqualified. Any proposed modification to the Owner's standard contract language should be included under a separate tab and will not be included in the page limitation. Any modifications not received with the submitted proposals will not be considered in the final awarded contract. Completed Section 004100, *Proposal Form*, the bonding letter, and company financial information will also not count toward the page limitation.

4.4 Table of Contents

Include with the proposal a Table of Contents that includes page number references. The Table of Contents should be in sufficient detail to facilitate easy reference of the sections of the proposal as well as separate attachments (which should be included in the main Table of Contents). Supplemental information and attachments included by your firm (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section. Supplemental information, unless excluded in Section 4.3 above, will count toward the page limitation.

4.5 Pagination

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

4.6 Bonding

Attach a letter of intent from a surety company indicating the applicant's bondability for this project. The surety shall acknowledge that the firm may be bonded for the project, with a potential construction cost of **\$74,000,000**. Bonding requirements are set forth in the Division 00, Section 7000, *UGC/SGC*.

4.7 Pricing

Respondent must complete Division 00, Section 004100, *Proposal Form* and submit an RFP response in accordance with Division 00.

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

4.8 Eligible Respondents

Only individual firms or formal joint ventures may apply. Two (2) firms may not apply jointly unless they have formed a joint venture. Any associates will be disqualified. (This does not preclude a respondent from having consultants.)

4.9 Checklist

Firms are instructed to complete, sign and return the following documents as part of their proposal submittal. Failure to return these documents may subject your proposal to disqualification. Responses should be submitted on the bid form and by proposal in accordance with the RFP. Responses will be time stamped on or before the hour and date specified for the response opening.

- A. Bonding Letter
- B. Signed and Completed Proposal Form (Division 00, Section 004100)
- C. Responses to RFP (Division 00, Section 002400)

5. SUBMISSION OF PROPOSALS

Submit a total of two (2) complete copies of the entire response. Please submit one (1) unbound copy plus one (1) copy on labeled CDs 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. An original signature must appear on the Proposal Form (Division 00, Section 004100) on at least one (1) of the submittals.

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

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

- B. Late proposals will not be considered under any circumstances.
- C. Telephone proposals are not acceptable.
- D. Facsimile ("FAX") or emailed proposals are not acceptable.

The RFP responses must be submitted no later than 2:00p.m. CDT on May 20, 2016. Responses received after the date and hour previously stated will not receive consideration.

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

TO: Elaine Robbins
University of North Texas System
Business Service Center
Woodhill Square
1112 Dallas Drive, Suite 4000
Denton, Texas 76205

Proposals will be received until the date and time established for receipt, then opened. The names of the respondents who submitted proposals will be made public. **A public opening shall be held on Friday, May 20, 2016 promptly at 3:00p.m. Location shall be University of North Texas System, Business Service Center, Woodhill Square, 1112 Dallas Drive, Conference Room 4202A, Suite 4200, Denton, Texas 76205.**

6. GENERAL INFORMATION

6.1 Type of Contract

After proposals are received in response hereto, and notice of intent to award a contract is made, the successful Respondent will be required to enter into a contract in the form of the Owner's standard Construction Manager-at-Risk Agreement. The Construction Manager must include in its response proposed exceptions, exclusions and or additions to the contract (Division 00, Section 005200, *Agreement Forms*). Any desired changes to the standard contract must be included with proposal and will be taken into account during the evaluation and selection process. For questions regarding the contract, contact:

Elaine Robbins - Construction Solicitation Coordinator
University of North Texas System Facilities
elaine.robbsins@untsystem.edu

6.2 Inquiries and Interpretations

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

Elaine Robbins - Construction Solicitation Coordinator
University of North Texas System Facilities

Please submit solicitation questions to:

elaine.robbsins@untsystem.edu.

All questions must be received no later than May 10, 2016 at 2:00p.m. CDT. All questions and answers will be posted to the website by 5:00pm CDT, May 13, 2016.

The Owner specifically requests that Respondents restrict all contact and questions regarding this RFP to the above named individual except as provided in 7.5.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in electronically by addendum (amendment) and posted at <http://bsc.untsystem.edu/bid-listing> and <http://esbd.cpa.state.tx.us/>. All such addenda issued by the Owner prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall be required to consider and acknowledge receipt of such in their proposal. Respondents are responsible for obtaining any addenda posted on the websites listed above.

Only those inquiries the Owner replies to which are made by formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. The Respondent must acknowledge all addenda in Division 00, Section 004100, *Proposal Form*.

6.3 Compliance with Law

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

6.4 University's Right to Audit

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

6.5 Access to Documents

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

6.6 Insurance and Bonds

The Contractor shall provide and maintain insurance, performance bond, and payment bond has required, the minimum insurance coverage and bonding requirements are stated in Division 00, Section 007000, *UNTS Uniform General Conditions 2016*.

6.7 Other Benefits

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

6.8 Non-Disclosure

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

6.9 Publicity

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

6.10 Assignment

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

6.11 Assignment of Overcharge Claims

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

6.12 Patent and Copyright

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

6.13 Texas Public Information Act

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

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

6.14 Freedom of Access and Use of Facilities

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

6.15 Observance of University Rules and Regulations

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

6.16 Section Headings

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

6.17 Governing Law

- A. This RFP, and any resulting Contract, agreement or purchase order shall be construed and governed by the laws of the State of Texas.
- B. The parties understand and agree that any purchase order/contract may be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative regulations and/or guidance which have been issued or may in the future be issued pursuant to HIPAA, including, but not limited to, the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively, "Privacy Laws"). Vendor agrees to comply with all Privacy Laws that are applicable to this purchase order/contract and to negotiate in good faith to execute any amendment to this purchase order/contract that is required for the terms of this purchase order/contract to comply with applicable Privacy Laws. In the event the parties are unable to agree on the terms of an amendment pursuant to this paragraph within thirty (30) days of the date the amendment request is delivered by one party to the other, this order may be terminated by either party upon written notice to the other party.
- C. Important Notice - Any purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to, the provision of Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).
- D. Federal Funds - All procurements of supplies, equipment, and services utilizing Federal Funds (e.g. Federal Grant or Contract) shall be made in accordance with all applicable federal rules and regulations: Federal Acquisition Regulations (FAR), Federal Office of Management and Budget (OMB) Educational Institutions, even if part of a State or local government follow: OMB A-21 for cost principles, A-110 for administrative requirements, and A-133 for audit requirements. All procurement requirements contained in the above referenced circulars are incorporated herein by reference. By signing this solicitation document, vendor certifies that vendor is in compliance with OMB A-110 and that vendor is not on the Debarred Bidders List.

6.18 Owner's Special Conditions

The Owner requires full compliance with Division 00 and Division 01 Specifications, Contract and General Requirements. The documents shall be a part of this RFP and the Contract.

6.19 Prevailing Wage Schedule, University of North Texas System

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

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

6.20 Pursuant to Section 231.006 of the Family Code, response must include names and social security numbers of each person with at least twenty-five percent (25%) ownership of the business entity submitting the response. Vendors that have pre-registered this information on the Texas Comptroller of Public Accounts Centralized Master Bidders List (CMBL) have satisfied this requirement. If not pre-registered, list the name and social security numbers for each person. Otherwise, this information must be provided prior to contract award.

6.21 Note to Vendors: Any terms and conditions attached to any response will not be considered unless specifically referred to on the Solicitation and may result in disqualification of the response.

A. **Dispute Resolution:** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. If Chapter 2260 applies to this Purchase Order, then the statutory dispute resolution process must be used by the vendor to attempt to resolve all of its disputes arising under this Purchase Order.

B. **Excess Obligations Prohibited:** The Texas Constitution (Article XVI, Section 10) prohibits obligators beyond the current appropriations, which the Owner applies annually. Any purchase order may be canceled at any time without penalty if legislative and/or the Owner's funds are not appropriated for goods or services obligated on any purchase order beyond the current fiscal year (September 1 through August 31 of any given year.)

C. **Cancellation:** Items or orders may be canceled without the consent of the vendor due to failure to fulfill their contractual obligations. If cancellation is requested by the Owner for some other reason through no fault of the vendor, the vendor will be contacted. The Owner reserves the right to cancel this contract upon thirty (30) days written notice to the Construction Manager. The Construction Manager must request and secure in writing the approval of the Purchasing Department to be released from this contract or any portion thereof should conditions unforeseeable occur.

D. **Miscellaneous:** The laws of the State of Texas shall prevail, including the Public Information Act. Any Order is not confidential. All transactions associated with this Order may be subject to audit. Vendor, by accepting this Order agrees to allow access to all records regarding this transaction upon written request by UNTS Internal Auditors and/or UNTS Business Service Center Purchasing.

7. AWARD PROCESS

7.1 Commitment

Respondent understands and agrees that this RFP is issued predicated on anticipated requirements for the new and/or renovated facilities for the Denton Campus, and that the Owner has made no representation, written or oral, that any such requirements be furnished under a Contract arising from this RFP. Furthermore, Respondent recognizes and understands that any cost borne by the Respondent, which arises from Respondent's performance hereunder, shall be at the sole risk and responsibility of Respondent.

7.2 Respondent's Acceptance of Evaluation Methodology

Submission of proposals indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective judgments must be made by the Owner during the determination of ranking order for the short-listed firms and award.

7.3 Contract

- A. Proposals will be opened publicly to identify the names, proposed fees and pricing of the Respondents who submitted proposals. Other contents of the proposals will be afforded security sufficient to preclude disclosure of the contents of the proposal prior to award. Within forty-five (45) days after the date of opening the proposals, the Owner will evaluate each proposal with respect to the selection criteria contained herein. The Owner shall select the Respondent that submits the proposal that offers the best value for the institution based on the selection criteria set forth in Division 00, Section 002400, Scope for Proposal and on the evaluation. The Owner shall first attempt to negotiate a contract with the selected Respondent. If the Owner is unable to negotiate a satisfactory contract with the selected Respondent, the Owner shall formally, and in writing, end negotiations with the Respondent and proceed to negotiate with the next Respondent in the order of the selection until a contract is reached or negotiations with all Respondents end. The Owner may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. The Owner reserves the right to reject any and all proposals, if deemed to be in the best interests of the Owner, and to re-solicit for proposals, and to temporarily or permanently abandon the procurement.
- B. A response to this Solicitation is an offer to contract based upon the terms, conditions and specifications contained herein. Responses do not become contracts until a UNTS Agreement is issued and accepted. The contract shall be governed, construed, and interpreted under the laws of the State of Texas as the same may be amended from time to time. The Education Code 51.9335 shall be considered in making an award when specified. Venue for any suit filed against UNTS shall be subject to the mandatory venue statute set forth in §105.151 of the Texas Education Code.
 - i. An award is made to the Vendor submitting the best value response conforming to this specification.
 - ii. DEBTS TO THE STATE: Any party indebted to the State of Texas or any party who is more than thirty (30) days delinquent for Child Support is not entitled to payment on this purchase order or any accompanying contract.
 - iii. If a "best offer" vendor shows not to be in "good standing," this agency may reject the response and award to the next best response.
 - iv. The Owner reserves the right to award the entire contract to a single Vendor or to award different components to different Vendors, whichever the Owner, at its sole discretion, determines to be in its overall best interest, as solely determined by the responsible parties of the Owner.
- C. Respondent understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through bidder and the requirement to cooperate is included in any subcontract it awards.
- D. Respondent understands and agrees in accordance with Texas Government Code §2252.908, prior to executing any contract, the selected firm must submit a Form 1294, Certification of Interested Parties, to the Owner along with the signed agreement. The form is available on the Texas Ethics Commission website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Completion of the form is not required with your response.

7.4 Response Results: It is not the policy of the Owner to furnish results over the telephone. Bid tabulations may be requested at <http://bsc.untssystem.edu/content/bid-inquiry>. While UNTS understands the value of conducting debrief meetings with firms not selected, UNTS does not have the resources to accommodate in person meetings. Request for feedback can be emailed to the contact listed in 6.2 above.

7.5 Historically Underutilized Businesses (HUB)

- A. If Owner elects to award the future Construction Phase Services to the Construction Manager, the Guaranteed Maximum Price (GMP) for the proposed contract resulting from the extension of this Contract is expected to exceed \$100,000.00. A Good Faith Effort Program in the form of a HUB Subcontracting Plan (HSP) is a mandatory condition precedent to the award of any such extension of the contract. The HUB Subcontracting Plan will become Exhibit A of the Construction Manager-at-

Risk Agreement and need not be submitted until such time as the GMP is submitted for review and acceptance by Owner. Refer to Division 00, Section 006000, *Project Forms* herein for HSP Forms.

- B. Centralized Master Bidders List (CBML): The Owner utilizes the Texas Comptroller of Public Accounts CMBL for HUB. The CMBL is located at: <http://www.window.state.tx.us/procurement/>. Non-HUB respondents are identified from various sources including the CBML.
- C. Questions regarding completing the HSP should be directed to Greg Obar, UNT System Associate Director, HUB Program or Kimmalla Mitchell at 940-369-5500. Additional information can also be found at the Texas Comptroller for the Public Accounts website at: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

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

END OF SECTION

DOCUMENT 002400

SCOPE FOR PROPOSAL

The University of North Texas System (UNTS), subsequently referred to as the Owner, requests proposals from qualified and experienced firms for the construction of a multi-story student learning and success center building at the UNT at Dallas campus, meeting the minimum specifications contained in this section.

Project Description

This project will be to construct new facilities of 1,000 beds on the main UNT campus. The 1,000 beds may be constructed in multiple facilities and locations in accordance to the UNT Campus Master Plan. It is anticipated that the construction will be in multiple phases with the initial phase constructing approximately 500 beds.

Construction of the initial first phase will be substantially completed no later than May 2018. Please include in the response a proposed realistic schedule for the construction of the project with a substantial completion date no later than May 2018.

Delivery

Time is of the essence in the performance of the Construction Manager's duties. The Owner shall have no obligation to accept late performance or to waive timely performance by Construction Manager.

Miscellaneous Provisions

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

The Owner shall contract for and provide independently of the construction manager, including but not limited to, the survey inspection services, the testing of construction materials engineering, and verification testing services necessary for acceptance of the facility by the Owner, 3rd party code review, commissioning and TAB services.

Construction Manager shall prepare and update a Construction budget during the schematic design phase, design development phase, and at the sixty percent (60%) construction documents phase, for written approval by the Owner; such budget to include estimating, updating and reporting of all construction costs.

At sixty percent (60%) completion of the Construction Drawing phase, Construction Manager shall prepare and submit to the Owner in writing a GMP proposal in the format in attached Exhibit A or similar form as required by Owner and at Owner's sole option and discretion. The GMP proposal shall require a breakdown of estimated costs organized by trade, allowances, contingencies, Construction Manager's Construction Phase Fee, General Conditions and other approved items, but shall not include compensation for Pre-construction Services. If accepted by Owner, the parties shall execute a GMP Amendment and the fully executed Amendment shall become a part of the Contract documents.

Liquidated Damages

As allowed for in the UNTS Uniform General Conditions 2016, Liquidated Damages shall be established that more accurately reflect the estimated actual amount of damages the Owner will sustain for late completion. The need to complete Housing projects on time is critical. For the purposes of calculating Liquidated Damages, substantial completion shall be applied to designated portions of the Work. Construction Manager shall complete and make available to Owner separate floors beginning with the top floor and working down to the bottom floor. For each day that a floor is not Substantially Complete and not operational and fit for the Owner to occupy and move furniture into, damages will be assessed at \$15.00 per bed, per day, per incomplete floor past substantial completion date.

Criteria for Award

The Owner shall evaluate the responses received and select the respondent that submits the proposal that offers the best value for the institution based on the below selection criteria:

1. Respondent's proposed fees set forth in Division 00, Section 004100, *Proposal Form*.
2. Respondent's ability to obtain a bond for the project.
3. Criterion A - Respondent's and proposed team's experience and capability to perform preconstruction services and construction management services for the project to ensure Owner's project schedule is met.
4. Criterion B - Respondent's project execution plan and technical competence as a construction manager.
5. Criterion C - Respondent's utilization of cost estimating and a construction cost control plan which will assure the Owner's construction budget shall not be exceeded.
6. Criterion D - Respondent's utilization of construction scheduling throughout the design and construction phases.
7. Criterion E - Respondent's capability to perform a quality control process during the entire project duration.
8. Criterion F - Respondent's job site safety program.
9. Criterion G - Respondent's HUB Subcontracting policies and approach.
10. Criterion H - Respondent's proposed exceptions, exclusions and or additions to the Owner's standard Construction Manager-at-Risk Agreement

Required Information

Respondents are requested to submit a complete response to each of the items listed below. Responses should be brief and submitted as an attachment to your proposal package. Please reference each response by its item number indicated below.

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

1. List separately all key personnel, including a **single point of contact with name, phone number and email address**, to be employed on site and those to be employed in home office for this project. Include resumes for the entire proposed key team members along with:
 - Location
 - Proposed role
 - Years of experience
 - Relevant experience on similar projects within the last five (5) years
2. Provide an organizational chart showing the construction team and their specific duties.
3. List the volume of work your firm has completed over the last five (5) years. Also attach an audited Financial Statement, including a profit and loss statement and other supporting schedules. If the last audited statement is over twelve (12) months old, include the most current unaudited statement.
4. Describe the pre-construction and construction phase services to be provided by your firm for this type of project.

5. Describe how you propose to interface with the design team and support the design process.
6. Describe your plan for partnering and team building at all levels for this project.
7. Describe your subcontractor contract award process, including review/approval by the Owner.
8. Describe your management plan for performing the work required of this project and include your program for managing subcontractors and material providers.
9. Describe your firm's start-up and closeout procedures for this project.
10. Describe the types of regular monthly reporting you propose to provide for this project.
11. List no more than three (3) relevant projects. Each project listed must include:
 - Project Name
 - Delivery Method
 - Date Completed
 - Construction Project Cost
 - Owner
 - Owner's contact person with telephone number and email address
 - Project summary
 - Key firms from proposal involved with the project and their role
 - Key personnel from proposal involved with the project, their firm affiliation on the project and role
12. Summary explanation of any claims and/or litigation in the last five (5) years.

CRITERION B: Respondent's project execution plan and technical competence as a construction manager:

1. Describe your project execution plan for this project.
2. Describe the types of records, reports, monitoring systems, and information management systems which your firm will utilize on this project.
3. Describe your plan for assuring that the project design is achievable under the Owner's and Construction Manager's contract requirements.
4. Describe your constructability methodology for this project and how it is implemented.
5. Describe your procedures and objectives for reviewing the design and construction documents and providing feedback to the Architect and Owner.
6. Describe your method of assuring that materials, equipment, and construction methods meet the Owner's design requirements.
7. Describe your firm's procedures for implementing the industry's "best practices" as defined by the Construction Industry Institute™ (CII) and similar organizations:
 - a. Establishing project objectives
 - b. Change (order) management system
 - c. Any others not listed but practiced and therefore recommended by your firm

CRITERION C: Respondent's utilization of cost estimating and project cost control plan which will assure that the Owner's construction budget shall not be exceeded.

1. Describe your cost estimating procedure.

2. Describe your cost control methods and what procedures you will utilize to maintain the GMP within the Owner's construction budget for this project.
3. Describe your approach to value engineering, identifying constructability issues, costing options and cost projections.
4. Describe your project financial plan and the projected monthly cash flow (draw-down) during the design and construction phases.
5. Describe any contingencies and allowances you would propose to be contained within the GMP and during what phase of the project.
6. Describe your firm's plans for cost reporting and tracking.

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

1. Describe in detail the project scheduling system or methodology you propose to use on this project. Describe any phased construction you anticipate.
2. Identify all process steps, phases, milestones, approvals, and project meetings you commonly anticipate.
3. Provide a proposed realistic schedule for the construction of the project with an Owner occupancy date no later than July 2018.
4. Describe your plan for meeting or shortening the Owner's schedule:
 - a. During design; and
 - b. During construction.

CRITERION E: Respondent's capability to perform a quality control process during the entire project duration.

1. Identify the quality control team for this project and their duties.
2. Describe in detail your firm's quality control program for each phase of this project.
3. Describe your quality control objectives for this project.
4. Describe how you propose to control the quality of construction performed by your subcontractors on this project

CRITERION F: Respondent's job site safety program.

1. Describe your job site safety program plan for this project and specific safety policies with which employees must comply.
2. Identify the safety team and their duties for this project.
3. List your firm's Experience Modification Rating (EMR) for the past three (3) years.

CRITERION G: HUB Subcontracting Policies Approach

1. Describe your approach to maximizing opportunities for HUB participation on this project and Owner's goals at the Construction Manager, Subcontractor, Sub-subcontractor, Material and Supplier levels. In addition,

describe your knowledge of unique or innovative programs designed to maximize opportunities for HUB participation which you recommend for consideration in this project.

2. Describe your commitment to implementing the Owner's HUB initiatives throughout the preconstruction and construction phases of the project. Describe any contractor insurance program utilized by your firm, such as a Contractor Controlled Insurance Program, and how it is utilized to assist small and HUB firms. Describe how it could be utilized for this project.

CRITERION H: Respondent's proposed exceptions, exclusions and or additions to the Owner's standard Construction Manager-at-Risk Agreement

Provide a copy of the draft of the Owner's standard Construction Manager-at-Risk Agreement with any proposed changes marked in red.

DOCUMENT 004100

PROPOSAL FORM

Proposal of: _____
(Company Name)

The University of North Texas System (UNTS), subsequently referred to as the Owner, is accepting sealed proposals from Respondents for a Construction Manager-at-Risk contract, pursuant to Sec. 51.782, Texas Education Code, using the one-step process in accordance with the terms, conditions and requirements set forth in this Request for Proposals (RFP). This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by the Owner.

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

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

TO: Elaine Robbins
University of North Texas System
Business Service Center
Woodhill Square
1112 Dallas Drive, Suite 4000
Denton, Texas 76205

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

PRICING SCHEDULE

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

A "not to exceed" amount for reimbursable expenses associated with the preconstruction phase:

A percentage of construction costs, which will be converted to a "not to exceed" construction management fee:

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

Provide a detailed breakdown per the categories provided in the attached file, *General Conditions Matrix 02-02-16.xlsx*, whether self-performed or assigned to subcontractors as an attachment to this Proposal Form. Clearly note any additional anticipated General Conditions not identified in the matrix.

DELIVERY SCHEDULE

Respondent, having carefully examined the Owner's delivery schedule as described in Division 00, Section 002100, *Instructions to Proposers* herein, agrees to furnish the Construction Management services based on the aforementioned delivery schedule. Any proposed revision or modification to the delivery schedule or listed deliverables are as listed below:

PAYMENT TERMS

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

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

SALES TAX

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

INSURANCE

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

LIQUIDATED DAMAGES

As allowed for in the UNTS Uniform General Conditions 2016, Liquidated Damages shall be established that more accurately reflect the estimated actual amount of damages the Owner will sustain for late completion. The need to complete Housing projects on time is critical. For the purposes of calculating Liquidated Damages, substantial completion shall be applied to designated portions of the Work. Construction Manager shall complete and make available to Owner separate floors beginning with the top floor and working down to the bottom floor. For each day that a floor is not Substantially Complete and not operational and fit for the Owner to occupy and move furniture into, damages will be assessed at \$15.00 per bed, per day, per incomplete floor past substantial completion date.

ADDENDA

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

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

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

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

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

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

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

- Vendors that meet or exceed air quality standards

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

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

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

9. By signature hereon, Respondent certifies as follows:

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

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

10. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship, exist between Respondent and an employee of any UNTS component, or Respondent has not been an employee of any UNTS component within the immediate twelve (12) months prior to RFP response. All such disclosures will be subject to administrative review and approval prior to UNTS entering into any contract with Respondent.

11. Respondent certifies that they are in compliance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, respondent will complete the following information in order for the response to be evaluated:

Name of former Executive: _____

Name of State Agency: _____

Date of separation from State agency: _____

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

12. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004, Texas Government Code).

13. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.

14. **Suspension, Debarment, and Terrorism:** Respondent further certifies that the Respondent and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government’s terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

15. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

16. Respondents should give Payee ID Number, full firm name, and address of Respondent below in the space provided. The Payee ID Number is the taxpayer number assigned and used by the Texas Comptroller of Public Accounts. If this number is not known, complete the Federal Employer's Identification Number

Complete the following:

Payee ID No. _____

If a Corporation
State of Incorporation: _____

FEI No. _____

Charter No: _____

Company Information:

Submitted by:

(Company Name)

(Authorized Signature)

(Street Address Line 1)

(Printed Name/Title)

(Street Address Line 2)

(Date)

(City, State, Zip Code)

(Telephone Number)

(Facsimile Number)

(Email address)

I. Construction Management Services

Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Project Superintendent(s)		X			
Assistant Superintendent(s)		X			
Field Engineer		X			
Project Manager		X			
Superintendent's Transportation		X			
Corporate Executives	X				
Owner in Charge	X				
Project Executives		X			
Legal Services	X				
Accounting	X				
Scheduling		X			
Life-Cycle Analysis	X				
Energy Management	X				
Production Engineering	X				
Purchasing-by PM		X			
Value Engineering-by PM		X			
System Development	X				
Estimating-by PM		X			
Cost Accounting (On Site)		X			
Project Coordinator-by PM		X			
Project Expediter-by PM		X			
Drafting Detailer	X				
Drawing Detailer	X				
Safety Officer	X				
E.E.O. Officer	X				
Secretarial On-Site		X			
Clerk-Typist		X			
Mechanical Coordinator		X			
Electrical Coordinantor		X			
Project Engineer		X			
Scheduling Services (Consultant)		X			
Time Keeper/Checker	X				
Safety Engineer (In House)	X				
Safety Engineer (On Site)		X			
Off-Site Staff Travel Costs	X				
Off-Site Staff Transportation	X				
On-Site Project Manager Trans.		X			
Engineer's Transportation	X				
Superintendent's Transportation		X			
Project Staff Moving Expense		X			
Project Staff Subsistence Costs		X			
Project Staff Budget Estimating-by PM	X (in Precon)				
Project Phasing Plans-by PM	X (in Precon)				

II. Safety, Security & Services					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Safety Equipment					X
First Aid Supplies		X			
Handrails and Toe Boards		X			
Opening Protection					X
Fire Extinguisher/Fire Watch					X
Security Guard/Watchman Svcs.					X
Weekly Cleanup					X
Final Cleanup					X
Temporary Fencing					X
Covered Walkways					X
Barricades					X
Safety Nets					X
Debris Hauling/Removal					X
Traffic Control					X
Roadway Maintenance					X
Dust Controls					X
2-Way Radio Equipment					X
Trash Chute & Hoppers					X

III. Facilities & Equipment					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Office Trailer Rental-Contractor		X			
Tool/Utility Trailer Rental					X
Water/Ice		X			
Temporary Lighting/Wiring					X-by Elec
Power Expenses-Trailers		X			
Temporary Water Services					X-by Mech
Temporary Heat Expenses					X
Temporary Cooling Expenses					X
Temporary Toilets/Temporary Sewer Services		X			
Change/Shower Rooms		X			
Lunch Rooms		X			
Temporary Stairs					X
Temporary Enclosures/Partitions					X
Project Signs/Bulletin Boards		X			
Telephone Expenses		X			
Temporary Roads					X
Trucks		X			
Air Compressors					X
Dewatering Equipment					X
Generators					X-as requested by sub
Miscellaneous Equipment					X
Fuel/Repairs/Maintenance					X
Owner Trailer					X
Owner Utilities				X	

IV. Vertical Hoisting					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Hoist & Tower Rental		X			
Small Material Hoist Rental		X			
Hoist Landings and Fronts		X			
Hoist Operators		X			
Hoist Safety Inspections		X			
Hoist Material Skips		X			
Hoist Material Hoppers		X			
Erect & Dismantle Hoists		X			
Fuel/Repairs/Maintenance		X			
Hoist Communication		X			
Crane Rental					X
Crane Operators					X
Crane Safety Inspections					X
Erect & Dismantle Crane					X
Fuel/Repairs/Maintenance					X
Crane Raising/Jumping Cost					X
Temporary Elevator Rental		X			
Elevator Operation Cost		X			
Elevator Repairs & Maintenance		X			
Cage Rider @ Elevator		X			
Safety Inspections		X			
Forklift Rental					X-by Trades
Forklift Operators					X-by Trades
Forklift Safety Inspections					X-by Trades
Fuel/Repairs/Maintenance					X-by Trades
Elevator Service Costs					X-by Trades

V. Reproduction & Printing					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Design Phase				X	
Cost Study Documents			X		
Systems Study Documents			X		
Bid Package Documents				X	
Bidding Instructions				X	
Construction Documents				X	
Accounting Forms	X				
Field Reporting Forms	X				
Contract Agreements	X				
Schedule Report Forms	X				
Estimating Forms	X				
Cost Reporting Forms	X				
Presentation Charts and Graphics	X				
Value Analysis Studies	X				
Data Processing (In-House)	X				
Reference Materials	X				
Duplication Expense (Misc.)		X			
Shop Drawing Printing		X			
Maintenance Manuals		X			
Operation Manuals		X			
Special Forms	X				
Postage and Delivery Expense		X			

VI. Quality Control					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Chief Inspector			X		
Field Inspector			X		
Inspectors' Office				X	
Inspectors' Transportation			X		
Inspectors' Equipment			X		
Special Inspection Consultants					X
Special Testing Consultants					X
Concrete Testing					X
Masonry Testing					X
Compaction Testing					X
Welding Inspections					X
Soils Investigations					X
Special Testing Supplies					X
Field Office Supplies/Materials		X			
Project Photographs		X			
Warranty Inspection Coordination	X				
Air & Water Balancing				X	
Operator On-site Training					X
Prepare Operation Manuals					X
Prepare Maintenance Manuals					X
Medical Gas Testing & Cert.					X
Infection Control/Air Quality					X
Interim Life Safety Measures					X

VII. Permits & Special Fees					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Storage Yard Rental					X
Parking Lot Rentals					X
Parking Fees					X
Curb & Gutter Permits				X	
Sign Permits				X	
Staking & Layout Fees/Costs					X-by Trades
Sidewalk Permits				X	
Landscape Permits				X	
Street/Curb Design Charge				X	
Building Permits				X	
Plan Check Fees				X	
Water Connection Fee*				X	
Sanitary Connection Fee*				X	
Storm Connection Fee*				X	
Gas Service Charge*				X	
Power Service Charge*				X	
Steam Service Charge*				X	
Chiller Water Service Charge*				X	
Special Tap Fees				X	
Contractors' Licenses		X			
Royalties		X			
Zoning Fees/Consultants				X	
Use Fees				X	
Construction Equip Licenses		X			
Construction Equip Permits		X			
A.G.C. Fees	X				

VIII. Insurance & Bonds					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Builder's Risk Insurance		X			
Errors and Omissions			X		
General Liability		X			
Completed Operations Liability		X			
Excess Liability Coverage		X			
Workman's Compensation		X			
FICA Insurance*		X			
Federal Unemployment*		X			
State Unemployment*		X			
Payment Bond		X			
Performance Bond		X			
Off-Site Insurance	X				
Off-Site Taxes	X				
Subcontractor Bonds or SubGuard	X				
* Cost should take into consideration the annual maximums					

IX. Other Costs					
Description	Contractor Basic Fee	General Conditions	A/E Cost	Owner Cost	Cost of Work
Project Taxes-if applicable					X
Construction Equipment					X
Construction Labor Costs					X
Construction Materials					X
Cost of Design & Engineering				X	
A/E Cost for Bid Packages			X		
Preliminary Soils Inspections				X	
Title/Development Cost				X	
Land Costs				X	
Financing/Interest Cost				X	
Interim Financing Costs				X	
Owner Change Contingency				X	
Building Operation after Move-In				X	
Building Maint. after Move-In				X	
Moving Coordination				X	
Moving Costs				X	
Corrective Work Extra					X
Cost of Emergency Work					X
CM General Overhead Cost	X				
CM Profit/Margin	X				
Costs Over GMP	X				

ISSUED DATE
April 15, 2016

DOCUMENT 004300
PROCUREMENT FORMS

UNT | SYSTEM™

CONSTRUCTION MANAGER-AT-RISK AGREEMENT

This Agreement made the [Day] day of [Month] [Year], by and between **University of North Texas System (UNTS)**, 1155 Union Circle #311040, Denton, Texas 76203-5017 (“Owner”), and **[Firm Name]** (“Construction Manager”), duly licensed by the laws of the State of Texas to provide Construction Manager Services in the State of Texas. The capitalized term “Party” refers to either Owner or Contractor individually and the term “Parties” refers to Owner and Contractor collectively.

ARTICLE 1 PROJECT

1.1 Owner desires and intends to construct [Project Name] (“Project”), on the [Campus Name], to be completed in accordance with the requirements herein, and generally described as follows:

[Scope of Work]

1.2 Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with Owner’s requirements and the terms of the Contract Documents. Construction Manager does hereby agree to perform for and furnish to Owner complete Pre-Construction Phase and Construction Phase Work, including all reasonably inferable services, studies, investigations, and labor incident to the construction administration and management of construction, for all stages of construction of the Project to be completed in accordance with the requirements set forth herein. The Contract Time and the date by which Substantial Completion shall be achieved will be established when and if Owner accepts Construction Manager’s Guaranteed Maximum Price Proposal (GMP).

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;

2.1.2 The Uniform General Conditions for Building Construction Contracts for the University of North Texas System (“Uniform General Conditions” or “UGC”);

2.1.3 Supplementary General Conditions or Special Conditions, if any;

2.1.4 Owner’s Specifications;

2.1.5 All Addenda issued prior to the Effective Date of this Agreement;

2.1.6 The Guaranteed Maximum Price Proposal when accepted by Owner and executed by the parties;

2.1.7 All Change Orders issued after the Effective Date of this Agreement;

- 2.1.8 The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
 - 2.1.9 The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by Owner; and
 - 2.1.10 The Historically Underutilized Business (HUB) Subcontracting Plan submitted or amended by Construction Manager and approved by Owner for this Project.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 DEFINITIONS

- 3.1 Terms, words, and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions.
- 3.2 The following terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the Uniform General Condition, the more specific given in this Agreement shall control.
- 3.2.1 ALLOWANCE means allocating construction funds to portions of the Work that cannot be specified with sufficient particularity for competitive bidding at the time of submission and acceptance of the Guaranteed Maximum Price.
 - 3.2.2 CONSTRUCTION COST LIMITATION (CCL) means the maximum monetary amount payable to Construction Manager for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and Construction Manager's Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Construction Manager's Pre-Construction Phase Fee, or Owner's Construction Contingency or Owner's Special Cash Allowance.
 - 3.2.3 CONSTRUCTION PHASE SERVICES means the coordination, implementation, and execution of the Work required by the Contract Documents.
 - 3.2.4 CONTRACT SUM means the total amount of all compensation payable to Construction Manager for the Project and shall not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.
 - 3.2.5 DESIGN PROFESSIONAL means licensed professionals, or firms employing such licensed professionals, engaged by Owner as independent architects or engineers for design of all or a portion of the Project and to prepare Drawings and Specifications for the construction of the Project. More than one such professional or firm may be employed by Owner, and all such professionals or firms, regardless of number, are referred to in the singular herein.

- 3.2.6 DIRECT CONSTRUCTION COST means the sum of the amounts that Construction Manager actually and necessarily incurs for General Conditions Costs, Cost of the Work, and Construction Manager's Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.
- 3.2.7 ESTIMATED CONSTRUCTION COST (ECC) means the amount calculated by Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the ECC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit, and price escalation and shall include and consider, without limitation, all alternates, allowances, and contingencies designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager's Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of Owner.
- 3.2.8 GENERAL CONDITIONS means those items included in Texas Education Code § 51.776(7), as amended.
- 3.2.9 GUARANTEED MAXIMUM PRICE (GMP) means the amount proposed by Construction Manager and accepted by Owner as the maximum cost to Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's Construction Phase Fee, the General Conditions Costs, the Cost of the Work, Construction Manager's Construction Contingency amount, and Owner's Construction Contingency amount and Owner's Special Cash Allowance.
- 3.2.10 MONTHLY SALARY RATE means the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager's salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by Construction Manager for services performed for the Project.
- 3.2.11 OWNER'S SPECIFICATIONS means the construction and contract administration requirements and standards detailed in Owner's Specifications.
- 3.2.12 PRE-CONSTRUCTION PHASE SERVICES means the participation, documentation, and execution of Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.
- 3.2.13 PRELIMINARY PROJECT COST (PPC) means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by Owner prior to the commencement of design.
- 3.2.14 PROJECT TEAM means Owner, Design Professional and its consultants, and Construction Manager, and any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.2.15 SUBCONTRACTOR means a person or entity who has an agreement with Construction Manager to perform any portion of the Work. The term Subcontractor does not include the Project Architect or any person or entity hired directly by Owner.

- 3.2.16 TOTAL PROJECT COST (TPC) means the total budget established for the Project by the Board of Regents or the Chancellor of the University of North Texas System at the end of the design development phase (subject to subsequent modification by Owner). The TPC includes, but is not limited to, Construction Manager's Pre-Construction Fee, Guaranteed Maximum Price Proposal(s), Project Architect and other professional service fees, and other miscellaneous Project costs.
- 3.2.17 VALUE ENGINEERING means a systematic method to improve the value of goods or products and services by using an examination of function. Value can therefore be increased by either improving the function or reducing the cost. If any value engineering activities constitute the professional practice of engineering, then an engineer licensed in Texas shall perform such activities.
- 3.2.18 WORK means the provision of all services, labor, materials, supplies, and equipment that are required of Construction Manager to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

ARTICLE 4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

- 4.1 Construction Manager shall furnish construction administration and management services and use Construction Manager's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Owner hereby designates and appoints Construction Manager and authorizes Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement. Neither Construction Manager nor any of its agents or employees shall bind or act on behalf of or in the name of Owner unless expressly and explicitly provided in this Agreement and authorized in writing by Owner's Representative.
- 4.2 Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.
- 4.3 Construction Manager shall furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.
- 4.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, laws, and applicable permits.
- 4.5 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Site.

- 4.6 Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's special and unique abilities with respect to construction management and the obligations of this Agreement. Construction Manager accepts the relationship of trust and confidence established between it and Owner by this Agreement. Construction Manager shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders, local utility companies and with those of any other body having jurisdiction. Construction Manager shall have no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.
- 4.7 Services to be performed by Construction Manager under or pursuant to this Agreement shall be of the standard and quality, which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in the same or similar locale, under the same or similar circumstances and involving a project such as the Project.
- 4.8 Construction Manager shall call to Owner's and Design Professional's attention anything of any nature in any Drawings, Specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Construction Manager (by Owner or any other party) which it regards in its opinion as unsuitable, improper, inaccurate, or would constitute a discrepancy, error, omission, or inconsistency in the Drawings or Specifications in connection with the purposes for which such document or data is furnished.
- 4.9 Construction Manager's duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Construction Manager be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Construction Manager's skill and knowledge in performing the services required hereunder.
- 4.10 Construction Manager shall permit only fit and skilled persons to perform the Work. Persons connected with Construction Manager directly in charge of its services must be duly registered and/or licensed under applicable laws, rules, and regulations of any authority having jurisdiction.
- 4.11 Construction Manager shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.
- 4.12 Construction Manager shall be responsible to Owner for acts or omissions of persons or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.
- 4.13 Construction Manager shall, at its own cost, remedy any defects in the Work as soon as Construction Manager becomes aware of such defects or is notified of such defects. Should Construction Manager refuse or neglect to remedy such defects within a reasonable time after receiving notice requesting such remedial work, then Owner shall be entitled to remedy such defective services at the expense of Construction Manager. This commitment by Construction Manager is in addition to, and not in substitution for, any other remedy for defective Services which Owner may have at law or in equity.
- 4.14 Construction Manager agrees that: (a) if it is a corporation or limited liability company, then it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement; or (b) if it is a partnership,

limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder. The individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and bind Construction Manager.

- 4.15 Neither the execution and delivery of this Agreement by Construction Manager nor the performance of its obligations hereunder will result in the violation of: (a) any provision (1) if a corporation, of its articles of incorporation or bylaws, (2) if a limited liability company, of its articles of organization or regulations, or (3) if a partnership, by any partnership agreement by which Construction Manager is bound; (b) any agreement by which Construction Manager is bound; or (c) to the best of Construction Manager's knowledge and belief, any order or decree of any court or governmental instrumentality relating to Construction Manager.
- 4.16 Except for the obligation of Owner to pay Construction Manager certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any Regent, director, officer, employee, or agent of Owner, or of the components comprising the University of North Texas System, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.
- 4.17 Construction Manager has provided a HUB Subcontracting Approach in Construction Manager's Response to Owner's RFP. Construction Manager agrees to comply with the established HUB Subcontracting Approach and shall make no changes to the HUB Subcontracting Approach without the prior written approval of Owner. Because construction may be phased or staged, it may not be possible for Construction Manager to determine HUB participation for all projected Work until the scope of such Work is defined. Accordingly, Construction Manager shall update the HSP and resubmit Owner's Good Faith Effort Program documentation for each phase, stage, or bid package.
- 4.18 Subcontractors
- 4.18.1 With the prior written approval of Owner, Construction Manager may subcontract such services as Construction Manager deems necessary to meet its obligations under this Agreement. Subcontractors shall be qualified and experienced in the type of work they will be performing. Owner shall have the right to reject any subcontractor but such right shall not relieve the responsibility of Construction Manager for his work and the work of the subcontractors. Construction Manager expressly assumes such responsibility and liability.
- 4.18.2 Construction Manager shall be responsible for the management of the Subcontractors in the performance of their work.
- 4.18.3 If this Agreement is terminated, each subcontract agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to Article 13; and (b) Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of Construction Manager pursuant to each subcontract agreement.
- 4.18.4 Subcontractors used on this Project shall be subcontracted in accordance with the terms and conditions of the Contract Documents. Construction Manager shall include and enforce the terms and conditions within the Contract Documents on all contracts with all subcontractors and vendors performing work on this Project.

ARTICLE 5
CONSTRUCTION MANAGER'S PRE-CONSTRUCTION PHASE SERVICES

- 5.1 In implementation of the responsibilities and duties of Construction Manager as set forth herein, Construction Manager shall perform services in accordance with the Work Progress Schedule (as defined in Section 5.03)
- 5.2 General Coordination
- 5.2.1 Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment.
- 5.2.2 Construction Manager shall provide recommendations to the Project Team on: construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; assignment of responsibilities for safety precautions and programs; temporary Project facilities; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents; and any other matters necessary to accomplish the Project in accordance with the Schedule (as defined below) and Project Construction Budget.
- 5.2.3 At Owner's request, Construction Manager shall attend public meetings and hearings concerning the development and schedule of the Project.
- 5.2.4 Construction Manager shall develop and update a "Constructability Review" report which is a report resulting from frequent communication with the Project Team and which will outline items that in Construction Manager's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of Specifications and Drawings, details, and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences.
- 5.2.5 Construction Manager shall create and continuously update a decision tracking system in a format acceptable to Owner.
- 5.3 Work Progress Schedule
- 5.3.1 When Project requirements have been sufficiently identified, Construction Manager shall prepare a critical path Project schedule (Work Progress Schedule) for the Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Work Progress Schedule with the services and activities of Owner, Construction Manager, Design Professional, other consultants/suppliers and the requirements of governmental entities.
- 5.3.2 As design proceeds, Construction Manager shall update the Work Progress Schedule at least once monthly to indicate detailed listing for all activity sequences, durations, or milestone dates for activities of the Project, including, without limitation:
- a. commencement, milestone, and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phase, and project stages;
 - b. times of commencement and completion for each Subcontractor;
 - c. contract document packages, completion dates, Owner contract document package review periods, construction contract bid dates;

- d. preparation and processing of shop Drawings and samples;
- e. a recommended schedule for Owner's purchase of materials and equipment requiring long lead-time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead-time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Design Professional; and
- f. Owner's occupancy requirements and estimated date of Substantial Completion of the Project.

5.3.3 If Schedule updates indicate that milestone dates contained in prior Schedules will not be met, Construction Manager shall notify and make recommendations to Owner.

5.3.4 If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the Drawings and Specifications.

5.3.5 A separate Schedule shall be prepared for each Stage and each set of bidding documents.

5.3.6 Construction Manager shall provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date set forth hereinabove, so that Owner can occupy and utilize the entire Project facilities on such date; and

5.3.7 Construction Manager shall create and maintain the Work Progress Schedule in a format acceptable to Owner (the license and training for which shall be at Construction Manager's sole expense).

5.4 Budget and Cost Consultation

5.4.1 Construction Manager shall obtain from Owner all Project service, materials, and property costs and expenses not known directly by Construction Manager, such costs to include, without limitation, Owner's personnel costs, force account labor, and special consultants.

5.4.2 Construction Manager shall prepare and update a Construction budget at: (1) one hundred percent (100%) schematic design; (2) fifty percent (50%) design development, (3) one hundred percent (100%) design development; and (4) at GMP, for written approval by Owner, such budget to include estimating, updating and reporting of all construction costs.

5.4.3 The design development phase and construction documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit in Construction Specifications Institute Division format for each portion of the Work.

5.4.4 Construction Manager shall provide, throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Construction Manager shall prepare and be responsible for all procurement and construction cost estimates, and advise the other members of the Project Team immediately if at any time Construction Manager has knowledge that the previously established PPC, TPC, PCB, or Work Progress Schedule will not be met, and make recommendations to the Project Team for corrective action.

5.4.5 At the completion of the Construction Contract Documents, Construction Manager shall update and refine a comparison of actual and projected costs to the Project Construction Budget, and in the event such actual and projected costs exceed the original Project

Construction Budget, develop and implement reasonable strategies to be approved by Owner to reduce the costs projected to be incurred during all phases of the Project.

5.5 Coordination of Design and Construction Contract Documents

- 5.5.1 Construction Manager shall examine and compare the Drawings and Specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager and any visible conditions at the Site affecting the Project.
- 5.5.2 Construction Manager shall review the Drawings and Specifications during the schematic design phase, design development phase, and construction documents phase in an effort to identify potential constructability problems, which could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner without assuming Design Professionals' professional responsibility.
- 5.5.3 Construction Manager shall during review of the Drawings and Specifications promptly report to Owner and Design Professional any discrepancies, errors, omissions, or inconsistencies discovered and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules.
- 5.5.4 Construction Manager shall assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by Owner at Owner's sole option and discretion.
- 5.5.5 Construction Manager shall coordinate with Owner to ensure that the Construction Contract Documents comply with all applicable State of Texas and University of North Texas System procurement requirements.
- 5.5.6 Construction Manager shall consult with Owner and Design Professional to suggest reasonable adjustments in the scope of the Project and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the GMP.
- 5.5.7 Construction Manager shall have no liability for discrepancies, errors, omissions, or inconsistencies in the Drawings or Specifications, unless Construction Manager fails to promptly report a discovered or apparent discrepancy, error, omission, or inconsistency to Owner and Design Professional or Construction Manager fails to adequately perform the examination.

5.6 Construction Planning

- 5.6.1 Construction Manager shall identify and recommend to Owner and Design Professional the need for items requiring extended delivery times (long lead items), and expedite the procurement of such items to ensure their delivery by the required dates. Construction Manager shall participate with Design Professional, as requested by Owner and subject to Owner's prior approval, in the preparation of performance Specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead-time equipment and materials. If requested by Owner, and subject to Owner's prior approval, Construction Manager shall issue requests for technical proposals to qualified sources, receive proposals, and assist in their evaluation.

- 5.6.2 Construction Manager shall make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts. Construction Manager shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and onsite production costs, shipping costs, code restrictions, Owner's goals for HUB contractor participation, and other constraints.
- 5.6.3 Construction Manager shall review the Contract Documents with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- 5.6.4 Construction Manager shall schedule and conduct pre-bid conferences with record minutes for interested bidders, subcontractors, material suppliers, equipment suppliers, and Owner.
- 5.6.5 Construction Manager shall coordinate, develop, and review with Owner and Design Professional bid packages and scopes of work for each separate bid category representing the entirety of the scope of the Work for each phase and stage of the Project.
- 5.6.6 In accordance with Texas Education Code section 51.782, as amended, Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Construction Manager may seek to perform portions of the work itself if Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if Owner determines that Construction Manager's bid proposal provides the best value for Owner. Owner's determination in such matters is final. If Construction Manager intends to submit a proposal for such work, it shall notify Owner in writing prior to soliciting proposals. Owner shall provide criteria for determination of best value. Construction Manager and Owner shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by Construction Manager, Design Professional or Owner. All bids and proposals shall be made public within seven (7) days after the date of final selection.
- 5.6.7 After review and evaluation, if a bid or proposal from a trade contractor or subcontractor is recommended by Construction Manager to Owner; however, Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, and then Owner shall compensate Construction Manager. Compensation shall be by change in price, time, or GMP for any additional cost and risk, which demonstrated to Owner's satisfaction and as required by the Contract, Construction Manager incurs because of Owner's requirement to accept another trade contractor or subcontractor bid or proposal.
- 5.6.8 Construction Manager shall assist Owner, Design Professional, or others, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, and the fire department providing fire protection.
- 5.6.9 Construction Manager shall refine, implement and monitor the HUB Goals including the Good Faith Effort Program, which promote equal employment opportunity in the provision of goods and services to Owner for the Project.

- 5.6.10 Construction Manager shall advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- 5.6.11 Construction Manager shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
- 5.6.12 In accordance with Uniform General Conditions, Construction Manager is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Manager shall provide information to Owner and Design Professional with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify the assignments with respect to Subcontractors are included in the Contract Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall in no way lessen or reduce the foregoing responsibilities set forth in this subparagraph of Construction Manager.
- 5.6.13 Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Construction Manager shall make recommendations for actions, which will minimize adverse effects of labor shortages.
- 5.6.14 Construction Manager shall consult with and make recommendations to Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate Owner's purchase and installation of such items as may be required to meet the Schedule.

ARTICLE 6 GUARANTEED MAXIMUM PRICE

- 6.1 At sixty percent (60%) completion of the Construction Drawing phase, Construction Manager shall prepare and submit to Owner in writing a GMP proposal in the format in attached Exhibit A or similar form as required by Owner and at Owner's sole option and discretion. The GMP proposal shall require a breakdown of estimated costs organized by trade, allowances, contingencies, Construction Manager's Construction Phase Fee, General Conditions and other approved items, but shall not include compensation for Pre-construction Services. If accepted by Owner, the parties shall execute a GMP Amendment and the fully executed Amendment shall become a part of the Contract Documents.
- 6.2 Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:
 - 6.2.1 List of the Drawings and Specifications, including all addenda, which were used in preparation of the GMP proposal;
 - 6.2.2 Allowances and a statement of their basis;
 - 6.2.3 The GMP Amendment shall include a construction contingency up to a maximum of [Word] percent ([Numeral]%) of the estimated costs for construction, to allow for continued development and completion of the Drawings and Specifications, which are reasonably inferable, except for the material changes in scope. Owner must approve in writing the release of any contingency funds. Amounts attributable to clarifications, assumptions, and

further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown;

- 6.2.4 The Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;
 - 6.2.5 Schedule of applicable alternate prices; and
 - 6.2.6 Schedule of applicable unit prices.
- 6.3 Owner, at its sole option and discretion may reject the GMP proposal, attempt to renegotiate the GMP proposal with Construction Manager (with the right to cease negotiations at any time and reject the GMP proposal), or increase the Project Construction Budget. Construction Manager shall not withdraw its GMP proposal for ninety (90) days after submission to Owner.
- 6.4 Adjustments to the GMP Amendment will be made for changes to the scope of Work for the Project by mutual agreement of Owner, Design Professional and Construction Manager, in writing, and shall include the following for both additive and deductive changes in scope of Work:
- 6.4.1 Net amount of the actual reimbursable costs from the change in the scope of Work;
 - 6.4.2 Net amount of General Conditions, if applicable, from the change in the scope of Work;
 - 6.4.3 Net amount of the cost of bonds and insurance, as required by the Uniform General Conditions;

ARTICLE 7 CONSTRUCTION MANAGER'S CONSTRUCTION PHASE SERVICES

- 7.1 The Construction Phase shall be deemed to commence upon the earlier of:
- 7.1.1 The date specified in a Notice to Proceed issued by Owner after approval by Owner of a GMP or the issuance of an early release package for the Work or portion of the Work specified in such Notice to Proceed;
 - 7.1.2 The issuance of a purchase order by Construction Manager for materials or equipment for the Project after prior written authorization by Owner; or
 - 7.1.3 Award of a subcontract in accordance with the requirements of this Agreement and after prior written authorization by Owner.
- 7.2 Preconstruction Phase Services may overlap with Construction Phase Services
- 7.3 Construction Manager shall provide Project Control, including, without limitation, the following:
- 7.3.1 Construct the Work in strict accordance with the Contract Documents within the time required by the Schedule approved by Owner.
 - 7.3.2 Award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and other Work, which has been awarded to Construction Manager in accordance with the requirements of *Texas Education Code*

section 51.782 and this Contract. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.

- 7.3.3 Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Project Construction Budget and GMP Amendment, and to attain Substantial Completion by the date set forth in the GMP Amendment.
 - 7.3.4 Schedule, direct, and attend weekly construction meetings in accordance with the Division 01 requirements. When requested, attend meetings scheduled by Owner and fully advise by written report the Project status.
 - 7.3.5 Maintain a competent, full-time staff at the Site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
 - 7.3.6 Establish onsite organization of personnel and clearly defined lines of authority in order to execute the overall plans of the Project Team. At a minimum, Construction Manager's site personnel shall include a project manager, project superintendent, project engineer and appropriate administrative support personnel.
 - 7.3.7 In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Professional, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
 - 7.3.8 Expedite and coordinate delivery and installation of Owner procured material and equipment.
 - 7.3.9 Supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures for the Work.
 - 7.3.10 In accordance with Uniform General Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.
 - 7.3.11 Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Professional in obtaining all approvals required from authorities having jurisdiction over the Project.
 - 7.3.12 Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.
- 7.4 Construction Manager shall provide Scheduling, including, without limitation, the following:
- 7.4.1 Perform Project scheduling in compliance with Owner's criteria as set forth in the Contract Documents.
 - 7.4.2 Provide regular monitoring, updating, and reissuing of all Project Schedules as construction progresses.
 - 7.4.3 Include, without limitation, the Schedule, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules.
 - 7.4.4 Identify potential and actual variances between scheduled and probable completion dates.

- 7.4.5 Review the schedules for Work not started or incomplete and recommend to Owner adjustments in the schedules to conform with the probable completion dates.
 - 7.4.6 Provide summary reports to Owner of each schedule update and document all changes in construction schedules.
 - 7.4.7 Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials.
 - 7.4.8 Processing of shop Drawings, data, and samples.
 - 7.4.9 Delivery of long lead-time items.
 - 7.4.10 Include Owner's occupancy requirements and occupancy priorities.
 - 7.4.11 Evaluate Subcontractor's personnel, equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any subcontract requirements are not met, or appear unlikely to be met.
- 7.5 Construction Manager shall provide Cost Control, including, without limitation, the following:
- 7.5.1 Construction Manager shall maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford Owner access to these records and preserve them for a period of three (3) years after Owner makes final payment to Construction Manager.
 - a. Accounting records maintained by Construction Manager shall include a project-to-date job cost report, including an itemized listing of all actual costs incurred, identification as to whether such amounts have or have not been paid and date paid for all costs necessarily incurred to complete the scope of work of the Project. The report shall include at least the contractor, subcontractor, vendor or payee name; invoice number; invoice date; description of the cost; line item number consistent with item number in the GMP Amendment breakdown; date cost was paid by Construction Manager; check number used to pay item; and other cost information requested by Owner.
 - b. Construction Manager shall maintain and make available to Owner all original third party invoices, receipts or other support documentation, for all costs billed to Owner. Construction Manager shall also maintain and make available documentation verifying incurred costs have been paid to all third parties.
 - c. For all amounts billed to Owner for the cost of Construction Manager's own labor forces, Construction Manager shall maintain and make available to Owner original timesheets and other timekeeping records. The records shall reflect employee name; title; position or occupation; trade labor classification (including level); identification of Project; date worked; number of hours worked (by task if multiple tasked are worked); detailed description of the work performed for each time entry; employees signature; and supervisory signature for all time worked. Construction Manager shall maintain and make available actual cost support documentation verifying actual amount incurred and paid for salaries and wages; itemization of all actual labor burden costs billed and paid including, but not limited to, any employer paid taxes, workers compensation, union contributions, health and welfare and other benefits costs as a result of work performed on this Project.

- 7.5.2 Construction Manager shall prepare, administer, maintain and provide to Owner a current schedule of values containing information required by Owner, in a format acceptable to Owner.
- a. Construction Manager shall require, obtain, maintain, and submit to Owner, Subcontractors' sworn statements and waivers of lien, in a form and format acceptable to Owner, for all amounts paid to subcontractors, suppliers and vendors for all materials, labor and all other costs paid by Construction Manager.
 - b. Construction Manager shall maintain, and provide Owner a current listing of all change order requests proposed by Construction Manager to include estimated or agreed to cost, status, and other information if requested by Owner, in a format acceptable to Owner.
 - c. Construction Manager shall maintain a current comparison of schedule of values and actual costs incurred in a format acceptable to Owner. Contractor shall promptly notify in writing (within two (2) business days) Owner in the event actual costs incurred exceed, or are expected to exceed, schedule of values costs for any schedule of values line items.
- 7.5.3 Develop and implement a system acceptable to Owner for the preparation, review and processing of change order requests, construction change directives and requests for information, in accordance with Uniform General Conditions.
- 7.5.4 Assist Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at Owner's request in order to meet the Schedule, without; however, assuming direct responsibility for the work of these consultants.

7.6 Documents, Shop Drawings, and Submissions

- 7.6.1 Design Professional shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Design Professional and Owner; however, Construction Manager shall request such interpretations from the Design Professional, with Owner consent, from time to time in order to facilitate Construction Manager's accomplishment of its duties under this Agreement.
- 7.6.2 In collaboration with the other members of the Project Team, Construction Manager shall establish and implement procedures for expediting the processing and Design Professionals' approval of shop Drawings and other submissions, and in accordance with Division 01 Specifications, as applicable. Receive from the Subcontractors, and review, all shop Drawings and other submissions for conformance with the Contract Documents. Coordinate shop Drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.
- 7.6.3 Construction Manager shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with Uniform General Conditions. Each member of Construction Manager's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, the daily logs shall be submitted to Owner no less than once a week for the immediately preceding week.
- 7.6.4 Construction Manager shall maintain at the Project site and make available to Owner, updated records of subcontracts, Drawings, examples, purchases, materials, equipment, maintenance and operating manuals, instructions, and other construction related

documents. Document to include all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record Drawings and project manual.

7.6.5 Coordinate and facilitate the creation of record and as-built Drawings, and the procurement of warranties and guarantees.

7.6.6 Upon request provide Owner with complete, unaltered copies of all Subcontracts, and all amendments thereto.

7.6.7 Submit to Owner all documents substantiating payments to all subcontractors as well as qualifying HUB's in a format designated by Owner.

7.7 Safety

7.7.1 Construction Manager is solely responsible for all safety precautions and programs in connection with the Work.

7.7.2 Construction Manager shall review safety programs developed by each of the Subcontractors and shall, within fourteen (14) days of Notice to Proceed submit to Owner a comprehensive safety program. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations, and with any Owner-controlled insurance program.

7.7.3 Construction Manager shall ensure compliance by the Subcontractors with their contractual safety requirements. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Construction Manager's responsibilities under this paragraph.

7.8 Hazardous Waste

7.8.1 Owner represents that it has disclosed to Construction Manager any Hazardous Waste known by Owner to exist on or near the Site. If unanticipated Hazardous Waste is discovered at the Site, Construction Manager will be entitled to immediately stop work in the affected area. Construction Manager will promptly report the condition to Owner and, if required, the governmental agency with jurisdiction. Construction Manager shall not be obligated to commence or continue Services until any Hazardous Waste discovered at the Site has been removed, rendered harmless, or determined to be harmless by Owner.

7.8.2 Construction Manager shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Waste without written mutual agreement.

7.8.3 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the unanticipated material encountered and whether it is a Hazardous Waste requiring corrective measures or remedial actions. Such measures and actions shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Services of Construction Manager.

7.8.4 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by Construction Manager, Subcontractors, Owner, or others, shall be maintained at the Site by Construction Manager and made available to Owner and Subcontractors.

- 7.8.5 During Construction Manager's performance of the Services, Construction Manager shall be responsible for the proper handling of all materials brought to the Site by Construction Manager.
- 7.9 Additional Services
- 7.9.1 Owner may request Construction Manager perform services in addition to those Services required or reasonably inferable herein (Additional Services). Each time Construction Manager is requested to perform services, which Construction Manager deems to be Additional Services, and prior to performing such Additional Services, Construction Manager shall complete and forward to Owner for acceptance by Owner, a change order request in a format approved by Owner. The form shall describe in detail the nature or scope of the Additional Services; the basis upon which Construction Manager has determined the requested services are Additional Services; the maximum amount of fees and reimbursable expenses for which Construction Manager is prepared to perform such Additional Services; and a proposed schedule for the performance of such Additional Services. Construction Manager shall proceed only after written approval by Owner of the change order request.
- 7.9.2 If Owner concludes that all or part of the services described in the change order request are Services already required to be performed by Construction Manager pursuant to this Agreement, then Owner shall notify Construction Manager of Owner's determination and Owner and Construction Manager shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Construction Manager are unable to resolve their differences, then Construction Manager shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Construction Manager's right to pursue a claim for compensation for such disputed services.
- 7.9.3 Upon written acceptance by Owner, each change order request and the services performed by Construction Manager pursuant to such change order request shall become part of this Agreement and shall be subject fully and completely to all the terms and conditions of this Agreement.
- 7.9.4 Construction Manager shall not be entitled to any increase in the Pre-construction Phase Fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its reasonable discretion.

ARTICLE 8 OWNER'S RESPONSIBILITIES

- 8.1 Owner's Representative shall be fully acquainted with the Project, shall facilitate and coordinate Owner's Project issues with Construction Manager, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. Upon request, Owner will furnish in writing the authorization of each representative of Owner to represent it in connection with the Project.
- 8.2 Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.

- 8.3 Owner shall inform all special consultants retained by Owner that they shall coordinate their services through Construction Manager. Owner shall provide special testing and inspection services to the extent required by Texas Education Code section 51.782, as amended.
- 8.4 If Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to Construction Manager.
- 8.5 Prior to commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Construction Manager shall be notified prior to any material change in Project financing.
- 8.6 Except for those permits and fees related to the Work, which are the responsibility of Construction Manager, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

ARTICLE 9 COST OF WORK

- 9.1 The term Cost of Work shall include and be limited to those costs actually incurred and paid by Construction Manager that have been necessarily incurred to properly perform the Work in strict compliance with the Contract Documents. Cost of Work includes only the items set forth in this Article.
- 9.2 Labor and Administrative costs include:
- 9.2.1 Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Work.
- 9.2.2 Reasonable and customary wages or salaries of Construction Manager's supervisory and administrative personnel who were previously identified, but only when stationed full-time at the site with Owner's prior consent, unless otherwise approved in advance by Owner.
- 9.2.3 Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are:
- a. required by law,
 - b. required by collective bargaining agreements,
 - c. or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of Work as defined herein.
- 9.2.4 Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.
- 9.2.5 Costs of long-distance telephone calls, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.
- 9.3 Materials, Equipment, Tools, and Rental costs include:
- 9.3.1 Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall

be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Construction Manager shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Uniform General Conditions.

- 9.3.2 Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.
- 9.3.3 Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from Construction Manager, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "Contractor's Equipment Cost Guide," latest edition published by the AGC, approved by Owner before commitments are made and shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost to Owner exceed seventy-five percent (75%) of the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Construction Manager shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to Owner with the amount of the fair market resale value.
- 9.3.4 Site debris removal and disposal costs in accordance with all applicable laws and regulations.
- 9.4 Payments made to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.
- 9.5 Other costs include:
 - 9.5.1 Governmental sales and use taxes directly attributable to the Work. Owner is a state agency and Construction Manager shall avail itself of all exemptions, which may exist for such taxes based on Owner's status.
 - 9.5.2 Permit and inspection fees, except that as a state agency, Owner is typically exempt from such fees.
 - 9.5.3 Premiums for Construction Manager's insurance and bonds to the extent directly attributable to this Contract.
 - 9.5.4 Testing fees pursuant to the terms and conditions of Uniform General Conditions.
 - 9.5.5 Intellectual property royalties and licenses for items specifically required by the Contract Documents, which are, or will be, incorporated into the Work.
 - 9.5.6 Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Construction Manager.

- 9.5.7 Other costs approved in advance in writing by Owner at Owner's sole option and discretion.
- 9.6 The following shall not be included in the Cost of Work paid by Owner:
- 9.6.1 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.
 - 9.6.2 Legal and administrative costs to review and negotiate these Contract Documents.
 - 9.6.3 Travel and subsistence expense of Construction Manager, its officers or employees incurred while traveling between the Project and Construction Manager's principal or branch offices, and travel in the metropolitan area of the Project.
 - 9.6.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.
 - 9.6.5 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.
 - 9.6.6 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
 - 9.6.7 All personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.
 - 9.6.8 All overhead expense or office expense at any location, except site office expense to the extent specifically included herein.
 - 9.6.9 Costs related to Construction Manager's indemnification obligations pursuant to Article 12 hereof.
 - 9.6.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
 - 9.6.11 Any cost arising out of the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected or nonconforming work, materials or equipment, and damage to persons or property.
 - 9.6.12 Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Work within the Contract Time.
 - 9.6.13 All costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.
 - 9.6.14 All General Condition costs included in the GMP Amendment itemized breakdown regardless of classification or amount listed.
- 9.7 The Cost of Work paid by Owner shall be credited with the following discounts, rebates, and refunds:

- 9.7.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to Owner, Construction Manager, or to some other party; and any such sale, if made to others than Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Construction Manager shall use its best efforts to obtain the highest price in respect of such sales.
- 9.7.2 If Owner makes funds available to Construction Manager, discounts earned by Construction Manager through advance or prompt payments. Construction Manager shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to Owner.
- 9.7.3 Reasonable market value as approved by Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by Construction Manager.
- 9.7.4 Rebates, discounts, or commissions allowed to and collected by Construction Manager from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
- 9.7.5 All discounts, deducts, rebates, negotiated settlements, or other credits received by Construction Manager from its subcontractors, vendors, or suppliers related to Work on the Project.
- 9.7.6 Construction Manager shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of Construction Manager. Should Construction Manager not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due Construction Manager.
- 9.8 Construction Manager and Owner will work together collaboratively in a good faith effort to reduce the cost of the Project while achieving the desired end product and complying with the conditions of Owner's funding. In the event the sum of the actual Cost of Work for the existing scope of Work (without taking into consideration reductions in scope by Change Order), plus compensable General Conditions, plus Construction Manager's Fee, is less than the GMP, then Construction Manager and Owner agree that 100% of all savings shall be to the benefit of Owner.
- 9.9 Related Party Transactions
- 9.9.1 Related Party shall mean any parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager, any entity in which any stockholder in, or management employee of, Construction Manager owns any interest in excess of ten percent (10%) in the aggregate, or any person or entity which has the right to control the business or affairs of Construction Manager. The term Related Party includes any member of the immediate family of any person identified above.
- 9.9.2 If any of the costs to be reimbursed arise from a transaction between Construction Manager and a Related Party, Construction Manager shall notify Owner of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred

shall be included as a cost to be reimbursed, and Construction Manager shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor. If Owner fails to authorize the transaction, Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a Related Party.

ARTICLE 10 COMPENSATION AND PAYMENT

10.1 Pre-Construction Services

10.1.1 In full consideration of Construction Manager's Services during the Pre-construction Phase of this Agreement, Owner will pay to Construction Manager the sum of [Amount Words] dollars and 00/100 (\$[Amount Numeral]) payable as a lump sum at the completion of the Bidding/Proposal Phase (3.1.3.b.i).

10.1.2 To receive payment, Construction Manager shall send an invoice with supporting documentation to Owner. Construction Manager's invoices shall specify the amount of Work completed and other information as required by Owner for payment purposes. No retainage is to be withheld from this amount.

10.1.3 In addition to the stipulated sum, the following expenses of Construction Manager, incurred solely and directly in support of the Project are reimbursable as described below:

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

10.1.4 Owner shall only be responsible for payment of actual amount of such reimbursable expenses. Payment of reimbursable expenses shall not exceed dollars [Amount Words] and 00/100 (\$[Amount Numeral]) without the prior written consent of Owner. Construction Manager shall invoice for reimbursement and shall submit receipts necessary to verify reimbursable expenses along with any reimbursement request.

10.2 Construction Phase

10.2.1 The Construction Cost Sum is the total compensation due to Construction Manager for all Construction Phase services. The Construction Cost Sum shall be the sum of:

- a. The lesser of actual General Conditions costs incurred and paid by Construction Manager or, the original General Conditions amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Construction Manager and Owner over the duration of the Project, plus
- b. the lesser of actual reimbursable "Cost of Work" (as defined in Article 9) incurred and paid by Construction Manager or, the original reimbursable Cost of Work amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Construction Manager and Owner over the duration of the Project, plus

- c. Construction Manager's Construction Phase Fee as set forth in the GMP Amendment, plus or minus any changes agreed to by Construction Manager and Owner over the duration of the Project, plus
 - d. the actual cost of required bonds, insurance, builder's risk and liability insurance.
- 10.2.2 The Construction Cost Sum shall not exceed the GMP Amendment amount as established in accordance with 6.4 above. Any cost not authorized by the terms and conditions of the Contract Documents, but which would cause the GMP to be exceeded, shall be paid by Construction Manager without reimbursement by Owner.
- 10.2.3 In a format acceptable to Owner, the Contractor must provide an estimated cost for General Conditions with the costs broken down by line item. Owner may accept or reject each line item of the estimated costs. Construction Manager's General Conditions cost is limited to a maximum of [Amount Words] dollars and 00/100 (\$[Amount Numeral]). In the event the General Conditions actually incurred and paid exceeds the General Conditions limit, all amounts in excess of the General Condition limit shall be borne solely by Construction Manager and are not payable by Owner. In the event actual General Condition Costs incurred and paid are less than \$[Amount Numeral], the GMP shall be reduced by an amount equal to the shortfall of actual costs incurred and paid by Construction Manager. General Conditions shall be defined as, and shall include all cost line items included on Construction Manager's itemized breakdown in the GMP Amendment and shall be subject to the General Conditions limit.
- 10.2.4 Owner has afforded Construction Manager with unrestricted access to the existing improvements and conditions on the construction site and has given Construction Manager the opportunity to thoroughly investigate the existing conditions, which Construction Manager represents it has done. The results of Construction Manager's investigation shall be taken into account in establishing the GMP of the Work. Construction Manager shall not be entitled to a claim for an adjustment in time or price under Uniform General Conditions for conditions, which Construction Manager discovered or ought to have discovered in Construction Manager's investigation. Before proceeding with the Work, Construction Manager shall review the Drawings and Specifications and notify the Design Professional and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. Construction Manager shall not proceed with the Work if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Construction Manager to exist in the Contract Documents. If Construction Manager nevertheless proceeds to perform the Work then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Contract Documents, Construction Manager shall immediately submit a written request for an explanation or decision to the Design Professional and Owner.
- 10.2.5 If payments are made to Construction Manager in excess of the Contract Price, Construction Manager shall immediately return such amounts to Owner upon request by Owner. In the event payments are made in excess of the Contract Price and other amounts are due to Construction Manager from Owner, Owner may offset other amounts due by amounts paid in excess of Contract Price.
- 10.2.6 In the event the actual cost incurred and paid for Allowance is less than the amounts set forth in the GMP Amendment entered into by the Parties, which are noted as Allowance, one hundred percent (100%) of all savings shall be to the benefit of Owner. In the event the actual cost incurred and paid by Construction Manager for Allowance is not equal to the amounts set forth in the GMP Amendment for Allowance, the GMP shall be adjusted

for the difference (increased for overruns and/or decreased for shortfalls). The adjustment amount shall be the difference between the actual cost incurred and paid for Allowance, and the amount set forth in the GMP Amendment.

- 10.2.7 Contingency is included in the GMP Amendment for the Project. While the contingency is referred to as "Construction Contingency", application of the Construction Contingency can occur only with the expressed written approval by Owner or direction of Owner. In the event Owner approves less than the full amount of the Construction Contingency, all unapproved amounts shall be to the benefit of Owner. In the event the sum of all approved uses of Construction Contingency is less than the initial Construction Contingency, the GMP shall be reduced by any shortfall.
- 10.2.8 In full consideration of Construction Manager's services during the Construction Phase of this Agreement, Owner shall pay Construction Manager a Construction Phase Fee as stipulated in the GMP Amendment, which shall be calculated as follows: [Word] percent ([Numeral]%) of the cost of construction, which shall be converted to a fixed fee at the establishment of the GMP Amendment. Construction Manager's Fee shall be billed to, and paid by, Owner in direct proportion of the cost of construction. In the event a balance is payable by Owner, or Owner has overpaid the fee as of the date of the final invoice, the remaining amount due or credit due to Owner shall be included in Construction Manager's final invoice. Change in the scope which require an increase in the GMP are entitled to an equitable increase in the Contractor's Construction Phase Fee percentage which shall be calculated in direct proportion to the Cost of Work times the Construction Phase Fee percentage in this Article. The Contractor's Construction Phase Fee will not be applied to changes which are funded by the construction contingency or subcontractor trade buyout savings. Construction Manager's Construction Phase Fee shall be shown as a separate line item on the schedule of values.
- 10.2.9 In Uniform General Conditions, references to adjustments in "cost" or "costs" refer to Costs of Work as defined herein below, and references to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.
- 10.2.10 Construction Manager's Construction Phase Fee shall cover Construction Manager's profit, general overhead and all expenses in connection with maintaining and operating Construction Manager's main office and any branch or field offices, including (except as otherwise provided hereinafter):
- a. Salaries of personnel not stationed full time at the site, including but not limited to, Construction Manager's officers, project manager(s), estimators, and schedulers.
 - b. Salaries of persons employed in the main or branch offices of Construction Manager whose time is devoted to the general conduct of Construction Manager's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.
 - c. Overhead or general expenses of any kind except those specifically included herein.
 - d. Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction services) relating to accounting in Construction Manager's office and even if at the site, except as specifically identified herein.
 - e. Interest on Construction Manager's capital or on money borrowed by Construction Manager, including the capital employed by Construction Manager in the performance of the Work.
 - f. Amounts required to be paid by Construction Manager for Federal and/or State income and franchise taxes.

- g. Legal, accounting, or other similar professional services provided by or to Construction Manager, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, the Design Professionals or any other person or entity relating to the Project or otherwise.
- h. Any professional fees, training, memberships, employee or subcontractor incentives or bonuses, and any subcontractor bonding or Sub-Guard.

10.2.11 On a monthly basis, the Construction Manger shall submit a Pay Request, in accordance with the Division 01 Specifications. Support Documentation should include, but is not limited to, a project-to-date job cost report; a current period job cost report; copies of third party invoices; receipts and other third party support documentation, sufficient to evidence each cost billed for has been incurred by Construction Manager; original timesheets and other timekeeping records; a current schedule of values; sworn statements and waivers of lien for all amounts paid to Construction Manager for materials, labor, equipment and all other costs.

10.2.12 In no event shall Construction Manager invoice for nor, shall Owner be required to pay, any costs in excess of work put in place by Construction Manager and its subcontractors at any given time.

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

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

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

10.2.16 Owner shall be billed in accordance with Chapter 2251 if the Texas Government Code and payment shall be made no later than thirty (30) days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to Customer; and (iii) interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Payee must be in good standing, not indebted to the State of Texas and current on all taxes owed to the State of Texas for payment to occur.

10.3 Application for Final Payment and Final Accounting

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

including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

- 10.3.2 Upon completion of Construction Manager's work, Construction Manager shall submit an Application for Final Payment to Owner including all costs incurred and paid, that are payable by Owner pursuant to the Contract Documents. As a basis for the Application for Final Payment, Construction Manager shall provide Owner with a final listing of all project costs incurred and paid by Construction Manager, together with all reconciliations necessary to reconcile amounts billed to the final Contract Price. Construction Manager shall also provide all support documentation as required in 10.2.11 above for all costs not previously supported. To the extent that any costs have been incurred by Construction Manager, but have not been paid by Construction Manager, Construction Manager shall separately list any such costs and provide any additional support necessary to verify costs have been incurred and will be paid. Construction Manager shall include within Construction Manager's Application for Final Payment the benefit of all credits, charge backs and negotiated reductions to contract, subcontractor and vendor contracts and invoices.
- 10.3.3 Upon receipt of Construction Manager's Application for Final Payment, Owner shall have thirty (30) days to review and verify the amounts billed by Construction Manager prior to acceptance. During this time, Construction Manager shall cooperate with Owner, or its designee, and provide Owner with all project records and documents requested by Owner or its designee to verify the amounts billed by Construction Manager for its Work on the Project.
- 10.3.4 Owner's auditors will review and report in writing on Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to Owner by Construction Manager. Based upon review of amounts billed, if Owner's auditors' report substantiates Construction Manager's final accounting and provided all other conditions for final payment have been met, Owner will, after receipt of the written report of Owners auditors, either issue to Construction Manager a final Payment or notify Construction Manager in writing of Owner's reasons for withholding final payment, in whole or in part.
- 10.3.5 If Owner's auditors' report finds that Construction Manager's final accounting contract price or actual costs incurred and paid are less than claimed by Construction Manager, Construction Manager shall be entitled to provide, for Owner's review, additional documentation to support the final accounting costs. Additional documentation shall be provided within thirty (30) days after Construction Manager's receipt of a copy of Owner's auditor's Final Certificate for Payment. Failure to provide additional documentation for review by Owner within the thirty (30) day period shall result in the substantiated amount reported by Owner's auditors becoming binding on Construction Manager. Owner shall pay Construction Manager the amount certified in the Final Certificate for Payment.
- 10.3.6 Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Agreement.
- 10.3.7 Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Construction Manager if any one or more of the following conditions precedent exist:
 - a. Construction Manager is in breach or default under this Agreement;
 - b. any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made

as to the part thereof attributable to services which were performed in accordance with this Agreement;

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

ARTICLE 11 BONDS

- 11.1 Construction Manager shall provide performance and payment bonds in accordance with the requirements set forth in the Uniform General Conditions. The penal sum of the payment and performance bonds shall be no less than the GMP. If construction is phased or staged with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all GMPs in effect. No retainage is to be withheld with respect to the cost of the required bonds.
- 11.2 Construction Manager shall not cause or allow any of its bonds or insurance to be canceled nor permit any lapse during the term of the Agreement or as required in the Agreement.

ARTICLE 12 INDEMNITY AND INSURANCE

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

- 12.1.1 **The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 12.1.2 **Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.**

12.2 Insurance

- 12.2.1 Construction Manager shall not commence work under the Agreement until it has obtained all insurance required in accordance with this Agreement and the Uniform General Conditions and until such insurance has been reviewed and approved in writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Construction Manager hereunder. Prior to commencing any of the Preconstruction Services, Construction Manager shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability as set forth in the Uniform General Conditions are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in the Uniform General Conditions shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or Stage of construction prior to the commencement of construction for that package, phase, or Stage.
- 12.2.2 Construction Manager shall include Owner, [Campus Name] and the UNTS Board of Regents as loss payees and Additional Insured's on General Liability and Business Automobile Liability. The Commercial General Liability, Business Automobile Liability, and Worker's Compensation policies shall include a waiver of subrogation in favor of Owner.
- 12.2.3 Insurance policies required under this Article shall contain a provision that the insurance company must give Owner written notice transmitted in writing: (a) thirty (30) calendar days before coverage is non-renewed by the insurance company and (b) within ten (10) business days after cancellation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after acceptance of the Services. If any insurance policy required under this Article is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager will give Owner prompt written notice upon actual or constructive knowledge of such condition.
- 12.2.4 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as Construction Manager.
- 12.2.5 Owner shall be entitled, upon request, and without expense, to receive copies of the policies, all endorsements thereto and documentation to support costs and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, exclusions and costs, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Any price credits determined in the insurance review will be refundable to Owner. Actual losses not covered by insurance as required by this Article shall be paid by the Contractor.

**ARTICLE 13
TERMINATION OF AGREEMENT**

- 13.1 With or without cause, Owner reserves and has the right to terminate this Agreement or to cancel, suspend or abandon execution of all or any Services in connection with this Agreement at any time upon written notice to Construction Manager. Construction Manager may terminate this Agreement upon seven days written notice to Owner only if Owner substantially fails to perform obligations under Article 8 of this Agreement or fails to timely pay Construction Manager as required under Article 10, and after adequate written notice is delivered to Owner and Owner has failed to take action within 30 (thirty) days in order to begin to correct the problem.
- 13.1.1 In the event of termination, cancellation, suspension, or abandonment that is not the fault of Construction Manager, Owner shall pay to Construction Manager as full payment for all services performed and all expenses incurred under this Agreement, the appropriate portion of sum due under Article 10 as shall have become payable because of the progress in the Work as the services actually rendered hereunder by Construction Manager bear to the total services necessary, plus any sum due Construction Manager for Additional Services described under Section 7.9 herein which were previously approved by Owner.
- 13.1.2 In ascertaining the services actually rendered hereunder up to the date of termination, cancellation, suspension, or abandonment of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete Drawings, and to other related documents, whether delivered to Owner or in possession of Construction Manager.
- 13.1.3 For any said sum paid under this Article, Construction Manager agrees to accept same in full settlement of all claims for services rendered under this Agreement.
- 13.2 If, upon payment of the amount required to be paid under this Article following the termination of this Agreement, Owner thereafter should determine to complete the original project or, substantially, the same project without major change in scope; Owner, for such purposes, shall have the right of utilization of any and all original tracings, Drawings, calculations, design analysis, Specifications, estimates, related data, and other documents including Construction Documents, prepared under this Agreement by Construction Manager who shall make them available to Owner upon request, with compensation to Construction Manager limited to actual reproduction costs. Owner agrees to credit Construction Manager with such authorship as may be due to him but is not required to renew this Agreement.
- 13.3 Upon request at the termination, cancellation, suspension, or abandonment of this Agreement, Construction Manager agrees to furnish to Owner copies of the latest documents prepared by Construction Manager for the Project.
- 13.4 A termination, cancellation, suspension, or abandonment under this Article shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Construction Manager. In the event of a termination under this Article, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement, with the substitute Construction Manager having all rights and privileges of the original Construction Manager of the Project.

**ARTICLE 14
MISCELLANEOUS**

- 14.1 The terms and conditions of this Agreement shall be binding upon the Parties, their partners, successors, permitted assigns, and legal representatives. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of Owner or a branch or agency of the State of Texas.
- 14.2 If Construction Manager transacts business as an individual, his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder; and Owner shall pay him or his estate the compensation payable under the Agreement for any services rendered prior to such termination. If Construction Manager is a firm comprised of more than one principal and any one of the members thereof dies or becomes incapacitated and the other members continue to render the services covered herein, Owner will make payments to those continuing as though there had been no such death or incapacity, and Owner will not be obliged to take any account of the person who died or became incapacitated or to make any payment to such person or his estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Construction Manager; and if death or incapacity befalls the last one of such group before this Agreement is fully performed, then the rights shall be as if there had been only one Construction Manager. In any event, notice of the death or incapacity of any principal shall be given to Owner by any surviving principal within a reasonable time.
- 14.3 Certifications
- 14.3.1 Pursuant to Texas Family Code, Section 231.006, Construction Manager certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 14.3.2 Pursuant to Texas Government Code, Section 2155.004, Construction Manager certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 14.3.3 If a corporate or limited liability company, Construction Manager certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Texas Tax Code, Chapter 171, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 14.3.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Construction Manager agrees that any payments owing to Construction Manager under this Agreement may be applied directly toward any debt or delinquency that Construction Manager owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 14.4 This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas and venue shall be as provided in Texas Education Code Section 105.151 for any legal proceeding pertaining to this Agreement.
- 14.5 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be

performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

14.6 Records of Construction Manager's costs, reimbursable expenses pertaining to the Project and payments shall be kept on a generally recognized accounting basis and shall be made available to Owner or its authorized representative during business hours for audit or other purposes as determined by Owner. Such records shall be maintained by Construction Manager and shall be available to Owner or his authorized representative for a period of at least three (3) years after the provision of Construction Manager's Services.

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

If to Owner:

Director of System Facilities Administration
University of North Texas System
1155 Union Circle #311040
Denton, Texas 76203-5017

If to Construction Manager:

[Contact Name]
[Firm Name]
[Street Address]
[City, State, Zip]

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

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

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

- 14.10 Financial records shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by Owner or Owner's authorized representative on reasonable notice.
- 14.11 Performance by Owner under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of North Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Construction Manager and Owner may terminate the Agreement in accordance with Article 13. Construction Manager acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 14.12 All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Construction Manager in the performance of services for Owner, which is not generally known to the public, shall be confidential and Construction Manager shall not, beginning on the date of first association or communication between Owner and Construction Manager and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Construction Manager's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Construction Manager shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Construction Manager as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Construction Manager shall obtain assurances similar to those contained in this subparagraph from persons, contractors, and subcontractors retained by Construction Manager. Construction Manager acknowledges and agrees that a breach by Construction Manager of the provisions hereof will cause Owner irreparable injury and damage. Construction Manager, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 14.13 Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Construction Manager shall make public information available to Owner in an electronic format.

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

OWNER:
UNIVERSITY OF NORTH TEXAS SYSTEM

CONSTRUCTION MANAGER:
[Firm Name]

By: _____
(signature)

By: _____
(signature)

[Authorized Signatory Name]
[Authorized Signatory Title]

(typed name and title)

Street/PO Box

City, State, ZIP

Telephone

State of TX Vendor ID Number

UNT | SYSTEM™

EXHIBIT A GUARANTEED MAXIMUM PRICE (GMP)

Project Name

We hereby submit to the Owner for the use and benefit of the Owner pursuant to the provisions of Article 6 of the Construction Manager-at-Risk Agreement by and between the Owner and [Firm Name], dated [Month Day, Year] (Agreement), a GMP for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. General Conditions (excluding insurances and bonds in no. 4)	[\$Amount]
2. Cost of Work	[\$Amount]
3. Construction Manager's Construction Phase Fee pursuant to the Agreement	[\$Amount]
4. Contractor Bonds/Insurance/Builders Risk/Liability	[\$Amount]
5. GMP TOTAL of 1, 2, 3 and 4 above.	[\$Amount]

This figure shall be the GMP, which we hereby guarantee to the Owner. The document prepared by [Firm Name] titled [Document Title] dated [Month Day, Year] is hereby incorporated by reference for all purposes and provides (*INSERT SECTION HEADINGS FROM GMP*). The Schedule of Values reflects how the Construction Manager anticipates bidding the project.

Construction Manager agrees to substantially complete all Work on the Project as specified in the Agreement and Contract Documents by [Day] day of [Month], [Year] (Substantial Completion), which shall be the total amount of time to substantially complete the Work.

Upon acceptance of the GMP by the Owner, the Owner will issue to the Construction Manager a Notice to Proceed for the Project.

Presented by:

Signature

Name

Title

Date

Accepted and Agreed by:

Signature
[Authorized Signatory Name]

Name
[Authorized Signatory Title]

Title

Date

PAYMENT BOND

Surety Bond No.

STATE OF TEXAS §
COUNTY OF §

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

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

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

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

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

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

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

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

CONSTRUCTION MANAGER-AT-RISK

(Firm Name)

(Address)

(Signature)

(City, State, Zip)

(Typed Name and Title)

(Telephone)

(Texas Vendor ID No.)

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)



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, including transportation and delivery, 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 transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 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 §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only 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, services, transportation and delivery will be subcontracted**. Note: In accordance with 34 TAC §20.11., 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, services, transportation and delivery. (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 <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **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, to include transportation and delivery 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, to include transportation and delivery 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, to include transportation and delivery.

SECTION-4: AFFIRMATION

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

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

Signature	Printed Name	Title	Date <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)

Rev. 09/15

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 <http://window.state.tx.us/procurement/prog/hub/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*, to continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B 3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and 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 your 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 <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- 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.

ISSUED DATE
April 15, 2016

DOCUMENT 006000

PROJECT FORMS

UNT | SYSTEM™

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

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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 made/to Subcontractors. (The PAR is available at the following link: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.)
- Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).

6.3 Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

ARTICLE 7.
BONDS

- 7.1 Construction Bonds. Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.
- 7.2 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to Owner, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.
- 7.2.1 Performance Bonds. A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. For Design-Build Projects the performance bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents. The form of the bond shall be approved by Owner. The performance bond shall be effective through Contractor's warranty period.
- 7.2.2 Payment Bonds. A Payment bond is required if the Contract Sum is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. For Design-Build Projects the payment bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents. The form of the bond shall be approved by Owner.
- 7.2.3 When Bonds Are Due. Payment and performance bonds are due before Contractor commences any Work.
- 7.2.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 7.3 Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD HARMLESS OWNER, AND ITS COMPONENT INSTITUTIONS, REGENTS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, FROM AND AGAINST ANY COSTS, LOSSES, OBLIGATIONS, OR LIABILITIES IT INCURS AS A RESULT.

- 7.3.1 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 7.3.2 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 7.4 Payment of Claims when Payment Bond is Not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code § 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, and actions necessary to release the lien and satisfaction of such claim.
- 7.5 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (FMS Circular 570). The Owner will consider acceptable any corporate surety which is qualified under this paragraph and which has a rating of at least B in Best's Insurance Reports – Property – Casualty.

ARTICLE 8.
INDEMNITY AND INSURANCE

- 8.1 **Indemnification of Owner.** Contractor covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS** Owner, and its component institutions, Regents, elected and appointed officials, directors, officers, employees, agents, representatives, and volunteers, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal or bodily injury, death, or property damage, made upon Owner directly or indirectly arising out of, resulting from, or related to Contractor's activities under the Contract, including any acts or omissions of Contractor, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Contractor, and their respective directors, officers, employees, agents, and representatives while in the exercise of performance of the rights or duties under the Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner or separate contractors in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS,**

WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 8.1.1 **No Third-Party Beneficiaries.** The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 8.1.2 **Notice.** Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.
- 8.2 **Insurance Requirements.** Design Professional shall carry insurance in the types and amounts indicated in the Contract for the duration of the Contract. Unless otherwise provide for in the Contract, Contractor shall carry insurance in the types and amounts indicated in these Uniform General Conditions for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Upon request, Owner and its agents shall be entitled to receive, without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
- 8.2.1 **Period of Coverage.** Contractor, consistent with its status as an independent contractor, shall provide and maintain all insurance coverages with the minimum amounts described below until the end of the warranty period unless expressly agreed otherwise. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 17.
- 8.2.2 **Certificates.** Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 8.2.3 **Failure to Provide Certificates.** Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 8.2.4 **Contractor's Liability.** The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 8.2.5 **Insurance Limits.** The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

8.2.6 Insurers. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

8.3 Insurance Coverage Required.

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

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

8.3.2 Commercial General Liability Insurance. Coverage including premises, operations, independent contractor's liability, products, and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage with a minimum limit of:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate
- \$5,000 Medical Expense each person;
- \$1,000,000 Personal Injury and Advertising Liability
- \$2,000,000 products and completed operations aggregate;
- \$50,000 Damage to Premises Rented by You; and
- Coverage shall be on an "occurrence" basis.
- The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.
- If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

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

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

- Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.
- Employer's liability limits for asbestos abatement will be:
 - \$500,000 each accident;
 - \$500,000 disease each employee; and
 - \$500,000 disease policy limit.

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

- Such insurance is to include coverage for loading and unloading hazards.
- Contractor, or any subcontractor of Contractor, responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include an MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

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

- This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.
- Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.
- For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary or Special Conditions for possible additional builder's risk insurance requirements.
- For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

- For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
- Builder’s risk insurance policy shall remain in effect until Substantial Completion.
- If this Contract is for asbestos abatement only, the foregoing All-Risk Builder’s Risk or All-Risk Installation Floater is not required.

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

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

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

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

- This insurance shall not be suspended, voided, canceled, materially changed, or non-renewed except after thirty (30) days, or ten (10) days for non-payment of premium, written notice has been given to Owner.
- It is agreed that Contractor’s insurance shall be deemed primary with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract with Owner.
- Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under the Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.
- A waiver of subrogation in favor of Owner shall be provided in all policies.

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

years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

ARTICLE 9.
CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD
DOCUMENTS

9.1 Drawings and Specifications.

9.1.1 Copies Furnished. Design Professional will furnish, free of charge, the number of complete sets of Drawings, Specifications, and addenda as provided in the Contract. Contractor will be furnished, free of charge, the number of complete sets of Drawings, Specifications, and addenda as provided in the Contract. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.

9.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by Design Professional shall be property of the Owner. These documents are not to be used by the Design Professional on any other project. Owner may use the Contract record set and electronic versions as needed for warranty operations or future renovations or additions without written approval of the Design Professional. All additional or confirmatory land survey field notes, sketches and related data, and additional or confirmatory soils engineering or investigations, samples, calculations, test results, and reports, for which Owner has paid for such direct services, shall be the sole property of Owner.

9.2 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.

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

9.4 Contractor's Duty to Review Contract Documents. In order to facilitate Contractor's responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, Contractor shall, prior to commencing the Work, examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor, and any visible or reasonably anticipated conditions at the Site affecting the Work.

This duty extends throughout the design phase and construction phase prior to commencing each particular work activity and/or system installation. Updated Coordination Documents shall be provided to the Owner and Design Professional monthly.

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

9.5.1 Design-Build Firm. It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm. When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.

9.5.2 Construction Manager-at-Risk Examination and Reporting. When performing as a Construction Manager-at-Risk, Contractor has no liability for discrepancies, errors, omissions, or inconsistencies unless Contractor fails to immediately report in writing a discovered or apparent discrepancy, error, omission, or inconsistency to OCM and Design Professional. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

9.5.3 Other Limitations. Unless Contractor is performing as a Design-Build Firm or a Construction Manager-at-Risk, Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect discrepancies, errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations.

9.6 No Warranty or Representation by Owner. Owner makes no representations, express or implied, about the adequacy or accuracy of the Drawings, Specifications, or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the Construction Documents are adequate, accurate, or suitable for their intended use.

9.7 Requirements for Record Documents.

9.7.1 Contractor shall:

9.7.1.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, Change Orders, and all Project correspondence and one record copy of approved Shop Drawings, Samples, and similar required submittals.

9.7.1.2 Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work, and show and

reference all changes made during construction. Provide Owner and Design Professional access to these documents.

- 9.7.1.3 Keep current and maintain the record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order, or otherwise. Make available all records prescribed herein for reference and examination by Owner and Design Professional, and their representatives and agents.
- 9.7.1.4 Be responsible for marking the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs. During construction, update the Record Documents, including all related RFI's, ASI's CCD's, and CO's, at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 9.7.1.5 Within thirty (30) days of Substantial Completion, Contractor shall furnish the Design Professional a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items, and as described in the Contract Documents. A complete set must be provided to the Design Professional within seven (7) calendar days of Final Completion.

9.7.2 Design Professional shall:

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

ARTICLE 10.
CONSTRUCTION SAFETY

- 10.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce, and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to OCM and Design Professional prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury, or loss and erect and maintain all necessary safeguards for such safety and protection.
- 10.2 Notices. Contractor shall provide notices as follows:
- 10.2.1 Utilities and Adjacent Properties. Notify owners of adjacent property, including those that own or operate utilities, utility services, and/or underground facilities, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 10.2.2 MSDS. Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 10.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury, or loss. Contractor shall:
- 10.3.1 On Call Response. Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 10.3.2 Notice.
- 10.3.2.1 Give OCM and Design Professional prompt notice of all such events.
- 10.3.2.2 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 10.3.3 Owner Remedy. Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 10.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify OCM and other parties as may be directed promptly, but

no later than twenty-four (24) hours after Contractor learns that an event required medical care. Contractor shall:

- 10.4.1 Documentation. Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
 - 10.4.2 Incident Report. Supply OCM and Design Professional with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide OCM with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 10.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify OCM immediately.
- 10.5.1 Subcontractors. Contractor shall bind all Subcontractors to the same duty.
 - 10.5.2 Owner. Upon receiving such notice, OCM will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, OCM will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
 - 10.5.2.1 Owner may hire third-party Contractors to perform any or all such steps.
 - 10.5.2.2 Should compliance with OCM's instructions result in an increase in Contractor's cost of performance or delay the Work, upon Contractor's submission of substantiated costs or an updated Work Progress Schedule and substantiated critical path analysis, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and issue a Change Order accordingly.
- 10.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to OCM prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

ARTICLE 11.
QUALITY CONTROL

11.1 **Materials & Workmanship.** Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

11.2 **Testing.**

11.2.1 **Owner.** Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents.

11.2.2 **Contractor shall provide the following testing:**

11.2.2.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

11.2.2.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

11.2.2.3 Preliminary, start-up, pre-functional, and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

11.2.2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

11.2.3 **Standards.** All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to OCM, Design Professional, and Contractor.

11.2.4 **Non-Compliance (Test Results).** Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

11.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.

11.2.4.2 Acceptance by Owner of the quality and nature of tests.

11.2.4.3 All tests taken in the presence of Design Professional and/or OCM, or their representatives.

- 11.2.4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
 - 11.2.4.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 11.2.4.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which OCM determines appropriate, including complete removal and replacement of noncompliant work or material.
- 11.2.5 Notice of Testing. Contractor shall give OCM and Design Professional timely notice of its readiness and the date arranged so OCM and Design Professional may observe such inspection, testing, or approval.
- 11.2.6 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with the Work Progress Schedule to avoid delay.
- 11.2.7 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by OCM, uncover and recover the work at Contractor's expense.

11.3 Submittals.

- 11.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by Design Professional and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
- 11.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to OCM and Design Professional, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by Design Professional and Owner. The list shall include Shop Drawings, manufacturer literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
 - 11.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from Design Professional and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and

procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) days duration after receipt by Design Professional and OCM for review and approval. If re-submittal required, allow a minimum of an additional *seven (7)* days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

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

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

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

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

11.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 11.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 11.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. Design Professional's and OCM's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

11.3.5 No Substitutions without Approval. OCM and Design Professional may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, OCM and Design Professional will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by OCM and Design Professional when:

11.3.5.1 The Contract Documents do not require extensive revisions; and

11.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of Design Professional and do not result in an increase in cost to Owner; and

11.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:

- Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
- The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
- The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
- The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
- The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and OCM can approve the requested substitution;
- Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;

- Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
- The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

11.3.6 Unauthorized Substitutions at Contractor's Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

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

11.4.1 Minimum. As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.

11.4.2 No Incorporation Unless Approved. Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to OCM. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.

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

11.5 Inspection During Construction. Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner or Design Professional and their agents. Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and Design Professional and their agents an opportunity to perform an inspection of the Work.

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

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

Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

ARTICLE 12.
CONSTRUCTION SCHEDULES

- 12.1 **Contract Time.** **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within 30 calendar days after Substantial Completion, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.
- 12.2 **Notice to Proceed.** Owner will issue a Notice to Proceed which shall state the dates for commencing Work and for achieving Substantial Completion of the Work.
- 12.3 **Work Progress Schedule.** Refer to Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit to OCM and Design Professional its initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed. The Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents, and acceptance of all Work. When acceptable to Owner, the initially accepted Work Progress Schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

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

12.3.1 **Schedule Requirements.** Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for completion of all Work. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

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

12.3.1.2 Submittal of a schedule, schedule revision, or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.

12.3.2 Work Progress Schedule Updates.

12.3.2.1 Contractor shall update the Work Progress Schedule and the Submittal Register monthly, at a minimum, to reflect progress to date and current plans for completing the Work, while maintaining the original schedule as the Baseline Schedule, and shall submit electronic and paper copies of the update to Design Professional and OCM as directed but at a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule.

12.3.2.2 Contractor should revise the Work Progress Schedule as necessary or appropriate for the management of the Work. All updated Work Progress Schedules must show the anticipated date of completion and reflect all extensions of time granted through Change Order as of the date of the update.

12.3.2.3 Contractor shall identify all proposed changes to schedule logic to Owner and to Design Professional via an executive summary accompanying the updated Work Progress Schedule for review and approval prior to implementation of any revisions to the Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to OCM.

12.3.3 Use of Work Progress Schedules. The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the Work Progress Schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning and completing the Work.

12.3.3.1 Owner's acceptance of a Work Progress Schedule, and any update or revision, constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the Work Progress Schedule.

12.3.3.2 Owner's acceptance of the Work Progress Schedule, or update or revision, does not indicate any approval of Contractor's proposed sequences and duration.

12.3.3.3 Owner's acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to so do.

12.3.3.4 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the

only method of modifying the Substantial Completion Date(s) and Contract Time.

12.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party. Before Contractor uses any portion of the float, Contractor must submit a written request to Owner and receive Owner's written authorization to use the portion of float. Owner's approval will not unreasonably be withheld.

12.5 Completion of Work. Contractor is responsible and accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

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

12.5.1.1 An increase in working forces.

12.5.1.2 An increase in equipment or tools.

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

12.5.1.4 Expedited delivery of materials.

12.5.1.5 Other action proposed if acceptable to Owner.

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

12.5.3 Owner's Notice Not Acceleration. Owner's notice to Contractor shall not be considered acceleration by Owner and Owner shall not be responsible for any increased costs incurred by Contractor.

12.6 Modification of the Contract Time. Delays and extensions of Contract Time are valid only if properly noticed and documented by Change Order.

12.6.1 Extension Request. When a delay is a Weather Day or an Excusable Delay, and such delay prevents Contractor from completing the Work within the Contract Time, Contractor may

be granted an extension of Contract Time. Owner will extend Contract Time by the number of days lost due to Weather Days or Excusable Delay, as measured by a substantiated critical path analysis of the Work Progress Schedule; provided, however, in no event will an extension of Contract Time be granted for delays that merely extend the duration of non-critical activities, or concurrent delay or which only consume float. All extensions of Contract Time will be granted in calendar days.

12.6.2 Weather Day. A “Weather Day” is a day on which Contractor’s current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. When a Weather Day prevents work at the site from proceeding, Contractor shall: (a) immediately notify OCM for confirmation of the conditions; and (b) at the end of each calendar month, submit to OCM and Design Professional a list of Weather Days occurring in that month along with documentation of the impact on critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension granted will be issued by Weather Change Order. If Contractor and Owner cannot agree on the Contract Time extension, Owner may issue a CCD for fair and reasonable time extension.

12.6.3 Excusable Delay. An “Excusable Delay” is a delay to Contractor’s current schedule caused by circumstances listed below that prevents Contractor from completing the Work within the Contract Time. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension will be issued by Change Order. Excusable Delay may be caused by the following:

12.6.3.1 Discrepancies, errors, omissions, and inconsistencies in design, which Design Professional corrects by means of changes in the Drawings and Specifications; provided, however, that this does not apply if (a) Contractor is a Design-Build Firm, or (b) Contractor is a Construction Manager-at-Risk and failed to promptly report a discovered or apparent discrepancy, error, omission, or inconsistency during the pre-construction phase.

12.6.3.2 Unanticipated physical conditions at the Site, which Design Professional corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

12.6.3.3 Changes in the Work that delay activities identified in Contractor’s Work Progress Schedule as “critical” to completion of the entire Work, if such changes are directed by ODR or recommended by Design Professional and directed by ODR.

12.6.3.4 Suspension of Work for unexpected natural events, civil unrest, strikes or other events which are not within the reasonable control of Contractor.

12.6.3.5 Suspension of Work for convenience of Owner, which prevents Contractor from completing the Work within the Contract Time.

- 12.7 No Damages for Weather Days. An extension of Contract Time shall be the sole remedy of Contractor for delays in performance of the Work due to Weather Days, and Contractor shall not be entitled to any compensation or recovery of any direct or indirect costs or damages.
- 12.8 Costs for Excusable Delay. In the event that Contractor incurs additional direct costs because of an Excusable Delay (other than described in Subsection 12.6.3.4) within the reasonable control of Owner, in addition to an extension of Contract Time the Contract Sum will be equitably adjusted by Owner pursuant to the provisions of Article 14.
- 12.9 No Damages for Other Delay. Except for direct costs for Excusable Delay as provided above, Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act other than the sole intentional interference of Owner that continues after notice, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, direct and indirect costs, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.
- 12.10 Concurrent Delay. Notwithstanding anything herein to the contrary, when the completion of the Work is simultaneously delayed by a Weather Day or an Excusable Delay and a delay arising from a cause not designated as excusable, Contractor will not be entitled to an extension of Contract Time for the period of concurrent delay.
- 12.11 Time Extension Requests for Changes to the Work or Excusable Delay. Extensions to Contract Time requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. If Contractor believes that the completion of the Work is delayed by Excusable Delay, Contractor shall give OCM written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the Excusable Delay. Contractor shall provide sufficient written evidence to document the Excusable Delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time should be made in numbers of whole or half days.
- 12.11.1 Content of Request. Within ten (10) days after the cessation of the Excusable Delay, Contractor shall formalize in writing its request for extension of Contract Time to include substantiation of the excusable nature of the delay and a complete analysis of impact to critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension granted will be issued by Change Order.

- 12.11.2 No Release. No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 12.11.3 Critical Path Analysis. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on completion of the Work and Contract Time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 12.11.3.1 The nature of the delay and its cause due to a change in the Work or an Excusable Delay and the basis of Contractor's claim of entitlement to an extension of Contract Time.
 - 12.11.3.2 Documentation of the actual impacts of the claimed delay on the critical path in Contractor's Work Progress Schedule, and any concurrent delays.
 - 12.11.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 12.11.4 Owner Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
- 12.11.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
 - 12.11.4.2 Owner will respond to each properly submitted Time Extension Request within a reasonable time following receipt. If Owner does not have enough information to make a determination or cannot reasonably make a determination within forty-five (45) days, Owner will notify Contractor in writing. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to an extension of Contract Time in the amount requested.
- 12.12 Failure to Complete Work in the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT**. Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in Section 12.13 below or elsewhere in the Contract Documents.
- 12.13 Liquidated Damages. Unless otherwise stated in the Contract, for each consecutive calendar day beyond the Contract Time that Substantial Completion of the Work is not achieved, Contractor shall pay Owner, within ten (10) days following written demand, an amount determined by the following schedule:

<u>Project Cost</u>		<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 Such additional documentation as Owner may require in the Contract Documents; and

13.2.1.5 Construction payment affidavit.

- 13.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, Design Professional and OCM will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, OCM and Design Professional may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by Design Professional and/or OCM, and must attach all additional documentation required by OCM and/or Design Professional, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work, and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.
- 13.2.3 Certification by Design Professional. Within five (5) days or earlier following Design Professional's receipt of Contractor's formal Application for Payment, Design Professional will review the Application for Payment for completeness, and forward it to OCM. Design Professional will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 13.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by OCM of: (a) a complete Application for Payment certified by Design Professional; and (b) Contractor's updated Work Progress Schedule.
- 13.3.1 Retainage. Owner will withhold from each progress payment, as retainage, whichever is more of the following three options: (a) five (5) percent of the total earned amount; (b) the amount authorized by law; or (c) as otherwise set forth in the Contract Documents. Retainage will be managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
- 13.3.1.1 Contractor shall provide written consent of its surety and concurrence of Design Professional for any request for reduction or release of retainage.
- 13.3.1.2 At least sixty-five percent (65%) of the Contract, or such other discrete Work phase as set forth in Subsection 15.1.8 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release, and only if permissible by law.
- 13.3.1.3 Contractor shall not withhold retainage from its Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.

13.3.2 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:

13.3.2.1 Defective or incomplete Work not remedied;

13.3.2.2 Damage to Work of a separate Contractor;

13.3.2.3 Failure to maintain scheduled progress;

13.3.2.4 Reasonable evidence that the Work will not be completed within the Contract Time;

13.3.2.5 Persistent failure to carry out the Work in accordance with the Contract Documents;

13.3.2.6 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;

13.3.2.7 Assessment of fines for violations of prevailing wage rate law; or

13.3.2.8 Failure to include the appropriate amount of retainage for that periodic progress payment.

13.3.3 Title.

13.3.3.1 Title to all material and Work covered by progress payments transfers to Owner upon payment.

13.3.3.2 Transfer of title to Owner does not: (a) relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance; (b) diminish the responsibility of Contractor and its Subcontractors to restore any damaged Work; or (c) waive the right of Owner to require the fulfillment of all the terms of the Contract.

13.3.4 Contracts with No Payment Bond. For a Contract in any amount less than \$25,000.00, payment will be made in one lump sum at the Final Completion of the Work, including Punchlist items and change orders.

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

13.3.6 Documentation.

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

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

13.3.6.3 Provide copies of bills of lading, invoices, delivery receipts, or other evidence of the location and value of such materials in requesting payment for materials. For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

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

ARTICLE 14. **CHANGES**

14.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and Design Professional, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 14.9 or other contract provisions.

14.1.1 Owner Ordered Changes. Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or CCD, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Work, an adjustment to Contract Sum or Contract Time shall be made and authorized by a Change Order.

14.1.2 Corrections. It is recognized by the parties hereto and agreed by them that the Drawings and Specifications may not be complete or free from discrepancies, errors, omissions, or inconsistencies, or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any discrepancies, errors, omissions, or inconsistencies in such Drawings and Specifications, or any changes in or additions to Drawings and Specifications or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such discrepancies, errors, omissions, or inconsistencies shall not constitute or give rise to

any claim, demand, or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Contractor will be entitled to the time or sum stated to be due Contractor in any Change Order approved and signed by all parties, which shall constitute full compensation to Contractor for all costs, expenses, and damages to Contractor.

14.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as agreed to by the parties and incorporated into a Change Order.

14.3 Claims for Additional Costs.

14.3.1 Claim with no Requested Change. If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, Contractor shall give Owner and Design Professional written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Section 10.3. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 18. Any change in the Contract Sum resulting from such claim must be authorized by a Change Order.

14.3.2 Miscellaneous Claims. If Contractor claims that additional cost is involved because of, but not limited to: (1) any written interpretation of the Contract Documents; (2) any order by Owner to stop the Work pursuant to Article 17 where Contractor was not at fault; or (3) any written order for a minor change in the Work issued pursuant to Section 14.4, Contractor shall make such claim as provided in Section 14.3.1.

14.3.3 Failure to Notify. Should Contractor fail to call to the attention of Owner and Design Professional to discrepancies, errors, omissions, or inconsistencies in the Contract Documents, but claim additional costs for corrective Work after Contract award or after Owner's acceptance of Contractor's Construction Manager-at-Risk guaranteed maximum price, Owner may assume intent to circumvent competitive bidding for the necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a CCD to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies, errors, omissions, or inconsistencies will not be considered by Owner.

14.4 Minor Changes. Design Professional, with concurrence of OCM, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.

- 14.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, OCM and Design Professional shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, Design Professional, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as deemed necessary to conform to the different conditions. Any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order.
- 14.6 Extension of Time. All changes to the Contract Time made as a consequence of requests as required under Section 12.6, must be documented by Change Order.
- 14.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 14.7.1 Procedures.
- 14.7.1.1 Procedures for administration of Change Orders shall be established by Owner and stated in the Contract Documents.
- 14.7.1.2 No oral order, oral statement, or oral direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 14.7.2 Routine Changes. Routine changes shall be formally initiated by Design Professional or Owner by means of a Proposal Request form detailing requirements of the proposed change for pricing by Contractor, or may be initiated by Contractor by means of a Change Order Request form detailing proposed work, pricing, and time. This action may be preceded by communications between Contractor, Design Professional, and OCM concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by Design Professional and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 14.7.3 Documentation. All proposed costs or time for Change Order Work must be supported by itemized accounting of material, equipment, and associated itemized installation costs in sufficient detail following the outline and organization of the established Schedule of

Values, and be supported by documented impact to critical path activities, to permit analysis by Design Professional and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

- 14.7.4 Emergencies. Emergency changes to save life or property may be initiated by Contractor alone with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 14.7.5 Coordination with Schedule of Values. The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to Owner.
- 14.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor includes in a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
- 14.8.1 Self-Performance. For Work performed by its forces, Contractor will be allowed its actual costs for materials, the total amount of wages paid for labor, plus the total cost of state and federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor.
- 14.8.2 Overhead and Profit. For contracts not based on a Guaranteed Maximum Price (GMP), Contractor will be allowed to include a percentage not to exceed five percent (5%) of the total Change Order amount. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
- 14.8.3 GMP Limitation. For Contracts based on a GMP, the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up or additional fee on any Change Order Work unless the Change Order increases the GMP. If the GMP increases, the Construction Manager-at-Risk or Design Builder will allowed additional fee at the rate specified in the Contract. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
- 14.8.4 Net Amount. On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 14.9 Construction Change Directive (CCD). Owner may issue a written CCD directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Sum and/or the Contract Time. Owner retains sole discretion whether or not to issue any CCD. Owner's issuance of a CCD does not require Owner to issue subsequent CO's. Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a CCD. Contractor shall not submit its costs for CCD Work with its Application for

Payment until a CO has been issued. The Parties reserve their rights as to the disputed amount, subject to Article 18.

ARTICLE 15.
PROJECT COMPLETION AND ACCEPTANCE

15.1 Closing Inspections.

15.1.1 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items, or the failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship, does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.

15.1.2 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.

15.1.5 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify OCM in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

15.1.5.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

15.1.5.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, Design Professional, OCM, Contractor, and other Owner representatives as determined by Owner will jointly attend the

Substantial Completion inspection, which shall be conducted by OCM or Owner's representative. If Owner and Design Professional determines that the Work is Substantially Complete, Design Professional will issue a Certificate of Substantial Completion to be signed by Design Professional, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security and maintenance. Design Professional will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

15.1.6 Final Inspection. Contractor shall correct or complete all items on the final Punchlist before requesting a Final Completion inspection and Final Payment. Unless otherwise agreed to in writing by the parties, Contractor shall complete this work within thirty (30) days of receiving the final Punchlist. Upon completion of the final Punchlist, Contractor shall notify Design Professional and OCM in writing stating the disposition of each final Punchlist item. Design Professional, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents Design Professional will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.

15.1.7 Additional Inspections.

15.1.7.1 If Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion inspection, Owner or Design Professional will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to Owner. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection. Owner's or Design Professional's failure to include items as causes of rejection does not constitute a waiver of Owner's right under the Contract or relieve Contractor of its responsibility for performance.

15.1.7.2 If Owner's inspection team determines that the Work is not complete at the Final Completion inspection, Owner or Design Professional will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to Owner. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection. Owner's or Design Professional's failure to include items as causes of rejection does not constitute a waiver of Owner's

right under the Contract or relieve Contractor of its responsibility for performance.

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

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

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

15.3 Acceptance and Payment.

15.3.1 Request for Final Payment. Following the certified completion of all Work, including all final Punchlist items, cleanup, and the delivery of Record Documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to Design Professional and OCM for review and approval.

15.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all Close-Out Documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents, and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified

materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work, and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid after payment from Owner, or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

- 15.3.3 Design Professional Approval. Design Professional will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, Design Professional will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note approval, and send to Owner.
- 15.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a CCD as may be applicable.
- 15.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 15.3.6 Effect of Final Payment. Final Payment shall not constitute a waiver of claims by Owner relating to the condition of the Work including those arising from:
 - 15.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 15.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 15.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 15.3.6.4 Claims arising from personal injury or property damage to third parties.

- 15.3.7 Waiver of Claims. Acceptance of final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 15.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

ARTICLE 16.
WARRANTY AND GUARANTEE

- 16.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation, or lack thereof, by Owner, Design Professional, or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.
- 16.1.1 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, the warranty period for that particular Work begins on the date of Substantial Completion of that phase, or as otherwise stipulated on the Certificate of Substantial Completion for that particular Work.
- 16.1.2 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 16.1.2.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
- 16.1.2.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 16.1.3 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of defective Work that is not in

accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- 16.1.3.1 Observations, or lack thereof, by Owner and/or Design Professional;
- 16.1.3.2 Recommendation to pay any progress or final payment by Design Professional;
- 16.1.3.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- 16.1.3.4 Use or occupancy of the Project or any part thereof by Owner;
- 16.1.3.5 Any acceptance by Owner or any failure to do so;
- 16.1.3.6 Any review by Owner of a Shop Drawing or sample submittal; or
- 16.1.3.7 Any inspection, test or approval by others.

16.2 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor and Contractor shall assume any duty to repair not otherwise covered by those warranty agreements. Owner will certify the date of service commencement in the Substantial Completion certificate.

16.2.1 Assumption. In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems, and equipment.

16.2.2 Assignment. Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

16.3 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.

16.4 Certification of No Asbestos Containing Materials or Work. Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract

responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

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

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

ARTICLE 17.

SUSPENSION AND TERMINATION

- 17.1 **Suspension of Work for Cause.** Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness, or longevity of the Work when completed.
- 17.1.1 **Cease Work.** Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified.
- 17.1.2 **Investigation.** As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings. Contractor shall cooperate with Owner's investigation.
- 17.1.3 **Outcome.** If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of Contract Time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension shall be considered an Excusable Delay and an extension of Contract Time will be granted through a Change Order.
- 17.1.4 **Time.** Suspension of Work under this provision will be no longer than is reasonably necessary to investigate and remedy the conditions giving rise to the suspension.
- 17.2 **Suspension of Work for Owner's Convenience.** Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. When such a suspension prevents Contractor from completing the Work within the Contract Time, it shall be considered an Excusable Delay. A notice of suspension for

convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

17.3 Termination by Owner for Cause.

17.3.1 Cause. Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

17.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;

17.3.1.2 Persistent disregard of laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, including Owner;

17.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the Contract Time;

17.3.1.4 Failure to remedy defective work;

17.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;

17.3.1.6 Persistent endangerment to the safety of labor or of the Work;

17.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance pursuant to the Contract;

17.3.1.8 Any material breach of the Contract; or

17.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

17.3.2 No Waiver. Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

17.3.3 Notice. Owner may immediately terminate the Contract under the provisions of this Section 17.3 upon written notice to Contractor and Contractor's sureties. Owner may also give notice to Contractor and Contractor's sureties of Owner's intent to terminate the Contract under the provisions of this Section 17.3 at any later date upon written notice to Contractor and its sureties.

17.3.4 Cure. Should Contractor or its surety, after having received notice of Owner's intent to terminate at a later date, demonstrate to the satisfaction of Owner that Contractor or its

surety are proceeding to correct such default with diligence and promptness, upon which the notice of intent to terminate was based, the notice of intent to terminate may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of Contract Time.

17.3.5 Failure to Cure. Should Contractor or its surety fail, after having received notice of Owner's intent to terminate, to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within the date specified by Owner, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

17.3.5.1 This amount includes the cost of additional Owner costs such as Design Professional services, other consultants, and contract administration.

17.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.

17.3.5.3 This obligation for payment survives the termination of the Contract.

17.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. Owner will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.

17.3.6 Conversion to Termination for Convenience. In the event that any termination of the Contract for cause under this Section 17.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience of Owner and Contractor's recovery for termination shall be strictly limited to the payments allowable under Subsection 17.4.3.

17.4 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:

17.4.1 Notice. Owner will immediately notify Contractor and Design Professional in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage, or decommissioning of incomplete Work or systems, and for safety.

17.4.2 Contractor Action. Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

17.4.2.1 Stop all work.

- 17.4.2.2 Place no further subcontracts or orders for materials or services.
- 17.4.2.3 Terminate all subcontracts for convenience.
- 17.4.2.4 Cancel all materials and equipment orders as applicable.
- 17.4.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.

17.4.3 Contractor Remedy. When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work completed including the corresponding pro rata portion of Contractor's overhead and profit. Contractor may not claim lost profits on other work or lost business opportunities.

17.5 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work completed including the corresponding pro rata portion of Contractor's overhead and profit, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.

17.6 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor as final payment.

ARTICLE 18.

DISPUTE RESOLUTION

18.1 Contracts Less Than \$250,000. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by Contractor or Design Professional to attempt to resolve any claim for breach of Contract made by Contractor or Design Professional that is not resolved under procedures described throughout the Uniform General Conditions or any Supplementary or Special Conditions of the Contract, *where the amount in controversy is less than \$250,000.*

18.2 Contracts \$250,000 or Greater. Contractor or Design Professional and Owner shall use the following dispute resolution process prior to initiating any litigation or filing suit in a court of competent jurisdiction.

- 18.2.1 **Mediation.** If a dispute arises out of or relates to the Contract or the breach thereof in which the amount in controversy is \$250,000 or greater, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute by mediation using the procedures specified in this section prior to the commencement of any legal action. The parties commit to participate in the proceedings in good faith with the intention of resolving the dispute if at all possible.
- 18.2.1.1 The party seeking to initiate mediation of a dispute shall give written notice to the other party describing the nature of the dispute, the initiating party's claim for relief and identifying one or more individuals with authority to settle the dispute on such party's behalf. The party receiving such notice shall have five (5) business days to designate by written notice one or more individuals with authority to settle the dispute on such party's behalf.
- 18.2.1.2 The parties shall then have ten (10) business days to submit to each other a written list of acceptable qualified mediators not affiliated with any of the parties. The mediator shall possess the qualifications required under Civil Practice and Remedies Code, § 154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable. The parties shall mutually agree on the mediator.
- 18.2.1.3 In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than (45) days after selection of the mediator.
- 18.2.1.4 The parties agree to participate in the mediation to its conclusion. The mediation shall be terminated (i) by the execution of a settlement agreement by the parties, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a party to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. Even if the mediation is terminated without a resolution of the dispute, the parties agree not to terminate negotiations and not to commence any legal action or seek other remedies prior to the expiration of five (5) days following the mediation. Notwithstanding the foregoing, any party may commence litigation within such five (5) day period if litigation could be barred by an applicable statute of limitations or in order to request an injunction to prevent irreparable harm.
- 18.2.1.5 The parties shall share the cost of the mediation process equally although each party's attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

- 18.2.1.6 The entire mediation process is confidential, and no stenographic, visual or audio record shall be made. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any party, their agents, employees, representatives or other invitees and by the mediator are confidential and shall, in addition and where appropriate, be deemed to be privileged and shall not be discoverable or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties.
- 18.3 Owner Retained Rights. Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 18.4 No Waiver. Except as may be expressly and specifically provided otherwise by Chapter 114, Texas Civil Practice & Remedies Code, nothing herein shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or the University of North Texas System.
- 18.5 No Attorney's Fees. In any litigation between Owner and Contractor or Design Professional arising from the Contract or Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless of which is deemed the prevailing party.
- 18.6 Interest. Pre-judgment and post-judgment interest shall be limited to the rate of one and a half percent (1.5%) per annum.

ARTICLE 19.
MISCELLANEOUS

- 19.1 Right to Audit. Owner, or any of its duly authorized auditors or representatives, shall during regular business hours and upon reasonable notice have access to and the right to examine, and be permitted to audit and copy, any directly pertinent books, documents, papers, and records of Contractor, including, without limitation, complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's quotes, proposals, purchase order, vouchers, memoranda, schedules, electronic data, pictures, videos, logs, minutes, notes, reports and other data relating to the Project. Further, Contractor or Design Professional agree to include in all subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such Subcontractor relating to any claim arising from the Contract and subcontract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein shall continue until the later of three years after Final Payment or final disposition of any disputes, claims, litigation, or appeals arising out of the Contract.
- 19.2 Supplementary or Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover

necessary and additional contractual relationships, the Contract may include Supplementary General or Special Conditions as described below:

- 19.2.1 Supplementary Conditions. Supplementary Conditions may describe the standard procedures and requirements of contract administration. Supplementary Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary Conditions are of such a character that it is to be anticipated that Owner may normally use the same, or similar, conditions to supplement each of its several projects.
- 19.2.2 Special Conditions. Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 19.3 Federally Funded Projects. On federally funded projects, Owner may waive, suspend, or modify any provision in these Uniform General Conditions which conflicts with any federal statute, rule, regulation, or procedure, where such waiver, suspension, or modification is essential to receipt by Owner of such federal funds for the Project. In the case of any Project wholly financed by federal funds, any standards required by the enabling federal statute, or any federal rules, regulations, or procedures adopted pursuant thereto, shall be controlling.
- 19.4 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers, or payment requests and processing, amendment, Change Orders, and other administrative activities.
- 19.4.1 Accessibility and Administration.
- 19.4.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 19.4.1.2 Owner shall administer the software.
- 19.4.2 Training. When used, Owner shall provide training to the Project team members.
- 19.5 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.
- 19.6 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.

- 19.7 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.
- 19.8 Governing Law and Venue. This Contract shall be governed by the laws of the State of Texas. Venue for any suit arising from the Contract will be in a court of competent jurisdiction subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code, or if mandatory venue is not applicable in the county in which the Project is located.
- 19.9 Captions and Catch Lines. The captions and catch lines used throughout the Uniform General Conditions and elsewhere in the Contract Documents are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.
- 19.10 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.
- 19.11 No Third-Party Beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.
- 19.12 Child Support Obligor. Notwithstanding anything to the contrary within the Contract Documents, it is understood and agreed between the parties that in accordance with the laws of the State of Texas, a child support obligor who is more than thirty (30) days delinquent in paying child support, and a business entity in which an obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%), is not eligible to receive payments from state funds under a contract to provide property, materials or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement.
- 19.13 No Assignment. This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to do business with the State of Texas.
- 19.14 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as if the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.
- 19.15 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.

- 19.16 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.