

Request for Qualifications

UNTHSC CENTER FOR BIOHEALTH LEVEL 1 RENOVATION

RFQ763-20-141268ER

DOCUMENT 001100
RFQ763-20-141268ER

NOTICE TO DESIGN PROFESSIONALS

The University of North Texas System (UNTS) subsequently referred to as the Owner on behalf of the University of North Texas Health Science Center (UNTHSC), requests firm's qualifications for Professional Services for Design Services for renovation of space on the 1st floor of the Center for BioHealth Building (CBH) for an Imaging Research Suite, located at 3500 Camp Bowie Blvd., Fort Worth, Texas. UNTS intends to select a firm as a result of the RFQ. In order to assist with project, the firm's submittal to the RFQ will be the basis of determining the qualifications to perform the professional services.

Sealed qualifications for **RFQ763-20-141268ER** will be received by the UNTS at the Business Service Center (BSC), Woodhill Square, 1112 Dallas Drive, Suite 4000, Denton, Texas 76205. A campus map can be found online at <http://maps.unt.edu/?code=WHS>. Parking for Woodhill Square is campus parking and permits are required. There is guest parking at the door to Suite 4000 and only those spaces can be utilized for submitting the bid. Respondents are responsible for all parking costs and for complying with parking regulations. Failure to comply with parking regulations may result in citation and possible impound of vehicle.

The Qualifications will be received up to 2:00p.m. CST on **November 14, 2019**. Responses received after the date and hour above stated will not receive consideration.

Project Description

This project is for the renovation of 11,027 square feet of the first floor of the Center for BioHealth Building for use as an Alzheimer's Imaging Research Suite that will feature two (2) 3T Magnetic Resonance Imaging (MRI) suites and two (2) Positron Emission Tomography-Computed Tomography (PET/CT) suites. The PET/CT suite will include a radioactive isotopes laboratory for this research. The space is currently occupied by a tenant that will be relocating as well as UNTHSC office space.

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 October 31, 2019. All questions and answers will be posted to the website by 5:00p.m. CST on November 4, 2019.

The Owner may in its sole discretion respond in writing to questions concerning this RFQ. Only the Owner's responses made by formal written Addendum to this Request for Qualifications shall be binding and shall be posted on the UNT System website located at <http://www.untsystem.edu/hr-it-business-services/procurement/purchasing/bid-opportunities>. Oral or other written interpretations or clarifications shall be without legal effect.

Online - Bidders can view bid documents at Electronic State Business Daily (<http://www.txsmartbuy.com/sp>) or at the UNT System website www.untsystem.edu/bids.

Historically Underutilized Business (HUB)

It is the policy of the Owner to promote and encourage contracting and subcontracting opportunities for HUB in all contracts. The firm will be required to provide a HUB Subcontracting Plan (HSP) for the intended subcontracting opportunities for this project.

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

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

END OF SECTION

**DOCUMENT 002400
RFQ763-20-141268ER
SCOPE FOR QUALIFICATIONS**

The University of North Texas System (UNTS) subsequently referred to as the Owner and on behalf of the University of North Texas Health Science Center (UNTHSC) requests firms' qualifications for Professional Services for Design Services for a renovation of the first floor of the Center for BioHealth Building (CBH) located at 3500 Camp Bowie Blvd, Fort Worth, Texas. The selected firm will be highly qualified with proven experience in design of functional academic medical facilities. It is currently anticipated that the project will be delivered via construction manager-at-risk method.

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

Project Description

This project is for the renovation of 11,027 square feet of the first floor of the Center of BioHealth Building for use as an Alzheimer's Imaging Research Suite that will feature two (2) 3T Magnetic Resonance Imaging (MRI) suites and two (2) Positron Emission Tomography-Computed Tomography (PET/CT) suites. The PET/CT suite will include a radioactive isotopes laboratory for this research. .

A feasibility study was recently completed in September 2019 of the six-story Center for BioHealth (CBH) and is included for information.

- A. Project Design – Deliverables will include (but are not limited to) schematic design, design development, construction documents and specifications for complete full design for construction. Services include but are not limited to mechanical, electrical, plumbing, fire protection, architectural, structural, fire alarm and civil engineering, ongoing assistance during construction and commissioning by reviewing submittals, responding to RFI's, reviewing Change Orders, and Record Drawings. In addition, the firm's design services must include preparation of detailed construction cost estimates at schematic design, design development, and 60% construction documents for Owner's review. Successful firm shall provide signed and sealed design documents based on existing building and feasibility assessment provided by owner representatives as well as field investigation and verification, best design practices, and all current codes and standards. It is imperative that the firm monitor the design during the various stages of the project so the Owner's construction budget is not exceeded.

The successful firm will be required to work with a Construction Manager at Risk (CMAR) to complete design documents within budget.

The design is anticipated to begin in **January 2020**. Projected construction to begin no later than **March 1, 2020** with substantial completion by **June 2020**.

- A. Contractor/Subcontractor Bidding – The selected firm is to attend all contractor pre-proposal meetings and provide any additional documentation required by the contractor during the bidding and selection of the subcontractor trades.
- B. Construction Administration – The selected firm will provide a full array of construction administration services for each phase of the project. These services will include (but are not limited to) submittal and shop drawing approvals, construction and post construction documentation, issuance of architectural supplemental instructions (ASI), compilation and completion of punch lists, all close-out documentation including record drawings, and participation in all construction meetings.
- C. Construction Budget – Firm is expected to provide estimating services and will be expected to work with selected contractor during pricing portion of design to establish scope of work that is within the construction budget. Total Project budget is \$5,400,000.00.

- D. Project Schedule – Please include in the response a proposed schedule for the design and construction phases of the project. Projected construction substantial completion by **June 2020** and project completion by July 2020.

Submission Requirements

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

1. Firm Data

- A. General Qualifications
- B. Name and Address(es) of each key sub-consultant firm proposed for the team
- C. Firm profile, i.e.:
 - i. Age
 - ii. Type of firm (partnership, professional corporation, etc.)
 - iii. Firm history
 - iv. Firm size (professionals by discipline), current and one year ago
 - v. Areas of specialty/concentration

2. Description of the Team:

Responses should include all key team members and sub-consultants for Design and Construction Administration services. Please designate in your response team members and sub-consultant's role and duration during the project.

- A. Identification of the single point of contact for the team to include name, email address, and phone number**
- B. Identification of key personnel to be assigned to the project.
- C. Availability and commitment to undertake the project for each key team member. This includes the amount of time committed to the project.
- D. Organizational chart illustrating reporting lines, responsibilities, names, and titles for key participants proposed by the firm and each of its key sub-consultants.
- E. Resumes for each key individual on the team and identification of that person's role. List any education, registrations that may be relevant to this project.

Relevant Experience and Capabilities

1. Relevant experience and capabilities will be assessed through a review of both completed and ongoing projects; however, information desired is on completed projects similar in scope, size, and complexity. Provide detailed data for no more than five (5) projects on which the firm and team members have been involved in providing services specifically related to renovation of space for imaging systems equipment which best illustrate current experience and capabilities relevant to this project. For each project, please provide the following information:
- A. Project name and location
 - B. Brief project description, including:

- i. Size and scope
 - ii. Firm's role in project
 - iii. Key firm strengths exhibited by project and relevant to this Project
 - C. Owner's name, address, contact person, email address, and telephone number
 - D. Identification of proposed personnel involved in the submitted project, along with explanations of their role in that project(s).
 - E. No more than five (5) color photographs (or renderings) per project:
 - i. Images should not be selected to facilitate evaluation of design
 - ii. Images need not be submitted for every project for which data is provided, but project data must be provided for all project images included.
 - F. Schedule Data (any unusual events or occurrences that affected the schedule should be explained)
 - i. Design phase (construction documents) complete date
 - ii. Construction substantial completion date
 - G. Construction Cost Data
 - i. Pre-construction (60% construction documents) construction budget
 - ii. Actual construction budget at substantial completion
 - H. Method of Construction Procurement Utilized
2. For no more than five (5) other projects relevant to the project scope and for each member of the Design Team, provide a list of project names, project sizes, project dates, and owner contact information which further illustrates experience and capabilities relevant to this project.
3. Approach:
 - A. Most pertinent consideration in designing the project – State briefly what the firm believes to be the most pertinent consideration(s) and challenge(s) that must be addressed in the program of a project of this type. Sketches, diagrams, analyses, or other tools that will help illustrate the team's points may be included.
 - B. Most pertinent consideration in designing the project – State briefly what the firm believes to be the most pertinent consideration(s) and challenge(s) that must be addressed in the design and construction of a project of this type. Sketches, diagrams, analyses, or other tools that will help illustrate the team's points may be included.
 - C. Unique qualifications – State why the firm believes the team is qualified to address the core issues that the firm finds to be relevant to this project.
 - D. Proposed methods of team organization and communication with the various project user groups to ensure quality – Discuss how the firm would coordinate development of design solutions, to the production of contract documents, and then to construction administration. Be specific with regard to internal and external communications, drawing quality control, construction cost estimating capabilities, proposed construction specification system, approach to construction administration, and responsible individuals including their location (e.g., on-site or specific office). Also, discuss the firm's demonstrated approach to full engagement in the construction administration process and full participation in all project meetings.

- E. Schedule – show a schedule which results in occupancy of the facility. Develop the schedule with each phase of work to include:
- i. Evaluation/Analysis of Existing Conditions
 - ii. Schematic Design
 - iii. Design Development
 - iv. Construction Drawings (60% and 100%)
 - v. Construction Administration including punch list preparation and verification of completion (keeping in mind full building occupancy during construction)
 - vi. Substantial Completion
 - vii. Owner Occupancy
 - viii. Final Completion
 - ix. Record Documents
- F. Show/discuss how the design team will provide continuity throughout the project in regards to personnel so that design intent and information retention is maintained.

Historically Underutilized Businesses (HUB)

HUB Subcontracting Plans (HSP) will be required with your response. The HSP must cover Design and Construction Administration activities and associated sub-consultants.

The HSP must be sent in the same clearly marked, sealed envelope separate from the RFQ response. The envelope must be labeled “**HUB Subcontracting Plan for RFQ763-20-141268ER**”. The envelope for the RFQ response must be labeled “**RFQ763-20-141268ER Response**”. Both envelopes and electronic media must be mailed or hand delivered in the same package.

Plan for participation of Historically Underutilized Businesses (HUB):

1. It is the policy of the Owner to promote and encourage contracting and subcontracting opportunities for HUB in all contracts. A HUB Subcontracting Plan (HSP) must be submitted with this proposal as specified in “3” below.
2. The Owner has determined subcontracting opportunities are possible and have identified the following areas:
 - Mechanical Engineering, Electrical Engineering, Plumbing Engineering, Structural Engineering, Construction Cost Estimating, Code Consultation, Civil Engineering, Architectural, Fire Alarm & Protection
3. Subcontracted work, whether identified by the Owner or not, is required to be identified in the HSP. Please complete the attached HSP for all subcontracting opportunities to be utilized in the project. Failure to complete the HSP correctly will disqualify the firm’s RFQ response.

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

Firms are encouraged to contact Greg Obar at 940-369-5647 or email hub@untsystem.edu with questions regarding completing the HSP. Additional information can also be found at the Texas Comptroller for Public Accounts website at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

Contract

A contract for Professional Services is included herein. Contract modifications are not expected and will not be considered or accepted by Owner. Responding firms should carefully review this agreement prior to submitting qualifications.

The planned project delivery method is Construction Manager at Risk.

Selection Process/Description of Process

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

1. A pre-solicitation meeting will be held at 2:00p.m. (CDT) on the date and time listed in Selection Schedule to answer any questions the potential firms may have before completing their response. There will be a site visit conducted immediately following the pre-solicitation meeting. Only a portion of the space will be available to view. The pre-proposal meeting will be held at:

UNT Health Science Center Campus
Center for BioHealth Building, Room 240
3500 Camp Bowie Boulevard
Fort Worth, Texas 76107

Note that for those attending the pre-solicitation meeting, parking will be in Lot 6 on Clifton Street, by the Carl E. Everett Education & Administration (EAD) Building, parking map attached.

2. Qualifications are due on or before **2:00p.m. (CST) on November 14, 2019**. Responses must be limited to no more than twenty (20) pages. Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Cover letter will not count as part of the twenty (20) pages as long as the cover letter does not include information on how the work will be performed. All documents should be printed one-sided and submitted in 8 1/2" X 11" page size, portrait style. Proposals received that are late or exceed the number of pages listed above will not be accepted. Provide two (2) copies of the submittal in the form of: one (1) in paper format, loose bound and one (1) electronic format on a virus free CD ROM or flash drive. Both formats must contain the exact same information. Missing information from either format may result in the Owner's rejection of the response. Overnight carrier or personal delivery to:

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

Email or faxed responses will not be accepted.

The HSP is due on or before **November 14, 2019 at 2:00p.m. (CST)**. The HSP must be in a clearly marked envelope, separate from your RFQ response as previously outlined in the HUB section.

3. The Owner may conduct formal interviews.
4. The top-ranked firms will be notified on or about the date listed in Selection Schedule.
5. The Owner expects to reach a contractual agreement with the top-rated firm shortly after notification and will expect the design work to begin immediately thereafter. All documents related to this project shall be and become the property of the Owner.

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

Selection Schedule Summary

The schedule for selection is as follows:

RFQ posted on the Electronic State Business Daily	10/17/2019
Pre-Solicitation Meeting	10/23/2019 @ 2:00p.m.
Qualifications received no later than	11/14/2019 @ 2:00p.m.
HSP received no later than	11/14/2019 @ 2:00p.m.
Notify short listed firms, if Owner elects to interview-on or about	12/3/2019
Interview short-listed firms, if Owner elects to interview-on or about	12/9/2019
Notify top-ranked firm, on or about	December 2019
Approve Contract/Issue Notice to Proceed on or about	January 2020

The Owner may choose not to conduct interviews. The selected firm will be notified by the Owner that they are top ranked and contract negotiations will begin.

Additional information and amendments may be posted on <http://www.untsystem.edu/bids>.

Evaluation Criteria

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

1. Relevant successful experience will be evaluated on the basis of the experience of those key individual(s) named to the project team. Demonstrated successful experience in:
 - a. Design and Construction Administration of other projects of similar character to this project, which best meets the intent of these criteria.
2. Firm performance and quality of past and current projects as included in response, including demonstrated success in delivering projects with aggressive schedule or implementation of phasing requirements utilizing construction manager at risk construction delivery method.
3. Current capabilities will be evaluated on the basis of the experience and capacity (current workload and availability) of the individuals assigned to the team for:
 - a. Design and Construction Administration
4. Project Management Procedures and the planning process will be evaluated based on the information presented in this RFQ. In addition, the quality assurance process, construction administration approach, specific project approach (work plan/schedule), and technical support capabilities will be reviewed.
5. The firm's ability to monitor construction cost estimates during the design process to ensure UNT's construction budget is not exceeded.
6. Quality and responsiveness of the RFQ submittal – if applicable, the interview.
7. Local representation will be evaluated on the ability to respond quickly to issues during the duration of the project.

Questions

Please address your questions concerning this RFQ to:

Elaine Robbins – Construction Solicitation Coordinator
University of North Texas System
Office of Facilities Planning & Construction

Please submit solicitation questions to:

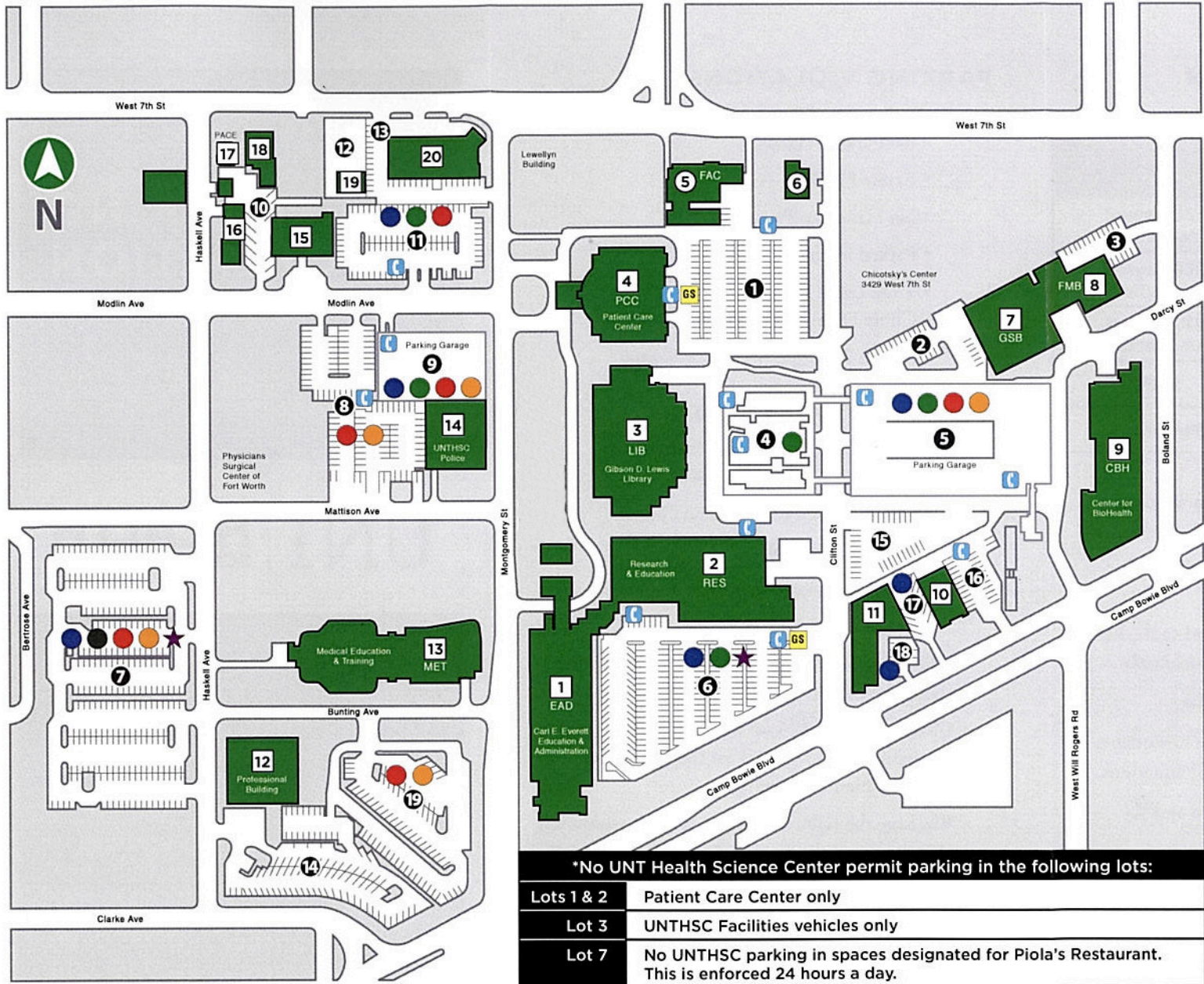
Elaine.robbs@untsystem.edu

All questions must be received no later than October 31, 2019, at 2:00p.m. CDT. All questions and answers will be posted to the website by 5:00p.m. CST, November 4, 2019.

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

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

END OF SECTION



1. Carl E. Everett Education & Administration
3500 Camp Bowie Blvd
2. Research & Education
1055 Montgomery St
3. Gibson D. Lewis Library
955 Montgomery St
4. Patient Care Center
855 Montgomery St
5. Founder's Activity Center
3515 W. 7th St
6. Geriatric Annex
3501 W. 7th St
7. General Services
3420 Darcy St
8. Facilities Management
3416 Darcy St
9. Center for BioHealth
3400 Camp Bowie Blvd
10. Office of Healthcare Quality & Risk Management
3430 Camp Bowie Blvd
11. Office of Strategy & Measurement
3440 Camp Bowie Blvd
12. Professional Building
1051 Hasckell Ave
13. Medical Education & Training
1000 Montgomery St
14. UNTHSC Police
3600 Mattison Ave
15. Ellis Child Development Center
3620 Modlin Ave
16. Internal Medicine/Center for Sleep Medicine
3632 Modlin Ave
17. Professional and Continuing Education (PACE)
3633 W. 7th St
18. Storage/Ground Shop
3629 W. 7th St
19. St. Emillion French Restaurant
3617 W. 7th St
20. Professional Offices
3603, 3605, 3607, 3609 W. 7th St
802 Montgomery St

***No UNT Health Science Center permit parking in the following lots:**

Lots 1 & 2	Patient Care Center only
Lot 3	UNTHSC Facilities vehicles only
Lot 7	No UNTHSC parking in spaces designated for Piola's Restaurant. This is enforced 24 hours a day.
Lot 10	Center for Sleep Medicine and Ellis Child Development Center only
Lot 12	St. Emillion only
Lot 13	Professional Offices and St. Emillion only
Lot 14	Professional Building only
Lot 15	Dialysis Center only
Lot 16	Radiology Associates only

B Buildings

P Parking

PARKING KEY

- ★ Visitor
- Reserved
- Faculty
- Employee
- Student
- GS Parking Attendant Guard Shack
- ☎ Emergency Phone Location

University of North Texas - Health Science Center BioHealth Research Imaging Suite

Final Feasibility Study
09.24.2019



24 September 2019

This is a **CONFIDENTIAL** Project.

No information to be shared outside of the team without UNT HSC's written permission.

Feasibility Study for the University of North Texas
Health Science Center - Center for BioHealth
Imaging Research Suite
Fort Worth, Texas

Feasibility Study

Executive Summary

Michael Franks
University of North Texas - Health Science Center
3500 Camp Bowie Boulevard
CBH Imaging Research Suite
Fort Worth, Texas 76107

RE: CBH - Imaging Research Suite Feasibility Center

Dear Mr. Franks,

This Feasibility Study is a review by the Gensler Team of the six-story Center for BioHealth (CBH) on the University of North Texas, Health Science Center (UNT HSC) in Fort Worth, Texas. The team has specifically reviewed the First Floor area of 11,027 square feet of the CBH building for the use as an Alzheimer's Imaging Research Suite for Dr. Sid O'Bryant, that will feature two, 3T Magnetic Resonance Imaging (MRI) suites and two Positron Emission Tomography – Computed Tomography (PET/CT) suites. The PET/CT will include a radioactive isotopes laboratory for this research.

The Gensler teams' findings of the existing first floor of the CBH building included architectural and interior design environments; the structural system; the mechanical, electrical, plumbing and fire protection systems; as well as, the vibration attributes of the existing built spaces for the for the use of the MRI and PET/CT medical equipment in the suite. The team has evaluated the space using the three equipment manufacturers UNT HSC shared with the team. The three manufacturers are: GE, Phillips, and Siemens. Please refer to Section 7 for manufacturers' information.

The team is using a combination of the most stringent requirements of the three equipment manufacturers that the UNT HSC team is considering. Our evaluation for the purpose of this study, the existing space is totally demolished and rebuilt for the specific purpose of this Research Imaging Suite Feasibility Study.

Architectural and interior design Findings:

The space is first floor of the CBH Building is suitable for a Research Imaging Suite. The existing space layout is desirable for the loading of the MRI and PET/CT equipment. Understanding that the floor structure will need to be reinforced. See Section 5d. And the floor to floor height of 16'-9" is ample for the infrastructure needed for the proposed equipment. The geometry of the space and square footage appears to be able to house the program of requirements developed, see Section 4 Test Fits.

UNT HSC also asked the team to consider the option of phased construction. Phasing the construction will impact the use of imaging magnet in the existing suite, as well as Phase I of the Research Imaging Suite when Phase II is constructed. The layout of the phased plan also adds operational challenges for the Research team.

The existing structural system of the CBH given the MRI and PET/CT equipment loads and vibration requirements additional structure will require to stiffen the slabs and carry the equipment loads. The new structure will be steel and concrete with steel rebar to minimize the magnetic material to allow world class research to be conducted in this suite.

The existing mechanical, electrical, plumbing and fire protection systems have been reviewed. All existing systems are considered to be removed, demolished and new for the purposes of this study.

The mechanical system will be designed for the equipment and operational loading which includes dedicated air cooled chillers for the equipment rooms. As well as, a quench exhaust system to the exterior for the MRIs.

The electrical system will be upgraded to include the additional electrical loads of the equipment. As well as an in-floor conduit system from the magnet to the control room the MRIs. The specific requirements, including the need and generator load, will be reviewed once UNT HSC selects the final equipment manufacturer.

The fire protection system in the space will be replaced and, in the MRI, and PET/CT Suite will require a pre-action system designed in copper pipe and coordinated with the selected equipment manufacturer.

The Gensler Team's findings represent general understandings of the space for use with any of the three equipment Manufacturers. UNT HSC selection of the specific equipment manufacturer will allow specific loads to be developed.

The schedule for this project was shared by UNT HSC to be moved in and operational by July of 2020. This represents a significant opportunity for the UNT HSC Team and the Team of consultants and contractor to work together to find an optimal solution. Currently the UNT HSC teams' selection of the specific equipment manufacturer, position on phased construction, and consultant contract timing are on the critical schedule path for this project.

Sincerely,

Gensler
Michael B. Ufer AIA, LEED AP

CC:
Team

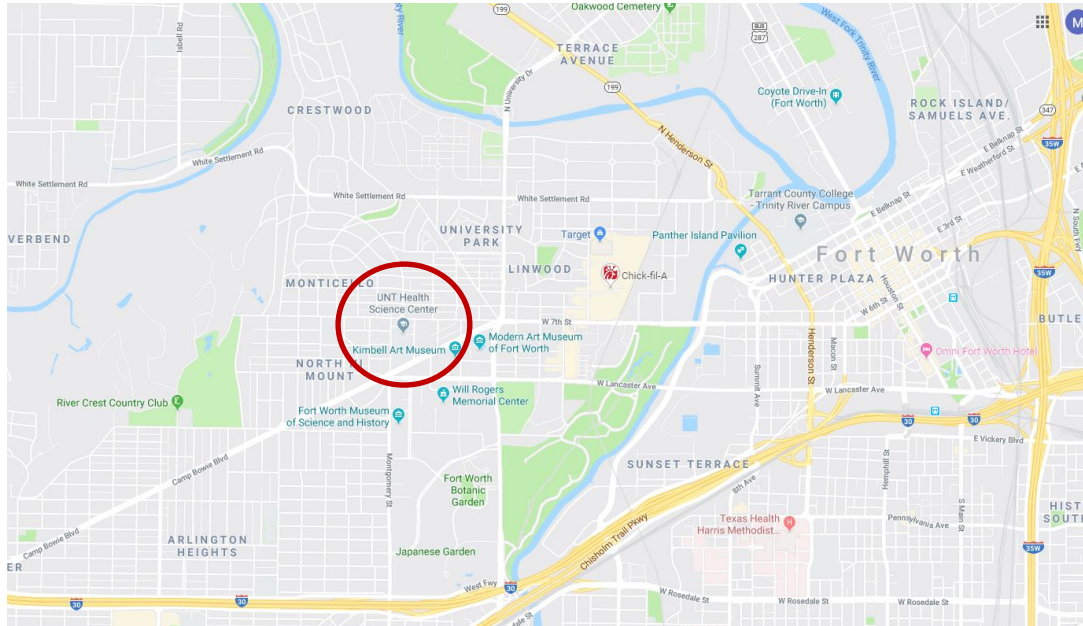
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Executive Summary

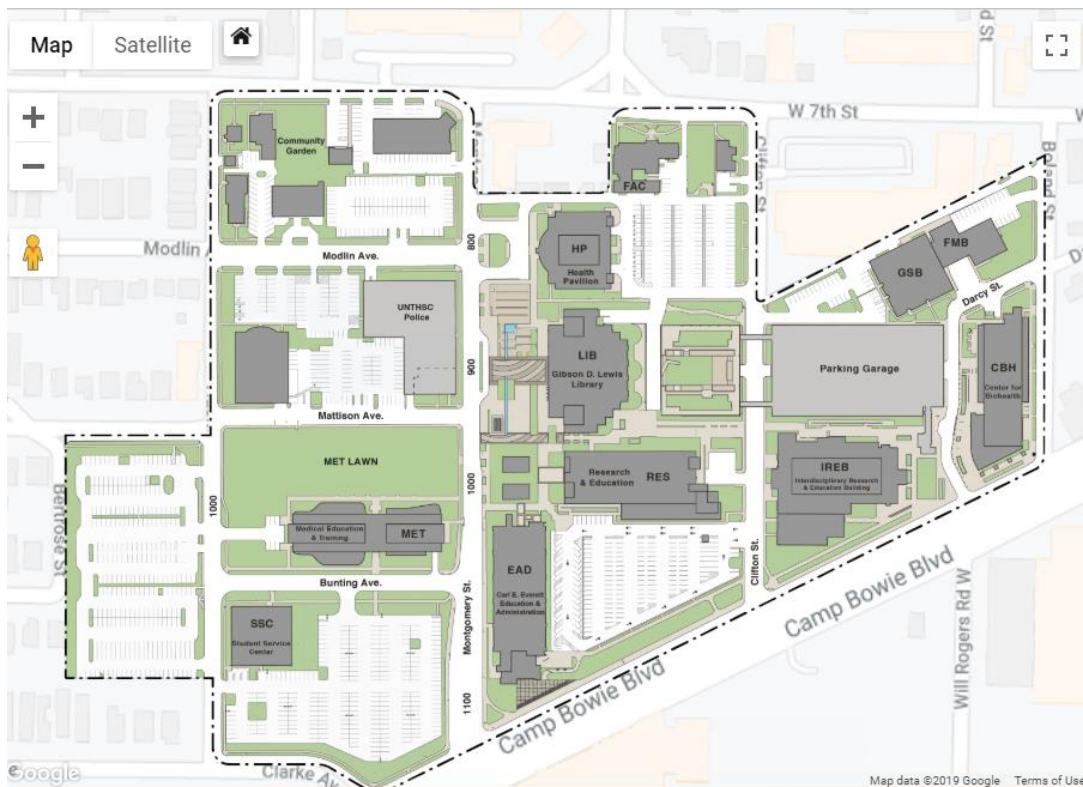
1. **Project Team**
2. **Understandings and Existing Conditions**
 - a. Existing Drawings
3. **Program of Requirements**
4. **Test Fits**
 - a. Option 1 - Full Floor Adjacency Diagram
 - b. Option 1 - Full Floor
 - c. Option 2 - Phased Floor
 - d. Manufacturers, by Manufacturers
 - GE
 - Phillips
 - Siemens
5. **Narratives, Charts, and Calculations**
 - a. Architectural
 - Design Vision and Participant Journey
 - b. Project Kick-off + Visioning Session
 - c. Interiors Environments
 - Finishes and Feel
 - d. Structural
 - e. MEP / FP
 - f. Vibration
6. **Schedule**
 - a. Feasibility Study
 - b. Full Schedule
 - c. Equipment Manufacturers Timeline
7. **Manufacture's Specifications (cut sheets and test findings)**
 - MRI and PET Equipment Cut Sheets
 - a. GE
 - b. Phillips
 - c. Siemens

2. Understandings and Existing Conditions

Location



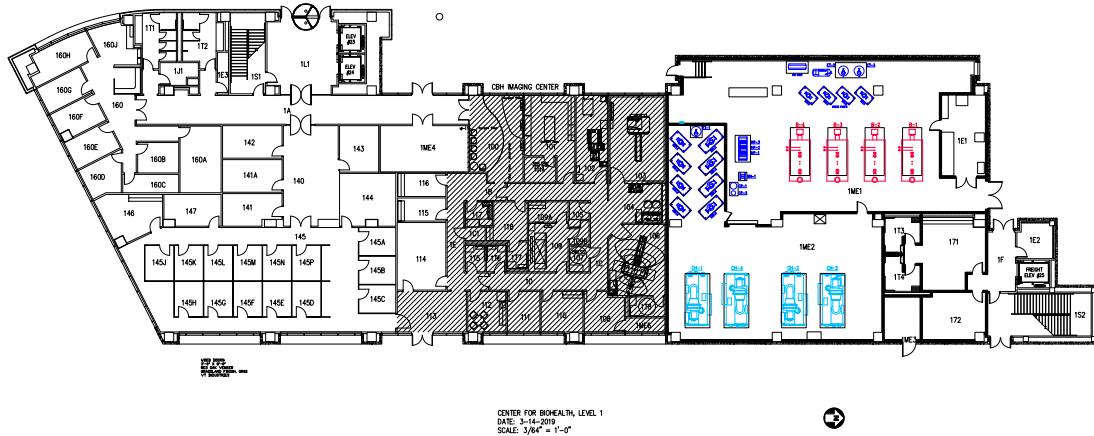
City of Fort Worth, Texas



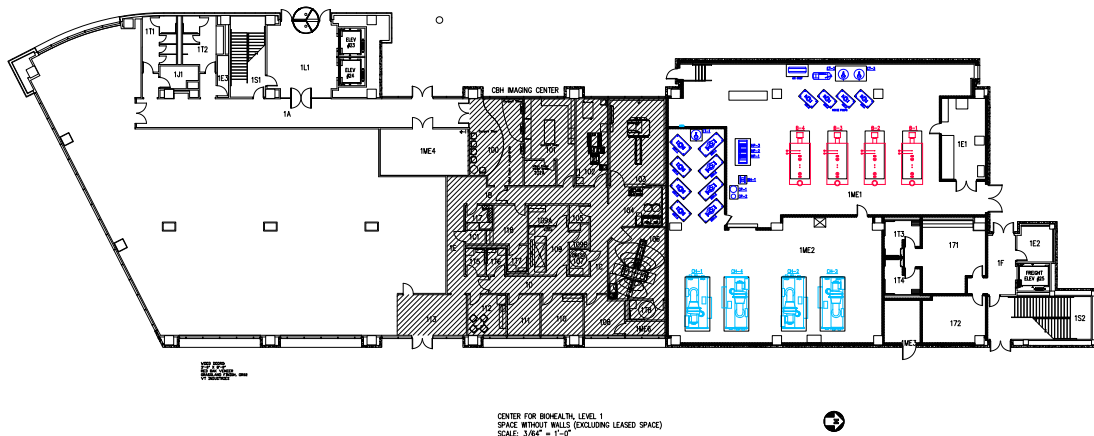
UNT Health Science Center Campus Map
 UNT Health Science Center - Center for BioHealth (CHB)

This Feasibility Study is for the first floor of the UNT Health Science Center – Center for BioHealth. The first floor is currently occupied by two users, The UNT HSC administration offices to the south, and Envision Health an imaging center. The remainder of the first floor

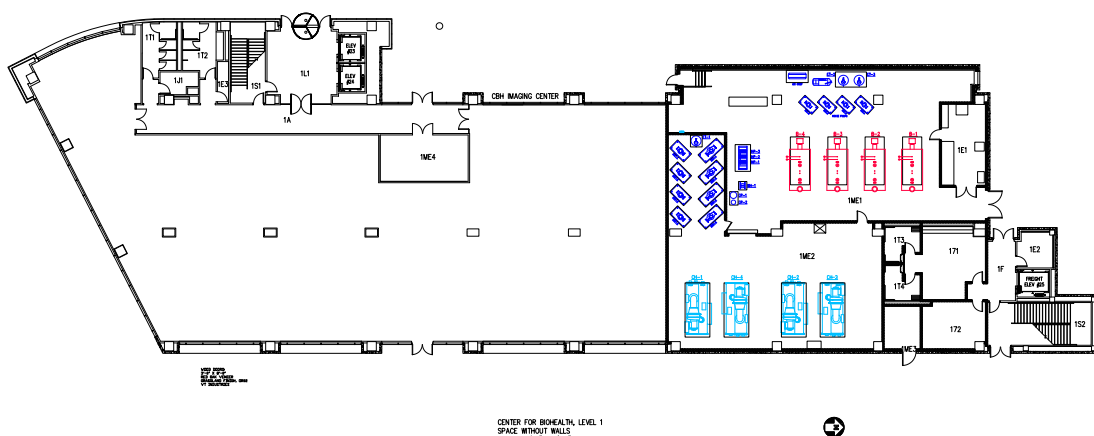
is a mechanical area and service entrance. The new UNT HSC Research Imaging Suite will occupy both occupied spaces for a total of 11,027 square feet.



UNT HSC - CBH – Existing Occupied First Floor



UNT HSC - CBH – Potential Phasing for the First Floor



UNT HSC - CBH –First Floor

Existing Conditions



3. Program of Requirements

The below program of requirements was developed in a meeting with Dr. O'Bryant and his team on 15 August 2019.

Overview of project spaces:



CBH Building Program for Requirements
12 August 2019 v2 15 August 2019



DIAGNOSTIC IMAGING FUNCTIONAL ELEMENT

FUNCTIONAL ELEMENT	QTY	UNIT SF	PROPOSED	
			TOTAL SF	COMMENTS
PUBLIC SPACES				
Main Participant Waiting	15	20	300	15 waiting seats plus circulation
Sub Participant Waiting	24	20	480	3 areas, 8 waiting seats
Nourishment Center	1	20	20	
Public Toilets	2	60	120	Mens and Womens, potentially use existing toilets
Wheelchair storage	1	40	40	
Reception Desk	1	65	65	1 front desk staff.
Consult Room	2	110	220	An area for consul-tation
SUBTOTAL			1245	

UNT HSC expressed a desire for operations scheduling management system to optimize the use and efficiency of the suite. UNT to direct the Gensler Team.

PARTICIPANT SPACES

Changing area lockers + subwait	3	220	660	Separate Male and Female, Keyed lockers with override master key
Changing Room	2	35	70	
Changing room ADA	2	60	120	
Changing room toilet	2	60	120	
Pre Procedure Patient Care Area / Observation space	2	80	160	Min, 80 SF. 2'8" min clear at each side and at foot. Tracer ECG, vitals labs in other HSC
Patient toilet	2	60	120	unisex
Nourishment counter	2	40	80	Counter separate from the handwashing sink, workcounter, storage.
Patient injection room (PET)	3	100	300	A sheiled room with dedicated toilet to accommodate radioactive waste. Handwash station, recliner chair. Configured to minimize patient movement. Light and audio for use. Positive distraction desired.
Patient cooldown room (PET)	1	100	100	A sheiled room with dedicated toilet to accommodate radioactive waste. Handwash station, recliner chair. Configured to minimize patient movement.
Hot Toilet (PET)	2	70	140	Both ADA - Mens and Womens

SUBTOTAL			1870
UNT Stated that the space must be participant experienced based.			
DIAGNOSTIC IMAGING TREATMENT ROOMS			
PET/CT	2	400	800
PET/CT Equipment room	2	80	160
PET/CT Control room	2	80	160
MRI - 3.0	2	550	1100 4' on each side of the table.
MRI Control Room	2	160	320
MRI Equipment room	2	180	360
MRI Vestibule	2	80	160 Handwash sink
SUBTOTAL			3060
CLINICAL SUPPORT			
Nurse Station	2	70	140 Designed to provide visual observation of all patient care stations. In view to injection rooms and sub-waiting areas.
Documentation / Team touchdown	6	65	390
Private Office	2	110	220
Medical records storage	1	110	110 if not on EMR
Reading Room	1	110	110
Emergency Equip Alcove	1	40	40 Alcove for emergency equipment cart.
Hand washing station	3	10	30 At nurses station
Medication Prep room	1	120	120 Workcounter, hand-washing station, lockable ref, locked storage for controlled drugs, sharps containers.
Hot Lab	1	110	110 Sink, Counter, Storage to accommodate preparation of contrast media.
Clean supply room	1	80	80 A clean workroom or clean supply room shall be provided.
Soiled workroom	1	80	80 A soiled workroom or soiled holding room shall be provided.
Hot soiled holding	1	80	80 A contaminated soiled holding are shall be provided and operationally integrated to minimize incidental exposure to ionizing radiation by persons providing environ. Svcs in the PET suite. Near back door for service through secure vestibule.
Equipment Storage room	1	120	120 General
Stretcher/Wheelchair Storage	1	80	80 Space for storage of stretchers and wheelchairs shall be provided out of the direct line of traffic.



CBH Building Program for Requirements
12 August 2019 v2 15 August 2019

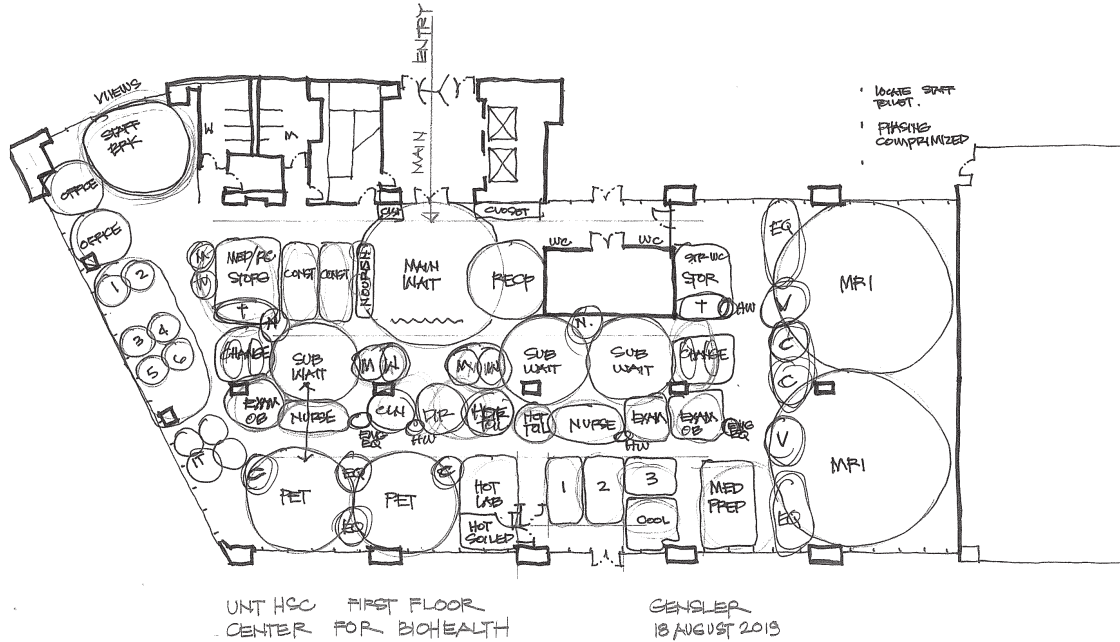


Environmental Services Closet	1	60	60
Imaging IT Closet	1	80	80
			size and need to be confirmed, could be in HSC
SUBTOTAL			1850
Staff Support			
Staff toilet	2	60	120
Staff Breakroom	1	150	150
Changing room	0	60	0
			User expressed desire for dedicated staff lounge.
SUBTOTAL			270
			8295
SUITE GROSSING FACTOR			1.50
TOTAL AREA, GSF			12443
			Note only 11,073 available

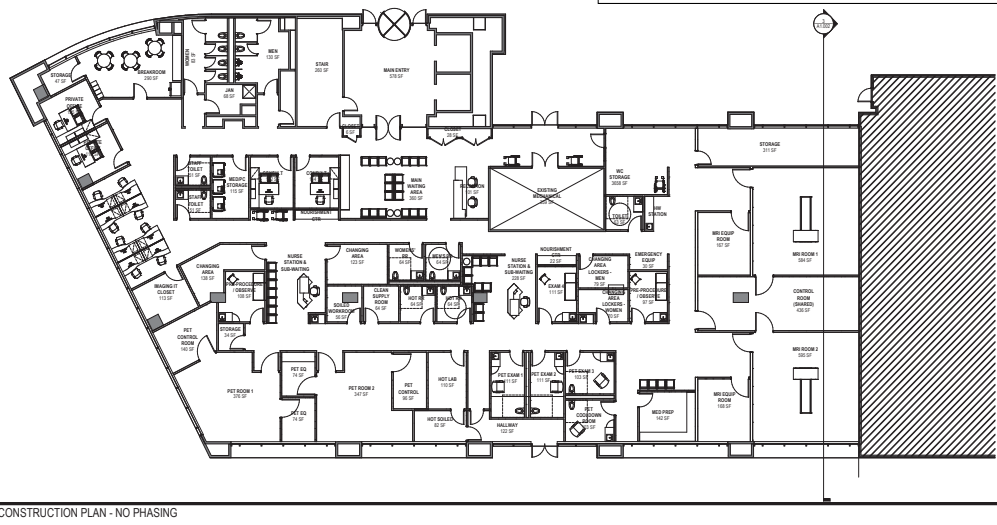
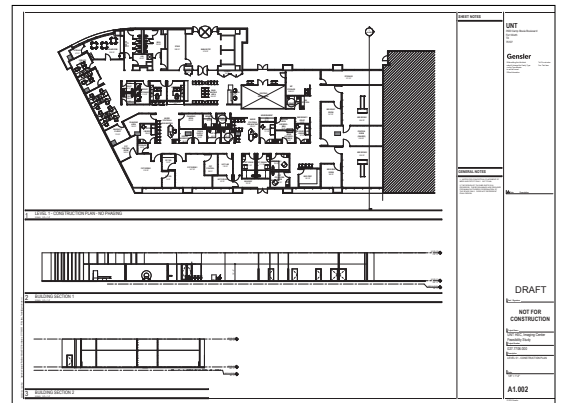
4. Test Fits

The following design diagrams and floor plan test fits are done using the 15 August 2019 program of requirements developed with the user.

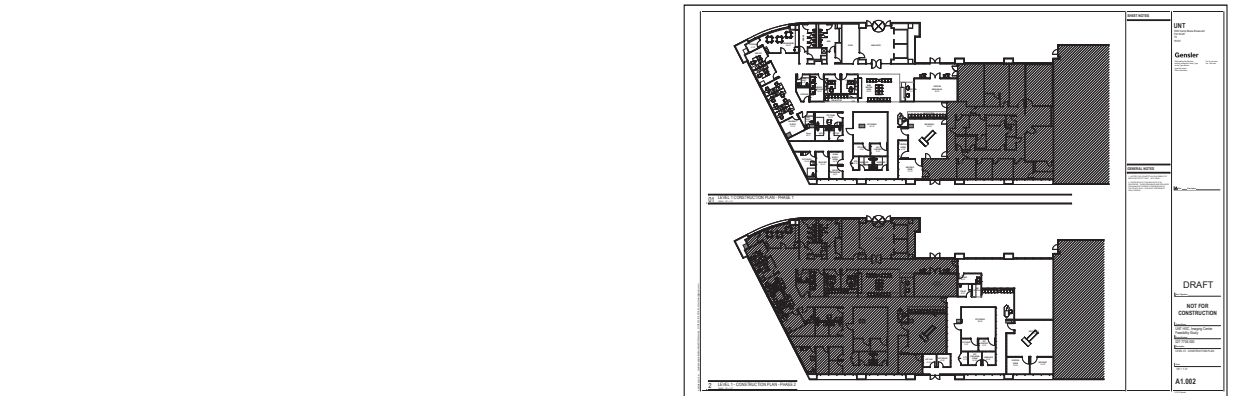
a. Option 1 – Full Floor Adjacency Diagram



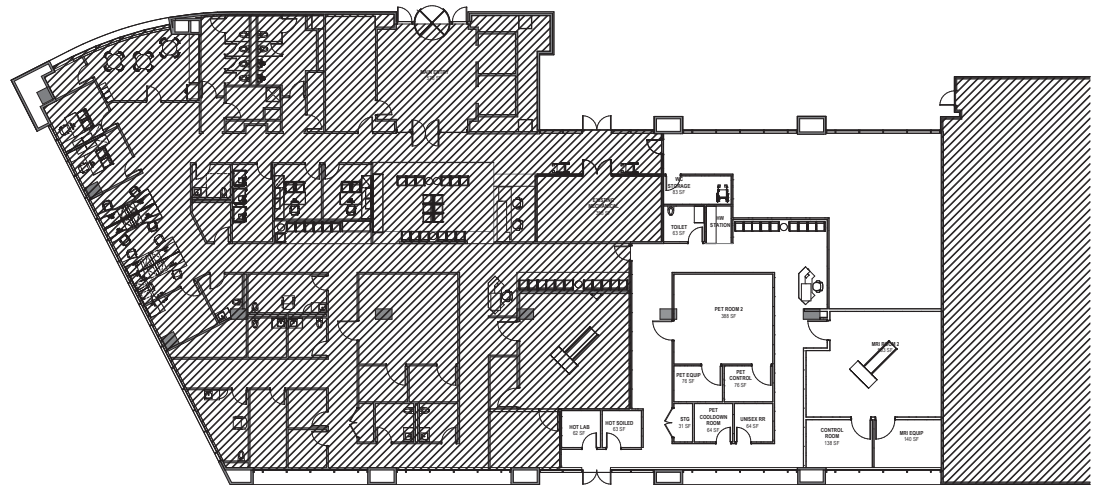
b. Option 1 - Full Floor



c. Option 2 - Phased Floor



01 LEVEL 1 CONSTRUCTION PLAN - PHASE 1
SCALE: 1/8" = 1'-0"



2 LEVEL 1 - CONSTRUCTION PLAN - PHASE 2
SCALE: 1/8" = 1'-0"

d. Manufacturers (See Section 7 for information from all three manufacturers)
Details from Manufacturers

5. Narratives, Charts, and Calculations

a. Architectural

This Feasibility Study is a review by the Gensler Team of the six-story Center for Bio Health (CBH) on the University of North Texas, Health Science Center (UNT HSC) in Fort Worth, Texas. The team has specifically reviewed the First Floor area of 11,027 square feet of the CBH building for the use as an Alzheimer's Imaging Research Suite for Dr. Sid O'Bryant, that will feature two, 3T Magnetic Resonance Imaging (MRI) suites and two Positron Emission Tomography – Computed Tomography (PET/CT) suites. The PET/CT will include a radioactive isotopes laboratory for this research. The location of the Research Imaging Suite in the CBH Building has easy access for participants and staff to the UNT HSC Campus and to the parking garage and street parking adjacent to the site.

The Gensler Team has had several meetings with the UNT HSC Team. The combined team developed a vision for the Research Imaging Suite that is participant based, focused on the recruitment and retention of the participants of the UNT HSC - NIH Grant for Alzheimer's research study. The team also developed a program of requirements for the suite that layout the spaces needed for a successful study environment that complies with the grant requirements. See Section 3.

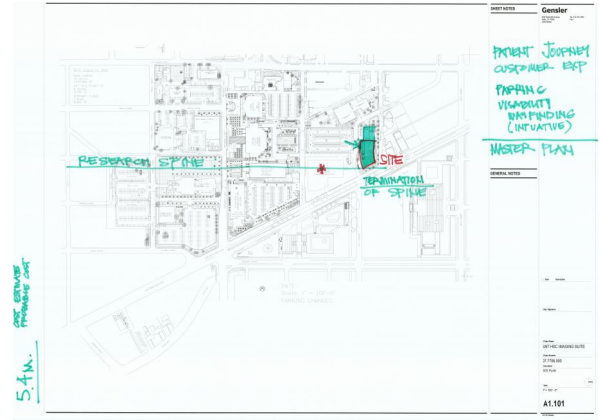
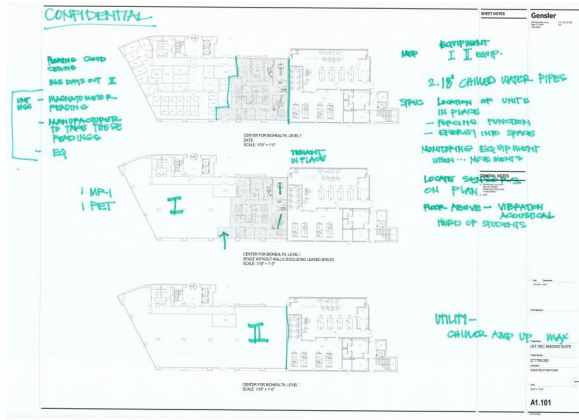
The Gensler team visually reviewed the CBH first floor of the CBH, noting the existing space is occupied by two tenants: UNT HSC Administration Suite to the South and Envision Imaging Center to the North, which includes, one 1.5T MRI suite and one PET /CT suite.

The Gensler teams' findings of the existing first floor of the CBH building included architectural and interior design environments; the structural system; the mechanical, electrical, plumbing and fire protection systems; as well as, the vibration attributes of the existing built spaces for the for the use of the MRI and PET/CT medical equipment in the space. Noting that only visual exploratory discovery of the space and review of "as built" drawings were done in this exploration. The team has evaluated the space using the three manufacturers UNT HSC shared with the team. The three manufacturers are GE, Phillips, and Siemens. Please refer to Section 7 for manufacturers' provided information. The team is using a combination of the most stringent requirements of the three equipment manufacturers that the UNT HSC team is considering.

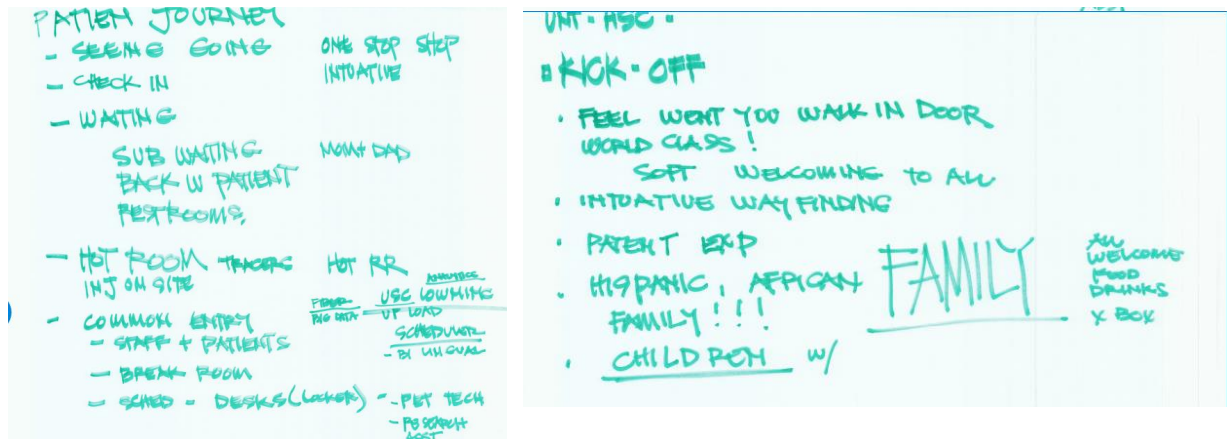
Our team's evaluation is of the existing space as a shell. No existing materials or system in the existing buildout will be reused. Reviewing the existing space as totally demolished and rebuilt for the specific purpose of this Research Imaging Suite Feasibility Study. The review notes these findings: architectural and interior design of the space is suitable and the existing first floor location is desirable for the move in / hoisting of the MRI and PET/CT equipment. As well as, the floor to floor height of 16'-9" is ample for the infrastructure needed for this equipment. The geometry of the space and square footage appear to be able to house the program of requirements developed, see Section 5 Test Fits.

UNT HSC team also asked the Gensler team to consider the option of phased construction. Sharing that the Envision suite is phase II of construction. See Section 4.b. Our initial findings share that further study is needed for phased construction given the Envision suite is to remain in operation. Construction of the UNT HSC Research Imaging Suite may impact the tests being done and requires study of the hours of construction. The potential for after-hours construction represents a potential solution but will impact the construction costs.

As well as, If the Research Imaging Center Phase II buildout, may not allow the Phase I suite to remain operational due to construction vibration and noise. Phase II may require nights and weekend construction as ANY construction in the proximity of the existing imaging MRI will impact results.



Design vision and participant journey



Conclusions:

1. The entry sequence for the participants in the research study are developed with ease of movement and use of the amenities in the space. Taking into consideration nourishment of the participants and their family members with them, restroom facilities and positive distractions in the suite.
2. The circulation for participants is separate. Based on test compliance and dignity of the participants. Noting the Hot lab will have hot toilet faculties and a cool down space.
 - a. UNT HSC shared that the finishes or the IREB should be considered in this design.

c. Interior Environments

Gensler

The interior environments should be warm and welcoming with a modern design feel. The finishes will be appropriate for the use and durability is of primary importance. Taking cost and operational maintenance into consideration.

The entry lobby will have major signage and the suite will include branding and graphic wayfinding for ease of navigation.

d. Structural

DatumRios

Evaluation

NEW IMAGING EQUIPMENT

The new level one imaging center will house two new MRIs and two new PET CTs. The equipment weights, which were provided by cutsheets from GE and Phillips, are as follows:

GE 3T MRI magnet weight	16,790 lb
GE 3T MRI total equipment weight	28,980 lb
Phillips 3T MRI magnet weight	13,448 lb
Phillips 3T MRI total equipment weight	19,335 lb
GE PET / CT equipment weight	10,916 lb
Phillips PET CT equipment weight	10,882 lb

In addition to the equipment weights, both the MRIs and PET CTs have floor vibration limits. Based upon the GE and Phillips data, the peak velocity for the lowest vibration mode at the MRIs shall be equal to or less than 800 micro inches per second. The peak velocity for the lowest vibration mode at the PET CTs shall be equal to or less than 1,900 micro inches per second.

EXISTING LEVEL 1 FLOOR SYSTEM

The existing level 1 floor system, which is above a crawl space, is cast-in-place concrete consisting of a 4.5" slab over 7" x 24.5" (= 20" deep pans + 4.5" slab) joists at 5'-0" on center and 48" x 24.5" girders. The calculated floor system's natural frequencies in the 33' and 39' bays are 8.77 Hz and 11.6 Hz respectively. See figures 1 and 2 the mode shapes. The same analytical model can be utilized to estimate the floor vibration responses from a moderate walking pace and the results of this analysis are shown in figure 3. The vibration responses are smaller in the 33' bay since it is stiffer in comparison to the 39' bay. Based upon its position in plan, we anticipate MRI room 1 will have the largest vibration responses in comparison to MRI room 2, PET room 1, or PET room 2.

Sources of floor vibration obviously extend beyond occupants walking. Mechanical equipment and / or ground motions from nearby roadways also contribute. Site vibration measurements are required by each manufacturer to quantify the in-place floor vibration responses.

NEW STRUCTURAL RETROFITS

Due to both the magnet weight and vibration criteria, new structural retrofits are anticipated below the existing level 1 framing. At the two MRI rooms, the retrofit will consist of new concrete beams to support the in-place joist framing. In addition, localized slab reinforcement will be necessary to support the magnet base loads. This concept is shown in figure 5.

Structural retrofit may also be necessary below the two new PET CTs. A similar retrofit concept can be utilized and is shown in figure 4.

The final retrofit scheme must be coordinated with in-place and proposed MEP systems that extend through the existing crawl space. This will require adjustments to MEP systems and / or the locations of new structural elements.

SITE VIBRATION TESTING

Phillips conducted level 1 floor vibration measurements at two locations on August 30th. The peak acceleration measured divided by the peak acceleration limit was only 7 percent. While the submitted data are positive, they also require more study during the project's design phase. The measured

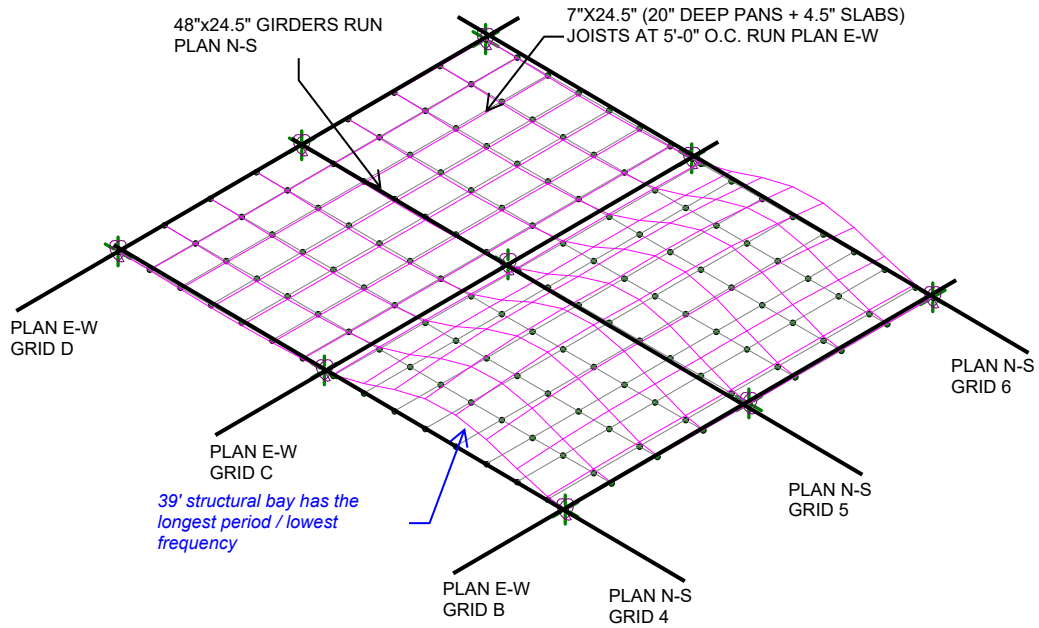
accelerations did not address walking excitations within the space and these will increase the 7 percent value noted above. Further, were the mechanical pumps, etc. in the adjacent mechanical room running when these tests were taking place? If not, these too will likely increase the measured accelerations in the level one structure. Lastly, the site vibration assessments by GE and / or Siemens may reach different conclusions based upon different imposed excitations (walking (footfall), MEP equipment, ground motions, etc.) in the level one structure and / or the locations where the vibration measurements are taken.

NEW EQUIPMENT INSTALLATION

The existing imaging equipment shall be removed prior to installation of the new imaging equipment. Due to the magnet weight, the travel paths below the magnets will likely require shoring from the existing level 1 slabs to the crawl space gravel below. The travel dolly below the magnet shall have a wide wheel base in each direction (5'-0" +) to minimize imposed bending stresses during the moving process. Floor protection below the dolly should be installed and its layout consistent with successful past projects.

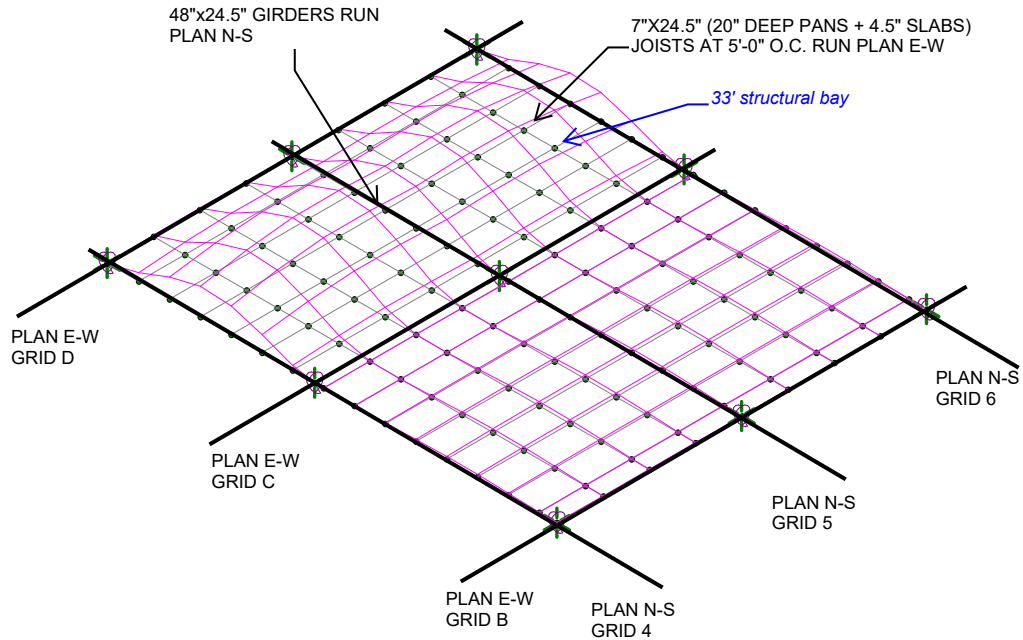
CONTIGENCY

We recommend a contingency be held for the architecture and engineering team that is separate from the contingencies of the Owner and general contractor. Given the early phase of this project, contingencies are both expected and necessary. Once a manufacturer is selected, their site-specific drawings will likely have criteria and / or details that increase project scope and therefore project cost.



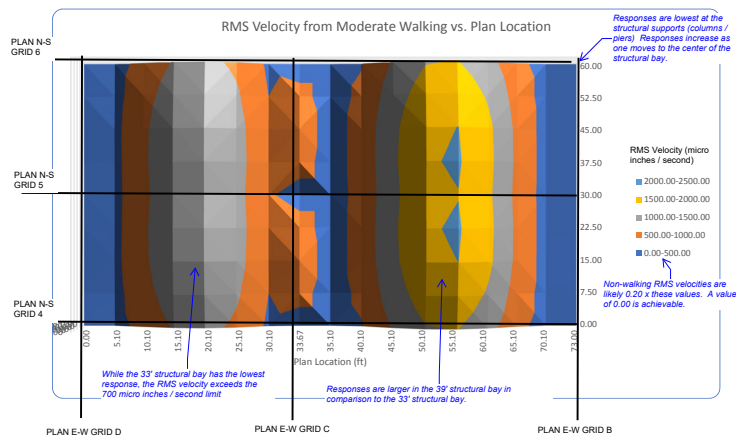
Mode 1 Period = 0.114 seconds

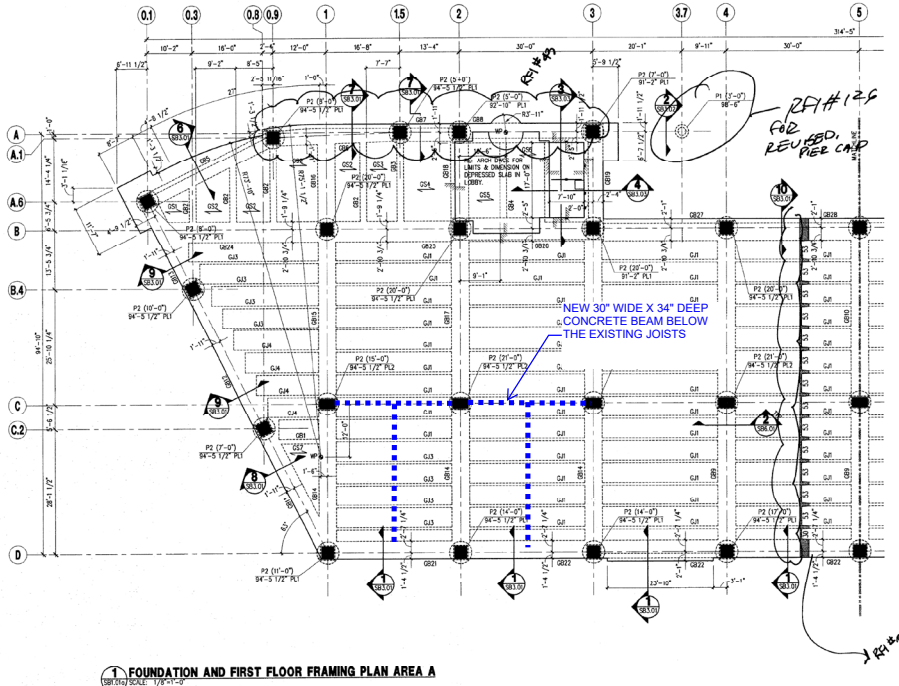
Mode 1 Frequency = 8.77 Hz



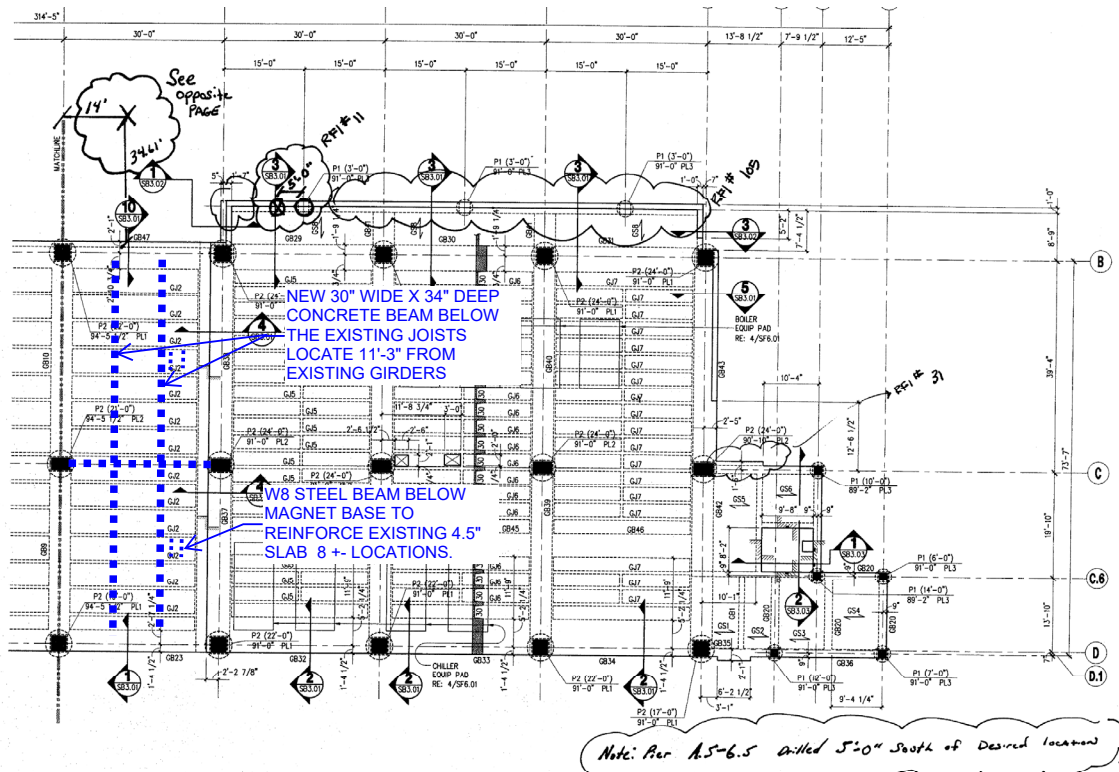
Mode 2 Period = 0.086 seconds

Mode 2 Frequency = 11.6 Hz





1 FOUNDATION AND FIRST FLOOR FRAMING PLAN AREA A
SCALE: 1/8"=1'-0"



1 FOUNDATION AND FIRST FLOOR FRAMING PLAN AREA B
SCALE: 1/8"=1'-0"

SSA**e. MEP / FP****a. Mechanical
Mechanical System Design****Code Analysis**

The following Standards and Codes, with addendums shall be used on this project for mechanical and plumbing design and construction:

1. ASHRAE 62-2013, Ventilation for Acceptable Indoor Air Quality;
2. International Energy Conservation Code – 2012
3. International Mechanical Code – 2012
4. 2012 Edition of the International Building Code
5. All applicable 2012 Codes from the National Fire Protection Association (NFPA);
6. The University of North Texas Guideline Specification.

Building Cooling and Heating Block Loads

- | | | |
|----|-------------------------|---------|
| 1. | Estimated Cooling Load | 60 tons |
| 2. | Estimated Heating Load: | 300 MBH |

Note: Cooling and heating loads are estimates. Both cooling and heating loads will be dependent on the options selected for the MRIs and the PET CT Equipment and if they will be provided with air-cooled or water-cooled equipment.

Chilled water and hot water piping will connect to the 3" taps provided for each system within the level 1 renovation space.

Energy Consumption Monitoring**UNT to confirm desire for this**

Consumption of thermal utilities (chilled water, heating water) shall be measured with flow and temperature measurements. The building control system shall calculate and monitor building energy consumption of the thermal utilities.

Consumption of thermal utilities (chilled water, heating water) shall be measured with flow and temperature measurements. The building control system shall calculate and monitor building energy consumption of the thermal utilities.

Load Calculation Criteria**Design Conditions - Outdoor Design Conditions**

Summer: (Based on 0.4% dry bulb and 0.4% Enthalpy conditions for Fort Worth NAS JRB, as published by ASHRAE)

Dry Bulb	=	100.4 °F
Wet Bulb	=	79.85 °F

Winter:

Dry Bulb	=	18.8 °F
----------	---	---------

Preheat coils will be selected on 10°F ambient air and no pickup factor will be applied.

Indoor Design Conditions

Temperature and Relative Humidity Design Conditions

Office Spaces

Summer:

Dry Bulb = 75 °F +/- 2 °F
Relative Humidity = 50%

Winter:

Dry Bulb = 70 °F +/- 2 °F

PET CT

Summer:

Dry Bulb = 72 °F +/- 2 °F
Relative Humidity = 30-60%

Winter:

Dry Bulb = 72 °F +/- 2 °F
Relative Humidity = 30-60%

MRI/MRI Equip. Room

Summer:

Dry Bulb = 70 °F +/- 2 °F
Relative Humidity = 40-70%

Winter:

Dry Bulb = 68 °F +/- 2 °F
Relative Humidity = 40-70%

Telecommunications Room

Summer: (No heating)

Dry Bulb = 72 °F +/- 2 °F

Electrical Equipment Rooms

Summer: (No heating)

Maximum Dry Bulb = 80 °F

Mechanical Equipment Rooms

Summer:

Maximum Dry Bulb = 80 °F

Winter:

Dry Bulb = 60 °F (minimum)

Occupants

Offices: Number of occupants to be determined

Imaging Spaces: Number of occupants to be determined

Occupant Heat Rejection:

Sensible = 250 Btuh/person

Latent = 200 Btuh/person

U-Values for Building Components

1. The following “R”-Values will be the minimum criteria used for calculating HVAC loads:
 - a. Exterior Walls Minimum R-13
 - b. Roof Minimum R-20
 - c. Window Glass– (Vision) Minimum “U” = 0.46
- Minimum Solar Heat Gain Coefficient = 0.25

Building Occupancy

The mechanical systems will be designed to operate 24 hours per day.

Building Ventilation

Ventilation Air Supply

1. As per IMC ventilation requirements:

	People Rate	Area Rate	
a.	Offices/ Conference Rooms	5 CFM/person	0.06 CFM/ft ²
b.	Multi-use Room	7.5 CFM/person	0.06 CFM/ft ²
c.	Imaging spaces	5 CFM/person	0.06 CFM/ft ²
d.	Lobbies	7.5 CFM/person	0.06 CFM/ft ²
e.	Storage Rooms		0.12 CFM/ft ²

Exhaust

1. As per IMC ventilation requirements:

- a. Women’s and Men’s Rooms 10 ACH or
50 CFM/Fixture (WC or urinal)
70 CFM/Fixture (WC or urinal)
heavy use
- b. Janitor’s Closet Min 1.0 CFM/ft² or 10ACH
- c. Copy/Print rooms Min 0.5 CFM/ft²
- d. Kitchenettes Min 0.3 CFM/ft²
- e. Locker/Dressing rooms Min 0.25 CFM/ft²
- f. Hot Lab/Hot Rooms Min 6 ACH

Noise Criteria

The noise and sound requirements shall be reviewed by Acoustical Consultant and will be translated into design requirements for the design team to implement.

Heating System

System Description

The heating water system will utilize the existing CBH boilers. The system will consist of 100% redundant base mounted, double suction circulating pumps for the reheat piping system, preheat coils, and domestic water heaters. There are existing 3” taps in the level 1 area that will feed the preheat and reheat coils for the level 1 renovation.

Isolation valves for sizes 2” and smaller will be ball valves, and for sizes 2-1/2” and larger, will be butterfly valves.

Heating water piping will be Schedule 40 black steel on 2-1/2" and larger and copper Type L on 2" and smaller.

Chilled Water System

System Description

The chilled water system will consist of existing water-cooled centrifugal chillers with roof mounted cooling towers. Each chiller is sized at 500 tons per chiller and there are 4 chillers currently in the CUP. The temperature of the chilled water to be utilized as the design temperature is 42°F with a 16-degree delta T. There are existing 3" taps in the level 1 area that will feed the cooling coils for the level 1 renovation.

Existing building chilled water pumps with variable speed drives are provided in the level 1 CBH mechanical room.

Isolation valves for sizes 2" and smaller will be ball valves, and for sizes 2-1/2" and larger, will be butterfly valves.

Chilled water piping will be Schedule 40 black steel on 2-1/2" and larger and copper Type L on 2" and smaller.

If it is determined, that either the of imaging manufacturers and the owner would prefer to put the cooling on the chilled water system, then a separate process chilled water system shall be provided. This system will be located in an additional mechanical room that is sized at 20 foot by 10 foot. This room would house two 100% redundant, plate and frame heat exchangers, and two process chilled water pumps. Flowmeters shall be provided on the PCHW and CHW side of the HXs.

System Criteria

The chilled and heating water flow to the coils in the air handling units will be controlled utilizing two-way control valves.

Supply Air Systems

Air Handling Unit System

System Description

Air handling units serving the level 1 imaging spaces will be 20-30% outside air, variable air volume, factory-fabricated, custom air handling units and will include the following components:

- MERV 13 Pre-filters
- Hot Water Preheat Coil
- Chilled Water-Cooling Coil
- Fan Array Supply Fans – Draw-thru configuration
- Inertia Bases and Vibration Isolation
- Fan Discharge Side Sound Attenuators
- Variable Frequency Drive.

Fan array (N+1 redundancy for supply air fans) is planned for the AHU system to maintain airflow during a single fan failure. The system will be provided with either a single or double inline return fans. Per IECC 2015, economizer is required and therefor the AHU system will be provided with the applicable controls and the OA and REA ductwork shall be sized accordingly.

In the imaging suite, a single duct variable air volume air system will be utilized, with medium pressure galvanized ductwork to transport the supply air from the air handling units to the airflow control devices supplying air to diffusers serving each space. The air from the imaging suite will be recirculated to the air handling unit via a plenum return system provided this suite will be a B-occupancy.

Low pressure ductwork will be utilized downstream of airflow control device to transport supply air to the spaces.

Air Handling Unit Design Criteria

The cooling coils serving the air handling units will be sized based on a maximum face velocity of 375 feet per minute. Individual cooling coils will be six rows or less with a maximum of 10 fins per inch consisting of copper fins on copper tubes.

Air handling unit fan motors will have a maximum speed of 3,600 rpm. Fan arrays shall be served by redundant VFDs without bypasses.

AHU preliminary size is 22,500 cfm supply air and 5,000 cfm maximum of outside air in normal mode. This is assuming all of the level 1 imaging spaces will be served by the AHU.

Fan Coil Units (If applicable)

If determined during the design process that certain spaces would be better served by a fan coil unit in lieu of the AHU, then the following will apply. A single zone fan coil unit shall be provided with a VFD driven or ECM motor, MERV 8 filters, heating and cooling coil. The fan coil unit shall be a vertical fan coil unit and shall be located within the space or in an adjacent fan coil mechanical room.

Exhaust Air Systems

System Description

A separate exhaust system will be provided to serve the hot labs, a separate system for the general exhaust and a separate exhaust for the MRI purge exhaust. The exhaust fans will consist of single fans without redundancy unless requested by the owner. The discharge location for the exhaust system for the Hot labs and MRI purge will be either routed to the roof or located at a location on level 1 where it is deemed acceptable.

The MRI purge fan system will be normally off and will engage during an MRI purge event.

Ductwork will be constructed of galvanized steel.

Preliminary sizes for the exhaust fans are as follows:

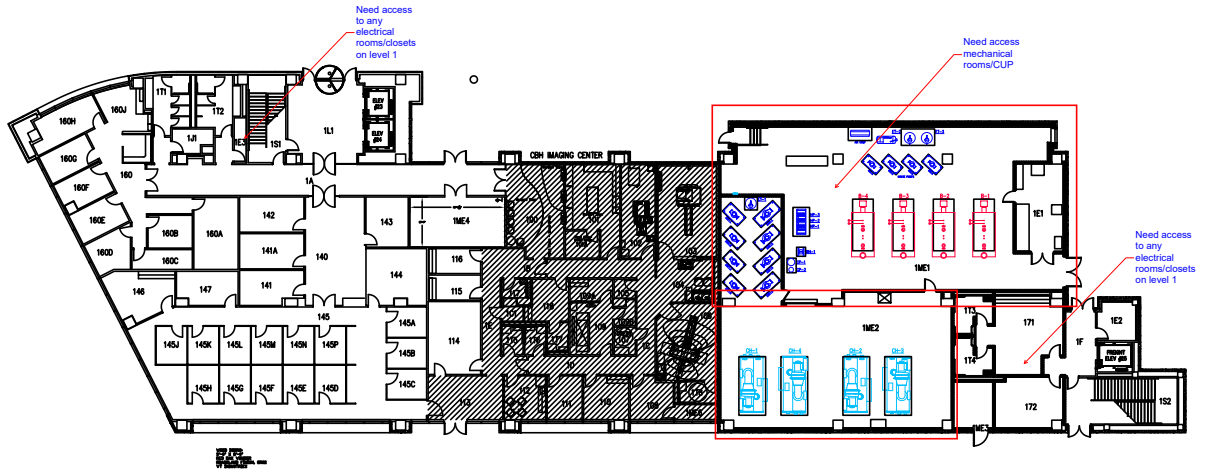
Hot Exhaust	1,500 cfm
MRI Purge Exhaust	2,000 cfm
General Exhaust	1,750 cfm

Control Systems

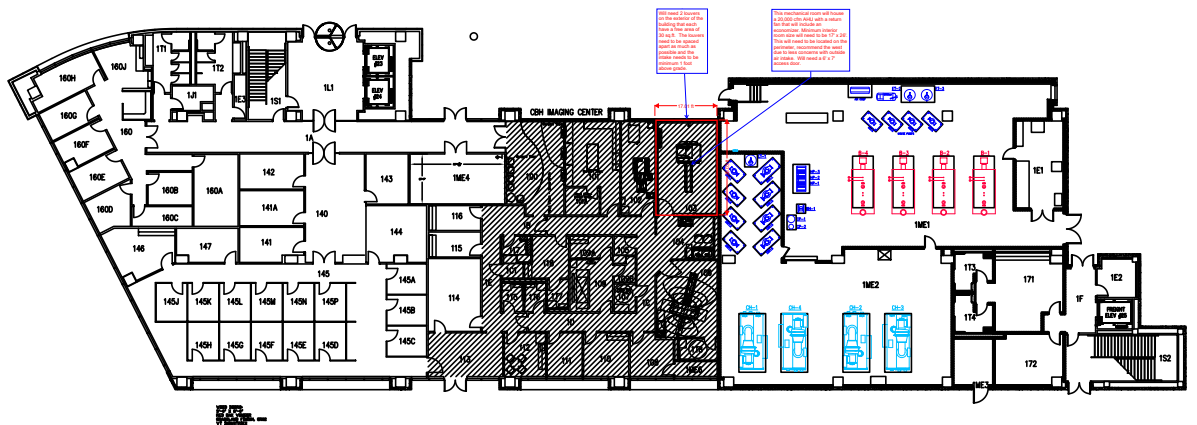
System Description

A building temperature control/building automation system will be provided for space temperature control and monitoring of defined environmental conditions.

Building Temperature Control/Building Automation System:

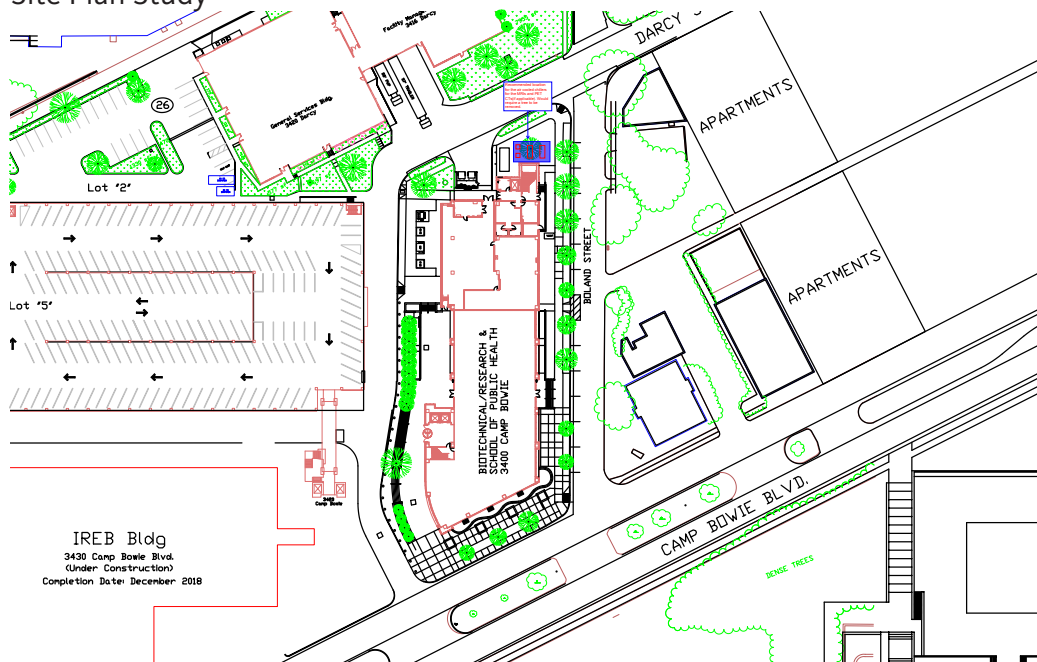


CENTER FOR BIOTECH RESEARCH & HEALTH, LEVEL 1
DATE: 3-14-2019
SCALE: 1/8" = 1'-0"



CENTER FOR BIOTECH RESEARCH & HEALTH, LEVEL 1
DATE: 3-14-2019
SCALE: 1/8" = 1'-0"

Site Plan Study



b. Electrical

Electrical System Design

Code Analysis

All electrical systems will be designed and constructed in accordance with the following codes and standards.

1. 2014 Edition of the National Electric Code
2. 2012 Edition of the International Building Code
3. 2012 Edition of National Fire Protection Association (NFPA)
4. Americans with Disabilities Act
5. International Energy Conservation Code 2015

Normal Electrical Distribution

Normal electrical service to the Center for Biohealth building (CBH) is derived from a pad mounted switch and transformer by Oncor located northwest of the building.

This transformer serves a 4000A switchboard "MSB" on the northwest corner of the central plant on the first floor of the building. There appears to be sufficient space in this existing switchboard to place a new 1200A circuit breaker to serve the new Imaging Suite on the first floor of the building

Normal power distribution shall originate at this new 1200A breaker in MSB and shall feed a new 1200A distribution panel that will serve a 480Y/277V lighting class panelboard for lighting, a 112.5kVA 480V-208Y/120V transformer and 400A two section, 208Y/120V branch circuit panelboard for receptacle and equipment needs.

Offices shall have at least 50% of the receptacles switched per ASHRAE 90.1 2010 and later standards via an accessory receptacle control pack that is tied into the lighting occupancy sensor controls.

Emergency Distribution

Emergency and standby power to the space will be as needed. Standby power is anticipated for any refrigerators, freezers, or critical lab equipment in the suite and shall feed down from panels 2CLA and 2CLB on the floor above. A new 208Y/120V panel may be provided should the quantities of branch circuits exceed the available spaces in panel 2CLA and 2CLB. Standby power is not anticipated for imaging equipment, equipment coolers, or office equipment in the space.

Egress lighting shall be served by single circuit, 2000W inverter fed from normal power distribution.

Lighting

Office areas, imaging areas, and laboratory areas will be provided with recessed 2' X 4' volumetric or prismatic lensed light fixtures with LED lamps. Lighting will be controlled via occupancy sensor with local override switch in all public areas. Lighting in the imaging rooms shall be dimmable for occupant comfort.

Corridors will be provided with a 2' X 4' recessed prismatic lensed fixture with tube LED lamps. Lighting will be controlled via occupancy sensor and local override switch.

New mechanical, electrical, and communications equipment rooms will be provided with chain

or pendant mounted, open industrial fixtures with wire guards with LED lamps. Lighting will be switched at the wall with no automatic off provision for safety of maintenance personnel per the exception in ASHRAE 90.1.

Fire Alarm System

An addressable fire alarm system exists within the building. The existing fire alarm system is manufactured by Notifier.

The fire alarm system buildout in the imaging suite will meet ADA and TDLR requirements for pull station and audible/visual notification devices. This system shall be an extension of the existing building fire alarm system with new initiation and notification device circuits and fire alarm power supplies as required to serve the new first floor buildout.

c. Plumbing

Plumbing and Fire System Design

Code Analysis

All plumbing systems will be designed and constructed in accordance with the following codes and standards.

1. 2012 Edition of the International Plumbing Code
2. 2012 Edition of the International Building Code
3. 2013 NFPA 101 - Life Safety Code
4. 2013 NFPA 13 - Automatic Sprinkler Systems
5. American Society of Sanitary Engineers Standards as applicable
6. American Society of Plumbing Engineers Data Book for design standards
7. Americans with Disabilities Act of 2010

System Descriptions

Domestic Cold and Hot Water

Domestic cold and hot water will be provided for all toilet rooms, emergency shower/eyewash units, to any equipment that requires domestic water supply.

Service valves will be provided at each branch line serving two or more plumbing fixtures. All plumbing fixtures and equipment connections will be provided with local stop valves. Additional service valves will be provided, to isolate the system for maximum maintainability.

Access panels will be provided with adequate space to operate the valve(s) in walls and non-accessible ceilings.

A shock arrestor will be provided on all water rough-ins serving individual plumbing fixtures. Where multiple plumbing fixtures are served by the same domestic water branch line a single shock arrestor shall be installed per the manufacturer's installation instructions.

A reduced pressure type backflow preventer will be provided on the make-up water connections to mechanical equipment.

Sanitary and Lab Waste and Vent

A complete waste and vent system will be provided for the imaging build-out to collect sanitary waste from plumbing fixtures, floor drains and floor sinks in accordance with the International Plumbing Code, unless indicated otherwise. The drainage piping system will be designed with a minimum slope of 1/4-inch per foot for pipe sizes less than 3-inch and 1/8-inch per foot for sizes 3-inch and larger.

Floor drains will be provided for each air handling device, equipment requiring drains, toilet rooms with water closets, and mechanical equipment rooms. In each mechanical room a floor drain will be provided for each air handling unit condensate drain and an additional floor drain will be provided for

general wash down of the floor.

Trap guards will be provided to each floor drain and floor sink. Electronic type trap primers will be provided only for floor drains that are anticipated to receive a large volume of drainage that will exceed the capacity of trap guards.

Compressed Air

An existing central compressed air system is located in the building. New compressed air piping will tie in to the existing main compressed air service and will be provided for the MRI/PT room pneumatically operated doors (if required).

Fire Protection

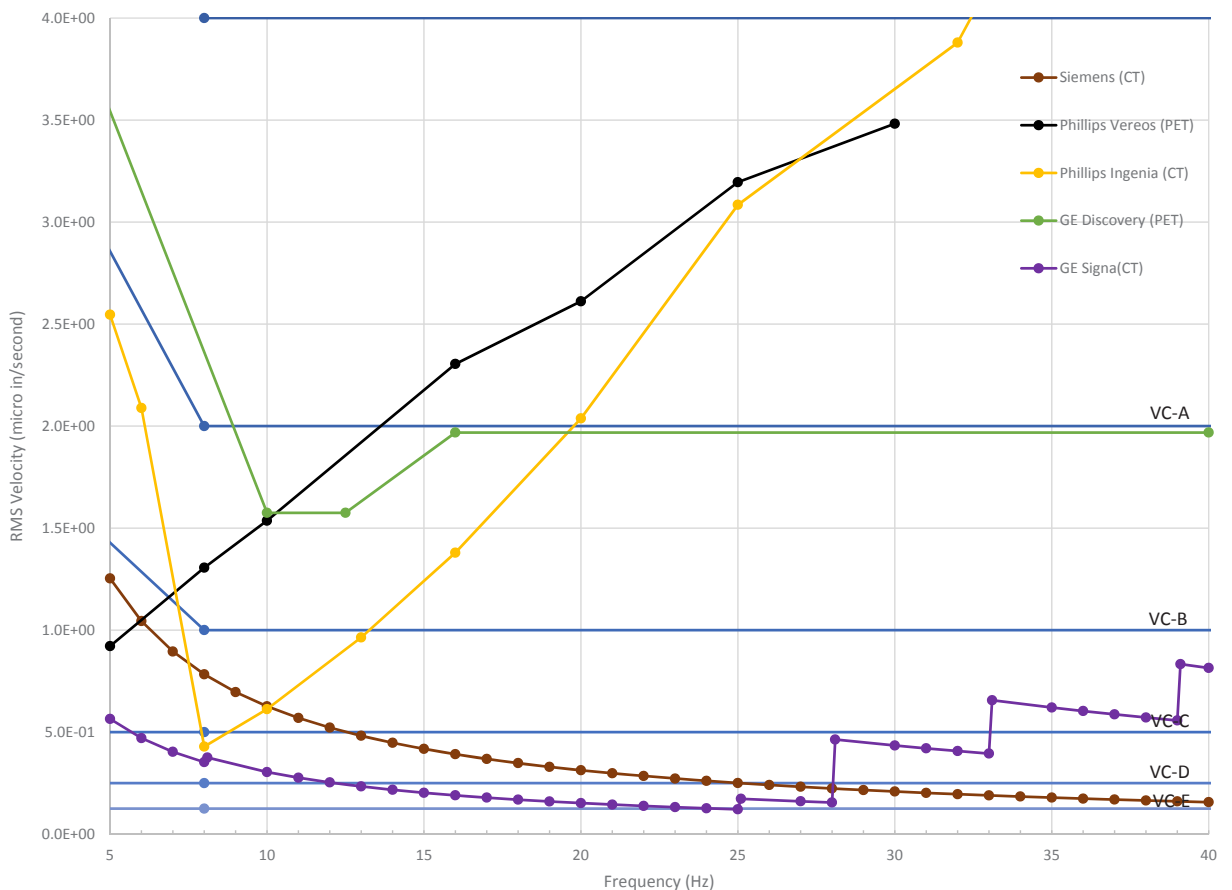
The new build-out will be protected by a wet automatic sprinkler system per NFPA 13 requirements. The existing sprinkler system currently serving this area of the building will be modified per the renovated layout of the space. In areas where accidental discharge is an issue due to the equipment in the room, such as the MRI/PT rooms, a double interlocking pre-action fire suppression system will be used.

f. Vibration

DataCom

Any new mechanical, plumbing or electrical equipment should be properly vibration isolation according to AHSRAE standards.

This section will be updated to include any required vibration mitigation once the vibration testing has been conducted.



1. Schedule

The Gensler team has developed three schedules:

First the Feasibility Schedule based on a 6 to 8-week study and,

Second, a full project schedule using July 2020 as the date of completion.

And Third the three manufactures timelines shared with the Gensler team.

UNT HSC provided the Gensler Team with the MRI and PET / CT equipment manufactures contact information. The time represents their responses, with the target of a July 31, 2020 operational date.

a. Feasibility Study

a. 6 to 8 weeks study, this report.

5 August 2019 start final draft sent 13 September 2019

b. Full Schedule

Based on a July 2020 date of completion, with the understanding that the manufacturers and General Contracting are integral parts of the success of achieving this schedule. There are three critical path schedule items to determine the full schedule: 1. The UNT HSC selection of the equipment Manufacturer. 2. The consultant team and contractor under UNT HSC contract. And 3. The phasing of construction. The Gensler team recommends a team meeting once contracts are in place and the equipment manufacturer is selected to explore the opportunity to optimize the project schedule.

Opportunities for team discussion:

1. UNT HSC Contracts for Services:

a. Architectural and Consultants

b. Contractor, CMaR or Conventional Design Bid Build.

2. Phasing of this construction provides several opportunities.

a. There are several phasing options being discussed.

b. The current Imaging tenant (Envision) remaining in place during the first phase of build out of the Research Imaging Suite. This may require nights and weekend construction as ANY construction in the proximity of the existing imaging MRI will impact results.

c. If the Research Imaging Center is built in phases. The first phase of work with an MRI and PET / CT being operational may be impacted by construction of the second phase of the suite. This may require nights and weekend construction as ANY construction in the proximity of the existing imaging MRI will impact results.

Also noting that the configuration of the space in two phases is not operationally ideal.

c. Equipment Manufacturers Timeline

a. The three equipment Manufacturers time lines have been provided below.
GE from e-mail 8/21/2019

IGNA Premier 3T MRI:

- Average 17 week lead time
- Dust- free environment and chiller in place
- 1 day Magnet delivery (approx 1 week prior to Electronics delivery)
 - Wall or roof hatch removed and replaced before and after magnet delivery
 - Chilled water and quench vent pipe connected to magnet
- 1 day Electronics delivery
- 5 days Mechanical installation
- 15 days Calibration & testing
- 10 days Applications Training

iscovery MI PET/CT:

- Average 14 week lead time
- 1 day System delivery (dust- free environment)
- 5 days Mechanical installation
- 10 days Calibration & testing
- 5 days Applications

Siemens

Siemens Timeline
E-mail received 26 August 2019
From Matt Wied

I have attached the typical drawings, the CAD files for the two systems, and the cutsheets. These contain all the information about our systems. The schedule is show below:

MRI Vida

Lead time(this varies show current lead time) 10-12 Weeks this includes manufacture and shipping time.
Mechanical installation 5 days includes one day for delivery
Calibration 8 days
Ready for patient use 13 days after delivery

PET Vision

Lead time(this varies show current lead time) 20 Weeks this includes manufacture and shipping time.
Mechanical installation 7 days includes one day for delivery
Calibration 7 days
Ready for patient use 14 days after delivery

As far as the testing for vibration and EMI this will need to be scheduled once the current magnet is out of the room or at least ramped down.

b. The Philips team response is below:

Phillips Timeline
E-mail received 19 August 2019
From Tracy Stallings

Good morning,

Thank you for your quick reply.
We are going through the information sent.

We have a few additional questions for you and your team.

1. MRI Specifications, all available
Size, weight, specialty requirements, utility connections / need, shielding...see attached Standard Reference Drawings (SRD's) for the Elition 3.0T MR. These show the MR, Chiller specifications and MEP requirements for a Generic Site. They also discuss Shielding Requirements and Quench Pipe Design in general terms, but we will do a Site Specific Shielding Design for both the RF and any Magnetic Shielding required once we have the Preliminary Equipment Layout drawn and approved by the Customer.
2. BIM model to be used in planning for the MRI and PET equipment in the research suite. We currently do not support BIM or REVIT...only AutoCAD.
3. Special **ASK** of manufacturers:
 - a. MRI Equipment Schedule, start to finish...without a Project Schedule to work from, Construction duration, Requested Delivery Date and Go Live Date this is difficult to gage at this time. We can talk in generalities once we have been able to discuss the tentative Project Timeline.
MRI design with user, confirmation of space equipment is to be located, fabrication, shipping, installation and construction, commissioning and calibration, every step, ready for use for research...Philips will proved a Preliminary Equipment Layout for Customer review and signoff. Once we have this we can move to an RF and Magnetic Shielding Design and next a full MEP Site Specific Drawing Package. We are happy to discuss these topics with you, but again will need to know a Tentative Timeline for Construction and GO Live Date.

Hi Michael,

Good to hear from you. I know we had a couple conversation about time line. We can not sent a time line with no idea on your project completion date but I will share with you again what we discussed verbally.

4-5 month ship time on new Elition 3T MRI and new Vereos Pet/CT systems from date we receive PO to when it is shipped to arrival at UNT HSC.

3 weeks for the installation.

1 week for any other 3rd party products to be installed and training.

5-6 months total from PO to first patient use estimate.

Once you have a set completion date for a total clean room ready for install, then Tracy can work with the factory to arrange the exact day the system will arrive. This will be highly organized and arrive on time. Hope this helps with your planning. If you need anything else please let Tracy and I know.

All the best,

Don Birdsey

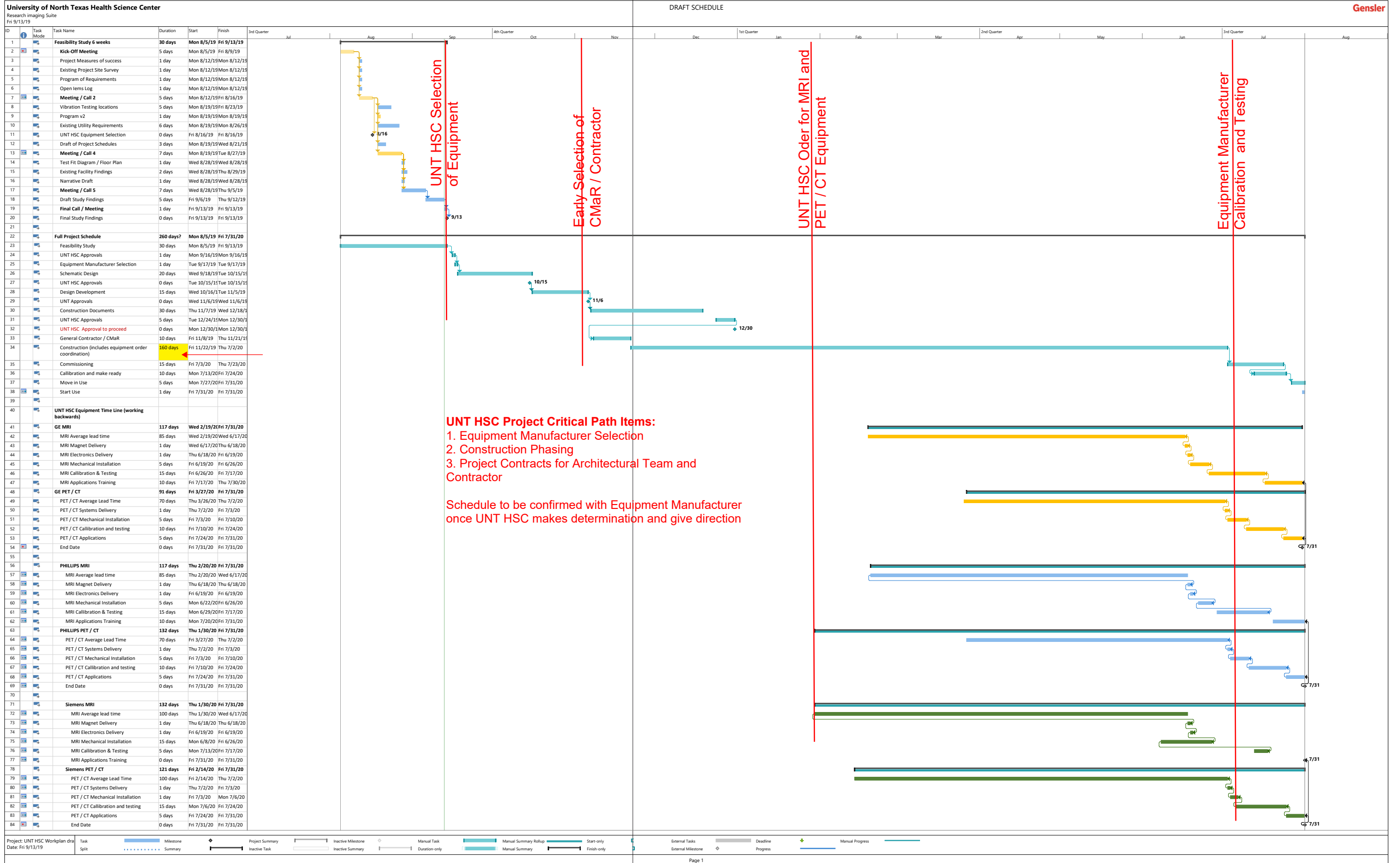
Philips HealthTech

Don Birdsey

Card/Rad Account Manager

817-917-0067 cell

don.birdsey@philips.com



7. Manufacture's Specifications (cut sheets and field test findings)

Please see the manufacturers complete set of information in the Section 7. Below is information each manufacture provided.

a. GE

<https://www.dropbox.com/sh/56uuqfre95f2lr2/AAAhURBbfzmSYgQkK1dLMqlra?dl=0>

i. Imaging Equipment Timelines
SIGNA Premier 3T MRI:

- Average 17-week lead time
- Dust- free environment and chiller in place
- 1 day Magnet delivery (approx 1 week prior to Electronics delivery)
- o Wall or roof hatch removed and replaced before and after magnet delivery
- o Chilled water and quench vent pipe connected to magnet
- 1 day Electronics delivery
- 5 days Mechanical installation
- 15 days Calibration & testing
- 10 days Applications Training

Discovery MI PET/CT:

- Average 14 week lead time
- 1 day System delivery (dust- free environment)
- 5 days Mechanical installation
- 10 days Calibration & testing
- 5 days Applications

Available in the Appendices

- b. GEHC SIGNA Premier 3T MR PIM
- c. GEHC SIGNA Premier 3T Typical Drawings
- d. GEHC Discovery MI PET – CT PIM
- e. GEHC Discovery MI Typical Drawings
- f. Test Results

b. Phillips

<https://www.dropbox.com/sh/o0vtbhysc7njlz6/AABrU1SOUiZ3PyOCAUYNUdWta?dl=0>

See manufacturers complete set of information in the appendixes.

- a. Ingenia Elition 3T
- b. Vereos
- c. Testing Results

c. Siemens

<https://www.dropbox.com/sh/bnqjy8a90dmsjp/AAAUJpddxETYbFVgOXvIMQ6na?dl=0>

See manufacturers complete set of information in the appendixes.

- a. 17064 – Magnetom VIDA – XQ Gradients
- b. 18070 – Biograph Vision

c. Testing

Notes from 3 September 2019 e-mail

“Siemens has concluded that they cannot test existing conditions of UNTHSC’s proposed space (including vibration, AC, and DC testing) due to interference from the existing MR on site, as these tests will require UNTHSC’s tenant, Envision, to ramp down their existing MR magnet.

In absence of such testing, and in an effort to provide a timely feasibility study to leadership at UNTHSC, the Siemens team is confident there will be no insurmountable issues with using their system in the proposed facility as delineated in previously shared drawings.”

ADDENDUM TO FEASIBILITY STUDY DATED 9/24/2019

Page 22: Mechanical -- Code Analysis

1. ASHRAE 62-3012, Ventilation for Acceptable Indoor Air Quality;
2. International Energy Conservation Code –~~2012~~ 2015;
3. International Mechanical Code – ~~2012~~ 2015;
4. ~~2012~~ 2015 Edition of the International Building Code;
5. ~~All applicable 2012 Codes from the National Fire Protection Association (NFPA);~~ The following, but not limited to, NFPA Codes/Standards:
 - a. 2015 NFPA 1 – Fire Code;
 - b. 2013 NFPA 13 – Standard for the Installation of Sprinkler Systems;
 - c. 2015 NFPA 101 – Life Safety Code;
 - d. 2017 NFPA 70 – National Electrical Code;
6. The University of North Texas Guideline Specifications.

Page 29: Electrical – Code Analysis

1. The following, but not limited to, NFPA Codes/Standards:
 - a. ~~2014~~ 2017 Edition of the National Electric Code (NFPA 70);
 - b. 2015 NFPA 72 – National Fire Alarm and Signaling Code;
 - c.
2. ~~2012~~ 2015 Edition of the International Building Code;
3. ~~2012 Edition of National Fire Protection Association (NFPA)~~
4. Americans with Disabilities Act;
5. International Energy Conservation Code 2015.

Page 30: Plumbing – Plumbing and Fire System Design

1. ~~2012~~ 2015 Edition of the International Plumbing Code;
2. ~~2012~~ 2015 Edition of the International Building Code;
3. ~~2013~~ 2015 NFPA 101 - Life Safety Code;
4. 2013 NFPA 13 - ~~Automatic Sprinkler Systems~~ Standard for the Installation of Sprinkler Systems;
5. American Society of Sanitary Engineers Standards as applicable;
6. American Society of Plumbing Engineers Data Book for design standards;
7. Americans with Disabilities Act of 2010.
8. 2012 Texas Accessibility Standards (TAS)



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

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

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

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



HUB Subcontracting Plan (HSP)

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

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

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

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

- - Agency Special Instructions/Additional Requirements - -

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

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

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

(mm/dd/yyyy)

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

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4: AFFIRMATION

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

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

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

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

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

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

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

SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

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

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

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

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
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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/passcmbsearch/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.

UNT | SYSTEM™

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement made and entered into by and between **University of North Texas System (UNTS)**, 1155 Union Circle #311040, Denton, Texas 76203-5017, hereinafter called “Owner”, and **{Firm Name}** hereinafter called “Design Professional”, duly licensed by the laws of the State of Texas to provide architecture or engineering Services in the State of Texas. The capitalized term “Party” refers to either the Owner or Design Professional individually and the term “Parties” refers to the Owner and Design Professional collectively. The effective date (“Effective Date”) of this Agreement shall be the date of the last signature by the Parties hereto.

ARTICLE I PROJECT

1.1 Owner desires and intends to {Project Name} (“Project”), on the {Campus} campus, to be completed in accordance with the requirements herein and within attached Scope of Services. The Project will consist of the following:

{General Description of the Project}

1.2 Owner does hereby engage Design Professional and Design Professional does hereby agree to perform for and furnish to Owner under the terms and conditions of the Contract Documents all services, studies, investigations, and labor incident to the architectural and engineering design as required of the Project.

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, as may be amended;
- 2.1.2 The Uniform General Conditions for Construction and Design Contracts for the University of North Texas System (“Uniform General Conditions” or “UGC”);
- 2.1.3 Supplementary General Conditions (SGC) 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 All Amendments issued after the Effective Date of this Agreement;
- 2.1.7 The Drawings, Specifications, details and other documents developed by Design Professional for the Project and accepted by Owner;
- 2.1.8 The Drawings and Specifications developed or prepared by Owner’s other consultants, if any, and accepted by Owner

- 2.1.9 Owner's Request for Proposal and/or Request for Qualifications issued in relation to the Project, including any addenda and/or clarifications issued by Owner, and Contractor's Response(s) to Owner's Request for Proposal and/or Request for Qualifications including, but not limited to Contractor's HUB Subcontracting Plan for Construction Phase Services (once accepted by Owner); and
- 2.1.10 The HUB subcontracting plan submitted or amended by Design Professional and approved by Owner for this Project.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Design Professional and supersede all prior negotiations, representations, or agreements, written or oral
- 2.3 To the extent the terms of this Agreement conflict with the UGC's and/or the SGC's, the terms of this Agreement will control.
- 2.4 If there is an irreconcilable conflict between or among the various documents that make up the Contract documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

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 "Alternate" shall mean the amount stated in the bid to be added or deducted from the amount of the base bid if the corresponding change in the Project scope or alternate materials and/or methods of construction is acceptable.
 - 3.2.2 "Applicable Law" shall mean all laws, codes, rules, regulations, judgments, ordinances and similar pronouncements of Appropriate Authorities.
 - 3.2.3 "Appropriate Authorities" and "Granting Agencies" shall mean any private, local, municipal, county, state, regional, or federal authority agency which may be involved in the Project. It is intended to include the authorities and agencies which require information, Drawings, and Specifications, etc., concerning the Project.
 - 3.2.4 "Construction Cost Estimate" shall mean Design Professional's dated estimate, prepared and update by Design Professional's construction cost estimating consultant(s), including the major categories of Work, of the entire Project's cost of construction including contingency with respect to each phase of development, and delivered to the Owner
 - 3.2.5 "Design Schedule" shall mean a schedule for the performance of Design Professional's services that show the order in which Design Professional proposes to carry out Design Professional's Services.
 - 3.2.6 "Design Work" means the design, administration, procurement, materials, equipment, and all services necessary for Design Professional, and/or it agents, to fulfill Design Professional's obligations under this Agreement.

- 3.2.7 "Direct Personnel Expenses" shall include direct compensation paid for employees engaged on the Project, including architects, engineers, designers, job captains, draftsmen, technicians, Specifications writers, and typists whether engaged in consultation, research, design, and production of Drawings, Specifications, and other documents relating to the Project, job site inspection or other services. Compensation, as used herein, shall include other mandatory and customary benefits such as insurance, social security contributions, sick leave, holiday or vacation pay, pensions, and similar benefits.
- 3.2.8 "Facility Program" means Owner's initial description of the Project scope, preliminary Construction Cost Limitation, Design Schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment. The Facility Program is incorporated by reference as if fully set forth in this Agreement.
- 3.2.9 "Floor Calculations" shall mean the calculation and tabulation of both gross and assignable floor areas as defined by the most current version of the Texas High Education Coordinating Board Facilities Room Inventory Report located and maintained State of Texas website, including copies of the Computer-Aided Design and Drafting (CADD).
- 3.2.10 "HUB" shall mean Owner's Historically Underutilized Business Policy.
- 3.2.11 "Major Categories of Work" are described as applicable categories of construction Work required for completion of construction of the entire Project, which may include but not be limited to the following: demolition, site preparation, grading and earth work, general construction, heating, ventilating, air conditioning, plumbing, electrical, voice and data cabling, security features, elevators, special systems, and site improvements.
- 3.2.12 "Owner's Design Review" shall mean and refer to Owner's review at each of the Design Development Phases, the periods of which shall be included in the Project Design Schedule. Drawings and Specifications developed to that point in design progress and the estimated construction cost shall be furnished to Owner as required.
- 3.2.13 "Programming" shall mean the thorough and systematic evaluation of the interrelated values, goals, facts and needs of the Owner's organization, facility users, and the surrounding community.
- 3.2.14 "Project Budget" shall mean Owner's estimate of the total Project cost from inception to Final Completion.
- 3.2.15 "Project Team" shall mean Owner, Contractor, Design Professional, any separate contractor and other consultants (including Consultants) employed for the purpose of programming, design and construction of the Project. The composition of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.2.16 "Reasonable Time" shall mean the earlier of ten (10) calendar days or such lesser amount of time as may be required to avoid delay of the Project.
- 3.2.17 "Services" means all services required of Design Professional under this Agreement.
- 3.2.18 "Work" means the provision of all services, labor, materials, supplies, and equipment that are required of ~~Construction-Manager~~ Contractor to complete the Project in strict accordance with the requirements of the Contract and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction

Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

ARTICLE 4 DESIGN PROFESSIONAL'S GENERAL RESPONSIBILITIES

- 4.1 Design Professional agrees and acknowledges that Owner is entering into this Agreement in reliance on Design Professional in reliance on Design Professional's represented expertise and special and unique abilities to provide the Services. Design Professional accepts the relationship of trust and confidence established between it and Owner by this Agreement and covenants to use Design Professional's best professional efforts, skill, judgment, and abilities in performing the Services, and to further the interests of Owner in accordance with the usual and customary standards of care, skill and diligence of Design Professional's profession, consistent with good architectural/engineering practices for architectural/engineering firms that provide professional design services for projects that are similar in size, scope, and budget to the Project, and in compliance with Applicable Law. Design Professional shall be solely responsible for the full cost of correcting any non-conforming Services, including any rendered by any Consultant(s) and any others who have acted in reliance thereon, that do not meet the standard of care. There are no obligations, commitments, or impediments of any kind known by Design Professional that will limit or prevent performance by Design Professional of its services.
- 4.2 Design Professional shall design the Project such that it can be built, with alternates, within the Project Construction Budget at or under the Construction Cost Limitation. By executing this Agreement, Design Professional acknowledges receipt and comprehension of the Construction Cost Limitation. Design Professional shall perform the Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
- 4.3 Design Professional shall perform its obligations with integrity, ensuring at a minimum to: (a) avoid conflicts of interest and disclose any promptly to Owner; and (b) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from any person or entity for whom it may be liable or requested to secure preferential treatment.
- 4.4 All professional services herein specified are to be performed wholly at the risk of Design Professional, and Design Professional shall take all precautions for the proper and safe performance thereof. Design Professional assumes all liability for this Design Work. Neither Design Professional nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in the Contract Documents or unless authorized in writing by Owner's Representative.
- 4.5 Design Professional's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. Design Professional will not change its Representative without prior written approval of Owner.
- 4.6 Design Professional shall pay all royalties and license fees, which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design Professional and used in the performance of the Services. Design Professional shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

- 4.7 Design Professional shall participate in review sessions with Owner's designated representatives at the end of each review period. Owner will provide its review comments to Design Professional on the form used by Owner for internal document review, and Design Professional shall provide a detailed written response to each of Owner's review comments and shall incorporate into the Construction Documents such correction and amendments as Owner requests, unless Design Professional reasonably objects to such changes in writing and Owner agrees to the objections. Owner's approval of revised documents submitted by Design Professional shall not constitute or be deemed an approval of any unlisted changes, and any costs for any Additional Services subsequently required and/or rendered for such unlisted changes shall be Design Professional's sole responsibility.
- 4.8 Design Professional shall identify to Owner in writing anything in Design Professional's drawings and specification and any other drawings, plans, sketches, instructions, information requirements, procedures, requests for action and other data supplied to Design Professional (by Owner or any other party) that Design Professional regards as unsuitable, improper or inaccurate in connection with the purposes for which such documents or data are furnished. Design Professional shall be solely responsible for the use of such documents or data unless Design Professional advises Owner in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and Owner instructs Design Professional in writing to proceed in accordance with the documents or data as originally provided.

ARTICLE 5 DESIGN PROFESSIONAL SERVICES

Design Professional shall perform all services as described in Scope of Services attached hereto.

5.1 Basic Services

- 5.1.1 Design Professional shall cooperate with other professionals or consultants employed by Owner for this Project or for the design of other Work related to the Project. Design Professional shall consult, to the extent necessary or required by Owner, with designated representatives of Owner relative to the Project. Nothing in the foregoing shall create a contractual relationship between Design Professional and any consultants retained or employed by Owner.
- 5.1.2 Design Professional shall designate in writing a principal or member of its staff satisfactory to Owner as the Project Design Professional who shall, so long as her/his performance continues to be acceptable to Owner, remain in charge of the architectural/engineering services for this Project from the onset of design through completion and acceptance by Owner. No changes are to be made to Design Professional's team without prior written approval from Owner.
- 5.1.3 Design Professional shall contract for or employ, at its expense, consultants for design of this Project, including architects, civil, structural, mechanical, plumbing, and electrical engineers, and landscape architecture design licensed as such by the State of Texas. Design Professional shall submit for approval by Owner the recommended consultants for each professional element of service of this Project, but Design Professional will be responsible for the Design Work of the consultants. Nothing in the foregoing requirement or procedure shall create any contractual relationship between Owner and any consultants employed or subcontracted by Design Professional under the terms of the Contract Documents.

- 5.1.4 Design Professional shall assist Owner in coordinating requirements set forth by Appropriate Authorities, Granting Agencies, and the Authority Having Jurisdiction as designated by Owner, whose participation in or interest impacts the design, the cost, and/or the construction of this Project.
- 5.1.5 Design Professional shall perform all the services specified herein in accordance with generally accepted professional standards. All Design Work drawn and specified, shall conform to and be in compliance with all applicable codes, laws, ordinances, regulations, and published legal restrictions which shall include but not be limited to The International Building Code, 2012 Edition and NFPA 101 Life Safety Code, 2012 Edition.
- 5.1.6 All Design Work drawn and specified shall include incorporation of the provisions of the Energy Conservation Design Standard for New State Buildings as administered by the State Energy Conservation Office, State Comptroller's Office of the State of Texas. Design Professional shall provide Owner with a Statement of Compliance and associated compliance documentation as required.
- 5.1.7 Design Professional shall assist with and attend with Owner representatives an open meeting to be held pursuant to Section 2166.403(b) Texas Government Code, to verify the economic feasibility of incorporating alternative energy devices for space heating, cooling, water heating, electrical loads, and interior lighting into the building's design and proposed energy system. At a minimum, Design Professional shall provide an economic evaluation for the potential of renewable energy applications pursuant to the legislative requirements. Guidelines are available from the State Energy Conservation Office or State Comptroller's Office.
- 5.1.8 All Design work shall include incorporation Landscape design required pursuant to *Texas Government Code* Section 2166.404 and UNT System Design guidelines. Design shall provide requirements meeting these guidelines and shall also be provided for the Design Development Documents submittal package.
- 5.1.9 Design Professional shall become sufficiently familiar with the existing facilities, systems, and conditions at the Project location so that the proposed Project will completely and properly interface functionally with them.
- 5.1.10 Design Professional shall participate in the pre-design conference wherein the Work under the Contract Documents shall be outlined, to include the scope, budget, instructions, procedures, and schedules with a principal, Design Professional, and other representatives including approved consultants, as deemed necessary by Owner.
- 5.1.11 All Drawings shall be prepared on sheets 42" x 30" size (trimmed) and all Specifications shall be prepared in bound form.
- 5.1.12 Design Professional shall:
- 5.1.12.1 Furnish all labor and equipment and provide all of the materials required to complete the services;
 - 5.1.12.2 Perform all services with promptness and diligence so that construction of the Project may commence and may be completed as set forth in the recitals herein;
 - 5.1.12.3 Properly perform all services specified herein;
 - 5.1.12.4 Have full control and direction over the mode and manner of performing the services covered by the Contract Documents.

5.1.13 All professional services herein specified are to be performed wholly at the risk of Design Professional, and Design Professional shall take all precautions for the proper and safe performance thereof. Design Professional assumes all liability for this Design Work.

5.2 Schedule

5.2.1 Promptly twenty-one (21) days after the execution of this Agreement and the pre-planning conference, Design Professional shall prepare and submit for approval to Owner a Design Schedule (in a format acceptable to Owner) showing the coordinated order and time frame in which Design Professional proposes to carry on Project. The Design Schedule shall include all major activities to ensure comprehensive and timely progress of the Design Work. The Design Schedule shall apply to the completion of all services in Exhibit(s) attached hereto. Design Professional shall, when requested, update the progress Design Schedule and deliver a reproducible version to Owner within fourteen (14) calendar days.

5.2.2 The Design Schedule shall be in the form of a progress chart indicating all major tasks to be accomplished and the time for starting and completing the task.

5.2.3 The Design Schedule shall include allowances for period of time required for Owner's review, for the performance of owner's consultants, and for approval of submissions by Appropriate Authorities having jurisdiction over the Project.

5.2.4 The Design Schedule shall include preparation and submittal of all required LEED documentation in accordance with U.S. Green Building Council (USGBC) guidelines for LEED NC certification projected to be at minimum Silver; provided, that this section shall not apply if the Project is not a LEED Project.

5.2.5 Once approved by Owner, time limits established by the Design Schedule shall not be exceeded by Design Professional or Owner, except for reasonable cause; provided, however, reasonably foreseeable occurrences, such as typical weather conditions, vacation time, and standard attrition, shall not constitute reasonable cause for purposes of extending time limits established by the Design Schedule.

5.3 Other Responsibilities of Design Professional

5.3.1 Design Professional shall comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, published legal requirements, and codes which are applicable to the performance of Work or services hereunder or applicable to Design Professional as an employer of labor or otherwise. Design Professional shall further comply with all laws, rules, regulations, and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors, consultants, and others employed or retained by him to render any services hereunder.

5.3.2 Any approvals by Owner of Design Professional's professional services shall not waive, relieve, limit, or release Design Professional from any of its responsibility or liability for its professional services or from the terms of or performance of the Contract Documents; nor shall any such approvals estop or be a defense against Owner.

5.3.3 Design Professional's liabilities, responsibilities and obligations provided for in this Article shall not limit or supersede any of Design Professional's other liabilities, responsibilities, and obligations either at law or otherwise under the Contract Documents.

- 5.3.4 Comply will all requirements of the Design Guidelines, Master Specifications and Telecommunication Infrastructure Standards. Any proposed deviations from Design Guidelines and/or Master Specifications must be submitted in writing to Owner for approval. Design Professional shall not proceed with any such deviations without prior written approval of Owner.
- 5.3.5 Design Professional agrees to allocate Design Work to consultants that are historically underutilized businesses in accordance with the currently approved Historically Underutilized Business Subcontracting Plan (HSP), submitted with the RFQ response. No changes to the HSP may be made unless approved in writing by Owner. While this Agreement is in effect and until the expiration of one year after Final Completion, Owner may require information from Design Professional, and may conduct audits, to assure that the Plan is followed.

5.4 Additional Services

Prior to commencing any Additional Services, Design Professional shall submit to Owner an Additional Services proposal describing, in detail, (a) the nature and scope of the Additional Services, (b) the basis upon which Design Professional believes such services constitute Additional Services rather than Basic Services, (c) the fee, calculated in accordance with this Agreement and Reimbursable Expenses for Design Professional's performance of the Additional Services, and (d) a proposed schedule for performance of the Additional Service. If Design Professional's Additional Services proposal is satisfactory to Owner, Owner shall prepare and deliver to Design Professional for signature an Amendment documenting the Parties' agreement regarding the Additional Services. The following services of Design Professional, when authorized by Owner in writing, shall be paid for by Owner in accordance with the provisions of this Agreement.

- 5.4.1 Making measured Drawings of existing construction when required for planning or designing additions or alterations to existing buildings or facilities. This does not include the responsibility of Design Professional to confirm critical dimensions on Owner furnished drawings or documents of existing facilities or buildings, excluding underground utilities, for which the planning or design of additions and/or alteration are to be provided under the Contract Documents.
- 5.4.2 Revising previously approved Drawings, Specifications, or other documents to accommodate Changes when so directed by Owner, provided, however, that no compensation for Additional Services shall be paid for the following revisions which:
 - 5.4.2.1 May be directed by Owner pursuant to this Agreement;
 - 5.4.2.2 Corrections of design errors or omissions;
 - 5.4.2.3 Changes initiated by the Design Professional;
 - 5.4.2.4 Changes necessitated to bring the Project budget as specified herein or adjusted by the Owner with the agreement of the Design Professional.

5.4.3 Design Professional shall refer to UGS's for additional requirements for Change Orders.

- 5.5 Ownership and Use of Documents: All drawings, specifications and other documents and electronic data furnished by Design Professional to Owner under this Agreement and specifically including the Electronic Files used to create any such date ("Work Product") are deemed to be instruments of service and Design Professional shall retain ownership to such documents, subject to the following provisions:

- 5.5.1 *License.* Owner shall be permitted at all phases of the Project to retain copies of all Work Product, including Electronic Files (such as Models), reproducible copies of drawings, specification and other documents for information and reference in connection with owner's use and occupancy of the Project. Design Professional hereby grants Owner an irrevocable, fully paid-up perpetual license and right to use (but not sell or further license) the drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein. This license will survive the termination or expiration of this Agreement. If this Agreement expires, is terminated or limited in scope, Design Professional hereby expressly consent to the employment by Owner of a substitute Design Professional to complete the Pre-Construction Phase Services under this Agreement, with the substitute Design Professional having all the rights and privileges of the original Project Design Professional.
- 5.5.2 *Ownership.* Upon Owner's Final Payment, the Work Product (including the Electronic files used to create any such Work Product) shall become the property of Owner to the extent allowed by Applicable Law. The Work Product shall be all drawings, specifications, confirmatory land survey field notes, sketches and related data and additional or confirmatory soils engineering or investigations, samples, calculations, test results and reports, and LEED documentation for which Owner has paid for such direct services. Owner may utilize all or any portion of the Work Product for the repair, maintenance, warranty operations, modification, expansion or renovation of the Project, and for any other purpose as permitted by law to the owner of such material without written approval of Design Professional. Owner understands that all such drawings, specifications, models, renderings, work product, instruments of service and other documents may be inappropriate for use in the construction of any other project. Design Professional shall not be responsible for the use or workability of such drawings, specifications, models, renderings, work product, instruments of services and other documents in connection with any project other than the project for which they were specifically designed. These documents are not to be used by Design Professional on any other Project.
- 5.5.3 *Required Disclosures.* Submission or distribution of any or all of the Construction Documents to meet official regulatory requirements of for other purposes in connection with the Project is not to be construed as publication in derogation of Design Professional's rights.
- 5.5.4 *Inspection by Others.* In any event a federal grant or other federal financing participates in the funding of this Project, Design Professional shall permit access to and grant the right to examine its books covering its Services, comply with all federal agency requirements as to work hours, overtime compensations, nondiscrimination, contingent fees, etc., and attend meetings, prepare reports and submit data for approval, as required by the agency involved.
- 5.5.5 Design Professional shall provide c copies of all documents in a quantity sufficient for Owner's intended purpose. The Design Professional shall provide final sets of any documents as required by Owner.
- 5.5.6 Should any of the plans, specifications and other design documents or other work materials produced or used by Design Professional pursuant to this Agreement are damaged or destroyed by fire or other casualty. Design Professional shall prepare and provide Owner with new copies of any such documents or materials, at no cost to Owner.

**ARTICLE 6
OWNER RESPONSIBILITIES**

- 6.1 Owner shall provide Design Professional with reasonable access to the Site to assist Design Professional in its performance of all tasks reasonably necessary for the completion of Services. Owner shall furnish all available information in regard to the Project to assist Design Professional in performing Design Professional's Services. Owner shall furnish the following to Design Professional, if available:
- 6.1.1 A land survey of the Site, signed and dated by a Texas Registered Professional Land Surveyor, identifying the physical characteristics, legal limitations and utility locations. The survey and legal information shall include as applicable, grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and topography of the Site, location, dimensions and floor elevations of existing buildings, other improvements and trees, and full information concerning available service and utility lines, both public and private above and below grade, including invert and depths.
 - 6.1.2 All necessary structural, mechanical, chemical and other laboratory tests and all construction materials testing, inspections and reports as required by Applicable Law or the Construction Documents or reasonably requested by Design Professional.
 - 6.1.3 Testing and balancing services for mechanical and hydronic systems.
 - 6.1.4 The services of soil engineer, when such services are deemed necessary by Owner for the Project, as well as a final geotechnical report including, but not limited to, identification of soil strata, test boring data, and recommendations for building foundations, slab and subgrade preparation.
 - 6.1.5 Commissioning services.
- 6.2 Owner will furnish plans and Specifications to document existing conditions to the extent requested by Design Professional and as reasonably necessary for the completion of Design Professional's Services. Owner does not guarantee the furnished information is correct. Design Professional shall have the duty and responsibility to review the existing as-built Drawings to determine any gross errors in the Drawings.
- 6.3 Provide a Project Budget and Construction Cost Limitation for this Project including information as to the gross area and major facility requirements, budget limitations, and Project scheduling. If the scope of Work changes, adjust the Construction Cost Limitation as required by subsequent approved estimates.
- 6.4 Owner will furnish available information on surface and subsurface soil conditions to include reports; test borings; test pits data; soil bearing values; or related information. When Design Professional determines and recommends additional subsoil investigations are necessary, Owner shall procure the professional services of a registered soils engineer to obtain the required information and data in a timely manner. Owner does not guarantee the furnished information is correct.
- 6.5 Owner's representative shall: (a) be fully acquainted with the Project, Services, and Site; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner (to the extent of their authority) in all matters requiring Owner's approval or authorization. If Owner changes its Representative, Owner shall promptly notify Design Professional in writing.

- 6.6 Owner hereby expressly reserves the right from time to time to designate by notice to Design Professional one or more representatives to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Design Professional shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary. Such representation by Owner, if any, at the site shall not at any time relieve Design Professional, in whole or in part, from any duty or responsibility placed upon Design Professional under the terms of the Contract Documents.
- 6.7 Owner shall examine, or cause its representative(s) to examine documents submitted by Design Professional and render decisions pertaining thereto to avoid unreasonable delay in the progress of Design Professional's Services. Review and approval of a document by Owner shall not waive the contractual responsibility or liability of Design Professional.
- 6.8 Owner shall furnish information required as expeditiously as necessary for the orderly progress of Design Professional's Services.
- 6.9 Owner shall furnish any provisions or sections that Owner may desire incorporated in the Specifications.
- 6.10 Nothing in the Contract Documents nor any act or failure to act on the part of Owner shall be construed as a waiver of claim by Owner for any defects or deficiencies in the Drawings and Specifications or as an assumption of any responsibility of Design Professional under the Contract Documents.

ARTICLE 7 COMPENSATION

Compensation and Payment shall be in accordance with Scope of Services attached hereto.

7.1 GENERAL

- 7.1.1 No partial payment made shall be, or construed to be, final acceptance or approval of the Services to which the partial payment relates, or a release of Design Professional or any Design Professional's obligations or liabilities with respect to such services.
- 7.1.2 Under no circumstances shall Owner be obligated to make any payment (whether a progress payment or final payment) to Design Professional during the existence of any one or more of the following conditions:
 - a. Design Professional is in breach or default under the Agreement or any other agreement between Design Professional and Owner or any of Owner's component universities;
 - b. Any portion of a payment is for Services that were not performed in accordance with this Agreement; provided, however, payment shall be made for those Services which were performed in accordance with the Agreement;
 - c. Design Professional has failed to make payments promptly to Consultants or other third parties for or in connection with Services for which Owner has made payment to Design Professional;
 - d. If Owner, in its good faith judgement, determines that the balance of the unpaid balance of the sum for Basic Services set forth in this Agreement, is not sufficient to complete the Basic Services in accordance with this Agreement; or
 - e. Design Professional has failed to achieve a level of performance necessary to maintain the Design Schedule.

- 7.1.3 Any fee, penalty, interest or damages suffered or incurred by Owner due to Design Professional's failure or refusal to pay any Consultant or other third party shall be offset against payment(s) due Design Professional.
- 7.1.4 If the Project is suspended or abandoned in whole or in part, Design Professional shall be paid for Services performed and for Reimbursable Expenses due prior to Design Professional's receipt of Owner's written notice of such suspension or abandonment.
- 7.1.5 The acceptance by Design Professional of final payment under this Agreement shall constitute a full and complete release of Owner from any and all claims, demands, and causes whatsoever of Design Professional and Owner under the provisions of this Agreement, except those claims previously made in writing and identified by Design Professional as unsettled at the time of final request for payment.
- 7.1.6 Owner shall be billed in accordance with Chapter 2251 of the Texas Government Code and interest, if any, on past due payments shall accrue and be paid in accordance with Chapter 2251 of the Texas Government Code. Payee must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.
- 7.1.7 All invoices submitted for payment must include a HUB Progress Assessment Report (PAR). The PAR should document compliance with the HUB Plan.
- 7.1.8 Payments for Additional Services of Professional as defined in the Professional Services Agreement, for reimbursable expenses as defined above shall be made monthly upon presentation of Professional's Statement of Services Rendered, which shall be reviewed and approved by Owner prior to payment.

ARTICLE 8 INDEMNITY AND INSURANCE

- 8.1 Design Professional 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 that is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Design Professional or Design Professional's agent, consultant under contract, or another entity over which Design Professional exercises control. IN THE EVENT DESIGN PROFESSIONAL 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 **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 **Design Professional shall promptly advise Owner in writing of any claim or demand against Owner or against Design Professional known to Design Professional related to or arising out of Design Professional's activities under this Contract.**

- 8.2 Intellectual Property. **Design Professional agrees to release, indemnify, protect, defend with counsel, approved by Owner, and hold harmless the indemnitees from and against all claims, damages, judgments and loss arising from infringement or alleged services or the use by Design Professional or by Owner at the direction of Design Professional, of any article or material, provided that upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Design Professional and Design Professional shall be given full opportunity to negotiate a settlement. Design Professional does not warrant against infringement by reason of Owner's or Owner's consultant's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Design Professional and Parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.**
- 8.3 The indemnities contained herein shall survive the completion of the Services and the expiration or termination of this Agreement
- 8.4 Insurance
- 8.2.1 Design Professional shall carry such professional liability/errors and omissions insurance, covering Design Professional's Services provided under the Contract Documents and such other insurance coverage as further described in this Article and as acceptable to and approved by Owner. The fees for such insurance will be at the expense of Design Professional. The insurance policy or policies shall remain in full force during the term of this Agreement and for a period of one (1) year beyond the provision of Design Professional's Services. A Certificate of Insurance issued by the insuring carrier or carriers, indicating the expiration date, and existence, of Design Professional's insurance coverage is required to be provided to Owner prior to commencement or continuation of performance of the services under the Contract Documents.
- 8.2.2 Design Professional is required to provide professional liability/errors and omissions insurance with a minimum limit of \$1,000,000 each claim and \$2,000,000 aggregate. The Certificate provided to Owner shall indicate the expiration date of Design Professional's professional liability/errors and omissions insurance.
- 8.2.3 Design Professional shall not commence Design Work under this Agreement until it has obtained all insurance required in accordance with the Contract Documents 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 Design Professional hereunder. Prior to commencing Design Work, Design Professional shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Professional Liability as set forth in the UGC are in full force and effect.
- 8.2.4 Design Professional shall include Owner, {Campus} and the Board of Regents of the University of North Texas System as loss payees and Additional Insured's on General Liability and Business Auto Liability. The Commercial General Liability, Business Auto Liability, Worker's Compensation, and Professional Liability policies shall include a waiver of subrogation in favor of Owner.
- 8.2.5 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 cancelation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, Design Professional 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, Design Professional will give Owner prompt written notice upon actual or constructive knowledge of such condition.

- 8.2.6 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of this 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 Design Professional.
- 8.2.7 Design Professional shall not cause or allow any of its insurance to be canceled nor permit any lapse during the term of the Agreement or as required in the Agreement.

ARTICLE 9 DESIGN PROFESSIONAL'S REPRESENTATIONS AND COVENANTS

- 9.1 Design Professional represents and covenants compliance with all Applicable Laws as they are interpreted by the Appropriate Authorities throughout the term of this Agreement. Design Professional will be solely responsible for all costs, fees, penalties, awards and/or damages, and any interest thereon, resulting from Design Professional's default under the immediately preceding sentence, together with the costs and fees incurred to secure compliance.
 - 9.1.1 Design Professional represents it is familiar with the Texas Standard for energy conservation design, and by this representation warrants compliance (and covenants to comply) with the requirements of *Texas Government Code* Section 447.004.
- 9.2 Design Professional represents and covenants to allocate adequate time, personnel and resources as necessary to perform Services. All staff assigned by Design Professional to perform all or any part of the Services shall be qualified by training and experience to perform their assigned tasks.
- 9.3 Design Professional represents and covenants that there are not obligations, commitments, or impediments of any kind known to Design Professional that will limit or prevent performance of the Services of Design Professional.
- 9.4 Design Professional represents and covenants that the Services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of a Service by Owner shall relieve Design Professional of any of its professional duties or release it from any liability, it being understood that owner is, at all times, relying upon Design Professional for its skill and knowledge in performing the Services. Owner shall have the right to reject any Service because of any fault or defect in the Project due to any material errors or omissions in the Construction Documents. Upon notice of any such errors or omissions, Design Professional shall promptly provide any and all services necessary to correct or remedy them at no cost to owner, even if such correction requires corrective construction work, which work will be paid by Design Professional. Design Professional's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.
- 9.5 Design Professional represents and covenants that the Project, as designed by Design Professional, can be constructed for an amount not to exceed the Construction Cost Limitation.
- 9.6 Design Professional represents and covenants that, upon completion of the Project in accordance with the Construction documents, the Project will be suitable for its intended purpose.

9.89.7 While on the premises of Owner or its component institutions (including the Site), Design Professional represents and covenants to abide and to cause Consultants and other third parties retained by Design Professional in connection with the Project to abide by the policies and procedures relative to conduct, action and demeanor applicable to such premises.

9.99.8 Design Professional represents and covenants that, upon the Effective Date of this Agreement, either (1) it is not delinquent in payment of State of Texas corporate franchise taxes, or (2) it is not subject to the payment of such taxes. Design Professional agrees that any false statement with respect to franchise tax status shall be a material breach hereof, and Owner shall be entitled to terminate this Agreement upon written notice thereof to Design Professional.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 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 the Contract Documents at any time upon written notice to Design Professional. Design Professional may terminate this Agreement upon seven days written notice to Owner only if Owner substantially fails to perform obligations per this Agreement or fails to timely pay Design Professional as required per this Agreement, and after adequate written notice is delivered to Owner and Owner has failed to take action within thirty (30) days in order to begin to correct the problem.

10.1.1 In the event of termination, cancellation, suspension, or abandonment that is not the fault of Design Professional, Owner shall pay to Design Professional as full payment for all services performed and all expenses incurred under this Agreement, the appropriate portion of sum due per this Agreement as shall have become payable because of the progress in the Design Work as the services actually rendered hereunder by Design Professional bear to the total services necessary, plus any sum due Design Professional for Additional Services described per this Agreement, which were previously approved by Owner.

10.1.2 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 Design Work and Design Work in progress, to complete and incomplete Drawings, and to other related documents, whether delivered to Owner or in possession of Design Professional.

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

10.2 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 Design Professional who shall make them available to Owner upon request, with compensation to Design Professional limited to actual reproduction costs. Owner agrees to credit Design Professional with such authorship as may be due to him but is not required to renew this Agreement.

10.3 Upon request at the termination, cancellation, suspension, or abandonment of this Agreement, Design Professional agrees to furnish to Owner copies of the latest documents prepared by Design Professional for the Project.

- 10.4 A termination, cancellation, suspension, or abandonment under this Article shall not relieve Design Professional or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Design Professional. In the event of a termination under this Article, Design Professional hereby consents to employment by Owner of a substitute Design Professional to complete the services under the Contract Documents, with the substitute Design Professional having all rights and privileges of the original Design Professional of the Project.

ARTICLE 11 MISCELLANEOUS

- 11.1 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 Design Professional, and Design Professional'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.
- 11.2 Should any provision of this Agreement, for any reason, be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement. This Agreement will be construed as if such provision had not been included herein.
- 11.3 Should an unforeseeable enactment or change in any Applicable Law affecting this Agreement happen after the Effective Date of this Agreement, Owner and Design Professional agree to negotiate in good faith to conform the affected terms of this Agreement with the provisions that have been enacted or changed.
- 11.4 If Design Professional transacts business as an individual, her/his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither Design Professional nor her/his estate shall have any further right to perform hereunder; and Owner shall pay her/his estate the compensation payable under this Agreement for any services rendered prior to such termination. If Design Professional 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 her/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 Design Professional; 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 Design Professional. 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.
- 11.5 **Certifications**
- 11.5.1 Pursuant to Texas Family Code, Section 231.006, Design Professional 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.
- 11.5.2 Pursuant to Texas Government Code, Section 2155.004, Design Professional 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.

- 11.5.3 If a corporate or limited liability company, Design Professional 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.
- 11.5.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Design Professional agrees that any payments owing to Design Professional under this Agreement may be applied directly toward any debt or delinquency that Design Professional 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.
- 11.6 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.
- 11.7 Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Design Professional certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Design Professional acknowledges the Agreement may be terminated if this certification is inaccurate.
- 11.8 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. Owner is not a Design Professional. No acceptance or approval of documents submitted or services rendered by Design Professional shall be deemed to release Design Professional from its obligations to Owner and responsibilities under Applicable Law, or to waive Owner's remedies for Design Professional's breach, failure or violation of such obligations and responsibilities
- 11.9 Records of Design Professional'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 Design Professional and shall be available to Owner or Owner's authorized representative for a period of at least five (5) years after the provision of Design Professional's Services.
- 11.10 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, System Facilities Administration
 University of North Texas System
 1155 Union Circle #311040
 Denton, Texas 76203-5017

If to Design Professional:

{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.

- 11.11 It is acknowledged and agreed that Design Professional's services to Owner are unique, which gives Design Professional a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Design Professional acknowledges and agrees that a breach by Design Professional of the provisions hereof will cause Owner irreparable injury and damage. Design Professional, 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 the Contract Documents, but only if Owner is not in breach of this Agreement.
- 11.12 Design Professional recognizes that it is engaged as an independent Design Professional and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Design Professional, in accordance with its status as an independent Design Professional, 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. Design Professional 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.
- 11.13 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.
- 11.14 Performance by Owner under this 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 Design Professional and Owner may terminate this Agreement in accordance with the terms of this Agreement. Design Professional acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 11.15 All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Design Professional in the performance of services for Owner, which is not generally known to the public, shall be confidential and Design Professional shall not, beginning on the date of first association or communication between Owner and Design Professional 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 Design Professional's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Design Work, Design Professional shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Design Professional as an independent Design Professional 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. Design Professional shall obtain assurances similar to those contained in this subparagraph from persons, Design Professionals, and sub-Design Professionals retained by Design Professional. Design Professional acknowledges and agrees that a breach by Design Professional of the provisions hereof will cause Owner irreparable injury and damage. Design Professional, 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.
- 11.16 Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Design Professional shall make public information available to Owner in an electronic format.

IN WITNESS WHEREOF the parties hereto have executed this Agreement in the day and year first above written.

OWNER:
UNIVERSITY OF NORTH TEXAS SYSTEM

DESIGN PROFESSIONAL:
{FIRM NAME}

By: _____
(signature)

By: _____
(signature)

[Authorized Signatory Name]
[Authorized Signatory Title]

(typed name and title)

Date: _____

Date: _____

Street/PO Box

City, State, ZIP

Telephone

State of TX Vendor ID Number

SAMPLE

SCOPE OF SERVICES

The Owner and Design Professional agree to the Scope of Services as outlined in the following and hereby incorporated for all purposes:

SEE ATTACHED SCOPE OF SERVICES
Dated [Proposal Date]

This Exhibit is attached to and made part of the Agreement between Owner and Design Professional.

Initialed by Owner

Initialed by Design Professional

DESIGN SERVICES WITH CMAR SCOPE OF SERVICES

1. Design Services

1.1 The Project Budget is determined by Owner and includes all costs for design, construction, and related management costs and shall not exceed {Word} and No/100 Dollars ({Numeral}.00) except as provided herein. **BUDGET: This Budget is subject to revision as allowed under the terms of the Agreement**

1.1.1 The Construction Cost Limitation for the Project is {Word} and No/100 Dollars ({Numeral}.00) extended to the time of competitive bidding.

1.1.2 The Alternate amount allowed for the Project is {Word} and No/100 Dollars ({Numeral}.00) extended to the time of competitive bidding.

1.1.3 The Project Budget is apportioned as described below including any applicable expense or fee multipliers:

Construction Cost Limitation	\${Numeral}
Alternates	\${Numeral}
Design Professional Basic Fee	\${Numeral}
Additional Services	
IT, AV, and Security System.....	\${Numeral}
LEED Administration.....	\${Numeral}
Civil	\${Numeral}
Total Design Professional Fee.....	\${Numeral}
Reimbursable Expenses	\${Numeral}
 TOTAL FEE AND REIMBURSABLE EXPENSES	 \${Numeral}

Design Professional Services shall be performed and shall consist of all services described in the Contract Documents and Exhibit B, including but not limited to the: (a) Schematic Design Phase; (b) Design Development Phase; (c) Construction Documents Phase; (d) bidding phase; and (e) construction administration phase services. Design Professional shall not proceed to any level or phase of design without written authorization by Owner representative, except at Design Professional's own financial risk. The Work, Design Work, related data, and services required in accordance with these provisions shall be accomplished within the basic Construction Cost Limitation and Project scope stated in this Agreement.

Design reviews will be at: (a) fifty percent (50%) Schematic Design Phase; (b) one hundred percent (100%) Schematic Design Phase; (c) fifty percent (50%) Design Development Phase; (d) one hundred (100%) Design Development Phase; and (e) sixty percent (60%) Construction Documents Phase.

Design Professional, in order to determine the requirements for Design Professional's Services, shall conduct a preliminary evaluation of the initial programming, to be provided by Owner. Design Professional shall confirm its understanding of such requirements with Owner and shall assist Owner to refine or make clarifications to Owner's Program for the Project.

2. Program Deliverables

2.1 Schematic Design Phase Services

Upon receipt of a Notice to Proceed, Design Professional shall proceed with the Schematic Design Phase and shall:

- 2.1.1 Review and validate the criteria furnished by the Owner to ascertain the requirements of this Project and shall confirm such requirements to the Owner.
- 2.1.2 Based on the building program approved by Owner, prepare schematic design studies consisting of, but not limited to, design concepts, design narrative for all disciplines, Drawings, and other documents illustrating the scale and relationship of Project components for approval by Owner. Reproducible set shall be submitted for Owner's required approval.
- 2.1.3 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided at the conclusion of the Schematic Design Phase, in a format approved by Owner, and review the written cost estimate with Owner. Design Professional shall adjust the scope of this Project as required based on the cost estimator's cost estimate.

2.2 Design Development Phase Services

Upon Owner's written approval to proceed, Design Professional shall proceed with the Design Development Phase and shall:

- 2.2.1 Prepare the Design Development documents and, upon completion, submit a reproducible set for approval by Owner to include: the architectural, structural, mechanical, plumbing and electrical floor plans and distributions systems, cross sections, and other required Drawings; and the outline Specifications in sufficient detail to describe the size, character, and quality as to kinds and locations of materials and the types and sizes of structural, mechanical, plumbing and electrical systems for the entire Project. If required Design Professional shall also provide a framed exterior rendering of the Project.
- 2.2.2 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided to Construction Manager at the conclusion of the Design Development Phase, in a format approved by Owner. Design Professional shall adjust the scope of the Project as required based on the cost estimator's cost estimate and as approved or directed by Owner.

2.3 Construction Documents Phase Services

Upon Owner's written approval to proceed, Design Professional shall proceed with the Construction Document Phase and shall:

- 2.3.1 Prepare the Construction Documents in accordance with the design schedule for approval by Owner to include and consist of the standard documents as may be furnished by Owner, and the final Working Drawings and technical Specifications that set forth in detail all the requirements for construction of the entire Project. Prepare final Drawings and Specifications in full compliance with all applicable building codes, laws, or ordinances, and other regulatory authorities.

- 2.3.2 Submit four (4) sets for Owner's review and approval, with comments as necessary, review sets of the Working Drawings and Specifications when at sixty percent (60%) and ninety-five percent (95%) completion points are reached in this phase of design. Review documents, two (2) sets, will be provided to Construction Manager for updating their cost estimate at each review point except for the sixty percent (60%) set which will be the GMP set.
- 2.3.3 Coordinate with Construction Manager in its preparation and submission for Owner's approval of a written final estimated construction cost upon one hundred percent (100%) completion of the final Drawings and Specifications in accordance with the design schedule and Owner approved format and detail. The estimate shall be itemized as necessary to include estimates for alternates (additives and/or deductive) and to conform to the form of Proposal Request intended for bidding purposes.

2.4 Bidding Stage Services

Upon receiving Owner's written approval to proceed, Design Professional shall assist Construction Manager as required in the solicitation of competitive subcontractor bids – said solicitation to be by Construction Manager – and Design Professional shall:

- 2.4.1 Furnish and distribute the following sets of Construction Documents, numbered in consecutive order:
 - a. One (1) set to the Owner at the time documents are released to the bidders;
 - b. Up to ten (10) sets of Construction Documents shall be furnished to Construction Manager to be distributed to Subcontract Bidders (Design Professional may require deposits or may sell at cost additional complete or partial sets of documents, in its discretion); and
 - c. Up to ten (10) sets of Construction Documents and electronic files shall be furnished to Plan Services, as determined by Owner and Design Professional. A maximum of two (2) sets shall be furnished to each location.
- 2.4.2 Prepare and issue addenda to the Construction Documents, including Drawings when appropriate, as may be required to clarify or interpret the Documents.
- 2.4.3 Review Construction Manager's final estimated construction cost prepared before bid opening(s). If the estimated construction cost for the final design and Specifications (Construction Documents) exceeds the original or Owner adjusted (if so done in writing during the Design Stage Services) Construction Cost Limitation, Owner may, at its discretion and decision, exercise one or more of the rights reserved to Owner under Section 2.4.4 below.
- 2.4.4 If the final estimated construction cost prepared by Construction Manager prior to bid opening, or the lowest and best bid(s) received exceeds the original or latest adjusted Construction Cost Limitation of the Project Budget by more than ten percent (10%), Owner may, at its discretion:
 - a. Give written approval of an increase in the construction cost portion of the Project Budget;
 - b. Direct Design Professional to make such changes at no additional expense to Owner in the Construction Documents to permit rebidding of the Project within the shortest, reasonable time;
 - c. Direct Design Professional to revise the scope or quality, or both, of the Project, so as to reduce the Project construction cost; in which case Design

Professional shall at its expense, if so directed by Owner, modify the Construction Documents, as directed, in order to reduce the estimated Project construction cost to be within the adjusted construction cost portion of the Project Budget;

- d. Assist Construction Manager in negotiating with lowest and best bidder(s); or
- e. Abandon the Project, in which case the appropriate part of Design Professional fee to be paid for the Design Development Phase shall be based on the latest adjusted construction cost portion of the Project Budget, and provided that this fee shall not be exceeded if the Project is later awarded at a cost still in excess of that portion of the Project Budget.

2.4.5 Attend all pre-bid conference(s) and bid openings, and assist Construction Manager with reviews, evaluations, and recommendations for selection of subcontractors to assure selection is based on best value.

2.4.6 Assist Construction Manager in preparing a tabulation of bids in a form acceptable to Owner.

2.5 Construction Stage Services

Upon the Owner's written approval to proceed, the Design Professional shall proceed from the Bidding Stage and shall:

2.5.1 Provide all the administrative services set forth and required in the Contract Documents and as required by the Construction Documents to permit timely prosecution of the construction Work.

2.5.2 Furnish to Owner two (2) additional sets of Construction Documents complete with all addenda issued during the bidding which are in suitable condition for use during construction. Provide electronic files of the Construction Documents for Owner and Construction Manager's use in constructing the Project in a format acceptable to Owner.

2.5.3 Make visits to the Project not less often than once a week, and when conditions require shall make more frequent visits to the site, to observe the progress and quality of the executed construction Work and to determine if the construction Work is proceeding in accordance with the Contract Documents. These visits shall be performed by the Project Design Professional and other experienced and qualified representatives of Design Professional. Design Professional shall use reasonable diligence to detect defects and deficiencies of the Work of Construction Manager and to recommend in writing to Owner the disapproval or rejection of Work as failing to conform to the Contract Documents. Design Professional shall immediately notify in writing Construction Manager and Owner of any detected noncompliance of Construction Manager or its subcontractors with the Contract Documents and shall make such recommendations in writing to Owner or Owner's representatives for remedial construction Work or rework necessary to obtain compliance with the Contract Documents. Design Professional will not be responsible for construction management, methods, or safety provisions employed by Construction Manager in the prosecution of the construction Work. Design Professional shall keep Owner informed of the status of the Project including significant milestones reached, problems resolved and those pending, and other important items by the submission of written reports not less often than once a month.

- 2.5.4 Review Construction Manager's periodic estimates for partial payments, determine the amount owed to Construction Manager, make recommendations to Owner and certify certificates for payment on such amounts. The certificate for payment shall constitute Design Professional's representation to Owner that construction Work has progressed to the value indicated, the quality of the construction Work is considered to be in accordance with the Contract Documents, and that Construction Manager is entitled to payment in the amount certified.
- 2.5.5 Interpret the Contract Documents and, within a Reasonable Time, render such interpretations as necessary for the proper and timely execution or progress of the construction Work.
- 2.5.6 Review for Owner's approval, Change Orders to the Construction Documents which are necessary as a result of such interpretations and/or clarifications, Construction Manager's inquiries, or Owner requests. Design Professional shall review cost and time extension estimates for each Change Order, analyze price and time Proposal Requests received from Construction Manager for Change Orders, compare Design Professional's estimate with Construction Manager's Proposal Request, advise Owner as to the acceptability of Construction Manager's Proposal Request and assist Owner, if requested, in resolving any discrepancy between the estimate and Construction Manager's Proposal Request. Such assistance shall be accomplished within a Reasonable Time.
- 2.5.7 Review and advise Owner, prior to or concurrent with notification to Construction Manager, as to acceptability of Work schedules prepared by Construction Manager in accordance with Owner's requirements; shop Drawings, laboratory samples; fabrication, erection and setting Drawings; wiring and control diagrams; materials delivery schedules; shop drawing submittal schedules; lists of materials and equipment; mockups; equipment or systems testing procedures and schedules; and, other descriptive data pertaining to materials and equipment for compliance with the design concept for the Project and with the information given in the Contract Documents. Unless otherwise specifically stated by Owner, such review, advice, and assistance as required in each instance shall be accomplished within a Reasonable Time.
- 2.5.8 Analyze and advise Owner as to the acceptability of test reports, test methods, materials, equipment, and systems.
- 2.5.9 Design Professional shall immediately, when identified, make all necessary revisions to the Contract Documents to correct errors, conflicts, omissions, or deficiencies and reissue the corrected Drawings and Specifications at no additional expense to Owner.
- 2.5.10 Review and, within a Reasonable Time, advise Owner as to the acceptability of substitutions proposed by Construction Manager.
- 2.5.11 Provide a color schedule and samples of textures and finishes of all materials in the Project for review and approval of Owner.
- 2.5.12 Provide a list of fixed and installed equipment to include the type/size, location, and quantity, to Owner for review and approval.
- 2.5.13 Provide technical assistance to and design interpretation of the Contract Documents for Construction Manager and Owner's Representative(s) and advise said personnel of all decisions rendered or recommendations made. Design

Professional shall review, at Owners request, the inspection reports prepared by Construction Manager and shall issue, subject to the concurrence of Owner, such directives as the evaluation of the report(s) data dictates as necessary to obtain compliance with the requirements of the Contract Documents. Owner's representative shall be notified immediately of any instructions given to Construction Manager. All instructions which result in revisions to or change in scope of the Work shall be promptly confirmed in writing by Design Professional with copies to all parties concerned. Unless otherwise specifically stated by Owner, such review, advice, and assistance as required in each instance shall be accomplished within a Reasonable Time.

- 2.5.14 Have authority to reject construction Work, with concurrence of Owner, which does not conform to the Contract Documents. Design Professional shall recommend in writing to Owner that the Work be stopped whenever in Design Professional's reasonable and professional opinion it may be necessary for the proper performance of the Construction Contract.
- 2.5.15 Make recommendations to Owner on all claims of Construction Manager relating to the execution and progress of the Work and on all matters or questions related thereto. Such recommendations shall be prepared and forwarded in writing to Owner within fifteen (15) calendar days of the date of the written notification by Construction Manager of such claim.
- 2.5.16 Arrange and conduct inspections, in coordination with Owner and Construction Manager, to determine construction deficiencies to be corrected by Construction Manager and to determine the dates of Substantial Completion, beneficial occupancy (in whole or parts thereof) and Final Completion, as such terms shall be defined in the Contract Documents, and advise in writing to Owner as to the acceptability of the Work performed by Construction Manager. Observe and evaluate the performance tests of equipment and systems tests required by the Contract Documents.
- 2.5.17 Assist Owner in fulfilling the requirements of the Appropriate Authorities and Granting Agencies relative to disbursements made under the Contract Documents for the Project and to periodic progress reports required to be submitted to these authorities and/or agencies for the Project.
- 2.5.18 Design Professional shall advise in writing and consult Owner on all significant matters related to performance under the Contract Documents.
- 2.5.19 Within thirty (30) calendar days following Final Completion, furnish to Owner one (1) complete full-size set of prints of the Project Drawings, which have been corrected to include all construction "as-built" which was different from the original Contract Documents as reported by Construction Manager or as known by Design Professional. Design Professional shall also furnish complete electronic files of record Drawings using the most current release of AutoCAD software or other software approved by Owner and also .pdf full-size format. Prior to submitting the final Record Documents, furnish one complete check set of revised Project Drawings for Owner review.

2.6 Responsibilities

- 2.6.1 Design Professional shall make recommendations to Owner as to the approval or disapproval of Construction Manager's requests for payments.

2.6.2 Design Professional shall participate with Owner and Construction Manager in the final construction inspection and prepare the punch list for Owner and Construction Manager.

2.6.3 Design Professional shall assist Construction Manager as otherwise may be required.

2.7 Additional Services

The following services of Design Professional, when authorized by Owner in writing, shall be paid for by Owner in Accordance with the compensation provisions below.

2.7.1 Making measured Drawings of existing construction when required for planning or designing additions or alterations to existing buildings or facilities. This does not include the responsibility of Design Professional to confirm critical dimensions on Owner furnished drawings or documents of existing facilities or buildings, excluding underground utilities, for which the planning or design of additions and/or alteration are to be provided under the Contract Documents.

2.7.2 Revising previously approved Drawings, Specifications, or other documents to accommodate Changes when so directed by Owner, provided, however, that no compensation for Additional Services shall be paid for the following revisions which:

- a. May be directed by Owner pursuant to Section 5.11.4 above
- b. Corrections of design errors or omissions;
- c. Changes initiated by the Design Professional;
- d. Changes necessitated to bring the Design Development within the Construction Cost Limitation as specified herein or adjusted by Owner with the agreement of Design Professional; and
- e. Are necessary to produce and furnish the final Record Documents, corrected to include all "as-built" construction and conditions.

2.7.3 Providing professional services made necessary by the default of Construction Manager in performance of the Work under the Contract Documents.

2.7.4 Providing Construction Contract administration of construction after the latest extended construction contract time has been exceeded by more than ten percent (10%) through no fault of Design Professional.

2.7.5 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction.

2.7.6 Preparing supporting data and other service in connection with Change Orders if the change is not the fault or negligence of Design Professional and if contract sum is not commensurate with the services required of Design Professional.

2.8 Provide and submit Drawings and applications to the USGBC for compliance review to obtain a minimum Silver rating in accordance with the USGBC LEED rating system; provided, that this section shall not apply if the Project is not a LEED Project.

2.9 Construction Costs

- 2.9.1 Construction cost does not include the fees of Design Professional and its consultants, Owner's management costs and expenses or allowances established by Owner.
- 2.9.2 Design Professional is responsible to maintain adequate control throughout the Design Work of the Estimated Construction Cost of the entire Project to ensure the Construction Cost Limitation is not exceeded. Design Professional and Owner may require a design contingency or such other cost growth factor for Design Development within the Construction Cost Limitation, as deemed necessary to permit development of final design within this limitation. Design Professional shall coordinate with Construction Manager in Construction Manager's submission of a full scope and detailed cost estimate for the construction Work for the entire Project at the intervals called for herein. Construction Manager shall prepare and submit a final estimated Project construction cost prior to releasing the Contract Documents to the bidders.
- 2.9.3 The format and detailed content of the cost estimate shall be approved by Owner. Said estimate shall include the Major Categories of Work for the entire Project and shall be detailed under each category to show the individual items of Work in both quantity and unit cost for labor and materials, which are to be directly incorporated in the Work by Construction Manager. Estimate summaries shall show the above direct quantity cost by Major Categories of Work and such indirect costs as appropriate by separate identification to estimate the Project construction cost which Owner may expect at the time of competitive bidding.
- 2.9.4 The final cost estimate prepared and submitted by Construction Manager shall be a continuation and expansion of previous estimates prepared and submitted during the Construction Documents Phase.
- 2.9.5 If the lowest and best bona fide competitive bid received exceeds the latest approved (final) Estimated Construction Cost, Owner may, at its discretion and decision, exercise one or more of the alternatives in this Agreement.

3. Compensation and Payment

3.1 Compensation

- 3.1.1 Owner shall pay Design Professional for performance of this Agreement, subject to additions and deductions provided herein, the sum of {Word} and No/100 Dollars ({Numeral}.00), in Periodic Progress Payments as hereinafter provided.
- 3.1.2 Professional shall be reimbursed for actual expenses incurred in deliveries and travel not to exceed a maximum reimbursement amount of {Word} and No/100 Dollars ({Numeral}.00). Professional reimbursable expenses must be approved and agreed to by Owner prior to incurring same, for the following incidental expenses after submission of a request for payment of same with supporting documentation of expenses that are approved by Owner:
 - a. Reproduction of deliverables in excess of those enumerated in the Professional Services Agreement.
 - b. Fees for special consultants, as authorized and approved in advance by Owner for other than structural, mechanical, and electrical engineering services, and estimating services; or other services specifically agreed to in writing or included herein per Exhibit B.

- c. Fees for expenditures for printing and printing supplies; plotting, photography; renderings; postage; delivery and handling materials at actual expense incurred.
- d. Reimbursement for travel expenditures at State of Texas reimbursement rates; provided further that no reimbursement will be made for travel within the Denton-Dallas-Fort Worth area or that involve less than 150 miles round-trip.

3.1.3 For Professional's Additional Services as described in this Agreement, a fee will be computed per the Exhibit B, Personnel Titles and Hourly Labor Rate Schedule.

3.1.4 It is agreed and understood that Professional shall have experienced and qualified personnel as needed for design and engineering of structural, mechanical, or electrical equipment and/or systems included in or related to the Work. Owner reserves the right to reject any of such persons or firms Owner may deem not qualified or competent to provide such services. Such pay or compensation and expenses associated therewith as will be required to be paid to these persons or firms shall be paid by Professional out of the fees provided for in this Agreement, and Owner accepts no responsibility whatsoever for any such person or firm.

3.2 Payment

3.2.1 Based on Invoices for Payment submitted by Professional, Owner shall make a progress payment to Professional of the cost of labor, materials and equipment incurred by Professional in relation to the Work during the previous month, except that the percentage of the total amount paid shall not exceed the percentage amount of the Work that has been completed as determined in the reasonable judgment of Owner. On or about the first day of each month, Professional will provide Owner with an invoice for payment, which shall include a breakdown of Work completion percentage based on the approved schedule of values and documentation for costs related to all travel, reproduction and sub-consultant reimbursable expenses stated under the basic services. Each invoice may only reference one purchase order. Multiple purchase orders will require separate invoices. Upon verification of costs incurred and amount of Work completed, Owner will make payment to Professional within thirty (30) calendar days or will notify Professional of any objection to the invoiced amount.

3.2.2 Payments on account of Design Professional's basic services shall be made monthly in proportion to the services performed to increase the compensation for basic services to the following maximum percentages of the basic fee at the completion of each of the Phases of Design Work. The following cumulative payment percentages shall apply:

Schematic Design Phase.....	15%
Design Development Phase	35%
Construction Documents Phase	65%
Bidding Phase (Award of Construction Agreement)	70%
Construction Phase through acceptance by Owner (monthly payments in increments based on progress to completion).....	95%
Receipt of record drawing files, reproducibles, and CD/ROM.....	100%

3.2.3 No deductions will be made from Design Professional's compensation on account of penalty, liquidated damages, or other contractual retainage withheld from payments to Construction Manager-at-Risk.

UNT | SYSTEM™

UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION AND DESIGN CONTRACTS 2016

ARTICLE 1 DEFINITIONS

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

- 1.1 “Addendum/Addenda” means formally issued written or graphic modification and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project
- 1.2 “Application for Final Payment” means Contractor’s final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor’s retainage.
- 1.3 “Application for Payment” means Contractor’s monthly partial invoice for payment that includes any portion of the Work that has been completed and performed in accordance with the requirements of the Contract Documents for which an invoice has not been submitted. The Application for Payment must accurately reflect the progress of the Work, be itemized based on the Schedule of Values, bear the notarized signature of Contractor, and not include subcontracted items for which Contractor does not intend to pay.
- 1.4 “Authority Having Jurisdiction” means a federal, state, local or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.5 “Baseline Schedule” means the initial time schedule prepared by Contractor for Owner’s information and acceptance that conveys Contractor’s and Subcontractors’ activities (including coordination and review activities required in the Contract Documents to be performed by Design Professional and Owner), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations, and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.6 “Certificate of Final Completion” means the certificate issued by Design Professional that documents, to the best of Design Professional’s knowledge and understanding, Contractor’s completion of all Contractor’s Punchlist items and pre-final Punchlist items, final cleanup, and Contractor’s provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.7 “Certificate of Substantial Completion” means the certificate executed by the Design Professional, Owner, and Contractor that documents to the best of the Design Professional’s and Owner’s knowledge and understanding, Contractor’s sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.8 “Change Order” means a written modification of the Contract between Owner and Contractor, agreed to and signed by Owner, Contractor, and Design Professional.

- 1.9 “Change Order Request (COR)” means a Contractor generated document which describes a change in the scope of Work, including a detailed description, Drawings and Specifications, and a request for changes to costs or time, as necessary, to inform Owner of the nature of the requested change to the Contract.
- 1.10 “Close-Out Documents” mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavits of payment, releases of liens and claims, and other documents as may be further defined, identified, and required by the Contract Documents.
- 1.11 “Contract” means the agreement, including all attachments thereto, and all of the Contract Documents between Owner and Contractor.
- 1.12 “Contract Date” is the date when the agreement between Owner and Contractor becomes effective.
- 1.13 “Contract Documents” mean those documents identified as a component of the Contract between Owner and Contractor. These may include, but are not limited to: Drawings; Specifications; Uniform General Conditions; Owner’s Special Conditions; Owner’s Design Criteria Package for Design-Build Projects; Guaranteed Maximum Price Proposal executed by Owner and Contractor; all Change Orders; all pre-bid and/or pre-proposal addenda; Owner’s Request for Proposal and/or Request for Qualifications; and Contractor’s response to Owner’s Request for Proposal and/or Request for Qualifications.
- 1.14 “Contract Duration” means the period between the start date identified in the Notice to Proceed and the end of the Warranty Period.
- 1.15 “Contract Sum” means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.16 “Contract Time” means the period between the start date identified in the Notice to Proceed with construction and the date to achieve Substantial Completion identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.17 “Contractor” means the individual, corporation, limited liability company, partnership, joint venture, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design- Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number but shall be interpreted to include the plural. The term “Contractor” shall also be inclusive of and apply to Design Professional in these Uniform General Conditions when the context does not indicate otherwise.
- 1.18 “Construction Change Directive” means an approved change in the Work issued by the Owner without the complete agreement of Contractor as to cost and/or time.
- 1.19 “Construction Documents” mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.20 “Construction Manager-at-Risk”, in accordance with Tex. Education Code §51.782, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.21 “Coordination Documents” means an ongoing process performed by the Contractor that documents, in a format approved by the Owner, the review of plans and specifications developed by the Design Professional demonstrating the Contractor understands the scope of the project and reviews complex interrelationships among project components.

- 1.22 “Date of Commencement” means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.23 “Day” means a calendar day unless otherwise specifically stipulated.
- 1.24 “Design-Build” means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build Firm. The Design-Build Project delivery shall be implemented in accordance with Tex. Education Code § 51.780.
- 1.25 “Design-Build Firm”, in accordance with Texas Education Code § 51.780, means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.
- 1.26 “Design Professional” means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.27 “Drawings” mean that product and set of documents of Design Professional which graphically depicts the Work.
- 1.28 “Final Completion” means the date determined and certified by Design Professional and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.29 “Final Payment” means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made including adjustments to the final Contract Sum resulting from approved change orders and release of Contractor’s retainage.
- 1.30 “Float” means the period in the Critical Path schedule that allows an excusable delay when the original schedule allows more than enough time to perform the work.
- 1.31 “Historically Underutilized Business (HUB)” pursuant to Tex. Gov’t Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity’s affairs.
- 1.32 “Notice to Proceed” means written document furnished by the Owner informing Contractor of the date to commence the Work and the date anticipated for Substantial Completion.
- 1.33 “Open Item List” means a list of work activities, Punchlist items, changes, or other issues not expected by Owner, Design Professional, and Contractor to be complete prior to Substantial Completion.
- 1.34 “Owner” means the University of North Texas System and/or its component institutions, as a higher education university system and agency of the State of Texas.
- 1.35 “Owner’s Construction Manager (OCM)” means the individual assigned by the Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. The OCM does not have the authority to bind the Owner or direct changes to the scope, cost, or time of the Contract.
- 1.36 “Owner’s Designated Representative (ODR)” means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

- 1.37 "Progress Assessment Report (PAR)" means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.38 "Project" means all activities necessary for realization and completion of Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, fulfillment of all Contract and warranty obligations, and work by Owner's forces or other contractors.
- 1.39 "Project Costs" means all costs necessary for the realization and completion of Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, fulfillment of all Contract and warranty obligations, and work by Owner's forces or other contractors.
- 1.40 "Proposal Request (PR)" means a document that informs Contractor, Owner, and Design Professional of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's pricing for the proposed change.
- 1.41 "Punchlist" means a list of items of Work to be completed or corrected by Contractor before Final Completion, and indicates items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.42 "Reasonably Inferable" means a fair, proper, and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.
- 1.43 "Record Documents" mean the Drawings, Specifications, and other materials maintained by Contractor during construction and as corrected by Design Professional, that documents all addenda, Architect's Supplemental Instructions, Change Orders, and postings and markings that record the as-built conditions of the Work and all changes made during construction.
- 1.44 "Request for Information (RFI)" means a written request by Contractor directed to Design Professional and Owner for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work.
- 1.45 "Samples" mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.46 "Schedule of Values" means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work, submitted by Contractor for approval by Owner and Design Professional.
- 1.47 "Shop Drawings" mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.48 "Site" means the geographical area of the location of the Work.
- 1.49 "Special Conditions" mean the documents containing terms and conditions which may be unique to the Work or Project.
- 1.50 "Specifications" mean the written product of Design Professional that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.51 "Subcontractor" means an individual or entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.

- 1.52 “Submittal Register” means a list provided by Contractor of all items to be furnished for review and approval by Design Professional and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.53 “Substantial Completion” means the date determined and certified by Contractor, Design Professional, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.54 “Unit Price Work” means the Work or a portion of the Work, paid for based on incremental units of measurement.
- 1.55 “Work” means the administration, procurement, materials, equipment, construction, and all services necessary for Contractor, and/or its agents, to fulfill Contractor’s obligations under the Contract.
- 1.56 “Work Progress Schedule” means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary and appropriate revisions, including a critical path impact analysis, as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

ARTICLE 2
WAGE RATES AND OTHER LAWS GOVERNING CONSTRUCTION

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Contractor is responsible for obtaining and maintaining permits related to storm water run-off. Contractor shall conduct operations consistent with storm water run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall, and shall cause subcontractors to, comply with the Texas Prevailing Wage law. Contractor shall pay not less than the wage scale of the various classes of labor as shown on the prevailing wage schedule as established by the United States Department of Labor in accordance with the Davis-Bacon Act, as amended. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by Contractor because Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. When requested, Contractor shall furnish competent evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties.
- 2.2.1.1 Contractor shall submit a copy of each worker's wage-rate notification to *Owner* with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.
- 2.2.1.2 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.
- 2.2.1.3 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractor. Pursuant to Tex. Penal Code § 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.
- 2.2.1.4 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or

by Subcontractor, Contractor shall promptly inform *Owner* of the proposed wage to be paid for the skill along with a justification for same and *Owner* shall promptly concur with or reject the proposed wage and classification.

2.2.1.5 Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

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

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258, and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

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

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

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

2.3 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers, and laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

2.4 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof. Provided, however, if Contractor is a Construction Manager-at-Risk, Contractor shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or

where the copyright violations are contained in Drawings, Specifications, or other documents prepared by Owner or Design Professional; unless Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent then Contractor shall be responsible for such loss unless notice of such information is promptly furnished to Design Professional.

- 2.5 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.
- 2.6 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological, or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the OCM and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on the Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the Owner a Notice of Claim as described in § 21.1.2.2.
- 2.7 Franchise Tax Status. Upon request, the Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.
- 2.8 Conflicts of Interest. Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors, sub-consultants or others for whom they may be liable, to secure preferential treatment.

ARTICLE 3
GENERAL RESPONSIBILITIES OF OWNER

- 3.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be convened for attendance by Owner, Contractor, Design Professional and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.2 OCM. Prior to the start of construction, Owner will identify its OCM, who has the express authority to act on behalf of the Owner to the extent and for the purposes described in the Contract, including responsibilities for general administration of the Contract.
- 3.2.1 Point of Contact. Unless otherwise specifically defined elsewhere in the Contract Documents, OCM is the single point of contact between Owner and Contractor. Notice to OCM, unless otherwise noted, constitutes notice to Owner under the Contract.
- 3.2.2 Directives. All directives on behalf of Owner will be conveyed to Contractor and Design Professional by OCM in writing.
- 3.3 Owner Supplied Materials and Information.
- 3.3.1 Surveys. Owner will furnish to Contractor those surveys Owner possesses describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
- 3.3.2 Drawings and Specifications. Owner will furnish or cause to be furnished, free of charge, the number of complete sets, paper or electronic, of the Drawings, Specifications, and addenda as provided in the Contract.
- 3.3.3 Other Information. Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
- 3.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.
- 3.5 Limitation on Owner's Duties.
- 3.5.1 No Control. Owner will not supervise, direct, control or have authority over, or be responsible for Contractor's means, methods, technologies, sequences, or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.4, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers, or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

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

ARTICLE 4
GENERAL RESPONSIBILITIES OF DESIGN PROFESSIONAL

- 4.1 Role of Design Professional. Unless specified otherwise in the Contract between Owner and Contractor, in addition to design services Design Professional shall provide general administration services for Owner during the construction phase of the project. Written correspondence, RFIs, and Shop Drawings/submittals shall be directed to Design Professional for determination and action. Design Professional has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by OCM, upon request.
- 4.2 Site Visits. Design Professional will make visits to the Site at intervals as provided in the Design Professional's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to OCM.
- 4.3 Inspections. Design Professional has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
- 4.4 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Such clarifications or interpretations will be provided by Design Professional consistent with the intent of the Contract Documents. Design Professional will issue these clarifications with reasonable promptness to Contractor as Design Professional's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 14.
- 4.5 Limitations on Design Professional Authority. Design Professional is not responsible for:
- Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Work, nor will Design Professional supervise, direct, control, or have authority over the same;
 - The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
 - Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
 - Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 5
GENERAL RESPONSIBILITIES OF CONTRACTOR

- 5.1 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until Substantial Completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where Punchlist items are completed until Final Completion.
- 5.2 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of Design Professional and OCM in accordance with these Uniform General Conditions and other provisions of the Contract, and as outlined in the pre-construction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstruction to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 5.2.1 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the Work. Contractor's management personnel are subject to the approval of OCM, and shall be removed and replaced at the request of OCM. Contractor shall not change approved staff during the course of the Project without the written approval of OCM unless the staff member leaves the employment of Contractor in which case Contractor shall notify OCM and appoint an approved replacement as soon as reasonably possible. Contractor shall provide additional quality control, safety, and other staff as may be stated in the Contract Documents or as may be necessary or advisable for completion of the Work.
- 5.2.2 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 5.2.3 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection, and completion of the Work. The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even if not particularly specified or indicated in the Contract Documents.
- 5.2.4 No Substitutions without Approval. Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Design Professional and in accordance with a Change Order.
- 5.3 Owner Equipment or Material. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor will be responsible for any damage or loss.
- 5.4 Non-Compliant Work. Should Design Professional and/or OCM identify Work as noncompliant with the Contract Documents, Design Professional and/or OCM shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either Design Professional or OCM does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

- 5.5 Subcontractors. Contractor shall not employ any Subcontractor, supplier, or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier, or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.
- 5.5.1 Contract Documents. All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.
- 5.5.2 Scheduling. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract or subcontract with Contractor. Contractor shall require all Subcontractors, suppliers, and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 5.6 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements, or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 5.7 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 5.8 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of its employees and its Subcontractors and their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees or agents whom OCM finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 5.9 Ancillary Areas. Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
- All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by OCM.
 - Contractor may erect, at its own expense, temporary buildings that will remain its property. Contractor will remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.
 - Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by OCM. Contractor will not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures, and other like existing

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

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

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

- Store materials in a commercial warehouse meeting the criteria stated below.
- Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance must be filed with Owner's representative.
- Inspection by Owner's representative is allowed at any time. OCM must be satisfied with the security, control, maintenance, and preservation measures.
- Materials for this Project must be physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
- Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
- With each monthly payment estimate, Contractor must submit a report to OCM and Design Professional listing the quantities of materials already paid for and still stored in the off-site location.
- Contractor must make warehouse records, receipts, and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
- In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents in place or at a location near the jobsite as directed by OCM. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

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

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

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

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

ARTICLE 6
HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN

6.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).

6.1.1 Good Faith Effort.

6.1.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic, and gender neutral means.

6.1.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.

6.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:

- Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
- Conduct the good-faith effort activities required, and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
- Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
- Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.
- Submit monthly Progress Assessment Reports (PAR) to Owner, verifying compliance with the HUB subcontracting plan, including the use/expenditures made made/to Subcontractors. (The PAR is available at the following link: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.)
- Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).

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

ARTICLE 7 BONDS

- 7.1 Construction Bonds. Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.
- 7.2 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to Owner, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.
- 7.2.1 Performance Bonds. A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. For Design-Build Projects the performance bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents. The form of the bond shall be approved by Owner. The performance bond shall be effective through Contractor's warranty period.
- 7.2.2 Payment Bonds. A Payment bond is required if the Contract Sum is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. For Design-Build Projects the payment bond is to be for the full amount of both the construction and design services in accordance with the Contract Documents. The form of the bond shall be approved by Owner.
- 7.2.3 When Bonds Are Due. Payment and performance bonds are due before Contractor commences any Work.
- 7.2.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 7.3 Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD HARMLESS OWNER, AND ITS COMPONENT INSTITUTIONS, REGENTS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, FROM AND AGAINST ANY COSTS, LOSSES, OBLIGATIONS, OR LIABILITIES IT INCURS AS A RESULT.
- 7.3.1 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 7.3.2 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for

collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

- 7.4 Payment of Claims when Payment Bond is Not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code § 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, and actions necessary to release the lien and satisfaction of such claim.
- 7.5 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (FMS Circular 570). The Owner will consider acceptable any corporate surety which is qualified under this paragraph and which has a rating of at least B in Best's Insurance Reports – Property – Casualty.

**ARTICLE 8
INDEMNITY AND INSURANCE**

- 8.1 **Indemnification of Owner.** Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS Owner, and its component institutions, Regents, elected and appointed officials, directors, officers, employees, agents, representatives, and volunteers, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal or bodily injury, death, or property damage, made upon Owner directly or indirectly arising out of, resulting from, or related to Contractor's activities under the Contract, including any acts or omissions of Contractor, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Contractor, and their respective directors, officers, employees, agents, and representatives while in the exercise of performance of the rights or duties under the Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of Owner or separate contractors in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 8.1.1 **No Third-Party Beneficiaries.** The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 8.1.2 **Notice.** Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.
- 8.2 **Insurance Requirements.** Design Professional shall carry insurance in the types and amounts indicated in the Contract for the duration of the Contract. Unless otherwise provide for in the Contract, Contractor shall carry insurance in the types and amounts indicated in these Uniform General Conditions for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Upon request, Owner and its agents shall be entitled to receive, without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
- 8.2.1 **Period of Coverage.** Contractor, consistent with its status as an independent contractor, shall provide and maintain all insurance coverages with the minimum amounts described below until the end of the warranty period unless expressly agreed otherwise. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 17.
- 8.2.2 **Certificates.** Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 8.2.3 **Failure to Provide Certificates.** Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

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

8.3 Insurance Coverage Required.

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

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

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

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

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

- The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.
- Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract,

plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

- Employer's liability limits for asbestos abatement will be:
- \$500,000 each accident;
- \$500,000 disease each employee; and
- \$500,000 disease policy limit.

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

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

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

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

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

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

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

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

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

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

ARTICLE 9
CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD DOCUMENTS

9.1 Drawings and Specifications.

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

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

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

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

9.4 Contractor's Duty to Review Contract Documents. In order to facilitate Contractor's responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, Contractor shall, prior to commencing the Work, examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor, and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the design phase and construction phase prior to commencing each particular work activity and/or system installation. Updated Coordination Documents shall be provided to the Owner and Design Professional monthly.

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

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

- 9.5.2 Construction Manager-at-Risk Examination and Reporting. When performing as a Construction Manager-at-Risk, Contractor has no liability for discrepancies, errors, omissions, or inconsistencies unless Contractor fails to immediately report in writing a discovered or apparent discrepancy, error, omission, or inconsistency to OCM and Design Professional. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.
- 9.5.3 Other Limitations. Unless Contractor is performing as a Design-Build Firm or a Construction Manager-at-Risk, Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect discrepancies, errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations.
- 9.6 No Warranty or Representation by Owner. Owner makes no representations, express or implied, about the adequacy or accuracy of the Drawings, Specifications, or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the Construction Documents are adequate, accurate, or suitable for their intended use.
- 9.7 Requirements for Record Documents.
- 9.7.1 Contractor shall:
- 9.7.1.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, Change Orders, and all Project correspondence and one record copy of approved Shop Drawings, Samples, and similar required submittals.
- 9.7.1.2 Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work, and show and reference all changes made during construction. Provide Owner and Design Professional access to these documents.
- 9.7.1.3 Keep current and maintain the record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order, or otherwise. Make available all records prescribed herein for reference and examination by Owner and Design Professional, and their representatives and agents.
- 9.7.1.4 Be responsible for marking the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs. During construction, update the Record Documents, including all related RFI's, ASI's CCD's, and CO's, at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 9.7.1.5 Within thirty (30) days of Substantial Completion, Contractor shall furnish the Design Professional a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items, and as described in the Contract Documents. A complete set must be provided to the Design Professional within seven (7) calendar days of Final Completion.

9.7.2 Design Professional shall:

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

ARTICLE 10 CONSTRUCTION SAFETY

- 10.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce, and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to OCM and Design Professional prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury, or loss and erect and maintain all necessary safeguards for such safety and protection.
- 10.2 Notices. Contractor shall provide notices as follows:
- 10.2.1 Utilities and Adjacent Properties. Notify owners of adjacent property, including those that own or operate utilities, utility services, and/or underground facilities, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 10.2.2 MSDS. Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 10.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury, or loss. Contractor shall:
- 10.3.1 On Call Response. Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 10.3.2 Notice.
- 10.3.2.1 Give OCM and Design Professional prompt notice of all such events.
- 10.3.2.2 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 10.3.3 Owner Remedy. Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 10.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify OCM and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care. Contractor shall:
- 10.4.1 Documentation. Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 10.4.2 Incident Report. Supply OCM and Design Professional with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the

scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide OCM with written notification within one week of such catastrophic event if legal counsel delays submission of full report.

10.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify OCM immediately.

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

10.5.2 Owner. Upon receiving such notice, OCM will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, OCM will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.

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

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

10.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to OCM prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

ARTICLE 11 QUALITY CONTROL

- 11.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 11.2 Testing.
- 11.2.1 Owner. Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents.
- 11.2.2 Contractor shall provide the following testing:
- 11.2.2.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 11.2.2.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 11.2.2.3 Preliminary, start-up, pre-functional, and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 11.2.2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 11.2.3 Standards. All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to OCM, Design Professional, and Contractor.
- 11.2.4 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
- 11.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 11.2.4.2 Acceptance by Owner of the quality and nature of tests.
- 11.2.4.3 All tests taken in the presence of Design Professional and/or OCM, or their representatives.
- 11.2.4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 11.2.4.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 11.2.4.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which OCM determines appropriate, including complete removal and replacement of noncompliant work or material.

- 11.2.5 Notice of Testing. Contractor shall give OCM and Design Professional timely notice of its readiness and the date arranged so OCM and Design Professional may observe such inspection, testing, or approval.
- 11.2.6 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with the Work Progress Schedule to avoid delay.
- 11.2.7 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by OCM, uncover and recover the work at Contractor's expense.

11.3 Submittals.

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

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

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

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

action taken and other information not conveniently tracked through the Work Progress Schedule.

- 11.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 11.3.2 Review of Submittals. Design Professional and OCM review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs Design Professional and OCM of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.
- 11.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to Design Professional and OCM, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 11.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 11.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 11.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. Design Professional's and OCM's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 11.3.5 No Substitutions without Approval. OCM and Design Professional may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, OCM and Design Professional will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by OCM and Design Professional when:
- 11.3.5.1 The Contract Documents do not require extensive revisions; and
- 11.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of Design Professional and do not result in an increase in cost to Owner; and
- 11.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
- Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;

- The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
- The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and OCM can approve the requested substitution;
- Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
- Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
- The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

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

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

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

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

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

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

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

11.5.2 Notice. Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to OCM of the anticipated need for an inspection so that Contractor may proceed with cover-up of Work. Should OCM fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

ARTICLE 12
CONSTRUCTION SCHEDULES

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

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

- 12.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for completion of all Work. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 12.3.1.1 Contractor shall re-submit the initial Work Progress Schedule as required to address comments from Design Professional and Owner until such schedule is accepted as the Baseline Schedule.
- 12.3.1.2 Submittal of a schedule, schedule revision, or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.
- 12.3.2 Work Progress Schedule Updates.
- 12.3.2.1 Contractor shall update the Work Progress Schedule and the Submittal Register monthly, at a minimum, to reflect progress to date and current plans for completing the Work, while maintaining the original schedule as the Baseline Schedule, and shall submit electronic and paper copies of the update to Design Professional and OCM as directed but at a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule.

- 12.3.2.2 Contractor should revise the Work Progress Schedule as necessary or appropriate for the management of the Work. All updated Work Progress Schedules must show the anticipated date of completion and reflect all extensions of time granted through Change Order as of the date of the update.
- 12.3.2.3 Contractor shall identify all proposed changes to schedule logic to Owner and to Design Professional via an executive summary accompanying the updated Work Progress Schedule for review and approval prior to implementation of any revisions to the Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to OCM.
- 12.3.3 Use of Work Progress Schedules. The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the Work Progress Schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning and completing the Work.
 - 12.3.3.1 Owner's acceptance of a Work Progress Schedule, and any update or revision, constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the Work Progress Schedule.
 - 12.3.3.2 Owner's acceptance of the Work Progress Schedule, or update or revision, does not indicate any approval of Contractor's proposed sequences and duration.
 - 12.3.3.3 Owner's acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to so do.
 - 12.3.3.4 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.
- 12.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party. Before Contractor uses any portion of the float, Contractor must submit a written request to Owner and receive Owner's written authorization to use the portion of float. Owner's approval will not unreasonably be withheld.
- 12.5 Completion of Work. Contractor is responsible and accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
 - 12.5.1 Requirement to Regain Schedule. If, in the judgment of Owner, the Work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress to insure timely completion of the entire Work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of Work placement by:
 - 12.5.1.1 An increase in working forces.
 - 12.5.1.2 An increase in equipment or tools.
 - 12.5.1.3 An increase in hours of work or number of shifts.

- 12.5.1.4 Expedited delivery of materials.
- 12.5.1.5 Other action proposed if acceptable to Owner.
- 12.5.2 Recovery Schedule. Within ten (10) days after such notice, Contractor shall notify OCM in writing of the specific measures taken and/or plan to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Work. Should Owner deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with Owner's approval.
- 12.5.3 Owner's Notice Not Acceleration. Owner's notice to Contractor shall not be considered acceleration by Owner and Owner shall not be responsible for any increased costs incurred by Contractor.
- 12.6 Modification of the Contract Time. Delays and extensions of Contract Time are valid only if properly noticed and documented by Change Order.
 - 12.6.1 Extension Request. When a delay is a Weather Day or an Excusable Delay, and such delay prevents Contractor from completing the Work within the Contract Time, Contractor may be granted an extension of Contract Time. Owner will extend Contract Time by the number of days lost due to Weather Days or Excusable Delay, as measured by a substantiated critical path analysis of the Work Progress Schedule; provided, however, in no event will an extension of Contract Time be granted for delays that merely extend the duration of non-critical activities, or concurrent delay or which only consume float. All extensions of Contract Time will be granted in calendar days.
 - 12.6.2 Weather Day. A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. When a Weather Day prevents work at the site from proceeding, Contractor shall: (a) immediately notify OCM for confirmation of the conditions; and (b) at the end of each calendar month, submit to OCM and Design Professional a list of Weather Days occurring in that month along with documentation of the impact on critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension granted will be issued by Weather Change Order. If Contractor and Owner cannot agree on the Contract Time extension, Owner may issue a CCD for fair and reasonable time extension.
 - 12.6.3 Excusable Delay. An "Excusable Delay" is a delay to Contractor's current schedule caused by circumstances listed below that prevents Contractor from completing the Work within the Contract Time. Based on substantiated critical path analysis to the Work Progress Schedule, any Contract Time extension will be issued by Change Order. Excusable Delay may be caused by the following:
 - 12.6.3.1 Discrepancies, errors, omissions, and inconsistencies in design, which Design Professional corrects by means of changes in the Drawings and Specifications; provided, however, that this does not apply if (a) Contractor is a Design-Build Firm, or (b) Contractor is a Construction Manager-at-Risk and failed to promptly report a discovered or apparent discrepancy, error, omission, or inconsistency during the pre-construction phase.
 - 12.6.3.2 Unanticipated physical conditions at the Site, which Design Professional corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

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

12.11.2 No Release. No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.

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

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

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

12.11.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

12.11.4 Owner Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

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

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

12.12 Failure to Complete Work in the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in Section 12.13 below or elsewhere in the Contract Documents.

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

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

- 12.13.2 Reasonable Estimate. Not as a penalty but as liquidated damages representing the parties' estimate at the time of Contract execution of the damages that Owner will sustain for late Substantial Completion of Work. The parties stipulate and agree that the actual damages sustained by Owner for late Substantial Completion of the Work will be uncertain and difficult to ascertain, that calculating Owner's actual damages would be impractical, unduly burdensome, and cause unnecessary delay, and that the amount of daily liquidated damages set forth above is a reasonable estimate.
- 12.13.3 Offset. Owner may also recover the liquidated damages from any money due or that becomes due Contractor. The amount of liquidated damages may be adjusted by the terms of the Contract.
- 12.13.4 No Waiver. Payment or offset of the liquidated damages does not preclude recovery under the Contract, except for claims related to delays in Substantial Completion or Final Completion. Owner's right to receive liquidated damages shall not affect Owner's right to terminate the Contract as provided in these Uniform General Conditions or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay liquidated damages.

ARTICLE 13. PAYMENTS

- 13.1 Schedule of Values. Contractor shall submit to OCM and Design Professional for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to OCM. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 13.1.1 Requirements.
- 13.1.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by OCM, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing Close-Out Documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract Sum. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 13.1.1.2 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
- 13.1.1.3 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal, and shall make the worksheets available to Owner at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 13.2 Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by Owner or its designee of a correct and complete Pay Application in electronic and/or hard copy format as required by the Contract Documents, and certified by Design Professional. Progress payments are made provisionally and do not constitute acceptance of Work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
- 13.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to Design Professional and OCM a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
- 13.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished, and materials incorporated into the Work, using the established Schedule of Values;
- 13.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
- 13.2.1.3 HUB subcontracting plan Progress Assessment Report;

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

13.2.1.5 Construction payment affidavit.

13.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, Design Professional and OCM will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, OCM and Design Professional may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by Design Professional and/or OCM, and must attach all additional documentation required by OCM and/or Design Professional, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work, and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

13.2.3 Certification by Design Professional. Within five (5) days or earlier following Design Professional's receipt of Contractor's formal Application for Payment, Design Professional will review the Application for Payment for completeness, and forward it to OCM. Design Professional will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.

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

13.3.1 Retainage. Owner will withhold from each progress payment, as retainage, whichever is more of the following three options: (a) five (5) percent of the total earned amount; (b) the amount authorized by law; or (c) as otherwise set forth in the Contract Documents. Retainage will be managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.

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

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

13.3.1.3 Contractor shall not withhold retainage from its Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.

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

13.3.2.1 Defective or incomplete Work not remedied;

13.3.2.2 Damage to Work of a separate Contractor;

13.3.2.3 Failure to maintain scheduled progress;

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

13.3.3 Title.

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

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

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

13.3.6 Documentation.

- 13.3.6.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
- 13.3.6.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
- 13.3.6.3 Provide copies of bills of lading, invoices, delivery receipts, or other evidence of the location and value of such materials in requesting payment for materials. For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

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

ARTICLE 14 CHANGES

- 14.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and Design Professional, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 14.9 or other contract provisions.
- 14.1.1 Owner Ordered Changes. Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or CCD, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Work, an adjustment to Contract Sum or Contract Time shall be made and authorized by a Change Order.
- 14.1.2 Corrections. It is recognized by the parties hereto and agreed by them that the Drawings and Specifications may not be complete or free from discrepancies, errors, omissions, or inconsistencies, or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any discrepancies, errors, omissions, or inconsistencies in such Drawings and Specifications, or any changes in or additions to Drawings and Specifications or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such discrepancies, errors, omissions, or inconsistencies shall not constitute or give rise to any claim, demand, or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Contractor will be entitled to the time or sum stated to be due Contractor in any Change Order approved and signed by all parties, which shall constitute full compensation to Contractor for all costs, expenses, and damages to Contractor.
- 14.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as agreed to by the parties and incorporated into a Change Order.
- 14.3 Claims for Additional Costs.
- 14.3.1 Claim with no Requested Change. If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, Contractor shall give Owner and Design Professional written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Section 10.3. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 18. Any change in the Contract Sum resulting from such claim must be authorized by a Change Order.

- 14.3.2 Miscellaneous Claims. If Contractor claims that additional cost is involved because of, but not limited to: (1) any written interpretation of the Contract Documents; (2) any order by Owner to stop the Work pursuant to Article 17 where Contractor was not at fault; or (3) any written order for a minor change in the Work issued pursuant to Section 14.4, Contractor shall make such claim as provided in Section 14.3.1.
- 14.3.3 Failure to Notify. Should Contractor fail to call to the attention of Owner and Design Professional to discrepancies, errors, omissions, or inconsistencies in the Contract Documents, but claim additional costs for corrective Work after Contract award or after Owner's acceptance of Contractor's Construction Manager-at-Risk guaranteed maximum price, Owner may assume intent to circumvent competitive bidding for the necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a CCD to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies, errors, omissions, or inconsistencies will not be considered by Owner.
- 14.4 Minor Changes. Design Professional, with concurrence of OCM, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.
- 14.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, OCM and Design Professional shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, Design Professional, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as deemed necessary to conform to the different conditions. Any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order.
- 14.6 Extension of Time. All changes to the Contract Time made as a consequence of requests as required under Section 12.6, must be documented by Change Order.
- 14.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 14.7.1 Procedures.
- 14.7.1.1 Procedures for administration of Change Orders shall be established by Owner and stated in the Contract Documents.
- 14.7.1.2 No oral order, oral statement, or oral direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 14.7.2 Routine Changes. Routine changes shall be formally initiated by Design Professional or Owner by means of a Proposal Request form detailing requirements of the proposed change for pricing by Contractor, or may be initiated by Contractor by means of a Change Order Request form detailing proposed work, pricing, and time. This action may be preceded by communications between Contractor, Design Professional, and OCM concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by Design Professional and ODR will be

required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

- 14.7.3 Documentation. All proposed costs or time for Change Order Work must be supported by itemized accounting of material, equipment, and associated itemized installation costs in sufficient detail following the outline and organization of the established Schedule of Values, and be supported by documented impact to critical path activities, to permit analysis by Design Professional and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
 - 14.7.4 Emergencies. Emergency changes to save life or property may be initiated by Contractor alone with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
 - 14.7.5 Coordination with Schedule of Values. The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to Owner.
- 14.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor includes in a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
- 14.8.1 Self-Performance. For Work performed by its forces, Contractor will be allowed its actual costs for materials, the total amount of wages paid for labor, plus the total cost of state and federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor.
 - 14.8.2 Overhead and Profit. For contracts not based on a Guaranteed Maximum Price (GMP), Contractor will be allowed to include a percentage not to exceed five percent (5%) of the total Change Order amount. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
 - 14.8.3 GMP Limitation. For Contracts based on a GMP, the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up or additional fee on any Change Order Work unless the Change Order increases the GMP. If the GMP increases, the Construction Manager-at-Risk or Design Builder will allowed additional fee at the rate specified in the Contract. Subcontractors will be allowed to include a percentage not to exceed five percent (5%) of the Change Order requested Work.
 - 14.8.4 Net Amount. On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 14.9 Construction Change Directive (CCD). Owner may issue a written CCD directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Sum and/or the Contract Time. Owner retains sole discretion whether or not to issue any CCD. Owner's issuance of a CCD does not require Owner to issue subsequent CO's. Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a CCD. Contractor shall not submit its costs for CCD Work with its Application for Payment until a CO has been issued. The Parties reserve their rights as to the disputed amount, subject to Article 18.

ARTICLE 15
PROJECT COMPLETION AND ACCEPTANCE

15.1 Closing Inspections.

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

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

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

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

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

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

15.1.7 Additional Inspections.

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

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

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

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

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

15.3 Acceptance and Payment.

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

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

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

15.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a CCD as may be applicable.

15.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

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

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

- 15.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 15.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 15.3.6.4 Claims arising from personal injury or property damage to third parties.
- 15.3.7 Waiver of Claims. Acceptance of final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 15.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

ARTICLE 16
WARRANTY AND GUARANTEE

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

- 16.2 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor and Contractor shall assume any duty to repair not otherwise covered by those warranty agreements. Owner will certify the date of service commencement in the Substantial Completion certificate.
- 16.2.1 Assumption. In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems, and equipment.
- 16.2.2 Assignment. Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.
- 16.3 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 16.4 Certification of No Asbestos Containing Materials or Work. Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

- 17.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness, or longevity of the Work when completed.
- 17.1.1 Cease Work. Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified.
- 17.1.2 Investigation. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings. Contractor shall cooperate with Owner's investigation.
- 17.1.3 Outcome. If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of Contract Time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension shall be considered an Excusable Delay and an extension of Contract Time will be granted through a Change Order.
- 17.1.4 Time. Suspension of Work under this provision will be no longer than is reasonably necessary to investigate and remedy the conditions giving rise to the suspension.
- 17.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. When such a suspension prevents Contractor from completing the Work within the Contract Time, it shall be considered an Excusable Delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 17.3 Termination by Owner for Cause.
- 17.3.1 Cause. Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
- 17.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
- 17.3.1.2 Persistent disregard of laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, including Owner;
- 17.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the Contract Time;
- 17.3.1.4 Failure to remedy defective work;
- 17.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;

- 17.3.1.6 Persistent endangerment to the safety of labor or of the Work;
 - 17.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance pursuant to the Contract;
 - 17.3.1.8 Any material breach of the Contract; or
 - 17.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 17.3.2 No Waiver. Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 17.3.3 Notice. Owner may immediately terminate the Contract under the provisions of this Section 17.3 upon written notice to Contractor and Contractor's sureties. Owner may also give notice to Contractor and Contractor's sureties of Owner's intent to terminate the Contract under the provisions of this Section 17.3 at any later date upon written notice to Contractor and its sureties.
- 17.3.4 Cure. Should Contractor or its surety, after having received notice of Owner's intent to terminate at a later date, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of intent to terminate was based, the notice of intent to terminate may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of Contract Time.
- 17.3.5 Failure to Cure. Should Contractor or its surety fail, after having received notice of Owner's intent to terminate, to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within the date specified by Owner, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 17.3.5.1 This amount includes the cost of additional Owner costs such as Design Professional services, other consultants, and contract administration.
 - 17.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 17.3.5.3 This obligation for payment survives the termination of the Contract.
 - 17.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. Owner will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 17.3.6 Conversion to Termination for Convenience. In the event that any termination of the Contract for cause under this Section 17.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience of Owner and Contractor's recovery for termination shall be strictly limited to the payments allowable under Subsection 17.4.3.

- 17.4 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
- 17.4.1 Notice. Owner will immediately notify Contractor and Design Professional in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage, or decommissioning of incomplete Work or systems, and for safety.
- 17.4.2 Contractor Action. Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
- 17.4.2.1 Stop all work.
- 17.4.2.2 Place no further subcontracts or orders for materials or services.
- 17.4.2.3 Terminate all subcontracts for convenience.
- 17.4.2.4 Cancel all materials and equipment orders as applicable.
- 17.4.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
- 17.4.3 Contractor Remedy. When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work completed including the corresponding pro rata portion of Contractor's overhead and profit. Contractor may not claim lost profits on other work or lost business opportunities.
- 17.5 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work completed including the corresponding pro rata portion of Contractor's overhead and profit, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 17.6 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor as final payment.

ARTICLE 18 DISPUTE RESOLUTION

- 18.1 Contracts Less Than \$250,000. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by Contractor or Design Professional to attempt to resolve any claim for breach of Contract made by Contractor or Design Professional that is not resolved under procedures described throughout the Uniform General Conditions or any Supplementary or Special Conditions of the Contract, *where the amount in controversy is less than \$250,000.*
- 18.2 Contracts \$250,000 or Greater. Contractor or Design Professional and Owner shall use the following dispute resolution process prior to initiating any litigation or filing suit in a court of competent jurisdiction.
- 18.2.1 Mediation. If a dispute arises out of or relates to the Contract or the breach thereof in which the amount in controversy is \$250,000 or greater, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute by mediation using the procedures specified in this section prior to the commencement of any legal action. The parties commit to participate in the proceedings in good faith with the intention of resolving the dispute if at all possible.
- 18.2.1.1 The party seeking to initiate mediation of a dispute shall give written notice to the other party describing the nature of the dispute, the initiating party's claim for relief and identifying one or more individuals with authority to settle the dispute on such party's behalf. The party receiving such notice shall have five (5) business days to designate by written notice one or more individuals with authority to settle the dispute on such party's behalf.
- 18.2.1.2 The parties shall then have ten (10) business days to submit to each other a written list of acceptable qualified mediators not affiliated with any of the parties. The mediator shall possess the qualifications required under Civil Practice and Remedies Code, § 154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable. The parties shall mutually agree on the mediator.
- 18.2.1.3 In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than (45) days after selection of the mediator.
- 18.2.1.4 The parties agree to participate in the mediation to its conclusion. The mediation shall be terminated (i) by the execution of a settlement agreement by the parties, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a party to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. Even if the mediation is terminated without a resolution of the dispute, the parties agree not to terminate negotiations and not to commence any legal action or seek other remedies prior to the expiration of five (5) days following the mediation. Notwithstanding the foregoing, any party may commence litigation within such five (5) day period if litigation could be barred by an applicable statute of limitations or in order to request an injunction to prevent irreparable harm.
- 18.2.1.5 The parties shall share the cost of the mediation process equally although each party's attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

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

ARTICLE 19 MISCELLANEOUS

- 19.1 Right to Audit. Owner, or any of its duly authorized auditors or representatives, shall during regular business hours and upon reasonable notice have access to and the right to examine, and be permitted to audit and copy, any directly pertinent books, documents, papers, and records of Contractor, including, without limitation, complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's quotes, proposals, purchase order, vouchers, memoranda, schedules, electronic data, pictures, videos, logs, minutes, notes, reports and other data relating to the Project. Further, Contractor or Design Professional agree to include in all subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such Subcontractor relating to any claim arising from the Contract and subcontract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein shall continue until the later of three years after Final Payment or final disposition of any disputes, claims, litigation, or appeals arising out of the Contract.
- 19.2 Supplementary or Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General or Special Conditions as described below:
- 19.2.1 Supplementary Conditions. Supplementary Conditions may describe the standard procedures and requirements of contract administration. Supplementary Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary Conditions are of such a character that it is to be anticipated that Owner may normally use the same, or similar, conditions to supplement each of its several projects.
- 19.2.2 Special Conditions. Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 19.3 Federally Funded Projects. On federally funded projects, Owner may waive, suspend, or modify any provision in these Uniform General Conditions which conflicts with any federal statute, rule, regulation, or procedure, where such waiver, suspension, or modification is essential to receipt by Owner of such federal funds for the Project. In the case of any Project wholly financed by federal funds, any standards required by the enabling federal statute, or any federal rules, regulations, or procedures adopted pursuant thereto, shall be controlling.
- 19.4 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers, or payment requests and processing, amendment, Change Orders, and other administrative activities.
- 19.4.1 Accessibility and Administration.
- 19.4.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 19.4.1.2 Owner shall administer the software.

- 19.4.2 Training. When used, Owner shall provide training to the Project team members.
- 19.5 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.
- 19.6 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.
- 19.7 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.
- 19.8 Governing Law and Venue. This Contract shall be governed by the laws of the State of Texas. Venue for any suit arising from the Contract will be in a court of competent jurisdiction subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code, or if mandatory venue is not applicable in the county in which the Project is located.
- 19.9 Captions and Catch Lines. The captions and catch lines used throughout the Uniform General Conditions and elsewhere in the Contract Documents are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.
- 19.10 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.
- 19.11 No Third-Party Beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.
- 19.12 Child Support Obligor. Notwithstanding anything to the contrary within the Contract Documents, it is understood and agreed between the parties that in accordance with the laws of the State of Texas, a child support obligor who is more than thirty (30) days delinquent in paying child support, and a business entity in which an obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%), is not eligible to receive payments from state funds under a contract to provide property, materials or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement.
- 19.13 No Assignment. This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to do business with the State of Texas.
- 19.14 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as if the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.
- 19.15 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.
- 19.16

- 19.17 Public Information. Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Contractor shall make public information available to Owner in an electronic format.
- 19.18 Entire Agreement. These Contract Documents supersede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitute the entire agreement.