



## REQUEST FOR PROPOSAL

**Request for Proposal #:**  
**Request for Proposal Name:**  
**RFP PRE-PROPOSAL MEETING DATE & TIME:**  
**RFP DUE DATE AND TIME:**  
**RFP PUBLIC OPENING DATE & TIME:**

**RFP769-22-975CS**  
**Fire Alarm System JOC**  
**Not Applicable**  
**July 21, 2022 @ 2:00 p.m.**  
**Not Public**

**RETURN SEALED PROPOSALS TO:**

**Physical Address (i.e. hand delivery and overnight):**

**University of North Texas System**

**Business Service Center**

**Woodhill Square**

**1112 Dallas Drive, Suite 4000**

**Denton, Texas 76205**

If there are any questions regarding this RFP, please contact Carrie Stoeckert at 940-369-8160 or submit solicitation questions to: [carrie.stoeckert@untsystem.edu](mailto:carrie.stoeckert@untsystem.edu). All questions must be received no later than June 30, 2022, at 2:00 p.m. CDT. All questions and answers will be posted to the website by 5:00p.m. on July 5, 2022.

A copy of this proposal form is posted at and may be downloaded from <https://www.untsystem.edu/bid-opportunities>.

Check below if preference claimed under TAC, Title 34, as amended

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

By signing this proposal, respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code (TAC), Title 34, as amended.

In accordance with the Texas Government Code, Sections 2161.181-182 and the Texas Administrative Code (TAC), Title 34, as amended, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Comptroller of Public Accounts HUB Rules, TAC, Title 34, as amended, encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.

**Are you a certified HUB? (circle one) YES or NO**

***If yes, please circle the organization or entity certified with below and include a copy of your certificate:***

Texas Comptroller of Public Accounts; NCTRCA; MBDC; Other \_\_\_\_\_

***If yes, please also specify:*** Ethnicity \_\_\_\_\_ & Gender \_\_\_\_\_

**IF SUBMITTING A PROPOSAL, RFP MUST BE SIGNED and ALL attached files must be printed and returned with proposal package. You shall submit electronically at <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS> or you may submit a clearly marked original with signature. Sealed proposals should be received NO LATER THAN the specified due date and time. UNTS reserves the right to accept late proposals, however proposals received after opening time will not be accepted. Show RFP opening date, RFP number, and return address of firm on sealed proposal envelope. Incomplete proposals will be disqualified.**

**RESPONDENT MUST FILL IN AND SIGN BELOW:**

**(FAILURE TO SIGN WILL DISQUALIFY PROPOSAL)**

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

PAYEE ID#: \_\_\_\_\_

AUTHORIZE AGENT: \_\_\_\_\_

(Print or Type Name)

AUTHORIZED SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

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RFP Checklist-Please use this checklist to make sure you are providing all the proper documents

- ( ) All UNTS provided RFP forms completed
- ( ) Proposal signed
- ( ) One electronic form if filed online or one Original if hand delivered
- ( ) If requested, supporting product or service documentation provided
- ( ) Addendums included in response

**NOTICE--IN ADDITION TO THE ITEMS LISTED BELOW, THE TERMS AND CONDITIONS OF THIS RFP ARE ATTACHED AS ATTACHMENT "A".**

**IMPORTANT NOTICE: ANY PROPOSED CHANGES TO THE TERMS AND CONDITIONS OUTLINED IN THIS RFP MUST BE SUBMITTED ALONG WITH YOUR RESPONSE TO THIS RFP. FAILURE TO PROVIDE SUCH MAY PREVENT UNT FROM AGREEING TO ANY CHANGES IN OUR STANDARD TERMS AND CONDITIONS AND COULD AFFECT THE AWARD OF THIS RFP.**

**The laws of the State of Texas must prevail on all responses.**

**1.0 SCOPE OF WORK/DESCRIPTION OF GOODS:**

In accordance with Education Code 51.784, the University of North Texas System (UNTS), subsequently referred to as the Owner, is accepting proposals and intends to enter into an agreement with a vendor(s) that specializes in **Fire Alarm, Fire Sprinkler, Fire Suppression System Services, inspections as well as remedial work and minor renovations** in accordance with the terms and conditions and requirements set forth in this Request for Proposal. UNTS intends to select multiple vendors as a result of this RFP. UNTS will assess the selected vendors on a rotational or qualifications basis as necessary for a given project. The selected vendor(s) may be awarded projects that are managed by UNTS or by any of its component institutions. The resulting pricing, terms and conditions shall be extended to the University of North Texas System (UNTS), the University of North Texas (UNT), the University of North Texas Health Science Center (UNTHSC), University of North Texas at Dallas (UNTDD) and any other institutions of higher education interested in utilizing the agreement, as allowed by the Texas Education Code.

This RFP shall include any future buildings with like systems within the contract period, should those properties be included after the beginning of the contract year, they will be prorated for the remaining period, depending on services required.

**1.1 Service Requirements:**

- Work shall include fire alarm systems, fire sprinkler systems, fire extinguishers, special fire suppression system services, inspections, repairs, remedial work, and renovations. Responses will be accepted from firms who wish to provide service on some but not all systems; for example, all systems except "extinguishing systems". This should be noted in the response.
- Contractor shall provide labor, materials, equipment, tools, and transportation required to perform these services.
- **Fire alarm systems include but are not limited to:**
  - Design, installation, programming and repair of fire alarm systems
    - **Contractor must be an authorized Notifier® Distributor**
  - Annual inspections
  - Fire Alarm Control Panels (FACP)
  - Fire Alarm Annunciator Panels (FAAP)
  - Power supplies and Backup power supplies
  - Communication equipment and Central Station reporting
  - Heat detectors
  - Smoke Detectors
  - Duct detectors
  - Optical Beam Detectors
  - Carbon Monoxide Detectors
  - Multi-Sensor Detectors
  - Addressable and Intelligent devices
  - RATH® communication systems
- **Fire Sprinkler Systems include but are not limited to:**
  - Design, installation, programming and repair of fire sprinkler systems
  - Annual inspections
  - Water flow switches
  - Supervisory and tamper switches for Fire pump monitoring
  - Pre-action valve solenoids
  - Dry pipe systems

- Emergency transfer switches
- Nitrogen generators and nitrogen-filled fire sprinkler piping systems
- **Special suppression and smoke evacuation systems include but are not limited to:**
  - Design, installation, inspection, programming and repair of special extinguishing systems
  - Annual and Semi-Annual inspections as required for applicable system
  - Kitchen hood fire suppression systems
  - Special agent suppression systems
  - Victaulic Vortex® Systems
  - HVAC smoke evacuation control equipment

**1.2 Guidelines:** Inspections will use the following guidelines;

- All fire alarm inspections and testing will follow the most recent adopted NFPA (National Fire Protection Association) 72 Fire Alarm Codes.
- Fire alarm inspection and testing will include but not limited to the visual inspection and testing of the following:
  - Smoke detectors
  - Heat detectors
  - Water flow relays
  - Supervisory relays
  - Fire pump monitoring relays
  - Pre-action valve solenoids
  - Dry pipe valve solenoids
  - Elevator recall
- Fire sprinkler system testing and inspection shall use most recent adopted NFPA 13 Standard.
  - Annual inspections
  - Water flow switches
  - Supervisory and tamper switches for Fire pump monitoring
  - Pre-action valve solenoids
  - Dry pipe systems
  - Emergency transfer switches
  - Nitrogen generator systems and nitrogen-filled fire sprinkler piping systems
- Special extinguishing system shall use the most recent adopted NFPA Standard for the specific system being inspected and tested.
  - Kitchen hood systems
  - Special agent suppression systems
  - Security output points
  - Elevator recall points
  - HVAC smoke evacuation control equipment
  - Power supplies
  - Backup power supplies
- All security doors will be tested for a fail-safe operation.
- Test all devices for alarm and supervision notification back to the FACP (fire alarm control panel).
- Test all Audio devices for proper ambient sound levels.
- All alarms, supervisory, and trouble signals shall be verified that the Department of Public Safety received their proper signals via the component institution's receiver station.
- All inspections and test schedules shall be coordinated with a Campus representative or a designee
  - All scheduled dates shall be kept due to building notices given to all building employees. Notices must be sent out in advance so all schedules must be kept.
  - Not less than a two-week notice will be given.

- After the inspection and test is complete, the appropriate tag will be attached indicating the system status.
- All companies shall provide adequate personnel and equipment to perform inspections and testing.
- All inspection reports will be computer generated or type written. The report will then be given to a Campus representative in no less than ten (10) working days of the completed inspection.
- All electrical work performed under this Contract is to be installed by a licensed electrical contractor and installed according to current National Electric Codes (NEC). This work is subject to inspection

**1.3 Contract Requirements:**

- This is a Requirements Contract, which means that no work is guaranteed under this Contract.
- For each proposed project under this Contract, the Campus representative will contact the Contractor for an estimate.
- Contractor will provide an estimate containing a work order number, building name, description of work, labor hours, materials, and estimated start and completion time.
- Contractor will proceed with the work only after the estimate is approved by the Campus representative through the issuance of a Purchase Order number.
- Work performed without a Purchase Order number will not be paid.
- Invoices for approved work will be sent to BSS (Business Support Services) within ten (10) days of completion and will include the Purchase Order number, work order number, labor records indicating day and hours worked, and material invoices from suppliers for materials and building information.
- The invoice will also include labor rates, approved material percentage markups, and description of the work performed.
- Invoices not containing this information will be rejected until all information required is furnished.

**1.4 Impaired System Response Requirements:**

- A site visit must be scheduled, and an initial visit must be made within twenty-four (24) hours when emergency service is requested.
- Upon responding, a proposal for the job requirements or a schedule for additional site visits, whichever is applicable, will be done within the next twenty-four (24) hours or forty-eight (48) hours from the initial notification.
- This Contract pertains to Life Safety and will require immediate response.
- Travel time to and from the job site is not reimbursable under this Contract.
- Contractor shall ensure that the authorized Campus representative logs the start and completion times on the service ticket for the services performed.
- Contractors will provide the following information on the service ticket: building name, floor, type of work performed, parts replaced, hours worked (regular or overtime), and name of personnel performing the work.

**1.5 Inspection Requirements:**

- All cleanable devices will be cleaned before inspection.
- All cleaning will be scheduled through the Fire Systems Supervisor, with a minimum two (2) weeks notification.
- Proper tagging shall be used as per the State Fire Marshal's requirements.
- All tagging will be in place prior to Contractor's departure from the building after completion of the inspection.
- Contractor shall provide signed inspection and test form/report for each fire alarm system inspected. Form/report will be equivalent to the NFPA form 72-110 2007.
- Contractor will submit this form for approval by the Fire Systems Supervisor prior to first inspection.
- Only originals of this form/report will be accepted.
- All inspection forms/reports must be computer generated or type written.
- If a yellow/red tag was issued, inspection form/report will be accompanied by a quote to restore the fire alarm system to a blue tag status.
- A white tag will be issued prior to all inspections and regardless of status on fire alarm system.

- Facsimile copies of the report will not be accepted.
- Contractor shall be responsible to examine all facilities in which the work will take place and to be familiar with the conditions under which the work will be accomplished.
- Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the project.

**1.6 Modifications to Specifications or Drawings:**

- If applicable, Contractor modifications to the plans must receive approval from the Fire Systems Supervisor prior to construction.
- Contractor must notify the Fire Systems Supervisor of any discrepancies in the drawings.
- Contractor shall provide a marked-up set of specifications and drawings marked in red with any items of in-place installations differing from those originally shown.
- Any material or installation method proposed by Contractor not included in these specifications shall be specified in the proposal, including manufacturer's product data.
- All changes must be in writing and approved by Owner.

**1.7 Drawings:**

- If applicable, as built drawings shall be furnished to Campus representative within thirty (30) days of completion of each project.

**1.8 Project Completion Time:**

- Contractors must perform work within the time frame agreed upon by the Contractors and the Owner prior to beginning work.

**1.9 Notification:**

- Contractor shall notify the campus to operate the fire panel at least one (1) hour before starting work and when the work is complete.
- Panel must show a "no fault or no trouble condition upon completion of test".
- After the inspection and test is complete, the appropriate tag will be attached indicating the system status.
- Contractor will attach a white tag upon commencement of work indicating the work in process.
- Contractor shall be responsible for any damage to fire system panels during the work process.

**1.10 Materials:**

- All fire system and smoke alarm equipment and materials installed by the Contractor shall match and be compatible with existing style and fire system at each project facility.
- Equipment must be capable of communicating with ONYXWorks® monitoring equipment.
- Contractor shall provide any and all parts and operating manuals for equipment installed.
- Any Fire Alarm Control Panel (FACP) equipment must be approved by the UNTS Fire Marshal or designee prior to installation.

**1.11 Testing:**

- Contractor shall test all repair or new construction work and furnish test results to the Fire Systems Supervisor.
- All test work performed shall be demonstrated to and witnessed by the Campus representative if requested at Contractor's expense.

**1.12 Locations:**

- Shall include buildings planned for renovation or repairs within UNT Denton Campus, UNT Health Science Center Campus, UNT at Dallas Campus, and UNT System Buildings.
- This contract shall also include all future properties acquired or constructed by UNT, UNT Health Science Center, UNT at Dallas or UNT System on an "as needed" basis.

**1.13 Respondent Qualifications:**

- Proposers are required to qualify for each of the following criteria.
- Contractor/Contractor's principals will have at a minimum five (5) years of experience in performing tests on the following or similar items already in place at the campus:

- sprinkler systems,
- fire pump,
- pre-action,
- dry systems,
- standpipes,
- Fire Alarm,
- Kitchen Hood Suppression, and
- Special Hazards Systems.
- References will be checked.
- Contractors are required to submit a minimum of three (3) references from entities with whom the Contractor has provided fire pump, pre-action, and dry systems, Fire Alarm, Kitchen Hood Suppression, and Special Hazards System testing services. Must include certifications on each system if applicable.
- Provide State of Texas certificate registrations numbers to demonstrate compliance with the regulations of the State Fire Marshall's Office.
- Out of state contractors doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the proposal.
- Previous Higher Ed experience required

**1.14 Subcontractors:**

- Subcontractors providing service under the purchase order shall meet the same requirements and level of expertise as required of the Contractor.
- No subcontractor under the purchase order shall relieve the primary Contractor of responsibility for the service.
- If the Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
  - Contractors planning to subcontract all, or a portion of the work shall identify the proposed subcontractors in writing to the Campus representative.
  - Subcontracting shall be at the Contractor's expense.
  - UNT retains the right to check subcontractor's background and make the determination to approve or reject the use of submitted subcontractors.
  - The Contractor shall be the only contact for UNT and subcontractors.
  - Contractor shall list a designated point of contact for all UNT and subcontractor inquiries.

**1.15 Performance Standards:**

- All work performed under this contract shall be in accordance with applicable rules of this specification and terms and conditions of local codes and ordinances and any other authority having lawful jurisdiction.
- All work performed by the Contractor or subcontractor shall be in accordance with the applicable local, state and federal statutes/standards to include applicable UNT, UNTD, UNTHSC Campus Design Guidelines, **National Fire Prevention Association (NFPA) Standards and International Code Conference (ICC) codes.**

**1.16 Unsatisfactory Performance:**

- UNT may consider the following performance by the Contractor as unsatisfactory performance. An unsatisfactory performance determination is not limited to the following:
  - In excess of one (1) service "call back" to correct the same problem within thirty (30) calendar days.
  - In excess of one (1) instance within one (1) calendar year of Contractor personnel assigned to an authorized service call not having the skill or knowledge to diagnose the problem and/or perform the inspection/repair.
  - Unsatisfactory performance may result in a Vendor Performance Report and resulting Corrective Action Plan (CAP).
  - Continued unsatisfactory performance and non-compliance to an issued CAP may result in termination, cancellation, use of a Secondary Awarded vendor, and/or debarment in doing business for UNT. Any significant damage may result in cancellation of contract.

**1.17 Special Conditions:**

- Fire Systems Supervisor – The UNTS Fire Marshal or Designee for this contract will be specified prior to any work.
- The instructions of the UNTS Fire Marshal or Designee are to be strictly and promptly followed by the Contractor in every case.
- The UNTS Fire Marshal or Designee is to have free access to the materials and the work at all times for measuring and inspecting the work and the Contractor is to afford the UNTS Fire Marshal all necessary facilities and assistance.
- The UNTS Fire Marshal or Designee will decide any and all questions which may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work.
- The UNTS Fire Marshal or his authorized representative or Designee, will determine the amount of work performed and materials furnished which are to be paid under the contract.
- Failure of the UNTS Fire Marshal during the progress of the contract to discover or reject unacceptable work, work not in accordance with the contract, or failure to exercise any remedies in connection therewith shall not be deemed an acceptance thereof, nor a waiver of the Owner's right to full performance of the contract.
- Contractor's Agreement to Cooperate – Contractor agrees to conduct all of its services under this contract by and through appropriate communications with the campus designated Fire Systems Supervisor or Designee.
- No work, installation or other service performed without the prior written direction of the UNTS Fire Marshal is work outside the scope of this contract and shall be performed exclusively at the Contractor's risk.
- The Contractor agrees to employ competent personnel meeting the requirements outlined in the specifications, who shall be satisfactory to UNT System or Component Institutions.
- Personnel assigned to perform services under this contract may not be reassigned without the prior written notification to the UNTS Fire Marshal.
- UNT System or Component Institutions may request that the Contractor replace unsatisfactory personnel, which request shall not be unreasonably denied.
- Contractor agrees to cooperate and coordinate its work with that of other Contractors retained by Owner.
- Upon discovery of an apparent conflict in the sequencing or work with another Contractor, Contractor shall report the concern to the UNTS Fire Marshal who will resolve the conflict.
- Contractor access – Access routes, entrance gates or doors, parking and storage areas, etc., and any imposed time limitations shall be designated by the UNTS Fire Marshall or Designee.
- The Contractor shall conduct operations in strict observation of the access routes and other areas established as described above.
- Under no circumstances shall any of the Contractor's personnel vehicles or equipment enter or move upon any area not authorized by the UNTS Fire Marshal for access by the Contractor.
- Existing Utilities and Structures – The Contractor shall adequately protect the work, UNT's property, adjacent property and the public. • In the event of damage to facilities as a result of the Contractors operations, the Contractor shall take immediate steps to notify the UNTS Fire Marshal and subsequently repair or restore all services to the satisfactory approval of the UNTS Fire Marshal.
- Further, the Contractor shall engage any additional outside services, which may be necessary to facilitate repairs until services are restored.
- All costs involved in making repairs and restoring disrupted services shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.
- The UNTS Fire Marshal may elect to perform such repairs and charge the cost of such repairs, replacements, and outside services to the Contractor.
- Upon the approval of the UNTS Fire Marshal, the Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets at UNT System or Component Institution's property.
- Contractor parking – Parking for Contractor vehicles when performing work must be coordinated through the Campus contact.
- UNTS Fire Marshal will arrange parking according to parking availability at the job site.
- Security and Identification – The Contractor shall abide by all procedures and rules as conveyed by the UNTS Fire Marshall regarding security requirements of the building where work is to be performed.



- All the Contractor and subcontractor's personnel must wear uniform clothing to identify the company for which they work.
- Shorts and/or muscle shirts shall not be worn at any time.
- Contractor Safety – All Contractors and subcontractors conducting work for UNT System or Component Institutions shall abide by all Occupational Safety and Health rules and regulations provided by the Department of Labor, Occupational Safety and Health Administration, Code of Federal Regulations, Chapter 29.
- Employees of these Contractors and subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations.
- Chemicals – Contractors and subcontractors shall provide the campus legible Material Safety Data Sheets (MSDS) on all chemicals used or brought onto the campus-controlled property.
- MSDS's shall be submitted to UNTS Fire Marshal prior to start of work.
- Storage/Waste Removal – Contractor will be allowed to store materials and equipment in performance of this contract only if space is available in each building.
- Storage space will be arranged through the UNTS Fire Marshal.
- Damages – Contractor shall be responsible for all damages to existing building or previously completed work incurred by his staff or subcontractors.
- Contractor is to protect adjacent areas from damage and debris.
- It is the intent of these specifications that any item affected by the work be restored to a state equal to or better than its original condition.
- Working Hours – UNT System and Component Institutions have a wide variety of building uses; therefore, testing and inspection work on fire alarm systems may be required to be performed both during and after regular working hours.
- Service calls may be required 24 hours a day, 7 days a week.
- Smoking – all campuses are non-smoking.

**1.18 Safety Record:**

- Provide your companies workers' compensation experience modification rate – EMR – for the last five (5) years as part of this proposal. This shall be submitted by your insurance carrier on their letterhead, with your proposal.
- Indicate the name and job title of the person in your organization who manages your safety program.
- Provide a description of your firm's safety program.
- UNT System and Component Institutions reserve the right to require a copy of your safety manual.

**1.19 Quality Control Program:**

- The respondent shall provide the name and job title of person in the organization who oversees the quality assurance program.
- Respondent shall also provide a description of the firm's quality assurance program.
- UNT reserves the right to require a copy of the Quality Control Manual and Quality Assurance Processes.
- Vendor shall describe its quality assurance program, quality requirements and means of measurement.
- Provide process flow charts on how quality is maintained and achieved. Vendor shall describe the firm's policy regarding establishing quality control processes similar to ISO 9000 and other in-place controls for adherence to budget, quality, safety, and schedule.

**1.20 Pricing: SEE ATTACHMENT "B".**

**1.21 General Requirements:**

- In performance of the service, the contractor shall protect the work, adjacent property, and person in a manner satisfactory to UNTS or Component Institutions. Special attention shall be given to the observation of all safety precautions so that the work will not damage or endanger students, employees, property, or the general public.
- The contractor shall be responsible for any damage or injury due to any act of negligence attributable to persons working under the direction of the contractor.

**1.22 Workmanship:**

- UNTS or component campus will inspect to the extent necessary to determine that the work conforms to the specifications of the contract.
- The presence or absence of an inspector or the performance or nonperformance of an inspector will not relieve the contractor from any requirement of contract.
- At all times, the UNTS Uniform General Conditions 2022, shall be enforced and will prevail.
- Respondent shall employ workmen who are careful and competent. UNTS or component campus may request the dismissal of any person or persons employed by the respondent that fails to conduct themselves properly, proves to be incompetent or negligent in the proper performance of duties or neglects or refuses to comply with the directions of UNTS or component campus. Said persons shall not be employed again to perform work on the UNTS or component campuses without written consent of UNTS or component campus.
- Workers are required to wear outer garments with the company logo or display contractor supplied badges with employee and company names.
- **WORKING IN RESIDENCE HALLS: At no time shall a worker be in a student's room or touch student property.**
- **FIRE SAFETY** – all crews shall have a charged and properly functioning fire extinguisher in the work area when soldering or any open flame exists. A Hot Work permit, issued by UNT Risk Management Services, is required for all open flame work.

**1.23 Completion:**

- UNTS or component campus request the installation and completion schedule be provided for each job.
- Failure to meet final completion date will be subject to terms as set forth by the UNTS Uniform General Conditions (UGC's) 2022.

**1.24 Project Requirements:**

- Respondent shall furnish a completion schedule to UNTS or component campus showing stages of work through starting date to anticipated completion date.
- It shall be respondent's responsibility to order and receive materials necessary to complete the entire scope of work.
- Respondent is responsible to make arrangements with suppliers and sub-contractors, if necessary, to assure the work is timely and according to pre-arranged schedule.
- Respondent will maintain a jobsite work log with individual employee names and actual hours worked by each employee. A copy of the work log may be requested by UNTS or component campus at any time for verification.
- Work hours in **unoccupied** buildings are 7:00AM to 6:00PM, Monday through Saturday.
- Work hours in **occupied** buildings are 8:00AM to 5:00PM, no excessive noise before 9:00AM.
- Note that "after hours" work may be needed to complete a project. Contractor must work directly with the UNTS or component campus assigned project manager or construction manager to schedule/coordinate access to building.
- If contractor wants to start earlier due to hot weather, then power equipment such as drills and/or grinders, etc. will not be utilized prior to 7:00AM, unless prior approval is granted.
- Respondent shall complete all work started before end of work period.

**1.10 Sequencing and Scheduling:**

- Coordinate and schedule installation so that sufficient materials and manpower are available to make building watertight each day.
- A weekly progress meeting shall be held to discuss progress, scheduling and quality control.
- Meeting shall include UNTS or component campus project manager or construction manager and respondent Project Superintendent and General Superintendent or company principle.
- Respondent is responsible for assigning a sufficient size crew of Licensed workers to complete project on schedule. At no time shall the project be manned with a crew numbering less than the successful respondent stated in the completion schedule furnished to UNTS or component campus.
- During all phases of work the respondent shall provide a Licensed workers on the job site during working hours. The Superintendent who starts the project should, within reason, remain for the entire duration of project.
- Respondent shall provide UNTS or component campus with names, license numbers for crew that may be working on a particular project.

- Respondent shall work with the UNTS or component campus Project Manager assigned to a particular project, report to, and receive directions from Project Manager, until work is completed.

**1.14 Contract:**

This contract is for services for a single project or multiple projects over the period three (3) years with two (2) additional one-year option periods. The cumulative total of fees paid under a contract will be for a maximum amount of \$900,000.00 (nine hundred thousand dollars) with a maximum cost of anyone (1) individual job order not to exceed \$500,000.00 (five hundred thousand) and will remain in effect until such time as the total sum of the financial commitment under the contract reaches \$900,000.00 (nine hundred thousand dollars) or the date at which the base period ends.

The Owner retains the right to renew the contract for twenty-four (24) months in twelve (12) month increments, or until the maximum contract is reached whichever occurs first. The value of the base contract plus any additional renewals shall not exceed \$900,000.00.

The Owner makes no representation regarding the amount or type of job orders, if any, that the vendor will be asked to perform for the Owner during the term of this contract. It is expressly understood that the Owner is under no obligation to request any services from the vendor and no minimum amount of work is required or contemplated as a result of this Request for Proposal (RFP) or potential subsequent contract. All job orders will be made by the Owner and will be on an as-needed basis.

A copy of the proposed JOC Contract to be used by all qualified respondents is included in this solicitation package. This is for informational purposes only. Responding firms should carefully review this contract before submitting responses. It is the Owner's intention to present all respondents with the same JOC Contract. Proposed changes to the JOC Contract will not be considered by the Owner.

**1.15 Option to Renew and Escalation Clause:**

It is agreed that the University of North Texas System shall have the option to extend the contract for **two (2)** additional years in one-year increments under the same terms and conditions. This option to extend is at the sole discretion of the University of North Texas System and will not be considered if legislative funding is not appropriated.

Pricing escalation will not be allowed during term of this contract including any subsequent option years.

**1.16 Cancellation:**

The Owner reserves the right to cancel this contract, in part or whole, without penalty upon thirty (30) days written notice to the successful respondent. The successful respondent must request and secure in writing the approval of UNTS Business Support Services Purchasing Department to be released from this contract or any portion thereof should unforeseen conditions occur.

**1.17 Payment and Performance Bond:**

In accordance with Texas Government Code 2253, a Payment Bond is required for all public works agreements over \$25,000.00 and a Payment and Performance Bond for all public works agreements over \$100,000.00. Payment and/or Performance Bond will be required for each project under this agreement. The cost of the Payment and Performance Bond should be listed separate from your pricing of the project. If awarded the agreement, vendor will have to secure bonding from a top-rated bonding company and provide Owner with proper documentation. The Owner will pay bonding costs to the awarded vendor as a pass thru amount with no markup and proper documentation provided along with an invoice. Bonding will be required for each project that exceeds \$25,000.00.

**2.0 HUB SUBCONTRACTING OPPORTUNITIES AND FORMS:**

It is the policy of the UNTS to promote and encourage contracting and subcontracting opportunities for HUB. Specific subcontracting opportunities will be dependent on each project. When a qualified firm is selected for a project, the contractor will be required to provide a HUB Subcontracting Plan (HSP) for the intended subcontracting opportunities for the project. The HSP must be submitted along with the proposal for the project. This applies to all projects, regardless of size or scope, awarded via this JOC. A HSP is **not** required with this submission.

Questions regarding the completion of the HUB Subcontracting Plan should be directed to Lisa Martinez-Tovar at [hub@untsystem.edu](mailto:hub@untsystem.edu). You may also view an on-line video/audio file that explains, in a step-by-step manner, exactly how to fill out a HUB Sub-Contracting Plan. The video/audio file is located at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

### **3.0 PRE-PROPOSAL MEETING: Not Applicable**

### **4.0 EVALUATION:**

As provided by statute, awards will be based on the best proposal most advantageous to the Owner. Determination will be made by consideration of prices offered, delivery date, quality, general reputation, and performance of the respondents, service as related to past performance, suitability of items for the intended use and conformity to specifications, terms and conditions of this Request for Proposal. The Owner reserves the rights to reject all bids that the Owner determines in its sole judgment are not in the best interest of the institution.

Responses shall be evaluated against the following Evaluation Criteria:

- a) Proposed rates/cost for services
- b) The qualifications and experience of the proposer's key personnel and subcontractors committed to work projects
- c) Proposer's availability of personnel and equipment
- d) The quality of references from owners for similar projects completed by the proposer within the last five (5) years
- e) The responsibility and reputation of the proposer, including claims and litigation experiences
- f) The proposer's safety record
- g) Quality and completeness of RFP submittal

### **5.0 SELECTION PROCESS:**

Selection of the Successful Offer submitted in response to this RFP by the Submittal Deadline will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected respondents may be invited to participate in oral presentations. The selection of the Successful Offer may be made by the Owner on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by the Owner on the basis of negotiation with any of the respondents.

At the Owner's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected respondents within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. The Owner will provide each respondent within the competitive range with an equal opportunity for discussion and revision of its offer. The Owner will not disclose any information derived from the offers submitted by competing respondents in conducting such discussions.

Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer, however, Owner reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, the Owner may permit a respondent to revise its offer in order to obtain the respondent's best final offer.

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

**5.1 Evaluation of Criteria:** The successful offer will be the offer that is submitted in response to this Proposal by the Submittal Deadline and is the most advantageous to the Owner at Owner's sole discretion. Offers will be evaluated by an evaluation committee that will include employees of the Owner and other persons invited by Owner to participate. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to the Owner by the respondent in response to the Specifications section of this Proposal. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to the Owner. The successful respondent will be required to enter into a contract acceptable to the Owner.

The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. The Owner may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of the Owner and will be extended in writing. In evaluating Proposals to determine the best value for the State, the Owner may consider information related to past contract performance of a Respondent including, but not limited to, Texas Comptroller of Public Account's Vendor Performance Tracking System. The Owner also considers "Best Value" in the award process.

**5.2 Respondent's Acceptance of Process:** Submission of an offer by a respondent indicates: (1) the respondent's acceptance of the Selection Process, the Evaluation of Criteria for selection, and all other requirements and specifications set forth in this Proposal; and (2) the respondent's recognition that some subjective judgments must be made by the Owner during this Proposal process.

## **6.0 SUBMITTAL DEADLINE:**

6.1 Submit a total of one (1) complete copy of the entire response. An original signature must appear on the Proposal Form.

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

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

- B. Late proposals will not be considered under any circumstances.
- C. The Owner reserves the right to accept late proposals; however, proposals received after opening time will not be accepted.
- D. Facsimile ("FAX") or emailed proposals are not acceptable.

**The Proposal must be submitted no later than 2:00 p.m. CDT on July 21, 2022. Proposals received after the date and hour previously stated will not receive consideration.**

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

TO: Carrie Stoeckert, CTCM/CTCD  
Senior Contract Administrator  
University of North Texas System  
Business Service Center  
Woodhill Square  
1112 Dallas Drive, Suite 4000  
Denton, Texas 76205

The delivery of responses is via **Federal Express, UPS or hand delivery** to arrive between the hours of 8:00am to 5:00 p.m.

**Via electronic delivery:**

**UNTS Jaggaer link:**

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS>

Proposals will be received until the date and time established for receipt, then opened. The names of the respondents who submitted proposals will be made available. Pricing will be available after the contract is awarded. **No public opening will be held for this RFP.**

In order to submit proposals electronically, Proposer must have a working, registered vendor username and password to login. If this is the first time Proposer has attempted to submit a response electronically, please register at:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS>

Proposers are highly encouraged to ensure you have a working login in advance of the submission deadline.

Proposer is responsible for ensuring it has the technical capability to submit its proposal via electronic submission.

Browser requirements: Chrome

**Proposer shall be solely responsible for ensuring timely submission of the Proposal.**

UNTS is not responsible for equipment or software failure, internet or website downtime, corrupt or unreadable data, or other technical issues that may cause delay or non-delivery of a Proposal or inaccessibility of the submitted data. **Proposers are highly encouraged to prepare and allow for sufficient time to familiarize themselves with the electronic submission requirements and to address any technical or data issues Prior to the Proposal due date and time.**

**7.0 Questions:**

After proposals are received in response hereto and notice of intent to award is made, the successful Respondent will be issued a Purchase Order.

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

Carrie Stoeckert – Senior Construction Contract Coordinator  
University of North Texas System  
Office of Facilities Planning and Construction

Please submit solicitation questions to: [Carrie.Stoeckert@untsystem.edu](mailto:Carrie.Stoeckert@untsystem.edu)

**All questions must be received no later than June 30, 2022, at 2:00 p.m. CST. All questions and answers will be posted to the website by 5:00 pm CST, July 5, 2022.**

The Owner specifically requests that Respondents restrict all contact and questions regarding this RFP to the above-named individual.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in electronically by addendum (amendment) and posted at:

**Bid Opportunities (untsystem.edu)**

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS>, and <http://www.txsmartbuy.com/sp>

All such addenda issued by the Owner prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall be required to consider and acknowledge receipt of such on the proposal form. Respondents are responsible for obtaining any addenda posted on the websites listed above.

Only those inquiries the Owner replies to which are made by formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. The Respondent must acknowledge all addenda on this proposal form.

- 8.0 SCHEDULE OF EVENTS.** The solicitation process for this RFP will proceed according to the following schedule:

| EVENT                                   | DATE                      |
|---|---------------------------|
| Issue RFP                               | June 21, 2022             |
| Pre-Proposal Conference                 | N/A                       |
| Deadline for Submission of Questions    | June 30, 2022 @ 2:00 p.m. |
| Deadline for Submission of Responses    | July 21, 2022 @ 2:00 p.m. |
| Public Opening                          | N/A                       |
| Expected Award of Contract-on or before | August 2022               |

- 8.1 REVISIONS TO SCHEDULE.** The Owner reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the Owners website <https://www.untsystem.edu/bid-opportunities> and the Electronic State Business Daily (ESBD) <http://www.txsmartbuy.com/esbd> as an Addendum.

**9.0 PUBLIC OPENING: Not Public**

**10.0 REFERENCES (REQUIRED) – See Attachment B - Qualifications**

- 11.0 INSURANCE REQUIREMENTS:** The contractor shall procure, pay for and maintain with insurance carriers the following (Also addressed in UGC's Section 8.2, Insurance Requirements):

**11.1 Workers' Compensation Insurance:**

- The Contractor shall secure and keep in effect such insurance as will protect contractor from claims under all Worker's Compensation Laws including occupational Disease as required by the State of Texas.
- Certificates of such insurance shall be filed by the Contractor with the Owner and shall be subject to the Owner's approval as to carrier and adequacy, prior to commencement of work.
- The Contractor shall ascertain that all Sub-Contractors secure and keep in effect similar insurance covering their employees.
- Workers Compensation at statutory limits and include Employer's Liability at the following limits:
  - \$1,000,000 each accident (bodily injury by accident)
  - \$1,000,000 policy limit (bodily injury by disease)
  - \$1,000,000 each employee (bodily injury by disease)
- Waiver of subrogation for workers' compensation in favor of UNTS.

- 11.2 Liability Insurance:** The Contractor shall maintain and pay for Commercial General Liability Insurance, including Contractual Liability and Automobile Liability Insurance, in a company or companies satisfactory to the Owner, and file with the Owner certificates of such insurance with minimum limits specified below.

- 11.3 Commercial General Liability:** with UNTS named as an additional insured where its interest may appear and waiver of subrogation in favor of UNTS.

- \$1,000,000 each occurrence
- \$2,000,000 aggregate
- \$5,000 Medical Expense each person
- Waiver of subrogation for commercial general liability in favor of UNTS.

- 11.4 Business Automobile Liability** with UNTS named as an additional insured where its interest may appear and waiver of subrogation in favor of UNTS:

- Combined Single Limit \$1,000,000 each occurrence
- Umbrella Liability Insurance \$2,000,000 limit.
- Waiver of subrogation for business automobile liability in favor of UNTS.

- 11.5 The insurance certificate must:
- Show that the Contractual Liability Coverage is applicable to the Agreement and set forth the address and specific location of the project.
  - Address to be established during permit process.
  - Set forth in full a hold harmless agreement acceptable to the Owner.
  - Include a provision that the Owner will be given thirty (30) days written notice of cancellation, non-renewal or material changes of insurance coverage.
- 11.6 Certificates indicating coverage to be enforced shall be filed with the Owner prior to commencement of work. Furthermore, certificates shall include no disclaimer for failure to notify the Owner and will clearly state, notice of cancellation of policy will be given to Owner in writing. No work shall be performed under this Agreement unless the insurance coverage required hereunder shall be in full force and effect. Failure to give notice will not relieve insurance carrier of responsibility.
- 11.7 Vendor shall provide Owner with proper insurance documentation. Work on the project cannot begin until the documentation is received and approved.
- 11.8 Certificate of Insurance indicating Pollution Liability and Remediation coverage with UNTS names as an Additional Insured with limits not less than:
- \$5,000,000 Each Incident Liability
  - \$5,000,000 Each Incident Remediation
  - \$10,000,000 Aggregate
- 11.9 The Commercial General Liability and Automobile Liability policies must be written on a primary basis and non-contributory with any insurance and/or self-insurance maintained by UNTS. All policies must include Waiver of Subrogation Clauses in favor of UNTS.





**ATTACHMENT A**

**PRICING**

**RFP769-22-975CS**

**Fire System JOC**

## PRICING

|                               | Regular Hours* | After Hours* | Holiday Hours* |
|-------------------------------|----------------|--------------|----------------|
| 1. <u>Fire Sprinkler</u>      |                |              |                |
| 1.1 Certified Technician      | \$ _____       | \$ _____     | \$ _____       |
| 1.2 Helper                    | \$ _____       | \$ _____     | \$ _____       |
| 1.3 Supervisor                | \$ _____       | \$ _____     | \$ _____       |
| 2. <u>Fire Alarm Systems</u>  |                |              |                |
| 2.1 Certified Technician      | \$ _____       | \$ _____     | \$ _____       |
| 2.2 Helper                    | \$ _____       | \$ _____     | \$ _____       |
| 2.3 Supervisor                | \$ _____       | \$ _____     | \$ _____       |
| 3. <u>Suppression Systems</u> |                |              |                |
| 3.1 Certified Technician      | \$ _____       | \$ _____     | \$ _____       |
| 3.2 Helper                    | \$ _____       | \$ _____     | \$ _____       |
| 3.3 Supervisor                | \$ _____       | \$ _____     | \$ _____       |
| 3.4 Programming               | \$ _____       | \$ _____     | \$ _____       |
| 4. <u>Fire Pumps</u>          |                |              |                |
| 4.1 Certified Technician      | \$ _____       | \$ _____     | \$ _____       |
| 4.2 Helper                    | \$ _____       | \$ _____     | \$ _____       |
| 4.3 Supervisor                | \$ _____       | \$ _____     | \$ _____       |
| 5. <u>Others</u>              | \$ _____       | \$ _____     | \$ _____       |
| 5.1 _____                     | \$ _____       | \$ _____     | \$ _____       |
| 5.2 _____                     | \$ _____       | \$ _____     | \$ _____       |

6. Material Supplied at invoice cost plus \_\_\_\_\_% (Invoice cost breakdown is required)

\*Regular working hours- (8:00 AM-5:00 PM Monday-Friday)

\*After hours (5:00 PM-7:00 AM Monday-Friday)

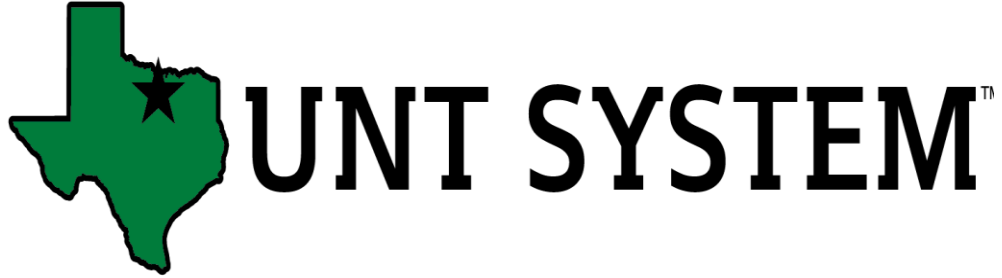
\*Holiday hours-holidays observed by the bidder for general service employee and charge rate for lead employee if required. Please list the observed holidays in the space below:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



**ATTACHMENT B**

**QUALIFICATIONS**

**RFP769-22-795CS**

**Fire System JOC**

## ITEMS 1 THROUGH 5 TO BE SUBMITTED WITH PROPOSAL

Proposer's Name: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

State Comptroller Vendor Identification Number: \_\_\_\_\_

### 1. GENERAL

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

## 2. HISTORY

- A. ☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture

State of Incorporation: \_\_\_\_\_

- B. In continuous business since: \_\_\_\_\_

Remarks (if required):

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

| <u>Name</u> | <u>Branch Manager</u> | <u>Telephone Number</u> |
|-------------|-----------------------|-------------------------|
|-------------|-----------------------|-------------------------|

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

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

- ☐ Large Business (100 or more employees)
- ☐ Small Business (fewer than 100 employees)
- ☐ HUB Business
- ☐ Other (Define) \_\_\_\_\_

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

- ☐ Yes ☐ No

If yes, stipulate where and why: \_\_\_\_\_

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

- ☐ Yes ☐ No

If yes, stipulate where and why: \_\_\_\_\_

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### 3. EXPERIENCE

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

---

---

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

---

---

C. List all major projects of your organization has in-progress. If more space is needed attach pages to this form using format below identified by item and sub-item:

i. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

---

---

Architect Reference Contact and Telephone Number:

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---

ii. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

---

---

Architect Reference Contact and Telephone Number:

---

---

iii. Name, Location and Description of Project: \_\_\_\_\_

---

---

---

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

---

---

Architect Reference Contact and Telephone Number:

---

---

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

Number \_\_\_\_\_ \$ \_\_\_\_\_

E. Largest contract currently in-process: \_\_\_\_\_

Anticipated date of completion: \_\_\_\_\_

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

Year

|       |          |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |

**G. List three (3) major projects of similar scope your organization has completed in the last five (5) years with completion date and references. Other projects of particular significance may also be listed.**

i. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

Architect Reference Contract and Telephone Number:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

ii. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

Architect Reference Contract and Telephone Number:

\_\_\_\_\_



iii. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

| _____ |                  |
|-------|------------------|
| Name  | Telephone Number |

Architect Reference Contract and Telephone Number:

| _____ |                  |
|-------|------------------|
| Name  | Telephone Number |

iv. Name, Location and Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Amount: \_\_\_\_\_

Percent Complete: \_\_\_\_\_

Project Completion Date: \_\_\_\_\_

Owner Reference Contact and Telephone Number:

| _____ |                  |
|-------|------------------|
| Name  | Telephone Number |

Architect Reference Contract and Telephone Number:

| _____ |                  |
|-------|------------------|
| Name  | Telephone Number |

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

\_\_\_\_\_  
**If yes, attach a list with project name, date or project, owner, owner's contact person with telephone number and summary explanation.**

#### 4. SAFETY PROGRAM

- A. List your organization's Workers Compensation Experience Modification Rate (EMR) for the last three (3) years, as obtained from your insurance agent.

|      |  |  |  |
|------|--|--|--|
| YEAR |  |  |  |
| EMR  |  |  |  |

- B. Complete matrix for the three (3) past years, as obtained from OSHA N. 200 Log:

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

Please provide your SIC Code \_\_\_\_\_

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

☐ Yes ☐ No

If yes, frequency:

☐ Weekly ☐ Bi-monthly ☐ Monthly ☐ As Needed

- D. Are project safety inspections conducted? ☐ Yes ☐ No

If yes, who performs inspection?

How often?

\_\_\_\_\_

\_\_\_\_\_

- E. Does organization have a written safety program? ☐ Yes ☐ No

If yes, provide a copy. It will become a compliance document upon contract award.

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

For employees promoted to Field Supervisors? ☐ Yes ☐ No

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

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

## 5. FINANCIAL

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

B. Surety Company:\_\_\_\_\_

Agent:\_\_\_\_\_

Name of Contact:\_\_\_\_\_ Telephone No.\_\_\_\_\_

C. Bonding Capacity:\_\_\_\_\_

Limit per project:\_\_\_\_\_

Unencumbered bonding capacity:\_\_\_\_\_

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

i. Organization:\_\_\_\_\_

Agent:\_\_\_\_\_

Name of Contract:\_\_\_\_\_ Telephone No.\_\_\_\_\_

ii. Organization:\_\_\_\_\_

Agent:\_\_\_\_\_

Name of Contract:\_\_\_\_\_ Telephone No.\_\_\_\_\_

iii. Organization:\_\_\_\_\_

Agent:\_\_\_\_\_

Name of Contract:\_\_\_\_\_ Telephone No.\_\_\_\_\_



# 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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> . | Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> . | 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 <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> . | Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> . | 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  
(mm/dd/yyyy)

#### **Reminder:**

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



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Page 1 of 1  
(Attachment A)

# HSP Good Faith Effort - Method B (Attachment B)

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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/tpasscmbldsearch/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<br>(Do not enter Social Security Numbers.) | Date Notice Sent<br>(mm/dd/yyyy) | 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<br>(mm/dd/yyyy) | Was the Notice Accepted? |
|--|----------------------------------|--------------------------|
|  |                                  | - Yes - No               |
|  |                                  | - Yes - No               |

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

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

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

| Company Name | Texas certified HUB | Texas VID or federal EIN<br><small>Do not enter Social Security Numbers.<br/>If you do not know their VID / EIN,<br/>leave their VID / EIN field blank.</small> | Approximate<br>Dollar Amount | Expected<br>Percentage of<br>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.



# HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

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

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Fax #: \_\_\_\_\_

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

Requisition #: \_\_\_\_\_

Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

## SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).*

*(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.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

- Not Applicable

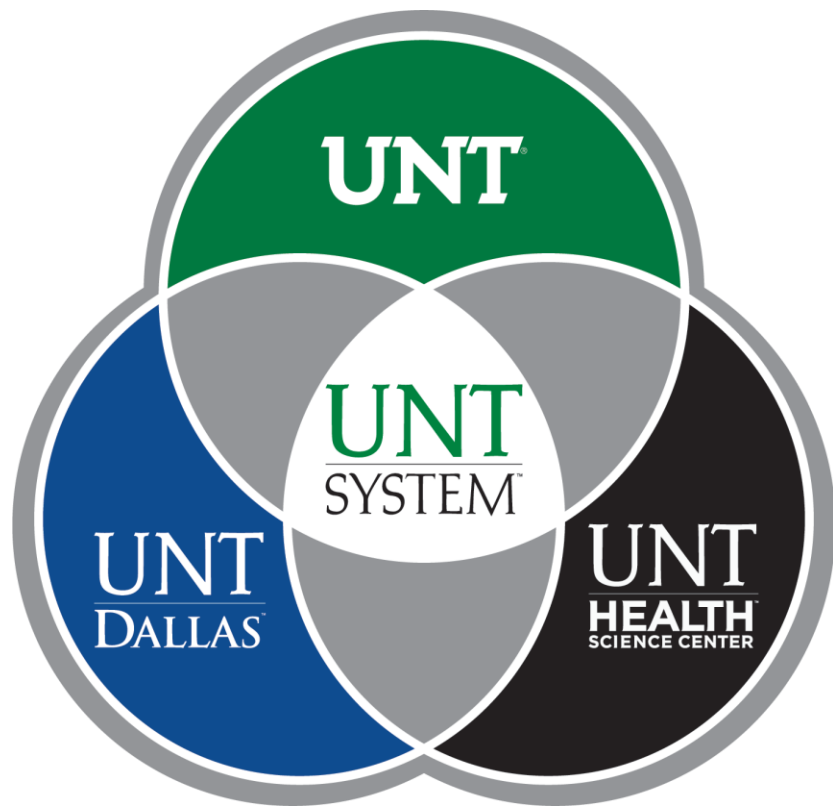
### 4. Bonding/Insurance Requirements:

- Not Applicable

### 5. Location to review plans/specifications:

- Not Applicable

## JOB ORDER CONTRACTING AGREEMENT



# JOB ORDER CONTRACTING AGREEMENT

This Agreement is made and entered into by **University of North Texas {System or Institution Name}** ("Owner"), and by **{Firm Name}** ("Contractor"), for the "minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks" as allowed by Section 51.784 of the Texas Education Code. The capitalized term "Party" refers to either Owner or Contractor individually and the term "Parties" refers to Owner and Contractor collectively. The effective date ("Effective Date") of this Agreement shall be the date of last signature by the Parties hereto.

## ARTICLE 1 PROJECT

- 1.1 Owner desires and intends to conduct **{General Description of the Service}** ("Project") on the **{Campus}**, to be completed in accordance with the requirements herein.
- 1.2 The initial term of this Contract shall begin on the Effective Date and shall expire two (2) years after that date unless renewed or terminated in accordance with the terms herein.
- 1.3 Owner has three (3) options to renew the term of this Contract in one (1) year increments upon written notice to Contractor prior to the expiration of the initial or subsequent term or until the maximum contract amount is reached, whichever occurs first.

## ARTICLE 2 AUTHORIZED CONTRACT SUM

- 2.1 Each proposed individual Job Order will not exceed a maximum value of \_\_\_\_\_.
- 2.2 The total combined cost of all Job Orders issued will not exceed the maximum value of \_\_\_\_\_ (Option: include *for the term and any renewal terms or per year*).
- 2.3 It is expressly understood that Owner is under no obligation to request a minimum amount of Work under this Agreement. All service requests will be made by Owner on an as-needed basis.

## ARTICLE 3 CONTRACT DOCUMENTS

- 3.1 The Contract Documents consist of:
  - 3.1.1 This Agreement and all exhibits and attachments listed, contained, or referenced herein;
  - 3.1.2 Each Job Order issued under this Agreement;
  - 3.1.3 The Uniform General Conditions for Construction and Design Contracts for the University of North Texas System ("Uniform General Conditions" or "UGC");
  - 3.1.4 Supplementary General Conditions or Special Conditions, if any;
  - 3.1.5 Owner Specifications;
  - 3.1.6 All Change Orders issued after the effective date of each Job Order;
  - 3.1.7 Any Scope of Work, drawings, specifications, details, or other documents developed in connection with each Job Order issued under this Contract;

- 3.1.8 The Historically Underutilized Business (HUB) subcontracting plan submitted or amended and approved by Owner.
- 3.2 The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.
- 3.3 To the extent the terms of this Agreement conflict with the Uniform General Conditions and/or the Supplemental Conditions, the terms of this Agreement will control.

#### **ARTICLE 4 DEFINITIONS**

- 4.1 Terms, words, and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions.
- 4.2 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 Conditions, the more specific meaning given in this Agreement shall control.
- 4.2.1 “Coefficient” shall mean the price multiplier that Contractor bids. The Parties shall use this multiplier to determine the price of Work. Contractor’s coefficient is multiplied by the Construction Task Catalog® rates. Proposed coefficient shall be a net decrease from or increase to the price in the CTC®. Coefficient shall be carried to four (4) decimal places only.
- 4.2.2 “Construction Task Catalog® (“CTC®”)” shall mean the Gordian Group cost database which contains construction task(s) with preset unit price(s) to be used in the administration of this Agreement.
- 4.2.2.1 Construction Task Catalog® issued with request for proposal No. **{Number}** will be in effect for the first year of the Agreement.
- 4.2.2.2 The CTC® will be updated annually and furnished to Contractor. The CTC® that accompany each anniversary shall only apply to Job Orders issued after the effective date of that specific renewal option and shall have no impact on Job Orders issued prior to the effective date of that specific renewal option. Contractor shall use the CTC® in effect on the date that the Job Order is issued. Contractor shall not delay the issuance of a Job Order to take advantage of a scheduled update of the CTC®. In that event, Contractor shall use the CTC® that would have been in effect without the delay.
- 4.2.3 “Job Order” shall mean a contractual instrument issued by Owner to Contractor. A Job Order represents Owner’s and Contractor’s agreement of task(s) and quantities of labor, materials, and equipment required to perform the Work, plans and specifications, and timeline to complete a project. A Job Order is issued upon agreement between Owner and Contractor regarding Scope of Work, performance, time, and price, and will be in form substantially similar to Exhibit A attached hereto.
- 4.2.4 “Non-Pre-Priced (NPP) Task” shall mean Work that is required by the Scope of Work, but is not included in the CTC®.
- 4.2.5 “Pre-priced Task” shall mean Work for which a unit price is stated and included in the CTC®.

- 4.2.6 "Scope of Work (SOW)" shall mean a description of specific Work negotiated by Owner and Contractor that contains sufficient detail to determine quantity, quality, and time for performance, which Work will be ordered through an associated Job Order.
- 4.2.7 "Work" shall mean the provision of all services, labor, materials, supplies, and equipment that are required to complete a project in strict accordance with the requirements of the Contract Documents related to a project. Work includes, without limitation, any additional Work required by Change Orders and any other Work reasonably inferable from the Construction Documents, taking into consideration the understanding of the Parties that some details necessary for completion of the Work may not be expressly stated in the Scope of Work, shown on drawings, or included in 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 5 PROCEDURES**

- 5.1 Project Request. Owner shall prepare a SOW, identifying the project and describing in drawings, specification and other appropriate materials the intended scope of the project, setting forth the proposal due date.
- 5.2 Project Proposal.
- 5.2.1 Contractor shall provide Owner with a written project proposal. Contractor shall prepare their proposal to include, at a minimum, the following:
- 5.2.1.1 Project price proposal;
  - 5.2.1.2 Required drawings and/or sketches;
  - 5.2.1.3 Catalog cuts, technical data, or samples;
  - 5.2.1.4 List of proposed subcontractors, anticipated price, and completed HUB Plan, if applicable;
  - 5.2.1.5 Project schedule;
  - 5.2.1.6 Any qualifications or conditions applicable to the project proposal; and
  - 5.2.1.7 Sample warranties and/or guarantees for materials, equipment, and/or systems proposed.
- 5.2.2 The price proposal shall identify the Pre-Priced Task, the NPP Tasks, and any other costs of Work proposed for the project. Contractor shall prepare the price proposal according to the following:
- 5.2.2.1 Pre-Priced Tasks and their quantities shall be identified in the CTC®.
  - 5.2.2.2 NPP Tasks shall be identified separately and included in the price proposal. NPP Tasks shall include, but not be limited to, catalog cuts, specifications, technical data, drawings, and/or other information as required to evaluate the task.
  - 5.2.2.3 NPP Tasks performed by Contractor shall be identified and must include a minimum of three (3) independent quotes for all materials. To the extent possible, pre-priced labor and equipment from the CTC® is to be used.



NPP Tasks performed by a subcontractor shall be identified and must include a minimum of three (3) independent quotes from subcontractors. Contractor shall not submit quotes or bids from any supplier or subcontractor that Contractor is not prepared to utilize. Owner may require additional quotes and bids from suppliers or subcontractors if Owner, at its sole discretion, deems submitted quotes or bids unacceptable.

- 5.2.2.4 The final price submitted for NPP Tasks shall be based on the NPP coefficient multiplied by the selected NPP price quoted.
- 5.2.2.5 Once an NPP Task has been used on three (3) separate Job Orders and upon approval by Owner, the unit price for said task is established and will be fixed as a permanent Pre-Priced Task. Price justification will no longer be required.
- 5.2.2.6 Owner shall determine an item is a Pre-Priced Task or an NPP Task. Said determination shall be final, binding, and conclusive to Contractor.
- 5.2.3 By submitting a signed project price proposal, Contractor agrees to complete the Work encompassed in the SOW, in accordance with the project request, and at the price submitted. It is Contractor's responsibility to ensure the necessary tasks and quantities are included in the project proposal prior to submittal.
- 5.2.4 Contractor shall not refuse to perform any task or Work in connection with a project.
- 5.3 Job Order. A Job Order signed by Owner and delivered to Contractor constitutes Owner's acceptance of the project price proposal. The Job Order authorizes Contractor to begin the work identified in the Job Order. Contractor shall complete the Work within the number of days specified in the Job Order, subject to extensions of time approved by Owner through a Change Order. The time set forth for completion of the Work for each Job order is an essential element of the Agreement.
- 5.4 Modification of a Job Order.
  - 5.4.1 Change Orders to a Job Order shall be requested, made, and issued in accordance with the UGC.
  - 5.4.2 Change orders shall be generated from CTC® as the sole basis for pricing.
  - 5.4.3 Owner recognizes three (3) typical circumstances resulting in the modification of a Job Order:
    - 5.4.3.1 Differing site conditions
    - 5.4.3.2 Increased Scope of Work
    - 5.4.3.3 Decreased Scope of Work
- 5.5 Project Completion. Upon completion of the project, Contractor will submit a Certificate of Final Completion for approval. Issuance of the Substantial Completion Certificate and Final Completion Certificate will be in accordance with the UGC.

## **ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES**

- 6.1 In General. Contractor agrees to provide general and specific services as requested by Owner in accordance with the terms of this Agreement. Contractor shall provide all labor and material

necessary and reasonably inferable for the complete performance of any Job Order authorized pursuant to this Contract. Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents specify other instructions.

- 6.2 Standard of Care. Contractor shall use its best efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with the orderly progress of any project authorized pursuant to this Agreement. Contractor shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in the schedule.
- 6.3 Filings and Permits. Contractor is responsible for obtaining all filings and permits required for the Work, and is to include, but not limited to, the preparation of all drawings, sketches, calculations and other documents or information that may be required thereof. Contractor shall bear the cost of providing all drawings, plans, specifications, and other documents used by Contractor and its consultants.
- 6.4 Compliance with Laws. Contractor shall perform the Work in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the project. Contractor shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Contractor, its employees, subcontractors, and agents for failure to comply with applicable laws and regulations, including fines, penalties, or corrective measures. Contractor shall also comply with all Owner's policies. These include, but are not limited to, contractor guidelines, safety and work practices, code of conduct, smoking and/or tobacco policies, and parking regulations. Any citations as a result of violations are the sole responsibility of Contractor.
- 6.5 Safety. Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. Such obligation does not relieve subcontractors of their responsibility for the safety of persons or property in the performance of their Work or for compliance with applicable laws and regulations.
- 6.6 Storage of Materials. Contractor is solely responsible for the receipt and storage of their own materials, including the unloading of trucks, and checking of deliveries and transportation to the work area.
- 6.7 Representative. Before commencing the Work, Contractor shall notify Owner in writing of the name and qualifications of its proposed project manager so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after giving it, Contractor shall name a different project manager for the site. Contractor's project manager shall possess full authority to receive instructions from Owner and to act on those instructions. If Contractor changes its project manager or authority for those individuals, Contractor shall immediately notify Owner in writing.
- 6.8 Supervision. Contractor shall provide competent supervision for the performance of each Job Order. Contractor will ensure that one (1) of their employees is present on each job site at all times. This individual must have overall project supervisory authority. Supervisory costs are to be included in Contractor's Coefficient and will not be reimbursed as a separate labor cost.
- 6.9 Off-site Work. In the event off-site Work is required, such as site fabrication, Contractor shall notify Owner at the time of the issuance of the Job Order. Owner reserves the right to inspect such off-site Work at any time.
- 6.10 Existing Conditions. Contractor shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Contractor by Owner, or any other party that Contractor uses for the Work.

- 6.11 Correction of Work. Contractor shall promptly correct any known or discovered error, omission, or other defect in the Work without any additional cost or expense to Owner.

## **ARTICLE 7 OWNER'S RESPONSIBILITIES**

- 7.1 Owner Specifications. Owner will develop specifications necessary for the execution of this Agreement. The intent of the specification(s) is to provide concise institutional and/or industrial standards for maintenance, repair, and construction of Owner's facilities.
- 7.2 Special Information. Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys, and plans and specifications relevant to the project. Contractor shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to Contractor by Owner.
- 7.3 Time for Response. Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Contractor's services under this Agreement.
- 7.4 Representative. Owner reserves the right to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's responsibilities. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.
- 7.5 Owner-Furnished Materials. Owner reserves the right to purchase material(s) and/or job-required merchandise. Owner will deliver any such material(s) to the jobsite, or compensate Contractor for providing the labor to relocate Owner-furnished materials to the jobsite. Contractor will return Owner-owned materials delivered but not used on the job to Owner for credit.
- 7.6 Owner's Rights. Owner reserves the right to cancel any project for any reason, to opt not to issue a Job Order, and/or perform such Work by other means, if it is determined to be in the best interest of Owner. No cost allowance is provided for the recovery of any costs by Contractor resulting from the development of the Job Order. These include but are not limited to, costs associated with attendance to the joint scope meeting, review of the SOW, subcontractor costs, and costs associated with reviewing the proposal with Owner.

## **ARTICLE 8 SUBCONTRACTS**

- 8.1 In General. Contractor may use the services of subcontractors, and will be responsible for their reimbursement. Owner may require Contractor to submit payment affidavit(s) for subcontractors before release of final payment. The use of subcontractors does not alter the CTC® unit costs or Contractor's Coefficient, and subcontractor pricing is not a basis of reimbursement.
- 8.2 Notice. As soon as practical, and prior to any subcontractor beginning work, Contractor shall notify Owner, in writing, the names and phone numbers of all subcontractors proposed for the principal parts of Work, as well as for any other as directed by Owner. Contractor may not employ any subcontractor, to which Owner objects for any reason, such as incompetent, unfit, irresponsible, or unsafe. Such objection shall not relieve the responsibility of Contractor for Contractor's Work and the Work of the subcontractors.
- 8.3 No Third-Party Beneficiary. The Contract Documents shall not create any contract or agreement between any subcontractor and Owner. Additionally, there is no intent to designate a subcontractor as a beneficiary of the contract between Owner and Contractor. Contractor shall be solely and fully

responsible to Owner for any acts and/or omissions of a subcontractor or persons directly employed thereby.

- 8.4 Compliance. Contractor shall ensure that each subcontractor agrees to be bound by the terms of this Agreement and related Contract Documents, including the University of North Texas System Uniform General Conditions, and individual project specifications, as far as applicable to their Work.

## **ARTICLE 9 HISTORICALLY UNDERUTILIZED BUSINESS PLAN**

- 9.1 HUB Plan for Job Order of \$85,000 or more. In the event that the value of any individual Job Order equals or exceeds Eighty-Five Thousand (\$85,000), Contractor must submit a separate HUB Plan, which shall be subject to Owner's approval and compliance efforts.
- 9.2 Compliance with HUB Plan. Contractor agrees to comply with the terms of its Historically Underutilized Business Plan ("HUB Plan"). No changes to the HUB Plan may be made without Owner's written approval. While this Agreement is in effect, Owner may require Contractor to provide information, and may conduct audits of Contractor, to ensure that the HUB Plan is being, and has been, followed.

## **ARTICLE 10 PAYMENT**

- 10.1 Contractor shall submit an invoice to Owner with sufficient documentation, as determined by Owner, to substantiate the completion of a Job Order at the time of billing. Owner shall render payment in accordance with the UGC. Owner will make progress payments based on the UGC and Applications for Payment submitted by Contractor.

## **ARTICLE 11 BONDS**

- 11.1 Contractor shall provide performance and payment bonds in accordance with the requirements set forth in the Uniform General Conditions.
- 11.1.1 Payment Bonds. For any Job Order requiring Work in excess of Twenty-five Thousand (\$25,000.00), Contractor shall provide a Payment Bond in accordance with Texas Government Code Chapter 2253 and documentation of such bonding to Owner.
- 11.1.2 Performance Bonds. In addition to Payment Bond, if a Job Order is in excess of One Hundred Thousand (\$100,000), Contractor must also provide a Performance Bond in accordance with the Texas Government Code Chapter 2253 and documentation of such bonding to Owner.

## **ARTICLE 12 WARRANTY**

- 12.1 In General. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty shall commence on the Date of Substantial Completion of Work.
- 12.2 Special or Extended Warranties. Contractor shall obtain from its subcontractors and material suppliers any special or extended warranties required by the Contract Documents. Contractor's

liability for such warranties shall be limited to a one-year period. After that period, Contractor shall provide reasonable assistance to Owner in enforcing the obligations of subcontractors or material suppliers for such extended warranties.

- 12.3 Correction of Work. If Contractor fails to correct defective Work within a reasonable time after receipt of written notice from Owner prior to final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the defective Work from payments then or thereafter due Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner. If Contractor's correction or removal of defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

### **ARTICLE 13 INDEMNITY AND INSURANCE**

- 13.1 Indemnity. Contractor covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS Owner, and the University of North Texas System Board of 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 Agreement, 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 Agreement. 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.**

13.1.1 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.

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

13.2 Insurance.

13.2.1 Contractor shall not commence Work until it has obtained all insurance required in accordance with the Uniform General Conditions.

13.2.2 Owner reserves the right to review the insurance requirements during the effective period of the Contract 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.

13.2.3 Owner shall be entitled, upon request, and without expense, to receive copies of the policies, all endorsements thereto and documentation to support costs and may make

any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, exclusions and costs, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Any price credits determined in the insurance review will be refundable to Owner. Actual losses not covered by insurance as required by this Article shall be paid by Contractor.

## **ARTICLE 14 MISCELLANEOUS**

- 14.1 Assignment. 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 service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner to a component or affiliate of Owner or a branch or agency of the State of Texas.
- 14.2 Death or Incapacity. If Contractor transacts business as an individual, his death or incapacity shall automatically terminate this Agreement as of the date of such event, and neither he nor his estate shall have any further right to perform hereunder; and Owner shall pay him or his estate the compensation payable under the Agreement for any services rendered prior to such termination. If Contractor is a firm comprised of more than one principal and any one of the members thereof dies or becomes incapacitated and the other members continue to render the services covered herein, Owner will make payments to those continuing as though there had been no such death or incapacity, and Owner will not be obliged to take any account of the person who died or became incapacitated or to make any payment to such person or his estate. This provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Contractor; and if death or incapacity befalls the last one of such group before this Agreement is fully performed, then the rights shall be as if there had been only one Contractor. In any event, notice of the death or incapacity of any principal shall be given to Owner by any surviving principal within a reasonable time.
- 14.3 Irreparable Injury. It is acknowledged and agreed that Contractor's services to Owner are unique, which gives a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.
- 14.4 Certifications.
- 14.4.1 Pursuant to Texas Family Code, Section 231.006, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 14.4.2 Pursuant to Texas Government Code, Section 2155.004, Contractor certifies that the business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 14.4.3 If a corporate or limited liability company, Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Texas Tax Code, Chapter 171, or that the corporation or limited liability company is exempt from the payment of

such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

- 14.4.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 14.4.5 Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.
- 14.4.6 Pursuant to Texas Government Code Sections 2252.201-2252.205, Contractor certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States.
- 14.4.7 To the extent required by Texas Government Code Chapter 2270, Contractor certifies that it does not currently boycott Israel and will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 14.4.8 By signature hereon, Contractor certifies that no member of the Board of Regents of the University of North Texas System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.
- 14.5 Business Ethics. During the performance of Contractor's contract responsibilities, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest with Owner's best interests. Neither Contractor nor its employees, agents, representatives, or subcontractors will assist or cause Owner to violate Owner's Conflicts of Interest Policy or applicable state ethics laws or rules.
- 14.6 Illegal Dumping. Contractor shall ensure that it and all of its subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.
- 14.7 Asbestos Containing Materials.
  - 14.7.1 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) no later than Contractor's application for Final Payment as required by the Uniform General Conditions.
  - 14.7.2 All materials used in this Project shall be certified as non-ACBM. Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with the following acts:
    - 14.7.2.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763, Subpart E)
    - 14.7.2.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos)

14.7.2.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295, Subchapter C, Asbestos Health Protection)

- 14.8 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be kept on a generally recognized accounting basis and shall be made available to Owner or its authorized representative during business hours for audit or other purposes as determined by Owner. Such records shall be maintained by Contractor and shall be available to Owner or his authorized representative for a period of at least five (5) years after the provision of Contractor's Services.
- 14.9 Notices. 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:

{Name}

{Title}

University of North Texas {System or Institution Name}

1155 Union Circle #311040  
Denton, Texas 76203-5017

If to Contractor:

{Contact Name}

{Firm Name}

{Street Address}

{City, State Zip}

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

- 14.10 Independent Contractor. Contractor recognizes that it is engaged as an independent contractor and acknowledges that Owner will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Contractor hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.
- 14.11 Loss of Funding. Performance by Owner under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of North Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate the Agreement. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 14.12 Confidentiality. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, shall be confidential and Contractor shall not, beginning on the date of first association or communication between Owner and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Contractor shall not make any press releases, public statements, or



advertisement referring to the Project or the engagement of Contractor as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Contractor shall obtain assurances similar to those contained in this subparagraph from persons, and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

- 14.13 Open Records. Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Contractor shall make public information available to Owner in an electronic format. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 14.14 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas and venue shall be as provided in Texas Education Code Section 105.151 for any legal proceeding pertaining to this Agreement.
- 14.15 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- 14.16 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

*SIGNATURE PAGE TO FOLLOW*

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

OWNER:  
UNIVERSITY OF NORTH TEXAS  
**{SYSTEM OR INSTITUTION NAME}**

By: \_\_\_\_\_  
(signature)

[Authorized Signatory Name]  
[Authorized Signatory Title]

Date: \_\_\_\_\_

CONTRACTOR:

**{FIRM NAME}**

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(typed name and title)

Date: \_\_\_\_\_

\_\_\_\_\_  
Street/PO Box

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
State of TX Vendor ID Number

## EXHIBIT A

### JOB ORDER

This Job Order is governed by all the terms and conditions of the Job Order Contracting Agreement (“JOC”), which is incorporated herein for all purposes.

**Contractor Name:** [Insert Contractor Name Here]  
**JOC Number:** [Insert Job Order Contracting Agreement Number Here]  
**Effective Date of JOC:** [Insert Effective Date Here]  
**Job Order Number:** [Insert Job Order Number Here]  
**Job Order Date:** [Insert Date Here]  
**Scope of Work:** [Insert Brief Description or See Exhibit(s) attached hereto]

**Value of Pre-priced Work:** [Insert Amount Here]

**Value of Non-prepriced Work:** [Insert Amount Here]

**Total Fixed Price of Job Order:** [Insert Amount Here]

**Notice to Proceed Date:** [Insert Date Here]

**Completion Date:** [Insert Date Here]

**Liquidated Damages:** [Insert Amount Here (if different than as set forth in UGCs)]

UNIVERSITY OF NORTH TEXAS  
[System or Institution Name]

[INSERT CONTRACTOR NAME]

By: \_\_\_\_\_  
[Name of Authorized Signatory]  
[Title of Authorized Signatory]

Date: \_\_\_\_\_

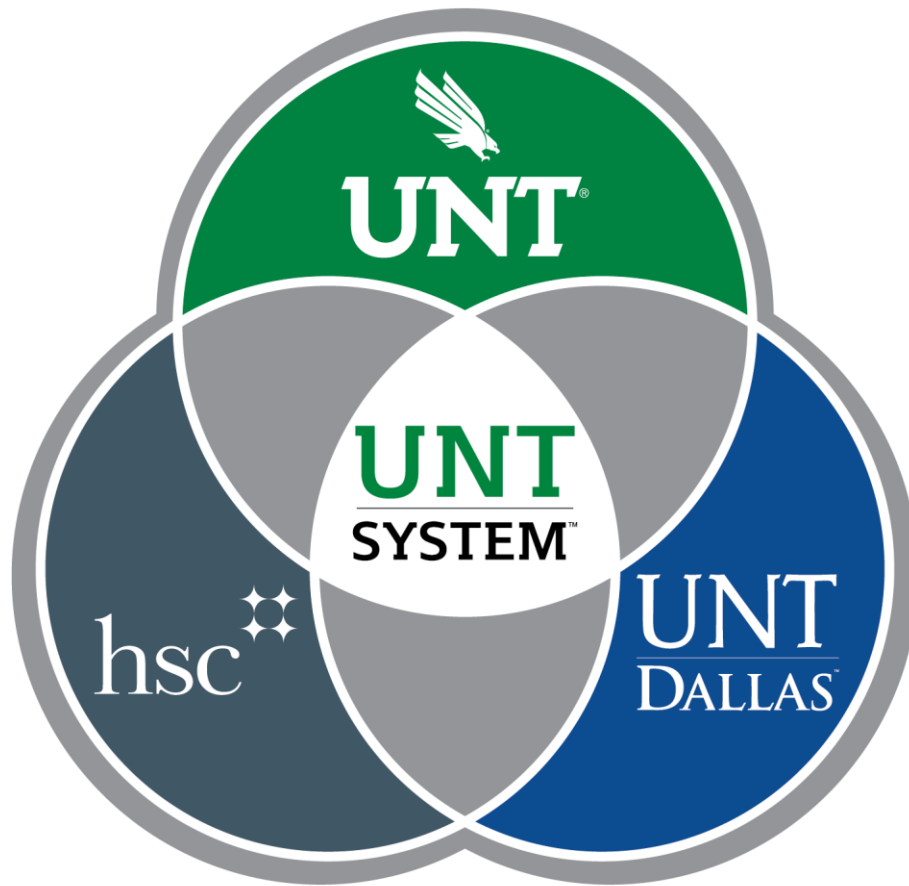
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[Title of Authorized Signatory]

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**UNIFORM GENERAL CONDITIONS**  
**FOR CONSTRUCTION AND DESIGN CONTRACTS**  
**2022**

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**UNIFORM GENERAL CONDITIONS**  
**FOR CONSTRUCTION AND DESIGN CONTRACTS**  
**2022**

**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 Longest 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 Punch list items and pre-final Punch list 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 “Construction Cost Limitation (CCL)” means the maximum funding authorized by and available to Owner to pay for the construction of the Project, exclusive of: (I) furniture, fixtures and other equipment (FFE) not in the Contract; (ii) Owner’s Contingency; and (iii) any design and/or commissioning fees.
- 1.12 “Contract” means the agreement, including all attachments thereto, and all of the Contract Documents between Owner and Contractor.
- 1.13 “Contract Date” is the date when the agreement between Owner and Contractor becomes effective.
- 1.14 “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.
- 1.15 “Contract Duration” means the period between the Effective Date of the Contract and the end of the Warranty Period.
- 1.16 “Contract Sum” means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.17 “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.

- 1.18 “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.
- 1.19 “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.
- 1.20 “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.
- 1.21 “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.
- 1.22 “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.
- 1.23 “Date of Commencement” means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.24 “Day” means a calendar day unless otherwise specifically stipulated.
- 1.25 “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.
- 1.26 “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.
- 1.27 “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 Firm 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.

- 1.28 “Drawings” mean that product and set of documents of Design Professional which graphically depicts the Work.
- 1.29 “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.
- 1.30 “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.
- 1.31 “Float” means the period of time a task can be delayed without delaying Substantial Completion Date.
- 1.32 “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.
- 1.33 “Longest Path” means the sequence of directly related activities that comprise the longest continuous chain of activities from the start of the first activity to the finish of the last activity. The activities represent critical path plus Float plus historical Weather Days. Each activity in the Longest Path is critical and directly related in that it prevents its successor from being scheduled earlier than it is.
- 1.34 “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.
- 1.35 “Open Item List” means a list of work activities, Punch list items, changes, or other issues not expected by Owner, Design Professional, and Contractor to be complete prior to Substantial Completion.
- 1.36 “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.
- 1.37 “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.
- 1.38 “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.
- 1.39 “Progress Assessment Report (PAR)” means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).



- 1.40 “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.
- 1.41 “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.
- 1.42 “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.
- 1.43 “Punch List” 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.
- 1.44 “Reasonably Inferable” means a fair, proper, and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.
- 1.45 “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.
- 1.46 “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.
- 1.47 “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.
- 1.48 “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.
- 1.49 “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.
- 1.50 “Site” means the geographical area of the location of the Work.
- 1.51 “Special Conditions” mean the documents containing terms and conditions which may be unique to the Work or Project.

- 1.52 “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.
- 1.53 “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.
- 1.54 “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.
- 1.55 “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.
- 1.56 “Substantial Completion Date” means the required date for substantial completion of the project. The Substantial Completion Date can only be changed by a written change order.
- 1.57 “Total Float” means the total number of days an activity on the longest path can be delayed without delaying the Substantial Completion Date.
- 1.58 “Unit Price Work” means the Work or a portion of the Work, paid for based on incremental units of measurement.
- 1.59 “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.
- 1.60 “Work Progress Schedule” means the continually updated time schedule prepared and monitored by Contractor that coordinates and integrates activities of the Project, including Contractor’s services, Design Professional’s services, the work of other consultants, suppliers, and Owner’s activities with the anticipated construction schedules for other contractors. The Work Progress Schedule accurately indicates all necessary and appropriate revisions, including a Longest 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, Owner requires Contractor and all subcontractors properly classify individuals as employees or independent contractors.
- 2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.
- 2.2.3 Complaints of Violations.
- 2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258, and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.
- 2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.
- 2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigation hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel

format; and copies of any and all Contract Documents between Contractor and any Subcontractors.

2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

- 2.3 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers, and laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.
- 2.4 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof. Provided, however, if Contractor is a Construction Manager-at-Risk, Contractor shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by Owner or Design Professional; unless Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent then Contractor shall be responsible for such loss unless notice of such information is promptly furnished to Design Professional.
- 2.5 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax-exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.
- 2.6 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological, or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the OCM and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on the Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may notify the Owner in accordance with Article 14.

- 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.

### **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 Owner's Construction Manager (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 herein, 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 Punch list items are completed until Final Completion.

5.1.1 Site Visit. Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility and general character of the Site and/or building. Contractor shall evaluate and plan for all construction related activities that will potentially impact the safety of students, staff, and visitors. A site-specific safety plan must be provided to the OCM prior to the commencement of any construction activities. The site-specific safety plan must include, at the minimum, project site controls and safety, building locations, delivery logistics, project offices, materials staging and parking.

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 Amendment or 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, integration of activities within Contractor's Work Progress Schedule 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. § 20.284.
- 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., Chapter 20, Subchapter D, Division 1 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. § 20.285 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. § 20.285.

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 percent (10%) 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 percent (10%) 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), <https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html>, stating companies holding

Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (FMS Circular 570). The Owner will consider acceptable any corporate surety which is qualified under this paragraph and which has a rating of at least B in Best's Insurance Reports – Property – Casualty.

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

## **ARTICLE 8.**

### **INDEMNITY AND INSURANCE**

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

- 8.1.1 **No Third-Party Beneficiaries.** The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

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

- 8.1.3 The indemnity provisions shall survive the termination of the Contract regardless of the reason for termination.

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 with limits of not less than:

- \$1,000,000 each accident;
- \$1,000,000 disease each employee; and
- \$1,000,000 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.
- Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

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 (or Subcontractor'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:
- \$1,000,000 each accident;
- \$1,000,000 disease each employee; and
- \$1,000,000 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 (or Subcontractor) 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 with respect to 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.
- If Owner is damaged by the failure of Contractor (or Subcontractor) to maintain insurance as required herein and/or as further described in Owner’s Special Conditions, then Contractor shall bear all reasonable costs properly attributable to that failure.

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 INSURED 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 INSURED 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 SEVEN (7) YEARS AND SHALL HAVE THE RESPONSIBILITY OF ENFORCING THESE INSURANCE REQUIREMENTS ITS SUBCONTRACTORS. OWNER SHALL BE ENTITLED, UPON REQUEST AND WITHOUT EXPENSE, TO RECEIVE COPIES OF THESE CERTIFICATES. CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD DOCUMENTS.**

## **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) 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 site-specific 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.
- 10.1.1 **Site Visits.** The OCM/ODR may perform random visits to Project Sites to address adherence to the site-specific safety plans and any Contractor safety requirements. Any violations that are discovered will be reported to Contractor for prompt remediation and correction. Poor performance in regards to safety, as determined by the OCM/ODR, is grounds for contract termination and/or immediate removal. The OCM/ODR may also require meetings with contractors regarding safety on the Project. The OCM/ODR may request to review safety policies of Contractor, Contractor's safety inspection forms, and the most current site-specific safety plan, as required.
- 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 **Safety Data Sheets.** Coordinate the exchange of safety data sheets (SDSs) 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 SDSs 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 To OCM and Design Professional: Give OCM and Design Professional prompt notice of all such events.

10.3.2.2 Changes or Variations to Work: 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 twenty-four (24) 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 (1) 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.

10.6.1 OSHA Regulations: All trench excavations shall be performed in full compliance with OSHA Regulations. The regulation identified as 29 CFR Subpart P – Excavations, consisting of sections 1926.650 through 1926.652 with Appendices A through F, of the OSHA Health and Safety Regulations, as amended or modified, shall apply to Contractor's trench excavations. Contractor shall meet and comply with this regulation and all other applicable safety standards that have been adopted by government agencies that have jurisdiction over this Project. It is the Contractor's responsibility to comply with any additional requirements resulting from any pre-construction conference relating to coordination of geotechnical investigation subjects.

10.6.2 Texas State Law: Texas State Law (Underground Facility Damage Prevention and Safety Act: Tex. Util. Code, Chapter 251) requires Contractors submit all required notifications to the authorities having jurisdiction two working days prior to commencement of all excavation site work. It is the Contractor's responsibility to inform Texas Excavation Safety System (1-800-DIG-TESS or 811) about all planned excavations and provide adequate notice. Contractor is required to coordinate identification of underground facilities with the Design Professional and ODR, and site mark approximate locations prior to planned excavation.

10.6.3 Contractor Responsibility: It is the sole duty and responsibility of the Contractor to determine the specific applicability of the designed trench safety systems to each field condition and to make inspections of the trench safety systems. Contractor shall maintain a permanent record of inspections, readily available to the ODR at any time.

- 10.7 Crane Safety. Any and all construction associated activities with crane operations must be coordinated and reviewed with OCM/ODR prior to commencement of such activities. Prior to the operation of any crane on Site, a suitable location needs to be determined and consulted with the OCM/ODR. Such location must be included on the site-specific safety plan. Consideration should be made to the capacity and type of crane in safe relationship to the physical site location limitations, as well as any existing or future underground/overhead conditions and utilities. Contractor is required to coordinate identification of underground/overhead facilities with Design Professional and ODR and site mark approximate locations prior to initial planned setup and activities. Any critical lift plans must be reviewed by OCM/ODR prior to activity occurring. If possible, avoiding critical lifts is preferred. All crane operators must be certified by the National Commission for Certification of Crane Operators (NCCCO). All signal persons & riggers at a minimum need to be qualified in accordance with OSHA standard. Contractor should have certified riggers & signal persons working on campus and Owner reserves the right to request such certification depending on the scope of work being performed. Contractor shall develop a lift plan for any crane activities being performed. The lift plan must be submitted to OCM/ODR prior to any lifting or hoisting activities occurring, with any additional documentation, including but not limited to, equipment manuals, inspections, certifications and licenses to be provided to the owner upon request.
- 10.8 Unmanned Aircraft System (UAS) Usage. Any UAS operation on Owner's property must follow Federal Aviation Administration (FAA) regulations, state law, and Owner's policies and procedures. Any images or video obtained from a pre-authorized and compliant UAS flight on Owner's property must be approved for use by the Owner prior to usage of any such images or video obtained. Any violations will result in an ODR directed no-fly restriction for UAS operations on Owner's property.
- 10.9 Fire Protection Procedures. Contractor shall maintain compliance with all Life/Safety Code requirements throughout the duration of the Contract and take precautions to prevent potential fire hazards at the jobsite. Contractor shall adhere to the preventative fire protection procedures of the University of North Texas System Fire Marshal and instruct all associated subcontractors, skilled tradesmen, contractors, material men, suppliers and/or laborers of the procedures for preventative fire measures. Construction sites and structures are required to have proper site access and egress, active and certified extinguishing devices or systems at all times, and all fire and egress systems clearly marked and identified. Fire department access (fire lanes) shall be kept clear of vehicles, equipment and materials at all times. Occupied buildings which require any fire protection systems to be non-active, require two weeks advance notice and life safety protection method of procedures must be reviewed by University of North Texas System Fire Marshal, prior to system deactivation.
- 10.10 Smoke and Tobacco Free Campus. All campuses within the University of North Texas System are designated 'Smoke and Tobacco Free' environments. Due to State health, sanitation and safety regulations, tobacco products are not permitted to be consumed by construction personnel in any Owner's property, occupied or unoccupied, including mechanical and other service spaces. Contractor shall be responsible for enforcing this policy on the construction site, at all times.

**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. 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. Contractor shall 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 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 Owner's Self Help. Should Contractor be unable to perform corrective work without impacting the overall WPS, Owner reserves the right to hire a separate Contractor to

complete the correction. The cost of the correction performed by separate Contractor will be charged back to Contractor.

- 11.5.3 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 thirty (30) 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. Contractor shall submit for review and approval a Construction Baseline Schedule to Owner and Design Professional no later than twenty-one (21) days after the effective date of the Notice to Proceed with construction. The Construction Baseline Schedule shall indicate the dates for starting and completing the various aspects required to complete the work and shall utilize the Longest Path Method with fully editable logic. The schedule shall include mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents, and acceptance of all Work. This Baseline Schedule shall become the comparison to the actual conditions throughout the Contract duration and become a part of the Work Progress Schedule (WPS). Contractor shall coordinate and integrate the Work Progress Schedule with the services and activities of Owner, Contractor, Design Professional, other consultants/suppliers, subcontractors and the requirements of governmental entities.

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 the specific agreements.

- 12.3.1 Work Progress Schedule Updates.



- 12.3.1.1 Contractor shall update the Work Progress Schedule and the Submittal Register weekly during the Owner/Architect/Contractor (OAC) meetings, at a minimum, to reflect progress to date and current plans for completing the Work, while maintaining 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.
- 12.3.1.2 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.
- 12.3.1.3 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 Work Progress Schedule. Schedule changes that materially impact Owner's operations shall be communicated within forty-eight (48) hours to OCM.
- 12.3.1.4 The Work Progress Schedule 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 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.
  - 12.3.2.1 Owner will coordinate its own activities with Contractor's activities as shown on the Work Progress Schedule.
  - 12.3.2.2 Owner's review of the Work Progress Schedule, or update or revision, does not indicate any approval of Contractor's proposed sequences and duration.
  - 12.3.2.3 Owner's review 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.
  - 12.3.2.4 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 percent (10%) 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 Owner's Self Help. Should Contractor be unable to complete portion of Work, Owner may hire separate Contractor to complete these items. The cost to complete this Work will be charged back to Contractor.
- 12.5.2 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:
- 12.5.2.1 An increase in working forces.
- 12.5.2.2 An increase in equipment or tools.
- 12.5.2.3 An increase in hours of work or number of shifts.
- 12.5.2.4 Expedited delivery of materials.
- 12.5.2.5 Other action proposed if acceptable to Owner.
- 12.5.3 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.
- 12.5.4 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 an Excusable Delay, as defined below, 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 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 Days. “Weather Days” means days contained in the Baseline Schedule that are reasonably foreseeable adverse weather conditions and will not constitute an Excusable Delay. “Seasonably foreseeable adverse weather conditions” means weather conditions in keeping with the historical average listed by the National Oceanic and Atmospheric Administration on its website, [www.noaa](http://www.noaa). When a Weather Day prevents critical path activities at the site from proceeding, Contractor shall: (a) immediately notify OCM for confirmation of the conditions and provide a detailed list of critical path activities impacted; and (b) at the end of each calendar month, submit to OCM and Design Professional a list of Weather Days occurring in that month along with documentation of the impact on critical path activities. Based on substantiated critical path analysis to the Work Progress Schedule, Owner will issue a Weather Day confirmation for any Contract Time extension to be documented by Change Order.
- 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 Longest 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 Longest 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.

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

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

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

- 12.13.1 Reasonable Estimate. Such amount is not a penalty but 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.

- 12.13.2 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.

- 12.13.3 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 Job Order Contracts. Contractor shall submit to OCM pricing based on the **regional** RS Means or Gordian Group pricing. The Job Order may be a fixed price, lump-sum contract based on unit pricing applied to estimated quantities or unit price order based on the quantities and line items delivered and the coefficient applied to the work items.

13.2 Schedule of Values (utilized in Construction-Manager-at-Risk and General Construction Agreement). 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.

13.2.1 Requirements.

13.2.1.1 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 after the effective date of the Notice to Proceed. 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.

13.2.1.2 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.

13.2.1.3 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 (1) year after final payment.

13.3 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.

13.3.1 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:

- 13.3.1.1 Contractor's estimate of the amount of Work performed, labor furnished, and materials incorporated into the Work, using the established Schedule of Values;
- 13.3.1.2 An updated Work Progress Schedule reflecting progress of Work, including the executive summary and all required schedule reports. The progress of Work shall be the same progress as payment request;
- 13.3.1.3 HUB subcontracting plan Progress Assessment Report (PAR); The PAR should document compliance with the HUB Plan.
- 13.3.1.4 Reimbursable Expenses: Reimbursable expenses incurred solely and directly in support of the Project within one of the following categories:
- Travel expenditures at State of Texas reimbursement rates, provided that reimbursement will not be granted for travel 1) within the Denton-Dallas-Fort Worth area or 2) involving less than 150 miles round-trip; or
  - Reproductions, printing, printing supplies, plotting, photographs, renderings, postage, binding, collating, delivery and handling of reports; Drawings and Specifications or other project-related work product other than that used solely in-house by Contractor at actual expense incurred; or
  - Fees and associated reimbursable expenses paid to consultants hired in accordance with prior written approval from Owner.
  - Expenses excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, laundry service, valet service, entertainment expenses and any non-Project related items.
  - Reimbursement of tips shall not exceed fifteen percent (15%).
- 13.3.1.5 Such additional documentation as Owner may require in the Contract Documents; and
- 13.3.1.6 Construction payment affidavit.
- 13.3.2 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.

13.3.3 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.

13.4 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.

13.4.1 Stored Materials. Payment for stored materials and/or equipment confirmed by Owner and Design Professional to be on-site or otherwise properly stored is limited to eighty-five percent (85%) of the invoice price or eighty-five percent (85%) of the scheduled value for the materials or equipment, whichever is less.

13.4.2 Retainage. Owner will withhold from each progress payment, as retainage, whichever is more of the following three options: (a) five percent (5%) 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.

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

13.4.2.2 At least sixty-five percent (65%) of the Contract, or such other discrete Work phase as set forth in Subsection 15.1.6 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.

13.4.2.3 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.

13.4.3 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:

- 13.4.3.1 Defective or incomplete Work not remedied;
- 13.4.3.2 Damage to Work of a separate Contractor;
- 13.4.3.3 Failure to maintain scheduled progress;
- 13.4.3.4 Reasonable evidence provided with Work Progress Schedule that the Work will not be completed within the Contract Time;
- 13.4.3.5 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 13.4.3.6 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
- 13.4.3.7 Assessment of fines for violations of prevailing wage rate law; or
- 13.4.3.8 Failure to include the appropriate amount of retainage for that periodic progress payment.

13.4.4 Title.

- 13.4.4.1 Title to all material and Work covered by progress payments transfers to Owner upon payment.
- 13.4.4.2 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.

13.4.5 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 Punch list items and change orders.

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

13.4.7 Documentation.

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

- 13.4.7.3 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.

- 13.5 Time for Payment by Contractor: Pursuant to Tex. Gov't Code § 2251.023, 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 the provisions herein or other Contract provisions.

Whenever Change Orders Requests to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Contractor among the following options: 1) lump sum Change Order; 2) unit price Change Order, or 3) cost plus fee Change Order.

- 14.1.1 Owner Ordered Changes. Owner, without invalidating the Contract and without approval of Contractor's Surety, 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 Construction Change Directive, 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. Accordingly, it is the express intention of the parties, notwithstanding any other provisions in the 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. However, 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 Lump Sum Change Order Request. Contractor will submit a properly itemized Lump Sum Change Order Request covering the additional work and/or the work to be deleted. This Request will be itemized for the various components of work and segregated by labor, material and equipment in a detailed format satisfactory to Owner. Owner will require itemized Change Orders on all Change Order Requests from Contractor, subcontractors and sub-subcontractors regardless of tier. Details to be submitted include detailed line item estimates showing detailed materials quantity take-offs, material prices by item, and related labor hour pricing information and extensions (by line item or by drawing as applicable).

14.2.1 Self-Performed Labor. Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by any Contractor (regardless of tier) for those workers or crews of workers who the Contractor reasonably anticipates will perform the Change Order work. Estimated labor hours shall include hours only for the worker and working foreman directly involved in performing the change order work. Supervision above the level of working foreman (such as general foreman, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined in the Contract. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a Change Order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the markup percentage as outlined in the Contract.

14.2.2 Overhead and Profit. Overhead shall be considered to include insurance beyond the scope of Article 8, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens, and general home office expenses. No separate allowance will be made.

14.2.3 Labor Burden. Labor burden allowable in Change Orders shall be defined as Contractor's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for Contractor's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to Contractor for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risks rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be

examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)

- 14.2.3.1 Non-Reimbursable Labor Burden. Employee Stock Ownership Plan (ESOP) related to fringe benefit costs are specifically considered non-reimbursable labor burden and any ESOP costs are considered covered by the allowable change order markups to cover overhead and profit.
- 14.2.4 Material. Estimated material change order costs shall reflect Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to Contractor due to "non-cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if Contractor has provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.
- 14.2.5 Equipment. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase order cost of more than \$750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor owned equipment the aggregate equipment rent charges for any signed piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered a separate direct cost associated with the change order work.
- 14.2.6 Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing change orders, the maximum markup percentage fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of 1) direct labor and allowable labor burden costs applicable to the change order or extra work 2) the net cost of material and installation equipment incorporated into the change or extra work, and 3) net rental cost of major equipment and related fuel costs necessary to complete the change in the work.
- 14.2.7 Maximum Markup Percentages Allowable on Work Performed by Subcontractors. With respect to pricing the portion of change order proposals involving work performed by Subcontractors, the maximum markup percentage fee allowable to the Contractor supervising the Subcontractor's work shall not exceed five percent (5%) of the net of all

approved change order work performed by all subcontractors combined for any particular Change Order Request.

- 14.2.8 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 or if contingency funds are utilized. If the GMP increases or contingency funds are utilized, the Construction-Manager-at-Risk or Design Builder will be allowed additional fees at the rate specified in the Contract.
- 14.2.9 No Markup on Bonds and Liability Insurance Costs. Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any markup percentage fee.
- 14.2.10 Direct and Indirect Costs Covered by Markup Percentages. As a further clarification, the agreed upon markup percentage fee is intended to cover the Contractor's profit and all indirect costs associated with the Change Order Work. Items intended to be covered by the markup percentage fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen; estimating; engineering; coordinating; expediting; purchasing; detailing; legal; accounting; data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; ESOP related costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the markup percentage fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
- 14.2.11 Deduct Change Orders and Net Deduct Changes. The application of the markup percentage referenced in the Contract will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined above so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change order involves but additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
- 14.2.12 Contingency. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributed to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of the material costs.
- 14.3 Unit Price Change Order Requests. As an alternative to Lump Sum Change Order Request, the Owner or the Contractor acting with the approval of the Owner may choose the option to use Contract unit prices. Agreed upon Contract unit prices shall be the same for added quantities and deductive quantities. Unit prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.

- 14.3 Cost Plus Change Order Requests. As an alternative to either Lump Sum Change Order Requests or Unit Price Change Order Requests, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notification, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foreman, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Requests as outlined above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for the time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.
- 14.4 Job Order Unit Prices. Job Order unit prices as stated in the contract document or Change Order Request shall be based upon a regional RS Means Book or Gordian Group pricing.
- 14.5 Claims for Additional Costs.
- 14.5.1 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.
- 14.5.2 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 14.6, Contractor shall make such claim as provided in Section 14.5.1.
- 14.5.3 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.

- 14.6 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 affected by written order which Contractor shall carry out promptly and record on as-built Record Documents.
- 14.7 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.
- 14.8 Extension of Time. All changes to the Contract Time made as a consequence of requests as required in the UGC's, must be documented by Change Order.
- 14.9 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.
- 14.9.1 Procedures.
- 14.9.1.1 Procedures for administration of Change Orders shall be established by Owner and stated in the Contract Documents.
- 14.9.1.2 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.
- 14.9.2 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.

- 14.9.3 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.
- 14.9.4 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.
- 14.9.5 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.
- 14.10 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 Change Orders. 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 Change Order has been issued. The Parties reserve their rights as to the disputed amount, subject to Article 18.
- 14.11 Audit of Changes. All Change Orders are subject to audit by Owner or its representative at any time and Change Order amounts may be adjusted lower as a result of such audit.

## **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 Punch list 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.

15.1.3 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 Punch list 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.

15.1.3.1 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.

15.1.3.2 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 Punch list items (the pre-final Punch list) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punch list, 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.

15.1.4 Final Inspection. Contractor shall correct or complete all items on the final Punch list 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 Punch list. Upon completion of the final Punch list, Contractor shall notify Design Professional and OCM in writing stating the disposition of each final Punch list item. Design Professional, Owner, and Contractor shall promptly inspect the completed items. When the final Punch list 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.

15.1.5 Additional Inspections.

15.1.5.1 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.

15.1.5.2 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.

15.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punch list 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.

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

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 Punch list 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 (1) 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. 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 insure that Texas Department of State Health Services licensed individual, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

16.5 Compliance with Acts. 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 forty-five (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 (1) 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. Owner shall be billed in accordance with Chapter 2251 of Texas Government Code and interest, if any, on past due payments shall accrue and be paid in accordance with 2251 of the Texas Government Code.

## **ARTICLE 19.**

### **MISCELLANEOUS**

- 19.1 Right to Audit. Owner, or any of its duly authorized auditors or representatives including the State Auditor's Office, 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 seven (7) years after Final Payment or final disposition of any disputes, claims, litigation, or appeals arising out of the Contract.
- 19.2 Records and Inspection. Owner's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, Subcontractors and vendors. Contractor's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases contracts, commitments, arrangements, notes, daily diaries, emails, superintendent reports, drawings, receipts, vouchers and memoranda and any and all other agreements, sources of information and matters that may in the Owner's judgment have any bearing on or pertain to

any matters, rights, duties or obligations under or covered by any Contract Documents. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records" to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- 19.2.1 Deliverables: Compliance with contract requirements for deliverables
- 19.2.2 Plans and Specifications: Compliance with approved plans and specifications
- 19.2.3 Ethics Expectations: Compliance with Owner's business ethics expectations
- 19.2.4 Change Order Pricing: Compliance with contract provisions regarding the pricing of Change Orders
- 19.2.5 Invoice Accuracy: Accuracy of Contractor representations regarding the pricing of invoices
- 19.2.6 Claims: Accuracy of Contractor representations related to claims submitted by the Contractor or any of his payees.
- 19.3 Audit of Subcontractor: Contractor shall require all payees receiving \$10,000 or more in connection with this contract to comply with the audit requirements herein by including the requirements hereof in a written contract agreement.
- 19.4 Overpricing or Overcharges: If an audit inspection or examination discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or Subcontractors in excess of \$100,000, in addition to adjusting for overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's finding to Contractor.
- 19.5 Documentation Requirements: In addition to the normal paperwork documentation the Contractor typically furnishes to the Owner, in order to facilitate efficient use of Owner resources when reviewing and/or auditing the Contractor's billings and related reimbursable cost records, Contractor agrees to furnish upon request the following types of information in the specified computer (PC) readable file format(s), as applicable:

| <u>Type of Record</u>   | <u>PC Readable File Format</u> |
|---|--------------------------------|
| Monthly Job Cost Detail_  | .pdf and Excel_                |
| Detailed Job Cost History To Date_  | .pdf and Excel_                |
| Monthly Labor Distribution Detail (if not already separately detailed in the Job Cost Detail)_  | .pdf and Excel_                |
| Total Job To Date Labor Distribution Detail (if not already separately detailed in the Job Cost History To Date)_   | .pdf and Excel_                |
| Employee Timesheets Documenting Time Worked By All Individuals Who Charge Reimbursable Time To The Project_   | .pdf_                          |
| Daily Foreman Reports Listing Names And Hours And Tasks Of Personnel Who Worked On The Project_   | .pdf_                          |
| Daily Superintendent Reports_   | .pdf_                          |
| Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payments to subcontractors, etc.)_ | .pdf and Excel_                |
| Copies Of Executed Subcontracts With All Subcontractors_  | .pdf_                          |
| Copies Of All Executed Change Orders Issued To Subcontractors_  | .pdf_                          |
| Copies Of All Documentation Supporting All Reimbursable Job Costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)_                   | .pdf_                          |

19.6 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:

19.6.1 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.

19.6.2 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.

19.7 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.

19.8 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.

19.8.1 Accessibility and Administration.

19.8.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.

19.8.1.2 Owner shall administer the software.

19.8.2 Training. When used, Owner shall provide training to the Project team members.

19.9 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.

19.10 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.

19.11 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.

19.12 Governing Law and Venue. The 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.

- 19.13 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.
- 19.14 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.
- 19.15 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.
- 19.16 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.
- 19.17 Buy America Requirements for Iron and Steel Used in Construction. In accordance with Texas Government Code 2252, Section 2252.202, all iron or steel products (i.e., rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.
- 19.18 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.
- 19.19 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.
- 19.20 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.
- 19.21 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.

## 19.22 Business Ethics Expectations

19.22.1 Contractor: During the course of pursuing contracts with the Owner and while performing the Work in accordance with the Contract, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests

19.22.2 Reasonable Action: Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the Owners' best interests. These obligations shall apply to the activities of Contractor employees, agents, subcontractors, subcontractor employees, consultants of Contractor, etc.

19.22.3 Gifts and Other Considerations: Contractor and its employees, agents, subcontractors, and material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans free work, substantially discounted work, or any other considerations to the Owner's representatives, employees or their relatives.

19.22.4 Subcontractors: Contractor and its employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.

19.22.5 Other Jobs: Contractor shall not receive the benefit of discounted bids or reduced payments on other jobs as an offset to bids, base subcontracts, and/or change orders on the Project.

19.22.6 Owner Notification: It is expected that the ODR be notified as soon as possible whenever anyone aware of these business ethics expectations believes there has been a failure to comply with the provisions herein or an attempt to have someone violate the business ethics expectations.

- Notifications may be made anonymously.
- Contractor representatives and/or subcontractor representatives familiar with the Project shall provide upon request a Certified Management Representation Letter in a form agreeable to the Owner stating that they are not aware of any situations violating the business ethics expectations outlined herein or any similar potential conflict of interest situations in connection with the Project.

19.22.7 Subcontractor Contracts: Contractor agrees to include the Business Ethics Expectation clause in all contracts with Subcontractors, subconsultants and material suppliers receiving more than \$10,000 in funds in connection with the Project.

19.22.8 Interviews and Audits: Contractor and any other third party receiving more than \$10,000 in connection with the Project shall permit interviews of employees and audits of its records by ODR to evaluate compliance with business ethics expectations. Such reviews and audits

will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor.

- 19.23 Entire Agreement. The 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.