

**Request for Qualifications  
Design-Build Services**

**UNT Discovery Park Fire  
Piping Replacement**

**RFQ752-23-263464CS**

**DOCUMENT 001100  
RFQ752-23-263464CS**

**ADVERTISEMENT FOR QUALIFICATIONS**

University of North Texas System  
**Design-Build Discovery Park Fire Piping Replacement**  
Qualifications due: **June 9, 2023**

In accordance with Education Code 51.780, the University of North Texas System (UNTS), subsequently referred to as Owner, using the two-phase process for selecting a Design/Build firm for the project, is accepting qualifications and intends to enter into an agreement with a vendor that specializes in Design/Build services in accordance with the terms and conditions and requirements set forth in this Request for Qualifications (RFQ).

Sealed qualifications for **RFQ752-23-263464CS** will be received by the UNTS up to 2:00 p.m. CST on **June 9, 2023**. Responses received after the date and hour above stated will not receive consideration.

Qualifications can be Submitted electronically through the Jaggaer web link at:

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

You will need a username and password to access the site. Please be sure to register as a new user PRIOR to attempting to submit your response electronically in order to become familiar with the site. Response and HUB Sub-Contracting Plan must be submitted as two separate pdf files and clearly identified.

**Project Description**

This project will be to design and to replace all in-ground Fire Suppression piping at Discovery Park. Scope is to include but not limited to the following.

- Remove and replace approximately 8,500 lineal feet of Fire Piping, all Post Indicator Valves (PIV's), and Hydrants at Discovery Park.
- Re-route pipe as required by on site conditions. Upsize 10" pipe to 12" from city supply around the building to the risers. Replace the piping from risers to the building with 10" pipe.
- The project needs to account for the existing city main tie-in as well as the tie-in to the new city water main currently planned to be installed along N. Elm Street.

**Questions**

Questions concerning this proposal should be directed to:

Carrie Stoeckert – Senior Construction Contract Coordinator  
[carrie.stoeckert@untsystem.edu](mailto:carrie.stoeckert@untsystem.edu).

**All questions must be received no later than 2:00 p.m. CST on May 24, 2023. All questions and answers will be posted to the website by 5:00 p.m. CST on May 26, 2023.**

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

The Owner may in its sole discretion respond in writing to questions concerning this RFQ. Only the Owner's responses made by formal written Addendum to this Proposal shall be binding and shall be posted on the UNT System website located at <https://finance.untsystem.edu/vendor-resources/bid-inquiry/bid-opportunities.php>. Oral or other written interpretations or clarifications shall be without legal effect.

**Online** - Respondents can view bid documents at Electronic State Business Daily (<http://www.txsmartbuy.com/sp>) or at the UNT System website <https://finance.untsystem.edu/vendor-resources/bid-inquiry/bid-opportunities.php> and the UNTS Jaggaer website <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS>.

### **Pre-Bid Meeting**

A pre-bid meeting will be held at UNT Discover Park, 3940 North Elm Street, Denton, Texas, Room F102D at **10:00 a.m.** on **May 18, 2023**. Parking will be available in Lot 95

### **Site Visit**

A site visit will be conducted on **May 18, 2023, immediately following the pre-solicitation meeting**. This will be the only time available to view the site, no other site visit will be allowed. Site visit will be at UNT Discovery Park, Denton, Texas.

### **Historically Underutilized Business (HUB)**

In accordance with Texas Government Code 2161, a HUB Sub-Contracting Plan is required from Firm as part of the Qualifications for Design Architect/Engineer Services. A HUB Sub-Contracting Plan is NOT required as part of the Qualifications for the Build Construction Services. A HUB Sub-Contracting Plan will be required by the selected Firm upon bidding of construction services. Therefore, a Good Faith Effort Program in the form of a HUB Subcontracting Plan (HSP) is a mandatory condition precedent to the award of any such extension of the contract. The HSP will become a part of the Design/Build Agreement. Refer to Division 00, Section 006000 herein for HSP Forms.

The Owner has set a HUB Subcontracting goal for this service at 25%.

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

**END OF SECTION**

**DOCUMENT 002100**

**INSTRUCTIONS TO PROPOSERS**

University of North Texas System (UNTS), subsequently referred to as the Owner, is accepting sealed qualifications from respondents for a Design/Build contract, pursuant to Sec. 51.780, *Texas Education Code*, as the first phase in a two-phase process in accordance with the terms, conditions and requirements set forth in this Request for Qualifications (RFQ). This RFQ provides sufficient information for interested parties to prepare and submit qualifications for consideration by the Owner.

**1. DEFINITIONS, BACKGROUND, AND SPECIAL CONCERNS**

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

**2. PRE-PROPOSAL MEETING:**

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

**May 18, 2023 @ 10:00 am**

Location: UNT Discover Park, 3940 North Elm Street, Denton, Texas, Room F102D

Parking will be available in Lot 95

### 3. SITE VISIT

A site visit will be conducted on **May 18, 2023, immediately following the pre-solicitation meeting.** This will be the only time available to view the site, no other site visit will be allowed. Site visit will be at UNT Discovery Park, located at Denton, Texas.

### 4. PROJECT PROPOSED SCHEDULE

<b>05/18/23</b>	10:00 a.m.	Pre-proposal Meeting/Site Visit
<b>06/09/23</b>	2:00 p.m.	Deadline for Qualifications
<b>06/12/23</b>	2:00 p.m.	Public Open-only names of respondents to be read -
<b>06/23</b>		Notification to short listed firms for Phase 2 to interview (on or about)
<b>06/23</b>		Interviews of short-listed firms, if necessary (on or about)
<b>07/07/23</b>		Request for Pricing Proposal Phase 2 issued
<b>07/19/23</b>	2:00 p.m.	Public Opening - Pricing
<b>07/23</b>		Design/Build Interviews on or about (if necessary)
<b>07/23</b>		Formal Contract Award Notification of Selected Firm
<b>July 2023</b>		Design/Build Services Authorized
<b>December 2024</b>		Substantial Completion
<b>December 2024</b>		Final Completion

### 5. PREPARATION OF BIDS

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

#### 4.1 General Instructions

- A. Respondents should carefully read the information contained herein and submit a complete response to all requirements and questions as directed. Respondents must comply with all the rules, regulations and statutes relating to purchasing in the State of Texas, to the rules and regulations of the Owner and the requirements of this form. UNTS consists of the UNTS Building at Dallas, University of North Texas at Denton, University of North Texas at Dallas, and University of North Texas Health Science Center at Fort Worth.
- B. The response to the RFQ will provide all information necessary for consideration and initial evaluation by the Owner. Based on the initial evaluation, the Owner may select a short list of up to five (5) of the top Firms for an interview. Short-listed respondents may be required to submit additional information in connection with the interview.
- C. In Phase 2, the Owner may request additional information regarding each short-listed Respondent's demonstrated competence and qualifications, based on criteria in the RFQ package. The Owner will evaluate each response submitted on the basis of criteria specified in the RFQ, any additional information submitted in connection with the interview, and the interview itself, if held.
- D. As part of Phase 2, the short-listed Respondents will be required to submit a proposal on the Owner-provided proposal form. The proposal form shall be submitted in a sealed envelope with the RFQ number and the Respondent's name clearly stated on the outside of the envelope. The proposal form will include line items that require each of the following to be stated separately: the Proposed Pre-Construction Phase Fee, the Proposed Construction Phase Fee, and the Proposed General Conditions costs by line item category along with the General Conditions Matrix. All proposed fees and general conditions costs shall exclude any and all architectural and engineering fees.
- E. Qualifications and any other information submitted by Respondents in response to this RFQ shall become the property of the Owner.
- F. The Owner will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for proposal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law. Respondents submit qualifications and proposals at their own risk and expense.
- G. Submittals which are qualified with conditional clauses or alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to disqualification by the Owner, at its sole option.

- H. Each response should be prepared simply and economically, providing a straightforward, concise description of your firm's ability to meet the requirements of this RFQ with a limitation of twenty-five (25) pages. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner's needs.
  - I. The Owner makes no guarantee that an award will be made as a result of this RFQ, and reserves the right to accept or reject any or all responses, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ or contract when deemed to be in the Owner's best interest. Representations made within any response will be binding on responding firms. The Owner will not be bound to act by any previous communication or response submitted by the firms other than this RFQ.
  - J. Failure to comply with the requirements contained in this RFQ will result in a finding that the respondent failed to submit a responsive proposal to this RFQ and is therefore considered disqualified.
  - K. The Owner's solicitation terms and mutually acceptable written revisions, if any, shall apply. Any terms and conditions not accepted through BSS Purchasing in writing are not binding on either party.
  - L. The Owner will not be bound by any oral statement or representation contrary to the written specifications of this Response.
- 4.2 Preparation and Proposal Instructions
- A. Responses to this RFQ should consist of answers to required criterion in Division 00, Section 002400, *Scope of Proposal*. It is not necessary to repeat the criterion in your response; however, it is essential that you reference the criterion number with your corresponding response. In cases where a criterion does not apply or if you are unable to respond, reference the criterion number and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Briefly explain your reason when responding N/R.
- 4.3 Page Size, Binders and Dividers
- Qualifications must be on letter-size (8½" X 11") paper, portrait style. The Owner requires that qualifications be submitted per Section 5. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections should be divided by tabs for ease of reference. Number each side of each page consecutively, including letter of interest, brochures, licenses, resumes, and supplemental information. Qualifications must be limited to twenty-five (30) pages, including brochures and other documents. QR Codes will not be accepted and may disqualify your response. Covers, table of contents and divider tabs will not count as pages, provided no additional information is included on those pages. Provide the number of copies of the proposal specified herein. Any submittals exceeding the twenty-five (30) page limit may be disqualified.
- 4.4 Table of Contents
- Include with the qualifications a Table of Contents that includes page number references. The Table of Contents should be in sufficient detail to facilitate easy reference of the sections of the response as well as separate attachments (which should be included in the main Table of Contents). Supplemental information and attachments included by your firm (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section. Supplemental information, unless excluded in Section 4.3 above, will count toward the page limitation.
- 4.5 Pagination
- All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately. Divider tabs do not require numbering.
- 4.6 Bonding
- Attach a letter of intent from a surety company indicating the applicant's bond ability for this project. The surety shall acknowledge that the firm may be bonded for the project, with a potential construction cost of **\$2,200,000.00**. Bonding requirements are set forth in the Division 00, Section 7000, *UGC 2022*.

#### 4.7 Eligible Respondents

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

#### 4.8 Checklist

Firms are instructed to complete, sign and return the following documents as part of their qualification's submittal. Failure to return these documents may subject your response to disqualification. Responses will be time stamped on or before the hour and date specified for the response opening.

- A. Bonding Letter
- B. Signed Statement of Interest
- C. Responses to RFQ (Division 00, Section 002400)

### 5. SUBMISSION OF QUALIFICATIONS

Submit a total of one (1) complete copy of the entire response electronically thru the UNTS Jaggaer site at <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS>. No QR codes will be accepted as part of your response and may disqualify your response. An original signature or electronic signature must appear on the Proposal Form (Division 00, Section 004100). Please submit your response as one (1) pdf file. Remember to sign the Proposal form (004100) electronically.

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

**The RFQ responses must be submitted no later than 2:00 p.m. CST on June 9, 2023. Responses received after the date and hour previously stated will not receive consideration.**

TO: Carrie Stoeckert  
University of North Texas System

Proposals will be received until the date and time established for receipt, then opened. The names of the respondents who submitted proposals will be made public. **Responses shall be delivered electronically via UNTS Jaggaer link:** <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=UNTS> .

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.sciquest.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.**

**A virtual public opening shall be held virtually via Microsoft Teams on June 12, 2023, promptly at 2:00 p.m.**

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Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 243 113 680 548

Passcode: yLWqWa

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 940-304-2772,,984299708#](#) United States, Denton

Phone Conference ID: 984 299 708#

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## 6. GENERAL INFORMATION

### 6.1 Type of Contract

After qualifications are received in response hereto, using the two-phase process, Owner will evaluate qualifications and may elect to request five (5) or fewer respondents for an interview. Short listed Respondents may be required to submit additional information in connection with the interview. Successful Respondent will be required to enter into a contract in the form of the Owner's standard Design/Build Agreement. A copy of the proposed Design/Build Agreement to be used is attached. This is for informational purposes only. Proposed changes to the Design/Build Agreement will not be considered by UNTS. For questions regarding the contract, contact:

Carrie Stoeckert - Senior Construction Contract Coordinator  
University of North Texas System Facilities  
[carrie.stoeckert@untsystem.edu](mailto:carrie.stoeckert@untsystem.edu)

### 6.2 Inquiries and Interpretations

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

Carrie Stoeckert - Senior Construction Contract Coordinator  
University of North Texas System Facilities

Please submit solicitation questions to:

[carrie.stoeckert@untsystem.edu](mailto:carrie.stoeckert@untsystem.edu).

**All questions must be received no later than May 24, 2023, at 2:00 p.m. CST. All questions and answers will be posted to the website by 5:00 pm CST, May 26, 2023.**

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

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

<https://finance.untsystem.edu/vendor-resources/bid-inquiry/bid-opportunities.php>;  
<https://bids.sciquest.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 in their proposal. Respondents are responsible for obtaining any addenda posted on the websites listed above.

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

### 6.3 Compliance with Law

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

### 6.4 University's Right to Audit

At any time during the term of any Contract resulting from this solicitation and for a period of seven (7) years thereafter, the Owner or a duly-authorized audit representative of the Owner or the State of Texas, at its expense and at reasonable times, reserves the right to audit Firm's records and books relevant to all services provided under this Contract. In the event such an audit by the Owner reveals any errors/overpayments by the Owner, Firm shall refund the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owing the Owner from any payments due Firm.

### 6.5 Access to Documents

To the extent applicable to this procurement, in accordance with Public Law 99-499 under TEFRA, Firm agrees to allow, during and for a period of not less than seven (7) years after the Contract term, access to this Contract and its books, documents, and records; and contracts between Firm and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services, and their duly authorized representatives.

### 6.6 Insurance and Bonds

The Firm shall provide and maintain insurance, performance bond, and payment bond as required, the minimum insurance coverage and bonding requirements are stated in Division 00, Section 007000, *UNTS Uniform General Conditions 2022*.

### 6.7 Other Benefits

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

### 6.8 Non-Disclosure

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

right, by one party against the other party hereto, or (iv) such information has been acquired from other sources.

6.9 Publicity

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

6.10 Assignment

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

6.11 Assignment of Overcharge Claims

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

6.12 Patent and Copyright

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

6.13 Texas Public Information Act

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

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

6.14 Freedom of Access and Use of Facilities

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

6.15 Observance of University Rules and Regulations

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

6.16 Section Headings

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

6.17 Governing Law

- A. This RFQ, and any resulting Contract, agreement or purchase order shall be construed and governed by the laws of the State of Texas.
- B. The parties understand and agree that any purchase order/contract may be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative regulations and/or guidance which have been issued or may in the future be issued pursuant to HIPAA, including, but not limited to, the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively, "Privacy Laws"). Vendor agrees to

comply with all Privacy Laws that are applicable to this purchase order/contract and to negotiate in good faith to execute any amendment to this purchase order/contract that is required for the terms of this purchase order/contract to comply with applicable Privacy Laws. In the event the parties are unable to agree on the terms of an amendment pursuant to this paragraph within thirty (30) days of the date the amendment request is delivered by one party to the other, this order may be terminated by either party upon written notice to the other party.

- C. Important Notice - Any purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to, the provision of Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).
- D. Federal Funds - All procurements of supplies, equipment, and services utilizing Federal Funds (e.g. Federal Grant or Contract) shall be made in accordance with all applicable federal rules and regulations: Federal Acquisition Regulations (FAR), Federal Office of Management and Budget (OMB) Educational Institutions, even if part of a State or local government follow: OMB A-21 for cost principles, A-110 for administrative requirements, and A-133 for audit requirements. All procurement requirements contained in the above referenced circulars are incorporated herein by reference. By signing this solicitation document, vendor certifies that vendor is in compliance with OMB A-110 and that vendor is not on the Debarred Bidders List.

#### 6.18 Owner's Special Conditions

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

#### 6.19 Prevailing Wage Schedule, University of North Texas System

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

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

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

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

- A. **Dispute Resolution:** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. If Chapter 2260 applies to this Purchase Order, then the statutory dispute resolution process must be used by the vendor to attempt to resolve all of its disputes arising under this Purchase Order.
- B. **Excess Obligations Prohibited:** The Texas Constitution (Article XVI, Section 10) prohibits obligators beyond the current appropriations, which the Owner applies annually. Any purchase order may be canceled at any time without penalty if legislative and/or the Owner's funds are not appropriated for goods or services obligated on any purchase order beyond the current fiscal year (September 1 through August 31 of any given year.)
- C. **Cancellation:** Items or orders may be canceled without the consent of the vendor due to failure to fulfill their contractual obligations. If cancellation is requested by the Owner for some other reason through no fault of the vendor, the vendor will be contacted. The Owner reserves the right to cancel this contract upon thirty (30) days written notice to the Firm. The Firm must request and secure in writing the approval of the Purchasing Department to be released from this contract or any portion thereof should conditions unforeseeable occur.

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

## 7. AWARD PROCESS

### 7.1 Commitment

Firm understands and agrees that this RFQ is issued predicated on anticipated requirements for the replacement of fire piping at Discovery Park on the UNT Denton campus, and that the Owner has made no representation, written or oral, that any such requirements be furnished under a Contract arising from this RFQ. Furthermore, Firm recognizes and understands that any cost borne by the Firm, which arises from Firm's performance hereunder, shall be at the sole risk and responsibility of Firm.

### 7.2 Firm's Acceptance of Evaluation Methodology

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

### 7.3 Contract

- A. Qualifications will be opened publicly and read aloud to identify the names of Firms. Within forty-five (45) days after the date of opening the qualifications, the Owner will evaluate each response with respect to the selection criteria contained herein. The Owner may request that five (5) or fewer respondents, selected solely on the basis of qualifications in the two-phase process, provide additional information. The Owner shall first attempt to negotiate a contract with the selected Firm. If the Owner is unable to negotiate a satisfactory contract with the selected Firm, the Owner shall formally, and in writing, end negotiations with the Firm and proceed to negotiate with the next Firm in the order of the selection until a contract is reached or negotiations with all Firms end. The Owner may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. The Owner reserves the right to reject any and all qualifications and/or proposals, if deemed to be in the best interests of the Owner, and to re-solicit for qualifications and/or proposals, and to temporarily or permanently abandon the procurement.
- B. A response to this Request for Qualifications and subsequent proposed fees is an offer to contract based upon the terms, conditions and specifications contained herein. Responses do not become contracts until a UNTS Agreement is issued and accepted. The contract shall be governed, construed, and interpreted under the laws of the State of Texas as the same may be amended from time to time. The Education Code 51.9335 shall be considered in making an award when specified. Venue for any suit filed against UNTS shall be subject to the mandatory venue statute set forth in §105.151 of the Texas Education Code.
- i. An award is made to the Vendor submitting the best value response conforming to this specification.
  - ii. DEBTS TO THE STATE: Any party indebted to the State of Texas or any party who is more than thirty (30) days delinquent for Child Support is not entitled to payment on this purchase order or any accompanying contract.
  - iii. If a "best offer" vendor shows not to be in "good standing," this agency may reject the response and award to the next best response.
  - iv. The Owner reserves the right to award the entire contract to a single Vendor or to award different components to different Vendors, whichever the Owner, at its sole discretion, determines to be in its overall best interest, as solely determined by the responsible parties of the Owner.
- C. Respondent understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through bidder and the requirement to cooperate is included in any subcontract it awards.

- D. Respondent understands and agrees in accordance with Texas Government Code §2252.908, prior to executing any contract, the selected firm must submit a Form 1295, Certification of Interested Parties, to the Owner along with the signed agreement. The form is available on the Texas Ethics Commission website at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). Completion of the form is not required with your response.
- 7.4 Response Results: It is not the policy of the Owner to furnish results over the telephone. Bid tabulations may be requested at <http://bsc.untssystem.edu/content/bid-inquiry>. While UNTS understands the value of conducting debrief meetings with firms not selected, UNTS does not have the resources to accommodate in person meetings. Request for feedback can be emailed to the contact listed in 6.2 above.
- 7.5 Historically Underutilized Businesses (HUB)
- A. In accordance with Texas Government Code 2161, a HUB Sub-Contracting Plan is required from Firm as part of the Qualifications for Design Architect/Engineer Services. A HUB Sub-Contracting Plan is NOT required as part of the Qualifications for the Build Construction Services. If Owner intends to move to Phase 2 of the contract, the future Construction Phase Services to the Construction Manager, the Guaranteed Maximum Price (GMP) for the proposed contract resulting from the extension of this Contract is expected to exceed \$100,000.00. A Good Faith Effort Program in the form of a HUB Subcontracting Plan (HSP) is a mandatory condition precedent to the award of any such extension of the contract. The HUB Subcontracting Plan will become Exhibit A of the Design-Build Agreement and need not be submitted until such time as the GMP is submitted for review and acceptance by Owner. Refer to Division 00, Section 006000, *Project Forms* herein for HSP Forms.
- B. Centralized Master Bidders List (CBML): The Owner utilizes the Texas Comptroller of Public Accounts CBML for HUB. The CBML is located at: <http://www.window.state.tx.us/procurement/>. Non-HUB respondents are identified from various sources including the CBML.

Questions regarding completing the HSP should be directed to Greg Obar, Sr. Director of Strategic Management & HUB Coordinator or Aurika Weaver-White, HUB Specialist at 940-369-5647. Additional information can also be found at the Texas Comptroller for the Public Accounts website at: <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

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

END OF SECTION

ISSUE DATE  
May 12, 2023

**DOCUMENT 002400**

**SCOPE FOR QUALIFICATIONS**

The University of North Texas System (UNTS), subsequently referred to as the Owner, requests qualifications from qualified and experienced firms for the construction of the replacement of fire piping at Discovery Park on the UNT at Denton campus in Denton, Texas, meeting the minimum specifications contained in this section.

**Project Description**

This project will be to design and replace the fire piping at Discovery Park on the UNT Denton Campus. The fire sprinkler piping at Discovery Park is old, deteriorating, and under capacity. There is a need to upgrade this piping and provide greater capacity for expanding usage of the building. This project is focused on the exterior underground piping and accessories.

UNT anticipates the design completion on November 1, 2023, in anticipation of GMP by December 20, 2023, with final completion on December 31, 2024.

**Delivery**

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

**Miscellaneous Provisions**

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

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

Firm shall prepare and update a Construction budget and constructability review, as well as other pre-con deliverables, during the schematic design phase, design development phase, and at the sixty percent (60%) construction documents phase, for written approval by the Owner; such budget to include estimating and reconciliation alongside the design team budget, updating and reporting of all construction costs.

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

**Liquidated Damages**

As allowed for in the UNTS Uniform General Conditions 2022, Liquidated Damages shall be established that more accurately reflect the estimated actual amount of damages the Owner will sustain for late completion. The need to complete Housing projects on time is critical. For the purposes of calculating Liquidated Damages, substantial completion shall be applied to designated portions of the Work. For each day that project is not Substantially Complete and not operational and fit for the Owner to occupy, damages will be assessed at \$1,000.00 per day, past substantial completion date.

### Criteria for Award

The Owner shall evaluate responses received on the basis of experience and qualifications using the following criteria:

1. Respondent's ability to obtain a bond for the project.
2. Criterion A - Respondent's and proposed team's experience and capability to perform design/build services for this project.
3. Criterion B - Respondent and proposed teams' experience and capability to perform design/build services for the project to ensure Owner's project schedule is met.
4. Criterion C - Respondent's project execution plan and technical competence in managing construction projects.
5. Criterion D - Respondent's utilization of cost estimating and a construction cost control plan which will assure the Owner's construction budget shall not be exceeded.
6. Criterion E - Respondent's utilization of construction scheduling throughout the design and construction phases.
7. Criterion G Respondent's capability to perform a quality control process during the entire project duration.
8. Criterion H - Respondent's job site safety program.
9. Criterion I - Respondent's HUB Subcontracting policies and approach. Responses can include any HUB outreach conducted in the formation of the team and how the team intends to conduct outreach for construction, goals for the project and examples of past successes.

### Required Information

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

#### **CRITERION A: Respondent and proposed teams' experience and capability to perform the design/build services for this project:**

1. List separately all key personnel, including a **single point of contact with name, phone number and email address**, to be employed on site and those to be employed in home office for this project. Include resumes for the entire proposed key team members along with:
  - Location
  - Proposed role
  - Years of experience
  - Relevant experience on similar design/build projects within the last five (5) years
2. Provide an organizational chart showing the firm's team and their specific duties.
3. List the volume of work your firm has completed over the last five (5) years.
4. Describe Respondent's management capability for the Design/Build construction delivery method.

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5. Describe how you propose to interface with the construction team, proposed project assignments and lines of authority and communication for each team member directly involved with the Project. Provide estimated percent of time each team member will be involved in the Project for Pre-construction and construction services. Confirm the individuals identified that will be committed for the entire duration of the project.
6. Describe your plan for partnering and team building at all levels for this project.
7. Describe the various pre-construction deliverables you provide during the pre-construction process.
8. Describe your methods for establishing expectations for jobsite cleanliness prior to construction start.
9. Describe your approach to constructability review and how you track this alongside the Owner, Design Team, and 3<sup>rd</sup> party consultants.
10. Describe your subcontractor contract award process, including review/approval by the Owner.

**CRITERION B: Respondent and proposed teams' experience and capability to perform the construction services for this project:**

1. Describe your management plan for performing the work required of this project and include your program for managing subcontractors and material providers.
2. Describe your firm's start-up and closeout procedures for this project.
3. Describe the types of regular monthly reporting you propose to provide for this project.
4. List no more than three (3) relevant projects. Each project listed must include:
  - Project Name
  - Delivery Method
  - Date Completed
  - Construction Project Cost
  - Owner
  - Owner's contact person with telephone number and email address
  - Project summary
  - Key firms from proposal involved with the project and their role
  - Key personnel from proposed team involved with the project, their firm affiliation on the project and role
7. Summary explanation of any claims and/or litigation in the last five (5) years.

**CRITERION C: Respondent's project execution plan and technical competence as a firm:**

1. Describe your project execution plan for this project.
2. Describe the types of records, reports, monitoring systems, and information management systems which your firm will utilize on this project.
3. Describe your plan for assuring that the project design is achievable under the Owner's and contract requirements.
4. Describe your constructability methodology for this project and how it is implemented.
5. Describe your procedures and objectives for reviewing the design and construction documents and providing feedback to the Design/Build Team, Owner, and any 3<sup>rd</sup> party consultants.
6. Describe your method of assuring that materials, equipment, and construction methods meet the Owner's design requirements.



7. Describe your firm's procedures for implementing the industry's "best practices" as defined by the Construction Industry Institute™ (CII) and similar organizations:
  - a. Establishing project objectives
  - b. Change (order) management system
  - c. Any others not listed but practiced and therefore recommended by your firm

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

1. Describe your cost estimating procedure.
2. Describe your cost control methods and what procedures you will utilize to maintain the GMP within the Owner's construction budget for this project.
3. Describe your approach to value added cost savings and identification of constructability issues, costing options and cost projections.
4. Describe your project financial plan and the projected monthly cash flow (draw-down) during the design and construction phases.
5. Describe your firm's plans for cost reporting and tracking.

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

1. Describe in detail the project scheduling system or methodology you propose to use on this project.
2. Identify all process steps, phases, milestones, approvals, and project meetings you commonly anticipate.
3. Provide a proposed realistic schedule for the construction of the project with an Owner occupancy date no later than December 31, 2024.
4. Describe your plan for meeting or shortening the Owner's schedule:
  - a. During design; and
  - b. During construction.

Commented [SC1]: I would put the completion date here

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

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

**CRITERION G: Respondent's job site safety program.**

1. Describe your job site safety program plan for this project and specific safety policies with which employees must comply.
2. Describe your job site cleanliness plan and your approach to enforcement of this plan.

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3. Identify the safety team and their duties for this project.
4. List your firm's Experience Modification Rating (EMR) for the past three (3) years.

**CRITERION H: HUB Subcontracting Policies Approach**

1. Describe any HUB outreach conducted in the formation of the design/build team.
2. Describe your approach to maximizing opportunities for HUB participation on this project and Owner's goals at the Construction Manager, Subcontractor, Sub-subcontractor, Material and Supplier levels. In addition, describe your knowledge of unique or innovative programs designed to maximize opportunities for HUB participation which you recommend for consideration in this project.
3. Describe your commitment to implementing the Owner's HUB initiatives throughout the preconstruction and construction phases of the project. Describe any contractor insurance program utilized by your firm, such as a Contractor Controlled Insurance Program, and how it is utilized to assist small and HUB firms. Describe how it could be utilized for this project.

Include the team's HUB participation goals for the project along with examples of past successes.

**STATEMENT OF INTEREST  
RFQ752-23-263464CS  
DISCOVERY PARK FIRE PIPING REPLACEMENT**

Proposal of: \_\_\_\_\_  
(Company Name)

The University of North Texas (UNT), subsequently referred to as the Owner, is accepting qualifications from Respondents for a Design/Build contract, pursuant to Sec. 51.780, Texas Education Code, using the two-phase process in accordance with the terms, conditions and requirements set forth in this Request for Qualifications (RFQ). This RFQ provides sufficient information for interested parties to prepare and submit qualifications for consideration by the Owner.

Qualifications will be received up to **2:00 pm CST on June 9, 2023**. Proposals received after the date and hour above stated will not receive consideration. Qualifications can be Submitted electronically through the Jaggaer web link at:

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

You will need a username and password to access the site. Please be sure to register as a new user PRIOR to attempting to submit your response electronically in order to become familiar with the site.

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

Having carefully examined all the specifications and requirements of this RFQ and any attachments thereto, the undersigned proposes to furnish qualifications for the Design/Build services as required pursuant to the aforementioned documents.

**DELIVERY SCHEDULE**

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

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**PAYMENT TERMS**

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

- a. Payment on any contract will be withheld from Respondent if Respondent is determined to be more than thirty (30) days delinquent for Child Support.
- b. Successful Respondent shall be responsible for referencing the purchase order number(s) resulting from this proposal on any invoice(s), packing list(s), correspondence, etc. Invoicing must correlate to prices quoted either on a unit, hourly, etc. basis.

- c. **DISQUALIFICATION:** Response is subject to disqualification if Respondent provides revisions and/or exclusions to the terms and conditions listed in this solicitation that the Owner is limited by law from accepting (i.e. offers with the laws of a State other than Texas), requirements for prepayment not defined in or allowed for in this Solicitation, limitations on remedies, any revision to stated terms and conditions of the Solicitation, etc.
- d. Respondent agrees that any payments due under this contract may be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

**SALES TAX**

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

**INSURANCE**

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

**LIQUIDATED DAMAGES**

As allowed for in the UNTS Uniform General Conditions 2019, Liquidated Damages shall be established that more accurately reflect the estimated actual amount of damages the Owner will sustain for late completion. For the purposes of calculating Liquidated Damages, substantial completion shall be applied to designated portions of the Work. For each day that facility is not Substantially Complete and not operational and fit for the Owner to occupy, damages will be assessed at \$1,000.00 per day, past substantial completion date.

**ADDENDA**

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

No. 1: \_\_\_\_\_ No. 2: \_\_\_\_\_ No. 3: \_\_\_\_\_ No. 4: \_\_\_\_\_ No. 5: \_\_\_\_\_ No. 6: \_\_\_\_\_  
Dated: \_\_\_\_\_ Dated: \_\_\_\_\_ Dated: \_\_\_\_\_ Dated: \_\_\_\_\_ Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

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

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

- 1. By signature hereon, Respondent offers and agrees to furnish the products and/or services in compliance with all terms, conditions, requirements set forth per the RFQ documents and contained herein.
- 2. By signature hereon, Respondent affirms that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted proposal. Failure to sign hereon, or signing with a false statement, shall void the submitted proposal or any resulting contracts, and the Respondent shall be removed from all proposal lists at this Agency.
- 3. By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporation is exempt from the payment of such taxes, or that the corporation is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. A false certification shall be deemed a material breach of contract and, at UNTS's option, may result in cancellation of any resulting contract or purchase order.

4. By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
5. By signature hereon, Respondent certifies that all statements and information prepared and submitted in response to this solicitation are current, complete and accurate.
6. By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this proposal. Unsigned responses will not be considered under any circumstances.
7. By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in Texas Administrative Code (TAC) Title 34. In the case of a tie, the award will be made in accordance with TAC, Title 34, amended. Check below preference claimed under TAC, Title 34, amended:

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

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

8. By signature hereon, Respondent certifies it is a small business and/or minority/female owned business as defined by the State of Texas. Check status below:
  - Historically Underutilized Business
  - Small Business (House Bill 366, 64th Legislature)
  - Minority/Female Owned Business (House Bill 2626, 73rd Legislature)
  - Certified by Texas Department of Commerce
  - Status not claimed

9. By signature hereon, Respondent certifies as follows:

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

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

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

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

Name of former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of separation from State agency: \_\_\_\_\_

Position with Respondent: \_\_\_\_\_ Date of employment with Respondent: \_\_\_\_\_

12. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFQ. (ref. Section 2155.004, Texas Government Code).
13. Respondent represents and warrants that all articles and services quoted in response to this RFQ meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
14. **Suspension, Debarment, and Terrorism:** Respondent further certifies that the Respondent and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
15. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
16. By signature hereon, Respondent will comply with and agree to use E-Verify System in accordance with State of Texas Executive Order RP-80 throughout this project as appropriate.
17. Respondents should give Payee ID Number, full firm name, and address of Respondent below in the space provided. The Payee ID Number is the taxpayer number assigned and used by the Texas Comptroller of Public Accounts. If this number is not known, complete the Federal Employer's Identification Number

Complete the following:

Payee ID No. \_\_\_\_\_

If a Corporation  
State of Incorporation: \_\_\_\_\_

FEI No. \_\_\_\_\_

Charter No: \_\_\_\_\_

Company Information:

Submitted by:

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Street Address Line 1)

\_\_\_\_\_  
(Printed Name/Title)

\_\_\_\_\_  
(Street Address Line 2)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Facsimile Number)

\_\_\_\_\_  
(Email address)

ISSUE DATE  
May 12, 2023

**DOCUMENT 006000**

**PROJECT FORMS**

**DESIGN-BUILD CONSTRUCTION AGREEMENT**

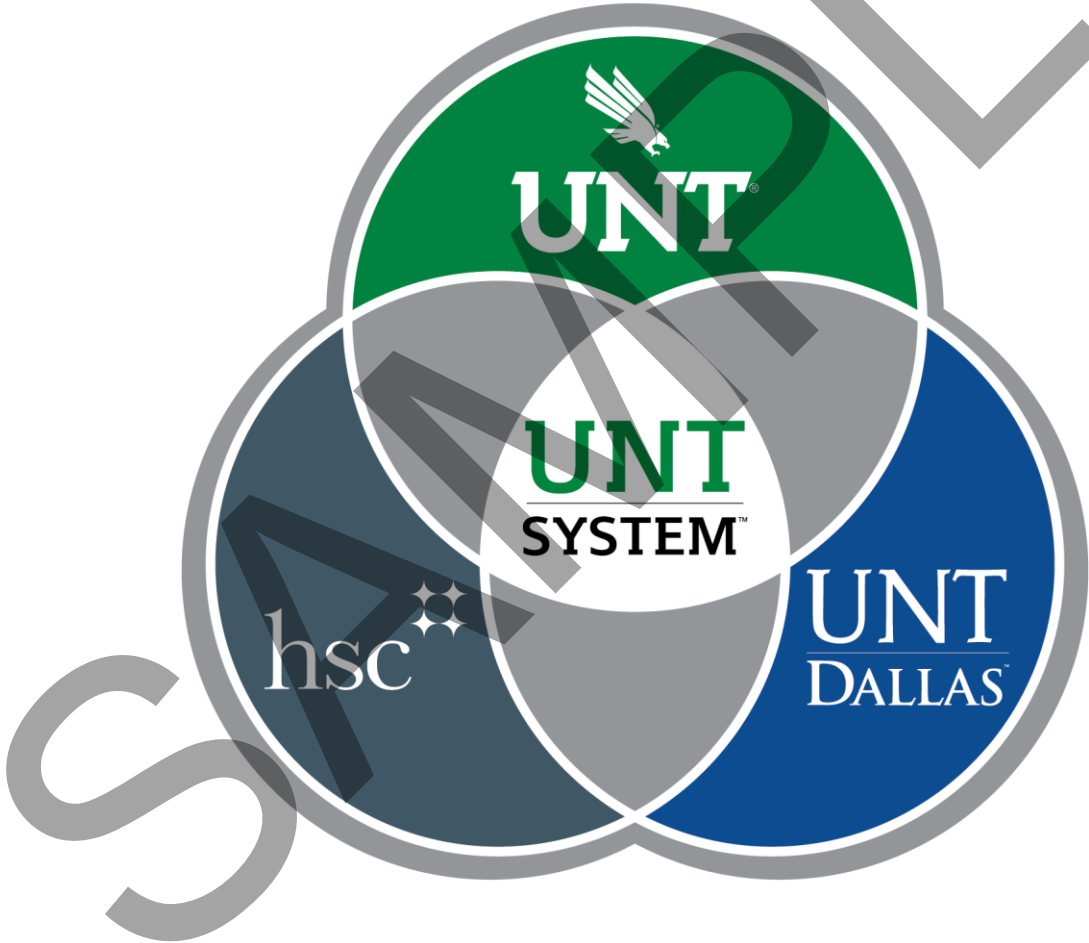




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# DESIGN-BUILD CONSTRUCTION AGREEMENT

This Agreement is made and entered into by **University of North Texas {System or Institution Name}**, (“Owner”), and by **{Design-build Firm Name}** (“Design-build Firm”), duly licensed by the laws of the State of Texas to provide Design-build Services in the State of Texas. The capitalized term “Party” refers to either Owner or Design-build Firm individually and the term “Parties” refers to Owner and Design-build Firm collectively. The effective date (“Effective Date”) of this Agreement shall be the date of last signature by the Parties hereto.

## ARTICLE 1 PROJECT

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

1.1 {General Description of the Project}

1.2 The Design-build Firm has overall responsibility for and shall provide complete Preconstruction phase Services and Construction phase Services and furnish all Design Services, materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner’s requirements and the terms of this Agreement.

## ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- 2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- 2.1.2 The Uniform General Conditions for Construction and Design Contracts for the University of North Texas System (“Uniform General Conditions” or “UGC”), Exhibit A;
- 2.1.3 Supplementary General Conditions (“SGC”) or Special Conditions, if any;
- 2.1.4 Owner’s Specifications;
- 2.1.5 All Addenda issued prior to the Effective Date of this Agreement;
- 2.1.6 The Guaranteed Maximum Price (“GMP”) Proposal when accepted by Owner and executed by the parties, Sample attached as Exhibit B;
- 2.1.7 All Change Orders issued after the Effective Date of this Agreement;
- 2.1.8 The Drawings, Specifications, details and other documents developed by Project Design Professional to describe the Project and accepted by Owner;
- 2.1.9 The Drawings and Specifications developed or prepared by Owner’s other consultants, if any, and accepted by Owner; and
- 2.1.10 The Historically Underutilized Business (HUB) subcontracting plan submitted or amended by Design-build Firm and approved by Owner for this Project;

- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Design-build Firm and supersede all prior negotiations, representations or agreements, written or oral.
- 2.3 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.
- 2.4 If there is an irreconcilable conflict between or among the various documents that make up the GMP Proposal and the other Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations.

### **ARTICLE 3 DEFINITIONS**

- 3.1 Terms, words, and phrases used in the Contract Documents shall have the meanings given in the Uniform General Conditions.
- 3.2 The following terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the Uniform General Condition, the more specific given in this Agreement shall control.
- 3.2.1 “Alternate” shall mean the amount stated in the bid to be added or deducted from the amount of the base bid if the corresponding change in the Project scope or alternate materials and/or methods of construction is acceptable.
- 3.2.2 “Allowance” means allocating construction funds to portions of the Work that cannot be specified with sufficient particularity for competitive bidding at the time of submission and acceptance of the Guaranteed Maximum Price.
- 3.2.3 “Baseline Schedule”
- 3.2.3.1 “Preconstruction Baseline Schedule” means the initial time schedule prepared by Design-build Firm which contain the services and activities of Owner, Design-build Firm, Design Professional, other consultants/suppliers and the requirements of governmental entities. The Preconstruction Baseline Schedule shall include the start date for construction, Substantial Completion date and Final Completion date for construction.
- 3.2.3.2 “Construction Baseline Schedule” means the initial time schedule prepared by Design-build Firm for Owner’s information and acceptance that conveys Design-build Firm’s and Subcontractors’ activities (including coordination and review activities required in the Contract Documents to be performed by the Design Professional and Owner), durations and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule shall clearly demonstrate the Longest Path of activities, critical activities durations, and necessary predecessor conditions that drive the end date of the schedule. The accepted Construction Baseline Schedule shall not change.
- 3.2.4 “Building Information Modeling” (“BIM”) means the process of generating and managing building data using building modeling software resulting in a BIM Model which is a digital representation of physical and functional characteristics of a facility.
- 3.2.5 “Construction Cost Limitation” (“CCL”) means the maximum monetary amount payable to Design-build Firm for all Construction Services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Services Fee and Owner approved Contingencies. The CCL may be adjusted by the

parties for changes in the scope of the Project before or after Owner's acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Design-build Firm's Preconstruction Services Fee or Owner's Special Cash Allowance.

- 3.2.6 "Construction Services" means the coordination, implementation, and execution of the construction Work required by the Contract Documents.
- 3.2.7 "Contingencies" means, collectively, the following:
- 3.2.7.1 "Design Contingency" means an amount to allow for continued development and completion of the Drawings and Specifications which are not reasonably inferable except for material changes in scope. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown. Upon issuance of one hundred percent (100%) Construction Documents, any unused Design Contingency shall be added to Owner's Contingency.
  - 3.2.7.2 "Construction Contingency" means an amount included in the GMP Amendment to cover any shortfalls in the scope of work as it was known at the time of the GMP Proposal execution.
  - 3.2.7.3 "Owner's Contingency" means an amount determined by Owner in Owner's sole discretion included in the GMP Amendment for the exclusive use of Owner.
- 3.2.8 "Construction Documents" ("CD") means the documentation prepared by Design Professional to be used to direct the Design-build Firm in the construction of the Project, to estimate the cost of the Project, and to secure bids for constructing the Project. The Construction Documents shall include drawings, specifications, general conditions, supplementary general conditions, special conditions, information to bidders, bid proposal(s), and addenda developed to set forth in detail all aspects of design, function and construction. Construction Documents shall also include design development documents and cover page, site amenity plan and details, finish plan (door and window schedule, flooring and wall finishes), interior elevations (millwork, specialty, restrooms), life safety plan, A.D.A./TDLR general notes, reflective ceiling plan (with lighting locations), power plan, electric riser diagram, electrical site plan, MEP performance details, gas plan, plumbing and waste vent diagram, plumbing riser diagram, pier diagram, framing plan, roof framing plan specific structural connections details (foundation and framing).
- 3.2.9 "Contract Sum" means the total amount of all compensation payable to Design-build Firm for the Project and shall not exceed the sum total amount of the Preconstruction phase fee plus the Guaranteed Maximum Price Proposal accepted by the parties, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Design-build Firm without reimbursement by Owner.
- 3.2.10 "Design Professional" means licensed professional(s) engaged by Design-build Firm for design of all or a portion of the Project and to prepare Drawings and Specifications for the construction of the Project. More than one such professional may be employed by Design-build Firm and all such professionals, regardless of number, are referred to in the singular herein.
- 3.2.11 "Design Services" means all professional services required to fulfill the Pre-Construction phase requirements and any additional design obligations of this Agreement, including, but not limited to, programming, schematic design, design development, and Construction Documents development.

- 3.2.12 “Direct Construction Cost” means the sum of the amounts that Design-build Firm actually and necessarily incurs for General Requirements, General Conditions, and Cost of the Work during the Construction as allowed by this Agreement. Direct Construction Cost does not include Preconstruction phase fees or Construction Services fees.
- 3.2.13 “General Conditions” means those items included in Texas Education Code § 51.776(7), as amended. General Conditions shall include all cost line items included on Design-build Firm’s itemized breakdown in the GMP Amendment and shall be subject to the General Conditions limit.
- 3.2.14 “Guaranteed Maximum Price” (“GMP”) means the amount proposed by Design-build Firm and accepted by Owner as the maximum cost to Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Design-build Firm’s Construction Services fee, Direct Construction Cost, and Contingencies.
- 3.2.15 “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. Each activity in the Longest Path is critical and directly related in that it prevents its successor from being scheduled earlier than it is. For this Project, “Longest Path” shall also include Ten Percent (10%) Total Float and Weather Days.
- 3.2.16 “Monthly Salary Rate” means the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Services to account for the services of Design-build Firm’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Design-build Firm’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by Design-build Firm for services performed for the Project
- 3.2.17 “Owner, Architect and Contractor meeting” (“OAC meeting”) means regularly scheduled meetings between Owner, Design Professional and Contractor.
- 3.2.18 “Owner’s Buyout” means buyout savings controlled by Owner once the Project is thirty percent (30%) complete as documented on the Schedule of Values (“SOV”).
- 3.2.19 “Owner’s Specifications” means the construction and contract administration requirements and standards detailed in Owner’s Specifications.
- 3.2.20 “Preconstruction Services” means the participation, documentation, and execution of Design-build Firm’s Preconstruction Services deliverables as required by the Contract Documents
- 3.2.21 “Program of Requirements” means Owner’s initial description of the Project scope, preliminary Construction Cost Limitation, Design Schedule, criteria for design objectives, characteristics and constraints, space requirements and relationships, site requirements, existing facilities, and desired special components, systems and equipment.
- 3.2.22 “Project Team” means Owner and its consultants, and Design-build Firm, and any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.2.23 “Self-Perform” includes Design-build Firm, any division of Design-build Firm, any separate entity that is wholly or partially owned by Design-build Firm, or any of their employees or persons related to employees within the second degree of consanguinity or affinity.

- 3.2.24 "Subcontractor" means a person or entity who has an agreement with Design-build Firm to perform any portion of the Work. The term Subcontractor does not include any person or entity hired directly by Owner.
- 3.2.25 "Total Float" shall refer to the number of days all activities on the Longest Path can be delayed without delaying the Substantial Completion Date.
- 3.2.26 "Value Engineering" means a systematic method to improve the value of goods or products and services by using an examination of function. Value can therefore be increased by either improving the function or reducing the cost. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.
- 3.2.27 "Work" means the provision of all services, labor, materials, supplies, and equipment that are required of Design-build Firm to complete the Project in strict accordance with the requirements of the Contract and Construction Documents. Work includes, but is not limited to, Design Services, Preconstruction Services, Construction Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.
- 3.2.28 "Work Progress Schedule" ("WPS") means the continually updated time schedule prepared and monitored by the Design-build Firm that coordinates and integrates activities of the Project, including Design-build Firm'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 WPS accurately indicates all necessary and appropriate revisions including a Longest Path impact analysis and percentage of work complete and incomplete, as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.
- 3.2.29 "Worker Wage Rate" ("WWR") means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions 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. All payments for non-salaried personnel working on the Project are subject to audit to determine actual cost of the wages and allowable employer contributions incurred by employer for services performed for the Project.

#### **ARTICLE 4 DESIGN-BUILD FIRM'S GENERAL RESPONSIBILITIES**

- 4.1 Design-build Firm shall furnish all services specifically allocated to it by the Contract Documents and use Design-build Firm's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents for the completion of the Project. Owner hereby designates and appoints Design-build Firm and authorizes Design-build Firm to so act in connection with the scope of Work and services set forth and described in this Agreement. Neither Design-build Firm nor any of its agents or employees shall bind or act on behalf of or in the name of Owner unless expressly and explicitly provided in this Agreement and authorized in writing by Owner's Representative.
- 4.2 Design-build Firm shall be responsible for the supervision and coordination of the Work, including the design, construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

- 4.3 Design-build Firm shall furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of Owner.
- 4.4 Design-build Firm shall perform Work only within locations allowed by the Contract Documents, laws, and applicable permits.
- 4.5 Design-build Firm shall provide competent supervision for the performance of the Work. Before commencing the Work, Design-build Firm shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Design-build Firm shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent or project manager shall not perform in that capacity thereafter at the Site.
- 4.6 Owner and Design-build Firm agree and acknowledge that Owner is entering into this Agreement in reliance on Design-build Firm's special and unique abilities with respect to the services and the obligations of this Agreement. Design-build Firm accepts the relationship of trust and confidence established between it and Owner by this Agreement. Design-build Firm shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Design-build Firm's profession or business and in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, orders, local utility companies requirements, and with those of any other body having jurisdiction. Design-build Firm shall have no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Work required hereunder.
- 4.7 Design-build Firm shall call to Owner's attention anything of any nature in any Drawings, Specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Design-build Firm (by Owner or any other party) which it regards in its opinion as unsuitable, improper, inaccurate, or would constitute a discrepancy, error, omission, or inconsistency in the Drawings or Specifications in connection with the purposes for which such document or data is furnished.
- 4.8 Design-build Firm shall coordinate services and provide cost information to the Project Team and Owner at all stages of the design. It is Design-build Firm's responsibility to keep the design within the Project CCL.
- 4.9 Design-build Firm's duties as set forth herein shall at no time be in any way diminished by reason of any approval by Owner nor shall Design-build Firm be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Design-build Firm's skill and knowledge in performing the services required hereunder.
- 4.10 Design-build Firm shall permit only fit and skilled persons to perform the Work. Persons connected with Design-build Firm directly in charge of its services must be duly registered and/or licensed under applicable laws, rules, and regulations of any authority having jurisdiction.
- 4.11 Design-build Firm shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Design-build Firm shall immediately reassign the person upon receipt of Owner's written notice to do so.
- 4.12 Design-build Firm shall be responsible to Owner for acts or omissions of persons or entities performing portions of the Work for or on behalf of Design-build Firm or any of its Subcontractors.
- 4.13 Design-build Firm agrees that: (a) if it is a corporation or limited liability company, then it is a corporation duly organized, validly existing, and in good standing under the laws of the State of

Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement; or (b) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder. The individual executing this Agreement on behalf of Design-build Firm has been duly authorized to act for and bind Design-build Firm.

- 4.14 Neither the execution and delivery of this Agreement by Design-build Firm nor the performance of its obligations hereunder will result in the violation of: (a) any provision (1) if a corporation, of its articles of incorporation or bylaws, (2) if a limited liability company, of its articles of organization or regulations, or (3) if a partnership, by any partnership agreement by which Design-build Firm is bound; (b) any agreement by which Design-build Firm is bound; or (c) to the best of Design-build Firm's knowledge and belief, any order or decree of any court or governmental instrumentality relating to Design-build Firm.
- 4.15 Design-build Firm shall comply with the HUB program as defined by Tex. Gov't Code, Chapter 2161. Failure to comply with the HUB program may constitute a material breach of this Contract, as determined by Owner's sole discretion.
- 4.16 Design-build Firm has provided a HUB Subcontracting Approach in Design-build Firm's Response to Owner's RFP. Design-build Firm agrees to comply with the established HUB Subcontracting Approach and shall make no changes to the HUB Subcontracting Approach without the prior written approval of Owner.
- 4.17 Design-build Firm will work with the Business Support Services HUB Coordinator to develop the HUB Subcontracting Plan (HSP). The HSP will be due at the time the GMP Proposal is presented to Owner for approval. Because construction may be phased or staged, it may not be possible for Design-build Firm to determine HUB participation for all projected Work until the scope of Work is defined. Accordingly, Design-build Firm shall amend the HSP and submit to Owner's HUB Coordinator documentation for each phase, stage, or bid package. Further details concerning the HSP are located within the UGCs.
- 4.18 General Responsibilities for Design Services
- 4.18.1 Design-build Firm shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the Owner's primary contact during the design phase of the Project and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and to bind the Design-build Firm in all matters related to Design Services. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.
- 4.18.2 Design-build Firm acknowledges that it has received from Owner a copy of Owner's Criteria. Design-build Firm further acknowledges that Owner's Criteria is intended to give an indication of design intent, including information both components and equipment required.
- 4.18.3 Design-build Firm shall engage the services of a Design Professional and other qualified professionals as required for performance of the Design Services. Design-build Firm certifies that the Design Professional and all other professional service providers have been or will be selected on the basis of competence and qualifications pursuant to Texas Education Code, Section 51.780(f)(1). Design-build Firm shall not perform any architectural or engineering service directly unless Design-build Firm is licensed in Texas to perform such services. Throughout the course of this Agreement, Design Professional must be professionally licensed in the State of Texas.



- 4.18.4 All Design Services shall be provided in accordance with Owner's design guidelines, design criteria, campus master plan (incorporated herein by reference), as well as all other requirements contained in the Contract Documents and all "Legal Requirements" (which term includes not only all laws, ordinances, rules and regulations or governmental authorities, but also includes the rules and regulations of all utility companies providing utility services to the Project).
- 4.18.5 Design-build Firm shall be solely responsible for all obligations to Design Professional and shall pay for the services of Design Professional and all other professional service providers out of the fees for this Agreement. However, the Owner shall be identified as an intended beneficiary in all such agreements and the Design Professional and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Project Design Professional or other design professionals not hired directly by the Owner.
- 4.18.6 Design-build Firm warrants to Owner the sufficiency and completeness of all Design Services performed and to be performed, and that all Drawings, Specifications, and other information furnished or provided by Design-build Firm shall be free from material errors and omissions. Design-build Firm acknowledges: (1) that notwithstanding the fact that Design-build Firm has retained Design Professional, to perform all or parts of the Design Services, Design-build Firm remains responsible to Owner for the design of the Project, and neither the reservation by Owner of any rights of approval over any portion of the Design Services nor the granting of any such approval by Owner shall be deemed to relieve Design-build Firm from Design-build Firm's responsibilities hereunder; and (2) that no feature, item or detail shown or provided for in Owner's Criteria shall be deemed waived by Owner merely by its approval of any documents prepared as part of the Design Services, and a waiver shall only be accomplished by an express written waiver signed by Owner.
- 4.18.7 Owner shall have the right to reject any defective Design Services of which Owner becomes aware and Design-build Firm shall promptly correct any such defect at Design-build Firm's expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, Drawings, Specifications, and other Construction Document materials prepared or furnished by Design-build Firm, Design-build Firm shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-build Firm refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

#### 4.19 Subcontractors

- 4.19.1 With the prior written approval of Owner, Design-build Firm may subcontract such services as Design-build Firm deems necessary to meet its obligations under this Agreement. Subcontractors shall be qualified and experienced in the type of work they will be performing. Owner shall have the right to reject any Subcontractor but such right shall not relieve the responsibility of Design-build Firm for its work and the work of the Subcontractors. Design-build Firm expressly assumes such responsibility and liability.
- 4.19.2 Design-build Firm shall be responsible for the management of the Subcontractors in the performance of their work.
- 4.19.3 If this Agreement is terminated, each subcontract agreement shall be assigned by Design-build Firm to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to Article 14; and (b) Owner accepts such assignment after termination by notifying the Subcontractor and Design-build Firm in

writing, and assumes all rights and obligations of Design-build Firm pursuant to each subcontract agreement.

- 4.19.4 Subcontractors used on this Project shall be subcontracted in accordance with the terms and conditions of the Contract Documents. Design-build Firm shall include and enforce the terms and conditions within the Contract Documents on all contracts with all Subcontractors and vendors performing work on this Project.

## **ARTICLE 5 PRECONSTRUCTION PHASE**

- 5.1 The Preconstruction Services and Design Services shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Design-build Firm is not entitled to reimbursement for any costs incurred for Preconstruction Services performed prior to issuance of Notice to Proceed. Preconstruction Services may overlap with Construction Services.
- 5.2 Preconstruction Services General Coordination
- 5.2.1 Design-build Firm shall schedule and attend regular meetings with Owner. Design-build Firm shall consult with Owner regarding site use and improvements and the selection of materials, building systems, and equipment.
- 5.2.2 Design-build Firm shall visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.
- 5.2.3 Design-build Firm shall participate as a member of the Project Team in the development of the Program of Requirements if such program has not been developed prior to the Effective Date of this Agreement.
- 5.2.4 Design-build Firm shall provide recommendations and information to the Project Team on: building systems, equipment and construction feasibility; site improvements; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Design-build Firm and Owner's separate contractors, if any; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in proposed Drawings and Specifications; methods of delivery of materials, systems and equipment; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Contract Documents; and any other matters necessary to accomplish the Project in accordance with the Preconstruction Work Progress Schedule and Construction Cost Limitation.
- 5.2.5 Design-build Firm shall assist Owner in selecting and directing the services of existing facility surveys, environmental surveys or other special consultants hired by Owner to develop additional information for the design or construction of the Project.
- 5.2.6 At Owner's request, Design-build Firm shall attend public meetings and hearings concerning the development and schedule of the Project.
- 5.2.7 Design-build Firm shall create and continuously update a decision tracking system in a format provided by Owner. Design-build Firm shall also develop and update a "Constructability Review Report" which will be due within fourteen (14) days prior to scheduled estimates. The Report will be based on frequent communication with the Project Team and will outline items that in Design-build Firm's opinion may cause problems in the

way the Project is to be constructed and will review the overall coordination of Specifications and Drawings, details, and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. The Report will include the following items in a format provided by the Owner: Location/Discipline, Description, Date Initiated, Current Status, Date Required, Date Completed, Responsible Party, Action Required.

- 5.2.8 Design-build Firm shall work in conjunction with Owner and Design Professional to work toward completion of the GMP process, to include meeting with all Parties. Meetings shall include, but are not limited to reviewing and commenting on construction logs, cost estimation, reconciliation and conflicts with BIM.
- 5.2.9 Design-build Firm shall not be entitled to any increase in the Preconstruction fee because of Schedule extensions or delays, or changes in the scope of the proposed Project, unless such extensions, delays, or changes are material and significant, as determined by Owner at its sole discretion.

### 5.3 Budget and Cost Consultation

- 5.3.1 Design-build Firm shall obtain from Owner all Project service, materials, and property costs and expenses not known directly by Design-build Firm, such costs to include, without limitation, Owner's personnel costs, force account labor, and special consultants.
- 5.3.2 Design-build Firm shall prepare and update Construction cost estimates at: (i) fifty percent (50%) schematic design; (ii) one hundred percent (100%) schematic design; (iii) fifty percent (50%) design development; (iv) one hundred percent (100%) design development and fifty percent (50%) Construction Documents for written approval by Owner, such cost estimate to include estimating, updating and reporting of all construction costs.
- 5.3.3 The design development phase and Construction Documents phase estimates shall be detailed estimates derived from cost quantity surveys. Such cost quantity surveys shall be based upon unit prices for labor, materials, and overhead and profit in Construction Specifications Institute Division format, Master Format 32, for each portion of the Work.
- 5.3.4 Design-build Firm shall provide, throughout the duration of the Project, updates of ongoing cost and budget impact, and provide continuous cost consultation services. Design-build Firm shall prepare and be responsible for all procurement and construction cost estimates, and advise the other members of the Project Team in writing within forty-eight (48) hours if at any time Design-build Firm has knowledge that the previously established CCL will not be met. Design-build Firm shall make recommendations to the Project Team for corrective action. Should the impact be critical in nature, Design-build Firm shall have a follow-up discussion with Owner,
- 5.3.5 At the completion of the Construction Documents, Design-build Firm shall update and refine a comparison of actual and projected costs to the Construction Cost Limitation, and in the event such actual and projected costs exceed the original Construction Cost Limitation, develop and implement reasonable strategies to be approved by Owner to reduce the costs projected to be incurred during all phases of the Project.

### 5.4 Coordination of Design and Construction Documents

- 5.4.1 Design-build Firm shall examine and compare the Drawings and Specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Design-build Firm, and any visible conditions at the Site affecting the Project.

- 5.4.2 Design-build Firm shall review all plans, Drawings and Specifications and any other design documents and advise Owner of any identified potential constructability problems, which could impact Design-build Firm's ability to perform the Work in an expeditious and economical manner. Design-build Firm shall advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to Owner.
- 5.4.3 Design-build Firm shall review all plans, Drawings and Specifications and any other design documents and report to Owner any discrepancies, errors, omissions, or inconsistencies discovered and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules. Design-build Firm shall report these items to Owner in writing within forty-eight (48) hours, and if the impact would be critical have a follow-up discussion with Owner.
- 5.4.4 Design-build Firm shall assist in development of any Special Conditions of the Construction Documents, which shall be approved in writing by Owner at Owner's sole option and discretion.
- 5.4.5 Design-build Firm shall coordinate with Owner to ensure that the Construction Documents comply with all applicable State of Texas statutes, laws, rules and regulations, and University of North Texas System requirements.
- 5.4.6 Design-build Firm shall consult with Owner to suggest reasonable adjustments in the scope of the Project and suggest alternate bids in the Construction Documents to adjust the Construction Cost to the GMP.
- 5.5 Pre-Existing Conditions & Design Errors and Omissions
- 5.5.1 Design-build Firm acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions and performed due diligence during the investigation. Design-build Firm's due diligence includes, but is not limited to, identifying underground infrastructure (i.e. water, sewer, electrical, gas and data lines) and/or other conditions that may affect the Project. Design-build Firm shall not make or be entitled to any claim for any adjustment to the Substantial Completion date or the cost for Preconstruction Services or Construction Services arising from Project conditions that Design-build Firm discovered or, in the exercise of reasonable care, should have discovered in the Design-build Firm's investigation.
- 5.5.2 Design-build Firm shall participate in the development and review of the Construction Documents. Design-build Firm shall review the Drawings, Specifications and other Construction Documents and, in writing, notify Owner of any errors, omission and discrepancies in the documents of which it is aware. Design-build Firm shall not make or be entitled to any claim for any adjustment to the Substantial Completion date or the cost for Preconstruction Services or Construction Services for errors or omissions in the Construction Documents that Design-build Firm discovered or, in the exercise of reasonable care, should have discovered in Design-build Firm's Preconstruction design review process that Design-build Firm did not bring to the attention of Owner in a timely manner.
- 5.6 Construction Planning
- 5.6.1 Design-build Firm shall identify and recommend to the need for items requiring extended delivery times (long lead items), and expedite the procurement of such items to ensure their delivery by the required dates. Design-build Firm shall participate as requested by Owner and subject to Owner's prior approval, in the preparation of performance

Specifications and request for technical proposals for the procurement and installation of systems, components, and for the procurement of long lead-time equipment and materials. If requested by Owner, and subject to Owner's prior approval, Design-build Firm shall issue requests for technical proposals to qualified sources, receive proposals, and assist in their evaluation.

- 5.6.2 Design-build Firm shall make recommendations to the other members of the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts. Design-build Firm shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and onsite production costs, shipping costs, code restrictions, Owner's goals for HUB subcontractor participation, and other constraints.
- 5.6.3 Design-build Firm shall review the Contract Documents with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.
- 5.6.4 Design-build Firm shall schedule and conduct pre-bid conferences with a record of minutes for interested bidders, subcontractors, material suppliers, equipment suppliers, and Owner.
- 5.6.5 Design-build Firm shall coordinate, develop, and review with Owner bid packages and scopes of work for each separate bid category representing the entirety of the scope of the Work for each phase and stage of the Project.
- 5.6.6 Design-build Firm shall publicly advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Design-build Firm shall receive and open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by Design-build Firm or Owner.
- 5.6.7 Design-build Firm shall furnish and distribute the following sets of Construction Documents, numbered in consecutive order:
  - 5.6.7.1 One (1) set to the Owner at the time documents are released to the bidders; and
  - 5.6.7.2 Up to ten (10) sets of Construction Documents and electronic files shall be furnished to Plan Services, as determined by Owner and Design-build Firm. A maximum of two (2) sets shall be furnished to each location.
- 5.6.8 Design-build Firm shall prepare and issue addenda to the Construction Documents, including Drawings when appropriate, as may be required to clarify or interpret the Documents.
- 5.6.9 Design-build Firm shall review final estimated construction cost prepared before bid opening(s). If the estimated construction cost for the final design and Specifications (Construction Documents) exceeds the original or Owner adjusted (if so done in writing during the Design Stage Services) Construction Cost Limitation, Owner may, at its discretion and decision, exercise one or more of the rights reserved to Owner as stated in this Agreement.
- 5.6.10 If the final estimated construction cost prepared by Design-build Firm prior to bid opening, or the lowest and best bid(s) received exceeds the original or latest adjusted Construction

Cost Limitation of the Project Budget by more than ten percent (10%), Owner may, at its discretion:

- 5.6.10.1 Give written approval of an increase in the construction cost portion of the Project Budget;
  - 5.6.10.2 Direct Design-build Firm to make such changes at no additional expense to Owner in the Construction Documents to permit rebidding of the Project within the shortest, reasonable time;
  - 5.6.10.3 Direct Design-build Firm revise the scope or quality, or both, of the Project, so as to reduce the Project construction cost; in which case Design-build Firm shall at its expense, if so directed by Owner, modify the Construction Documents, as directed, in order to reduce the estimated Project construction cost to be within the adjusted construction cost portion of the Project Budget;
  - 5.6.10.4 Direct Design-build Firm to assist in negotiating with lowest and best bidder(s); or
  - 5.6.10.5 Abandon the Project, in which case the appropriate part of Design Services fee to be paid for the Design Development Phase shall be based on the latest adjusted construction cost portion of the Project Budget, and provided that this fee shall not be exceeded if the Project is later awarded at a cost still in excess of that portion of the Project Budget.
- 5.6.11 Design-build Firm and Owner shall review all trade contractor or subcontractor bids/proposals. Based on the selection criteria included in the request for proposals, Design-build Firm shall recommend to Owner, in a manner acceptable to Owner, the bid/proposal(s) that provides the best value for the Project. Within ten (10) days, Owner shall determine if the bid proposal(s) provides the best value for Owner. Owner's determination in such matters is final. Upon Owner's written concurrence with the recommendation, Design-build Firm may negotiate the terms of the subcontract with the apparent best value bidder/proposer. All bids and proposals shall be made public within seven (7) days after the date of final selection.
- 5.6.12 For scope of work bid packages typically performed by subcontractors, Design-build Firm may seek to Self-Perform portions of the Work on a cost-plus fee (Not-To-Exceed 7.5%) basis subject to a Guaranteed Maximum Price for the Self-Performed Work. If Design-build Firm intends to submit a proposal for Self-Performance, it shall notify Owner in writing prior to soliciting proposals. Design-build Firm shall bid for the Work to be Self-Performed against at least three other interested trade contractors and must submit its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors. If the Design-build Firm's bid is considered the "best value", the bid amount will be considered the Guaranteed Maximum Price for the Self-Performed Work.
- 5.6.13 The Guaranteed Maximum Price will provide for payment in an amount equal to the Cost of the Work (as defined in this Agreement) plus fee and will not exceed the agreed upon Guaranteed Maximum Price. All terms and provisions of any subcontract for Self-Performed Work will be consistent with the terms and conditions of this Agreement with the exception of the agreed upon fee percentage. All savings under any such subcontract for Self-Performed Work shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement.
- 5.6.14 After review and evaluation, if a bid or proposal from a trade contractor or subcontractor is recommended by Design-build Firm to Owner, but Owner requires a bid or proposal from another trade contractor or subcontractor to be accepted, Owner shall compensate Design-build Firm. Compensation shall be by change in price, time, or GMP for any additional cost

and risk, which demonstrated to Owner's satisfaction and as required by the Contract, Design-build Firm incurs because of Owner's requirement to accept another trade contractor or subcontractor bid or proposal.

- 5.6.15 Design-build Firm shall assist Owner in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, and the fire department providing fire protection.
- 5.6.16 Design-build Firm shall refine, implement and monitor the HUB goals which promote equal employment opportunity in the provision of goods and services to Owner for the Project.
- 5.6.17 Design-build Firm shall advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- 5.6.18 Design-build Firm shall review the Contract Documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.
- 5.6.19 In accordance with Uniform General Conditions, Design-build Firm is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-build Firm shall provide information to Owner with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-build Firm shall verify the assignments with respect to Subcontractors are included in the Contract Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall in no way lessen or reduce the foregoing responsibilities set forth in this subparagraph of Design-build Firm.
- 5.6.20 Design-build Firm shall provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Design-build Firm shall make recommendations for actions, which will minimize adverse effects of labor shortages.
- 5.6.21 Design-build Firm shall consult with and make recommendations to Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate Owner's purchase and installation of such items as may be required to meet the Schedule.

## 5.7 Design Services

### 5.7.1 General Obligations

- 5.7.1.1 At each phase of the Design Services, Design-build Firm, at its sole expense, shall provide Owner with the number of document review sets reasonably requested by Owner.
- 5.7.1.2 Design reviews will be at: (a) fifty percent (50%) schematic design phase; (b) one hundred percent (100%) schematic design phase; (c) fifty percent (50%) design development phase; (d) one hundred (100%) design development phase; and (e) sixty percent (60%) Construction Documents phase.
- 5.7.1.3 Design-build Firm, in order to determine the requirements for Design Services shall have a preliminary evaluation of the initial programming to be provided by Owner. Design-build Firm shall confirm its understanding of such

requirements with Owner and shall refine or make clarification to Owner's Program for the Project.

5.7.1.4 Owner and Design-build Firm may agree to merge phases of Design Services. Construction will not proceed until the GMP is approved.

5.7.1.5 Design-build Firm shall incorporate into the documents such corrections and amendments as Owner requests at each stage of review, unless Design-build Firm objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design-build Firm's failure to incorporate Owner's requested corrections and amendments shall be borne by Design-build Firm.

5.7.1.6 Any Owner directed changes that occur after the design is approved and have a financial cost will result in an amendment.

5.7.1.7 At each stage of the Design Services, Design-build Firm shall provide the following services as appropriate:

Architectural Services  
Landscape Architectural Services  
Civil Engineering Services  
Structural Engineering Services  
Mechanical Engineering Services  
Electrical Engineering Services  
Construction Cost Estimating  
Scheduling Services  
Storm Water Pollution Prevention Plan Design Services  
Building Information Modeling (BIM)

5.7.1.8 The format and detailed content of the cost estimate shall be approved by Owner. The cost estimates shall include the Major Categories of Work for the entire Project and shall be detailed under each category to show the individual items of Work in both quantity and unit cost for labor and materials, which are to be directly incorporated in the Work by Design-build Firm. Estimate summaries shall show the above direct quantity cost by Major Categories of Work and such indirect costs as appropriate by separate identification to estimate the Project construction cost which Owner may expect at the time of competitive bidding.

5.7.1.9 Design-build Firm will provide and submit Drawings and applications to the USGBC for compliance review to obtain a minimum Silver rating in accordance with the USGBC LEED rating system; provided, that this section shall not apply if the Project is not a LEED Project.

5.7.2 Preliminary Design Phase. Design-build Firm shall prepare a Schematic Design Study, including preliminary plan, elevation and specification which shall reveal:

5.7.2.1 The general configuration and layout of the Project, including materials and type of structure;

5.7.2.2 The architectural, structural, mechanical and electrical schemes;

5.7.2.3 The rough outline of building structure to be erected as part of the Project;



- 5.7.2.4 A statement as to the extent, if any, that Owner's Criteria do not conform to Legal Requirements (collectively "Schematic Design Study") and shall submit same to Owner for its approval; and
- 5.7.2.5 All work drawn and specified shall conform to and be in compliance with all applicable codes, laws, ordinance as applicable, regulations, and published legal restrictions which shall include but not limited to The International Building Code, 2009 Edition and NFPA 101 Life Safety Code, 2009 Edition.
- 5.7.3 Schematic Design Phase. Upon receipt Owner's written approval to proceed, Design-build Firm shall proceed with the schematic design phase and shall:
- 5.7.3.1 Based on the approved preliminary design phase documents and any adjustments to the Program or CCL authorized by Owner, Design-build Firm shall develop alternative approaches to design and construction of the Project and review them with Owner;
- 5.7.3.2 Review and validate the criteria furnished by Owner to ascertain the requirements of this Project and shall confirm such requirements to the Owner;
- 5.7.3.3 Based on the building program approved by Owner, prepare Schematic Design Studies consisting of, but not limited to, design concepts, design narrative for all disciplines, Drawings, and other documents illustrating the scale and relationship of Project components for approval by Owner. Reproducible set shall be submitted for Owner's required approval; and
- 5.7.3.4 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided at the conclusion of the schematic design phase, in a format approved by Owner, and review the written cost estimate with Owner. Design-build Firm shall adjust the scope of this Project as required based on the cost estimator's cost estimate.
- 5.7.4 Design Development Phase. Upon Owner's written approval to proceed, Design-build Firm shall proceed with the design development phase and shall:
- 5.7.4.1 Prepare the design development documents and, upon completion, submit a reproducible set for approval by Owner to include: the architectural, structural, mechanical, plumbing and electrical floor plans and distributions systems, cross sections, and other required Drawings; and the outline Specifications in sufficient detail to describe the size, character, and quality as to kinds and locations of materials and the types and sizes of structural, mechanical, plumbing and electrical systems for the entire Project. If required, Design-build Firm shall also provide a framed exterior rendering of the Project.
- 5.7.4.2 Include in the design development, schematic design documents and floor plan, exterior elevations, wall sections, roof plan, typical structural details and notes, foundation plan, MEP layout and locations, MEP load calculations, MEP notes MEP schedule, demolition plan, paving plan, erosion control plan, right-of-way work coordination plan, preparation of exterior views for Design Review Board approval, utility plan, utility drainage profiles if required, landscape and irrigation design and photometric plan; and
- 5.7.4.3 Have a professional construction cost estimator prepare a written estimated construction cost, based on documents provided to Design-build Firm at the conclusion of the design development phase, in a format approved by Owner. Design-build Firm shall adjust the scope of the Project as required based on the cost estimator's cost estimate and as approved or directed by Owner.

5.7.5 Construction Documents Phase. Upon Owner's written approval to proceed, Design-build Firm shall proceed with the Construction Document phase and shall:

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

5.7.5.2 Submit four (4) sets for Owner's review and approval, with comments as necessary, review sets of the Working Drawings and Specifications when at sixty percent (60%) and ninety-five percent (95%) completion points are reached in this phase of design. Design-build Firm shall review the documents for updating their cost estimate at each review point except for the sixty percent (60%) set which will be the GMP set.

5.7.5.3 Design-Build firm shall coordinate preparation and submission for Owner's approval of a written final estimated construction cost upon one hundred percent (100%) completion of the final Drawings and Specifications in accordance with the design schedule and Owner approved format and detail. The estimate shall be itemized as necessary to include estimates for alternates (additives and/or deductive) and to conform to the form of Proposal Request intended for bidding purposes. The final cost estimate prepared and submitted by Design-build Firm shall be a continuation and expansion of previous estimates prepared and submitted during the Construction Documents phase.

5.7.5.4 Once Owner approves the Construction Documents, Design-build Firm shall not be entitled to any adjustment in the approved Project Construction Cost except for changes in Project scope or quality which materially increase or decrease cost to construct the Project that are ordered by Owner in writing in accordance with the Uniform General Conditions.

#### 5.7.6 Additional Services

The following additional Design Services, when authorized by Owner in writing to Design-build Firm, shall be paid for by Owner in accordance with this Agreement:

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

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

- a. May be directed by Owner pursuant to this Agreement;
- b. Corrections of design errors or omissions;
- c. Changes initiated by the Design Professional or the Design-build Firm;

- d. Changes necessitated to bring the design development within the Construction Cost Limitation as specified herein or adjusted by Owner with the agreement of Design-build Firm; and
  - e. Are necessary to produce and furnish the final Record Documents, corrected to include all "as-built" construction and conditions.
- 5.7.6.3 Providing professional services made necessary by the default of Design-build Firm in performance of the Work under the Contract Documents.
  - 5.7.6.4 Providing construction contract administration of construction after the latest extended construction contract time has been exceeded by more than ten percent (10%) through no fault of Design-build Firm.
  - 5.7.6.5 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction.
  - 5.7.6.6 Preparing supporting data and other service in connection with Change Orders if the change is not the fault or negligence of Design-build Firm and if Contract Sum is not commensurate with the services required of Design-build Firm.

#### **ARTICLE 6 SCHEDULE**

##### **6.1 Preconstruction Baseline Schedule**

- 6.1.1 Design-build Firm shall meet with Owner to coordinate preparation of the Preconstruction Baseline Schedule. Design-build Firm shall within twenty-one (21) days of the Preconstruction Notice to Proceed prepare a Preconstruction Baseline Schedule for the Owner's review and approval. Design-build Firm shall coordinate and integrate the Preconstruction Baseline Schedule with the services and activities of Owner, Design-build Firm, Design Professional, other consultants/suppliers and the requirements of governmental entities. This Preconstruction Baseline Schedule shall become the comparison to the actual Preconstruction phase Services progress and become a part of the Preconstruction Work Progress Schedule.
- 6.1.2 As design proceeds, Design-build Firm shall update the Preconstruction Work Progress Schedule at least monthly to detail all activity sequences, durations, or milestone dates for activities of the Project, including, without limitation:
  - 6.1.2.1 commencement, milestone, and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phase, and project stages;
  - 6.1.2.2 times of commencement and completion for each Subcontractor
  - 6.1.2.3 contract document packages, completion dates, Owner contract document package review periods, construction contract bid dates;
  - 6.1.2.4 preparation and processing of shop Drawings and samples;
  - 6.1.2.5 a recommended schedule for Owner's purchase of materials and equipment requiring long lead-time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead-time procurements including coordination of the schedule with the early preparation of relevant portions of the Contract Documents by Design Professional; and

- 6.1.2.6 Owner's occupancy requirements and estimated date of Substantial Completion of the Project.
- 6.1.3 If updates indicate that milestone dates contained in the Preconstruction Work Progress Schedule will not be met, Design-build Firm shall notify Owner in writing and make recommendations to Owner.
- 6.1.4 If the Project is to be completed in phases, Design-build Firm shall make recommendations to Owner regarding the phased issuance of the Drawings and Specifications.
- 6.1.5 A separate schedule shall be prepared for each stage and each set of bidding documents.
- 6.1.6 Design-build Firm shall provide the necessary Longest Path schedule control with a goal to attain Substantial Completion of the Project on or before the date set forth in the solicitation documentation, so that Owner can occupy and utilize the entire Project facilities on such date.
- 6.1.7 Design-build Firm shall create and maintain the Preconstruction Work Progress Schedule in a format acceptable to Owner (the license and training for which shall be at Design-build Firm's sole expense).
- 6.1.8 Prior to commencement of the Construction Services and concurrently with the submission of the GMP Proposal, Design-build Firm shall submit an up-to-date Preconstruction Work Progress Schedule for the performance of Construction Services as specified. The Preconstruction Work Progress Schedule shall include reasonable periods of time for the Owner's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.
- 6.2 Construction Baseline Schedule
- 6.2.1 Design-build Firm shall submit for review and approval a Construction Baseline Schedule to Owner no later than twenty-one (21) days after Notice to Proceed with Construction Services. The 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 Construction Baseline Schedule shall become the comparison to the actual conditions throughout the duration of the Agreement and become a part of the Construction Work Progress Schedule.
- 6.2.1.1 A Construction Baseline Schedule that does not have at least the minimum amount of Total Float at submission will result in Design-build Firm forfeiting all claims to extensions and/or delays as a result of contract changes and/or excusable delays as described in the UGC.
- 6.2.2 In accordance with the UGC, the Construction Work Progress Schedule shall include at least ten percent (10%) Total Float and Weather Days from the effective date of Notice to Proceed with Construction Services to Substantial Completion Date (refer to UGCs for amendment to the Total Float requirement and Weather Days).
- 6.2.2.1 Total Float shall not be shown as a single activity, but rather the results of the relationship between the early and late finish dates or early and late start dates of each Activity. The allocation of float shall be determined by the Project Team as conditions warrant.
- 6.2.3 As design proceeds, Design-build Firm shall update and submit the Construction Work Progress Schedule to Owner at OAC meeting minutes. The Construction Work Progress

Schedule shall detail all activity sequences, durations, or milestone dates for activities of the Project, including, without limitation:

- 6.2.3.1 commencement, milestones, and completion dates for facility program phase, schematic design phase, design development phase, construction documents phase, bidding/proposals phase, construction phase, and project stages;
  - 6.2.3.2 times of commencement and completion for each Subcontractor;
  - 6.2.3.3 bid packages, anticipated issue dates, Owner review period of responses, and completion dates;
  - 6.2.3.4 other detailed schedule activities as directed by Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology, data-transmission systems, and computer technology systems;
  - 6.2.3.5 preparation and processing of shop Drawings and samples;
  - 6.2.3.6 a recommended schedule for Owner's purchase of materials and equipment requiring long lead-time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead-time procurements including coordination of the schedule with the early preparation of relevant portions of the Contract Documents by Design Professional; and
  - 6.2.3.7 Substantial Completion Date and a projected date of achieving Substantial Completion of the Project;
  - 6.2.3.8 Activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials.
- 6.2.4 Design-build Firm shall provide regular monitoring, updating, and reissuing of all Project schedules as construction progresses and identify potential and actual variances between scheduled and probable completion dates.
- 6.2.5 Design-build Firm shall review the schedules for Work not started or incomplete and recommend to Owner adjustments in the schedules to conform to the probable completion dates. Design-build Firm shall also evaluate Subcontractor's personnel, equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule and recommend action to Owner when any subcontract requirements are not met, or appear unlikely to be met.
- 6.2.6 During OAC meetings, Design-build Firm shall: review progress since last meeting with Owner; report progress on all activities that were behind schedule at any prior OAC meeting; determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to Design-build Firm's Construction Work Progress Schedule; determine how activities behind schedule will be expedited; secure commitments from parties involved to do so; discuss whether schedule revisions are required to ensure the current and subsequent activities will be completed within the Substantial Completion; and review Construction Work Progress Schedule for next period.
- 6.2.7 In addition to attending regularly scheduled OAC Project progress meetings, Design-build Firm shall schedule, direct, and attend interim progress meetings (i.e., commissioning

meetings, coordination meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. Design-build Firm shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

- 6.2.8 If schedule updates indicate the Longest Path contained in prior Construction Work Progress Schedule will not be met, Design-build Firm shall, in writing, notify Owner within forty-eight (48) hours and make recommendations to Owner. Should the item be critical in nature, Design-build Firm shall have a follow-up discussion with Owner.
- 6.2.9 Design-build Firm, concurrently with making revisions to the Construction Work Progress Schedule, shall prepare tabulated reports showing the following:
  - 6.2.9.1 Identification of activities that have changed
  - 6.2.9.2 Changes in early and late start dates
  - 6.2.9.3 Changes in early and late finish dates
  - 6.2.9.4 Changes in activity durations in workdays
  - 6.2.9.5 Changes in the Longest Path
  - 6.2.9.6 Changes in Contract time
  - 6.2.9.7 Show relationship between activities on initial and updated Construction Work Progress Schedule
  - 6.2.9.8 Remaining Total Float and Weather Days.
- 6.2.10 If the Project is to be completed in phases, Design-build Firm shall make recommendations to Owner regarding the phased issuance of the Drawings and Specifications.
- 6.2.11 Design-build Firm shall provide the necessary Longest Path schedule control with a goal to attain the Substantial Completion Date of the Project.
  - 6.2.11.1 Punch List and Final Completion: The Longest Path schedule control shall include not more than thirty (30) days or an agreed to timeframe approved by Owner for punch list and Final Completion.
- 6.2.12 Design-build Firm shall coordinate preparation of the Schedule of Values with preparation of the Construction Work Progress Schedule.
- 6.2.13 Design-build Firm shall create and maintain the Construction Work Progress Schedule in a format acceptable to Owner (the license and training for which shall be at Design-build Firm's sole expense).
- 6.2.14 Design-build Firm shall provide within the Work Progress Schedule without limitation, the following:
  - 6.2.14.1 Perform Project scheduling in compliance with Owner's criteria as set forth in the Contract Documents.
  - 6.2.14.2 Provide regular monitoring, updating, and reissuing of all Project Schedules as construction progresses.

- 6.2.14.3 Include, without limitation within the Work Progress Schedule, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules.
  - 6.2.14.4 Identify potential and actual variances between scheduled and probable completion dates,
  - 6.2.14.5 Review the schedules for Work not started or incomplete and recommend to Owner adjustments in the schedules to conform to the probable completion dates.
  - 6.2.14.6 Provide summary reports to Owner of each schedule update and document all changes in construction schedules.
  - 6.2.14.7 Incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials.
  - 6.2.14.8 Processing of shop Drawings, data and samples.
  - 6.2.14.9 Delivery of long lead-time items.
  - 6.2.14.10 Include Owner's occupancy requirements and occupancy priorities.
  - 6.2.14.11 Evaluate Subcontractor's personnel, equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to Owner when any subcontractor requirements are not met, or appear unlikely to be met.
- 6.2.15 Design-build Firm shall notify Owner within forty-eight (48) hours should a periodic update to the Construction Work Progress Schedule indicate the Work is fourteen (14) or more calendar days behind the current approved Schedule, Design-build Firm shall submit a separate recovery schedule indicating means by which Design-build Firm intends to regain compliance with the Construction Work Progress Schedule. The recovery schedule shall indicate changes to working hours, working days, crew sizes, and equipment required for compliance, and date by which recovery will be accomplished.
- 6.2.16 Design-build Firm shall refer to the Uniform General Conditions for schedule extension and delay processes.

## **ARTICLE 7 GUARANTEED MAXIMUM PRICE**

- 7.1 At sixty percent (60%) completion of the Construction Documents, Design-build Firm shall prepare and submit to Owner in writing a GMP proposal in the format in attached Exhibit B or similar form as required by Owner and at Owner's sole option and discretion. The GMP proposal shall require a breakdown of estimated costs organized by trade, allowances, Contingencies, Design-build Firm's Construction Fee, General Conditions and other approved items, but shall not include compensation for Preconstruction phase Services. If accepted by Owner, the parties shall execute a GMP Amendment and the fully executed Amendment shall become a part of the Contract Documents.
- 7.2 Design-build Firm shall include with the GMP proposal a written statement of its basis, which shall include:
- 7.2.1 List of the Drawings and Specifications, including all addenda, which were used in preparation of the GMP proposal;

- 7.2.2 Allowances and a statement of their basis;
- 7.2.3 Design Contingency up to a maximum of {Word} percent ( {Numeral} %) of the Direct Construction Cost minus Payment and Performance Bond and Insurance cost to allow for continued development and completion of the Drawings and Specifications which are not reasonably inferable except for material changes in scope. Payment and Performance Bond and Insurance will be calculated at the time Contingency is utilized;
- 7.2.4 Construction Contingency up to a maximum of {Word} percent ( {Numeral} %) of the Direct Construction Cost to be used to fund increases in the Direct Construction Cost minus Payment and Performance Bond and Insurance cost of the Project identified through the refinement of Construction Documents or procurement of the Work. Payment and Performance Bond and Insurance will be calculated at the time Contingency is utilized. Any reallocation of funds to cover increases in the Direct Construction Cost must be approved by Owner in advance and in writing. Design-build Firm shall provide detailed documentation of the scope affected and the bases for any increases in costs.
- 7.2.4.1 The Construction Contingency is not to be used for Contractor rework, cost increases caused by lack of coordination or communication with Design Professional or trade Subcontractors.
- 7.2.4.2 After GMP is approved and payment application documents Project is fifty percent (50%) complete, fifty percent (50%) of the remaining Construction Contingency shall revert to the Owner's Contingency.
- 7.2.5 Owner's Contingency, if applicable, for the exclusive use of Owner;
- 7.2.6 The Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Baseline Schedule upon which the Date of Substantial Completion or the Date of Final Completion is based;
- 7.2.7 Catalog of applicable alternate prices; and
- 7.2.8 Catalog of applicable unit prices.
- 7.3 Owner, at its sole option and discretion may reject the GMP proposal, attempt to renegotiate the GMP proposal with Design-build Firm (with the right to cease negotiations at any time and reject the GMP proposal), or increase the Construction Cost Limitation. Design-build Firm shall not withdraw its GMP proposal for ninety (90) days after submission to Owner. If Owner rejects the GMP Proposal or the parties are unable to agree on a GMP, Owner may terminate this Agreement.
- 7.4 Adjustments to the GMP Amendment will be made for changes to the scope of Work for the Project by mutual agreement of Owner and Design-build Firm, in writing, and shall include the following for both additive and deductive changes in scope of Work:
- 7.4.1 Net amount of the actual reimbursable costs from the change in the scope of Work;
- 7.4.2 Net amount of General Conditions, if applicable, from the change in the scope of Work;
- 7.4.3 Net amount of the cost of bonds and insurance, as required by the Uniform General Conditions.

## **ARTICLE 8 CONSTRUCTION SERVICES**

- 8.1 The Construction Services shall be deemed to commence upon the earlier of:



- 8.1.1 The date specified in a Notice to Proceed issued by Owner after approval by Owner of a GMP or the issuance of an early release package for the Work or portion of the Work specified in such Notice to Proceed. The Notice to Proceed date is the date the Construction schedule begins and informs Design-build Firm to obtain Insurance and Bonds. Once Owner receives documentation of the insurance and bonds from Design-build Firm, Owner will send an Acknowledgement and Receipt at which time Design-build Firm is approved to proceed or
- 8.1.2 Award of a subcontract in accordance with the requirements of this Agreement and after prior written authorization by Owner.
- 8.2 Design-build Firm shall provide Project Control, including, without limitation, the following:
- 8.2.1 Construct the Work in strict accordance with the Contract Documents within the time required by the Construction Baseline Schedule approved by Owner.
- 8.2.2 Award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Design-build Firm shall self-perform only General Conditions Work and other Work, which has been awarded to Design-build Firm in accordance with the requirements of *Texas Education Code* section 51.780 and this Agreement. Owner reserves the right to perform Work related to the Project and to award separate contracts for Work related to the Project.
- 8.2.3 Coordinate, monitor and inspect the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the CCL and GMP Amendment, and to attain Substantial Completion by the date set forth in the GMP Amendment.
- 8.2.4 Schedule, direct, and attend weekly construction meetings in accordance with the Division 01 requirements. When requested, attend meetings scheduled by Owner and fully advise by written report the Project status.
- 8.2.5 Maintain a competent, full-time staff at the Site to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project.
- 8.2.6 Establish onsite organization of personnel and clearly defined lines of authority in order to execute the overall plans of the Project Team. At a minimum, Design-build Firm's site personnel shall include a project manager, project superintendent, project engineer and appropriate administrative support personnel.
- 8.2.7 In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Professional, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.
- 8.2.8 Expedite and coordinate delivery and installation of Owner procured material and equipment.
- 8.2.9 Supervise and direct the Work and be solely responsible for construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work. Design-build Firm shall keep Owner informed of progress and quality of the Work.
- 8.2.10 In accordance with Uniform General Conditions, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

- 8.2.11 Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Design Professional in obtaining all approvals required from authorities having jurisdiction over the Project.
- 8.2.12 Inspect the Work of Subcontractors to ensure conformance with the Contract Documents.
- 8.3 Design-build Firm shall provide Cost Control, including, without limitation, the following:
- 8.3.1 Design-build Firm shall maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford Owner access to these records and preserve them for a period of seven (7) years after Owner makes final payment to Design-build Firm.
- 8.3.1.1 Accounting records maintained by Design-build Firm shall include a project-to-date job cost report, including an itemized listing of all actual costs incurred, identification as to whether such amounts have or have not been paid and date paid for all costs necessarily incurred to complete the scope of work of the Project. The report shall include at least the contractor, subcontractor, vendor or payee name; invoice number; invoice date; description of the cost; line item number consistent with item number in the GMP Amendment breakdown; date cost was paid by Design-build Firm; check number used to pay item; and other cost information requested by Owner.
- 8.3.1.2 Design-build Firm shall maintain and make available to Owner all original third-party invoices, receipts or other support documentation, for all costs billed to Owner. Design-build Firm shall also maintain and make available documentation verifying incurred costs have been paid to all third parties.
- 8.3.1.3 For all amounts billed to Owner for the cost of Design-build Firm's own labor forces, Design-build Firm shall maintain and make available upon request by Owner original timesheets and other timekeeping records. The records shall reflect employee name; title; position or occupation; trade labor classification (including level); identification of Project; date worked; number of hours worked (by task if multiple tasks are worked); detailed description of the work performed for each time entry; employee's signature; and supervisory signature for all time worked. Design-build Firm shall maintain and make available actual cost support documentation verifying actual amount incurred and paid for salaries and wages; itemization of all actual labor burden costs billed and paid including, but not limited to, any employer paid taxes, workers compensation, union contributions, health and welfare and other benefits costs as a result of work performed on this Project.
- 8.3.2 Design-build Firm shall prepare, administer, maintain and provide to Owner a current SOV containing information required by Owner, in a format acceptable to Owner. Design-build Firm shall submit for review and approval the SOV to Owner with submission of GMP Proposal.
- 8.3.2.1 Design-build Firm shall require, obtain, maintain, and submit to Owner, Subcontractors' sworn statements and waivers of lien, in a form and format acceptable to Owner, for all amounts paid to subcontractors, suppliers and vendors for all materials, labor and all other costs paid by Design-build Firm.
- 8.3.2.2 Design-build Firm shall maintain, and provide Owner a current listing of all change order requests proposed by Design-build Firm to include estimated or agreed to cost, status, and other information if requested by Owner, in a format acceptable to Owner.

- 8.3.2.3 Design-build Firm shall maintain the original SOV and actual costs incurred in a format acceptable to Owner. Design-build Firm shall notify Owner in writing within forty-eight (48) hours in the event actual costs incurred exceed or are expected to exceed SOV costs for any SOV line items. Should the item be critical, Design-build Firm shall also provide follow-up notification to Owner.
- 8.3.3 Develop and implement a system acceptable to Owner for the preparation, review and processing of change order requests, construction change directives and requests for information, in accordance with Uniform General Conditions.
- 8.3.4 Assist Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at Owner's request in order to meet the Schedule, without; however, assuming direct responsibility for the work of these consultants.
- 8.4 Documents, Shop Drawings, and Submissions
- 8.4.1 In collaboration with the other members of the Project Team, Design-build Firm shall establish and implement procedures for expediting the processing and approval of shop Drawings and other submissions, and in accordance with Division 01 Specifications, as applicable. Receive from the Subcontractors, and review, all shop Drawings and other submissions for conformance with the Contract Documents. Coordinate shop Drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.
- 8.4.2 Design-build Firm shall record the progress of the Project, submit written progress reports to the other members of the Project Team, including information on the Subcontractor's Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team in accordance with Uniform General Conditions. Each member of Design-build Firm's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, the daily logs shall be submitted to Owner no less than once a week for the immediately preceding week.
- 8.4.3 Design-build Firm shall maintain at the Project site and make available to Owner, updated records of subcontracts, Drawings, examples, purchases, materials, equipment, maintenance and operating manuals, instructions, and other construction related documents. Documents to include all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record Drawings and project manual.
- 8.4.4 Coordinate and facilitate the creation of record and as-built Drawings, and the procurement of warranties and guarantees.
- 8.4.5 Upon request provide Owner with complete, unaltered copies of all subcontracts, and all amendments thereto.
- 8.4.6 Submit to Owner all documents substantiating payments to all Subcontractors as well as qualifying HUB's in a format designated by Owner.
- 8.5 Construction Administration

- 8.5.1 Design-build Firm shall provide all the administrative services set forth and required in the Contract Documents and as required by the Construction Documents to permit timely prosecution of the construction Work.
- 8.5.2 Design-build Firm shall furnish to Owner two (2) additional sets of Construction Documents complete with all addenda issued during the bidding which are in suitable condition for use during construction. Provide electronic files of the Construction Documents for Owner and Design-build Firm's use in constructing the Project in a format acceptable to Owner.
- 8.5.3 Design-build Firm shall make visits to the Project not less often than once a week, and when conditions require shall make more frequent visits to the site, to observe the progress and quality of the executed construction Work and to determine if the construction Work is proceeding in accordance with the Construction Documents. Design-build Firm visits shall be performed by experienced and qualified representatives of Design-build Firm. Design-build Firm shall use reasonable diligence to detect defects and deficiencies of the Work. The Design-build Firm shall notify the Owner the disapproval or rejection of Work by the Design-build Firm as failing to conform to the Construction Documents. Design-build Firm will inform Owner of the status of the Project and provide documentation to the Owner of all site visits by the Design-build Firm.
- 8.5.4 Design-build Firm will have the Design Professional review of periodic estimates for partial payments, determine the amount owed to Design-build Firm, make recommendations to Owner and certify certificates for payment on such amounts. The certificate for payment shall constitute representation to Owner that construction Work has progressed to the value indicated, the quality of the construction Work is considered to be in accordance with the Contract Documents, and that Design-build Firm is entitled to payment in the amount certified.
- 8.5.5 Design-build Firm will have the Design Professional interpret the Contract Documents and, within a Reasonable Time, render such interpretations as necessary for the proper and timely execution or progress of the construction Work.
- 8.5.6 Design-build Firm shall Provide documentation for Owner's approval, Change Orders to the Construction Documents which are necessary as a result of such interpretations and/or clarifications, and provide documentation of Design Professional's review of cost and time extension estimates for each Change Order, analyze price and time Proposal Requests received from Design-build Firm for Change Orders, advise Owner as to the acceptability of Proposal Request.
- 8.5.7 Design-build firm shall review and advise Owner, as to acceptability of Work schedules in accordance with Owner's requirements; shop Drawings, laboratory samples; fabrication, erection and setting Drawings; wiring and control diagrams; materials delivery schedules; shop drawing submittal schedules; lists of materials and equipment; mockups; equipment or systems testing procedures and schedules; and, other descriptive data pertaining to materials and equipment for compliance with the design concept for the Project and with the information given in the Contract Documents. Unless otherwise specifically stated by Owner, such review, advice, and assistance as required in each instance shall be accomplished within a reasonable time.
- 8.5.8 Design-build Firm shall analyze and advise on the acceptability of test reports, test methods, materials, equipment, and systems.
- 8.5.9 Design-build Firm shall immediately, when identified, make all necessary revisions to the Contract Documents to correct errors, conflicts, omissions, or deficiencies and reissue the corrected Drawings and Specifications at no additional expense to Owner.

- 8.5.10 Design-build Firm shall obtain approval from Design Professional as to the acceptability of substitutions and within a reasonable time, advise Owner as to the acceptability of substitutions proposed; provide a color schedule and samples of textures and finishes of all materials in the Project for review and approval of Owner; and provide a list of fixed and installed equipment to include the type/size, location and quantity to Owner for review and approval.
- 8.5.11 Design-build Firm shall have authority to reject construction Work, with concurrence of Owner, which does not conform to the Contract Documents. Design-build Firm shall recommend in writing to Owner that the Work be stopped whenever in Design-build Firm's reasonable and professional opinion it may be necessary for the proper performance of the Construction Contract.
- 8.5.12 Design-build Firm shall make recommendations to Owner on all claims of Design-build Firm relating to the execution and progress of the Work and on all matters or questions related to performance under the Contract Documents. Such recommendations shall be prepared and forwarded in writing to Owner within fifteen (15) calendar days of the date of the written notification of such claim.
- 8.5.13 Design-build Firm will arrange and conduct inspections, to determine construction deficiencies to be corrected by Design-build Firm and to determine the dates of Substantial Completion, beneficial occupancy (in whole or parts thereof) and Final Completion, as such terms shall be defined in the Contract Documents. The Design-build Firm shall advise in writing to Owner as to the acceptability of the Work performed by Design-build Firm. Observe and evaluate the performance tests of equipment and systems tests required by the Contract Documents.
- 8.5.14 Design-build Firm will assist Owner in fulfilling the requirements of the appropriate authorities and granting agencies relative to disbursements made under the Contract Documents for the Project and to periodic progress reports required to be submitted to these authorities and/or agencies for the Project.
- 8.5.15 Design-build Firm shall within thirty (30) calendar days following Final Completion, furnish to Owner one (1) complete full-size set of prints of the Project Drawings, which have been corrected to include all construction "as-built" which was different from the original Contract Documents as reported or as known by Design-build Firm. Design-build Firm shall also furnish complete electronic files of record Drawings using the most current release of AutoCAD software or other software approved by Owner and also .pdf full-size format. Prior to submitting the final Record Documents, Design-build Firm shall furnish one complete check set of revised Project Drawings for Owner review.

## 8.6 Safety

- 8.6.1 Design-build Firm is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- 8.6.2 Design-build Firm shall review safety programs developed by each of the Subcontractors and shall, within fourteen (14) days of Notice to Proceed submit to Owner a comprehensive safety program. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable state, local, or federal laws or regulations, and with any Owner-controlled insurance program.
- 8.6.3 Design-build Firm shall ensure compliance by the Subcontractors with their contractual safety requirements. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Design-build Firm's responsibilities under this paragraph.

8.6.4 Design-build Firm shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Design-build Firm shall verify that appropriate safety provisions are included in the Construction Documents.

## 8.7 Hazardous Waste

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

8.7.2 Design-build Firm shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Waste without written mutual agreement.

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

8.7.4 Material Safety Data Sheets (MSDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by Design-build Firm, Subcontractors, Owner, or others, shall be maintained at the Site by Design-build Firm and made available to Owner and Subcontractors.

8.7.5 During Design-build Firm's performance of the Services, Design-build Firm shall be responsible for the proper handling of all materials brought to the Site by Design-build Firm.

## 8.8 Additional Services

8.8.1 Owner may request Design-build Firm perform services in addition to those Services required or reasonably inferable herein (Additional Services). Each time Design-build Firm is requested to perform services, which Design-build Firm deems to be Additional Services, and prior to performing such Additional Services, Design-build Firm shall complete and forward to Owner for acceptance by Owner, a change order request in a format approved by Owner. The form shall describe in detail the nature or scope of the Additional Services; the basis upon which Design-build Firm has determined the requested services are Additional Services; the maximum amount of fees and reimbursable expenses for which Design-build Firm is prepared to perform such Additional Services; and a proposed schedule for the performance of such Additional Services. Design-build Firm shall proceed only after written approval by Owner of the change order request.

8.8.2 If Owner concludes that all or part of the services described in the change order request are Services already required to be performed by Design-build Firm pursuant to this Agreement, then Owner shall notify Design-build Firm of Owner's determination and Owner and Design-build Firm shall attempt, in good faith, to resolve by negotiation their differences. If within seven (7) business days Owner and Design-build Firm are unable to resolve their differences, then Design-build Firm shall nevertheless perform the services requested by Owner as if the services were Services required to be performed pursuant to this Agreement, without prejudice, however, to Design-build Firm's right to pursue a claim for compensation for such disputed services.

- 8.8.3 Change orders are to include an updated Construction Work Progress Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship.
- 8.8.4 Upon written acceptance by Owner, each change order request and the services performed by Design-build Firm pursuant to such change order request shall become part of this Agreement and shall be subject fully and completely under all the terms and conditions of this Agreement.

## **ARTICLE 9 OWNER'S RESPONSIBILITIES**

- 9.1 Owner's Representative shall be fully acquainted with the Project, shall facilitate and coordinate Owner's Project issues with Design-build Firm, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. Upon request, Owner will furnish in writing the authorization of each representative of Owner to represent it in connection with the Project.
- 9.2 Owner shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.
- 9.3 Owner shall inform all special consultants retained by Owner that they shall coordinate their services through Design-build Firm. Owner shall provide special testing and inspection services to the extent required by Texas Education Code section 51.780, as amended.
- 9.4 If Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to Design-build Firm.
- 9.5 Prior to commencement of the Work and thereafter at the written request of Design-build Firm, Owner shall provide Design-build Firm with evidence of Project financing. Design-build Firm shall be notified prior to any material change in Project financing.
- 9.6 Except for those permits and fees related to the Work, which are the responsibility of Design-build Firm, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

## **ARTICLE 10 COST OF WORK**

- 10.1 The term Cost of Work shall include and be limited to those costs actually incurred and paid by Design-build Firm that have been necessarily incurred to properly perform the Work in strict compliance with the Contract Documents. Cost of Work shall include the following:
- 10.1.1 Costs to Be Reimbursed
- 10.1.1.1 In the event Design-build Firm operates and maintains a fabrication shop to assemble pre-fab materials for installation at the job-site, Design-build Firm's direct cost will be considered Costs to Be Reimbursed. However, Design-build Firm's shop overhead such as plant and equipment, depreciation, taxes, utilities, etc. will be considered covered by the overall fees quoted as markup on the various components of reimbursable Cost of Work.
- 10.1.1.2 Where any cost is subject to the Owner's prior approval (whether or not written approval is specified), Design-build Firm shall obtain this approval in writing

prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price Amendment.

10.1.1.3 Costs as defined herein shall be actual costs with no additional charges for mark-ups, handling or any other charges or fees paid by Design-build Firm; less all discounts, rebates, and salvages that shall be taken by Design-build Firm, subject to this Agreement. All payments made by Owner pursuant to this Agreement, whether those payments are made before or after the execution of this Agreement, are included in the Guaranteed Maximum Price; provided, however, that in no event shall Owner be required to reimburse Design-build Firm for any portion of the Cost of the Work incurred prior to the Commencement Date unless Design-build Firm has received Owner's written consent prior to incurring such cost. Notwithstanding the breakdown or categorization of any costs to be reimbursed under this Agreement or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories

10.1.2 Labor and Administrative costs

10.1.2.1 Reasonable and customary wages paid to construction workers directly employed by Design-build Firm who perform the construction of the Work.

10.1.2.2 Reasonable and customary wages or salaries of Design-build Firm's supervisory and administrative personnel who were previously identified, but only when stationed full-time at the site with Owner's prior consent, unless otherwise approved in advance by Owner.

10.1.2.3 Costs paid or incurred by Design-build Firm for labor costs arising out of taxes, insurance, and benefits which are:

- a. required by law;
- b. required by collective bargaining agreements; or
- c. otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of Work as defined herein.

10.1.2.4 Reasonable and customary travel expenses of Design-build Firm's personnel incurred directly and solely in support of the Project, and approved in advance by Owner subject to limitations set forth in the UGCs. Design-build Firm shall provide to Owner receipts, documenting travel expenses for reimbursement.

10.1.2.5 Costs of long-distance telephone calls, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of Design-build Firm's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

10.1.3 Materials, Equipment, Tools, and Rental costs

10.1.3.1 Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner's option, Design-build Firm shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to Uniform General Conditions.



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

10.1.4.7 Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

10.2 The following shall not be included in the Cost of Work paid by Owner:

10.2.1 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

10.2.2 Legal and administrative costs to review and negotiate these Contract Documents.

10.2.3 Travel and subsistence expense of Design-build Firm, its officers or employees incurred while traveling between the Project and Design-build Firm's principal or branch offices, and travel in the metropolitan area of the Project.

10.2.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design-build Firm.

10.2.5 Costs incurred by Design-build Firm resulting from the failure of Design-build Firm or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Design-build Firm to comply with directives of Owner not in conflict with said schedules.

10.2.6 Costs resulting from the failure of Design-build Firm or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

10.2.7 All personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.

10.2.8 All overhead expense or office expense at any location, except site office expense to the extent specifically included herein.

10.2.9 Costs related to Design-build Firm's indemnification obligations pursuant to Article 13 hereof.

10.2.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.

10.2.11 Any cost arising out of the fault or negligence of Design-build Firm, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected or nonconforming work, materials or equipment, and damage to persons or property.

10.2.12 Liquidated or actual damages imposed by Owner for failure of Design-build Firm to complete the Work within the Contract Time.

10.2.13 All costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.

10.2.14 All General Condition costs included in the GMP Amendment itemized breakdown regardless of classification or amount listed.

10.3 The Cost of Work paid by Owner shall be credited with the following discounts, rebates, and refunds:

10.3.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to Owner, Design-build Firm, or to some other party; and any such sale, if made to others than Owner, shall be at fair market price. Upon

completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and Design-build Firm shall use its best efforts to obtain the highest price in respect of such sales.

- 10.3.2 If Owner makes funds available to Design-build Firm, discounts earned by Design-build Firm through advance or prompt payments. Design-build Firm shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. Design-build Firm shall purchase materials for this Project in such quantities as will provide the most advantageous prices to Owner.
  - 10.3.3 Reasonable market value as approved by Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by Design-build Firm.
  - 10.3.4 Rebates, discounts, or commissions allowed to and collected by Design-build Firm from suppliers of materials or from Subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.
  - 10.3.5 All discounts, deducts, rebates, negotiated settlements, or other credits received by Design-build Firm from its subcontractors, vendors, or suppliers related to Work on the Project.
  - 10.3.6 Design-build Firm shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of Design-build Firm. Should Design-build Firm not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design-build Firm, including, but not limited to, by deducting the amount from payments due Design-build Firm.
- 10.4 Related Party Transaction
- 10.4.1 Related Party shall mean any parent, subsidiary, affiliate or other entity having common ownership or management with Design-build Firm, any entity in which any stockholder in, or management employee of, Design-build Firm owns any interest in excess of ten percent (10%) in the aggregate, or any person or entity which has the right to control the business or affairs of Design-build Firm. The term Related Party includes any member of the immediate family of any person identified above.
  - 10.4.2 If any of the costs to be reimbursed arise from a transaction between Design-build Firm and a Related Party, Design-build Firm shall notify Owner of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and Design-build Firm shall procure the Work, equipment, goods or service from the Related Party, as a Subcontractor. If Owner fails to authorize the transaction, Design-build Firm shall procure the Work, equipment, goods or service from some person or entity other than a Related Party.

## **ARTICLE 11 COMPENSATION AND PAYMENT**

### **11.1 Preconstruction Services**

- 11.1.1 In full consideration of Design-build Firm's Services during the Preconstruction of this Agreement, Owner will pay to Design-build Firm the sum of {Word Amount} and No/100 dollars (\$ {Numeral} .00) payable as a lump sum at the completion of the Bidding/Proposal Phase.

- 11.1.2 To receive payment, Design-build Firm shall send an invoice with supporting documentation to Owner. Design-build Firm's invoices shall specify the amount of Work completed and other information as required by Owner for payment purposes. No retainage is to be withheld from this amount.
- 11.1.3 In addition to the stipulated sum, the following expenses of Design-build Firm, incurred solely and directly in support of the Project are reimbursable as described below:
  - 11.1.3.1 Actual out-of-pocket coach class, air travel and other expenses previously approved in writing by Owner for travel outside the Project area and incurred solely in connection with Design-build Firm's performance of its services hereunder; provided, however, that the cost of travel between Design-build Firm's offices and Owner's local offices or the Project shall not be reimbursed.
  - 11.1.3.2 Reproductions, printing, binding, collating and handling of reports, Drawings and Specifications or other project-related work product, other than that used solely in-house by Design-build Firm.
  - 11.1.3.3 Fees and associated reimbursable expenses paid to Consultants hired in accordance with prior written approval from Owner.
- 11.1.4 Owner shall only be responsible for payment of actual amount of such reimbursable expenses. Payment of reimbursable expenses shall not exceed {Word Amount} and No/100 dollars (\$ {Numeral} .00) without the prior written consent of Owner. Design-build Firm shall invoice for reimbursement and shall submit receipts necessary to verify reimbursable expenses along with any reimbursement request.

11.2 Design Services

- 11.2.1 Owner shall pay Design-build Firm for performance of Design Services, subject to additions and deductions provided herein, the sum of {Word} and No/100 Dollars ({Numeral}.00), in periodic progress payments. Payments shall be made monthly in proportion to the services performed to increase the compensation to the following maximum percentages at the completion of each of the phases of Design Work. The following cumulative payment percentages shall apply:

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

- 11.2.2 For Additional Services, a fee will be computed per the Personnel Titles and Hourly Labor Rate Schedule, incorporated herein for all purposes.

11.3 Construction Services

- 11.3.1 The Construction Cost Sum is the total compensation due to Design-build Firm for all Construction services. The Construction Cost Sum shall be the sum of:
  - 11.3.1.1 The lesser of actual General Conditions costs incurred and paid by Design-build Firm or, the original General Conditions amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus

- 11.3.1.2 the lesser of actual reimbursable “Cost of Work” (as defined in Article 10) incurred and paid by Design-build Firm or, the original reimbursable Cost of Work amount as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus
  - 11.3.1.3 Design-build Firm’s Construction Fee as set forth in the GMP Amendment, plus or minus any changes agreed to by Design-build Firm and Owner over the duration of the Project, plus
  - 11.3.1.4 the actual cost of required bonds, insurance, builder’s risk and liability insurance.
- 11.3.2 Construction cost does not include the fees of Design Services and its consultants, Owner’s management costs and expenses or allowances established by Owner
- 11.3.3 The Construction Cost Sum shall not exceed the GMP Amendment amount as established in accordance with this Agreement. Any cost not authorized by the terms and conditions of the Contract Documents, but which would cause the GMP to be exceeded, shall be paid by Design-build Firm without reimbursement by Owner.
- 11.3.4 In a format acceptable to Owner, Design-build Firm must provide an estimated cost for General Conditions with the costs broken down by line item. General Conditions should be included in the SOV. Owner may accept or reject each line item of the estimated costs. Design-build Firm’s General Conditions cost is limited to a maximum of {Word Amount} and No/100 dollars (\$ {Numeral} ). In the event the General Conditions actually incurred and paid exceeds the General Conditions limit, all amounts in excess of the General Condition limit shall be borne solely by Design-build Firm and are not payable by Owner. In the event actual General Condition Costs incurred and paid are less than \$ {Numeral} , the GMP shall be reduced by an amount equal to the shortfall of actual costs incurred and paid by Design-build Firm.
- 11.3.4.1 General Conditions generally follow the percentage complete for the total project Cost of Work. Owner recognizes initial start-up project costs may result in a slightly higher General Conditions. Payment shall be made monthly in proportion to the Work performed following maximum percentages of the General Conditions cost as compared to the total project percentage complete. The following cumulative payment percentage shall apply:

Project Percentage Complete	33%	66%	90%	100%
General Conditions	45%	80%	95%	100%

11.3.5 Owner has afforded Design-build Firm with unrestricted access to the existing improvements and conditions on the construction site and has given Design-build Firm the opportunity to thoroughly investigate the existing conditions, which Design-build Firm represents it has done. The results of Design-build Firm’s investigation shall be taken into account in establishing the GMP of the Work. Design-build Firm shall not be entitled to a claim for an adjustment in time or price under Uniform General Conditions for conditions which Design-build Firm discovered or ought to have discovered in Design-build Firm’s investigation. Before proceeding with the Work, Design-build Firm shall review the Drawings and Specifications and Owner of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. Design-build Firm shall not proceed with the Work if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known or should be known by Design-build Firm

to exist in the Contract Documents. If Design-build Firm nevertheless proceeds to perform the Work then Design-build Firm shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting therefrom unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Contract Documents, Design-build Firm shall immediately submit a written request for an explanation or decision to Owner.

- 11.3.6 If payments are made to Design-build Firm in excess of the Contract Sum, Design-build Firm shall immediately return such amounts to Owner upon request by Owner. In the event payments are made in excess of the Contract Price and other amounts are due to Design-build Firm from Owner, Owner may offset other amounts due by amounts paid in excess of Contract Price.
- 11.3.7 In the event the actual cost incurred and paid for Allowance is less than the amounts set forth in the GMP Amendment entered into by the Parties, which are noted as Allowance, one hundred percent (100%) of all savings shall be to the benefit of Owner. In the event the actual cost incurred and paid by Design-build Firm for Allowance is not equal to the amounts set forth in the GMP Amendment for Allowance, the GMP shall be adjusted for the difference (increased for overruns and/or decreased for shortfalls). The adjustment amount shall be the difference between the actual cost incurred and paid for Allowance, and the amount set forth in the GMP Amendment.
- 11.3.8 Design-build Firm and Owner will work together collaboratively in a good faith effort to reduce the cost of the Project while achieving the desired end product and complying with the conditions of Owner's funding. In the event the sum of the actual Cost of Work for the existing scope of Work (without taking into consideration reductions in scope by Change Order), plus compensable General Conditions, plus Design-build Firm's Fee, is less than the GMP, then Design-build Firm and Owner agree that 100% of all savings shall be to the benefit of Owner.
- 11.3.8.1 Buyout shall occur at thirty percent (30%) Project completion as documented on the SOV. All Buyout savings realized at thirty percent (30%) completion of the SOV shall revert to the Owner for use on the Project.
- 11.3.8.2 Design-build Firm shall document any future Buyout savings utilized by Design-build Firm after thirty percent (30%) completion of the SOV.
- 11.3.8.3 Design-build Firm shall document the actual Cost of the Project Buyout as compared to the GMP Proposal. Design-build Firm shall track and report this information in the form of a Buyout savings log to Owner on a monthly basis and with Design-build Firm's recommendation for selection of a bid/proposal for each subcontracting package.
- 11.3.9 Contingencies shall be included in the GMP Amendment for the Project. Bonds, insurance, and fees will not be calculated until Contingency is utilized. Twenty-one (21) days after issuance of one hundred percent (100%) Construction Drawings, any remaining Design Contingency shall be converted to the Owner's Contingency. Use of Owner's Contingency shall be at the Owner's sole discretion. Use of any Contingency shall only be authorized via a Contingency Release approved by Owner. In the event Owner approves less than the full amount of the Construction Contingency, all unapproved amounts shall be to the benefit of Owner. In the event the sum of all approved uses of Contingencies is less than the initial Contingencies, the GMP shall be reduced by any shortfall.
- 11.3.10 In full consideration of Design-build Firm's services during the Construction of this Agreement, Owner shall pay Design-build Firm a Construction Fee as stipulated in the GMP Amendment which shall be calculated as follows: {Word} percent ( {Numeral} %) of the cost of construction, which shall be converted to a fixed fee at the establishment of

the GMP Amendment. Design-build Firm's Fee shall be billed to, and paid by, Owner in direct proportion of the cost of construction in the event a balance is payable by Owner, or Owner has overpaid the fee as of the date of the final invoice, the remaining amount due or credit due to Owner shall be included in Design-build Firm's final invoice. Change in the scope which require an increase in the GMP are entitled to an equitable increase in the Design-build Firm's Construction Fee percentage which shall be calculated in direct proportion to the increase in Cost of Work times the Construction Fee percentage in this Article. The Design-build Firm's Construction Fee will not be applied to changes which are funded by subcontractor trade buyout savings. The Design-build Firm's Construction Services Fee will be applied to all changes which are funded by Contingencies. Design-build Firm's Construction Fee shall be shown as a separate line item on the SOV.

11.3.11 In Uniform General Conditions, references to adjustments in "cost" or "costs" refer to Costs of Work as defined herein below, and references to Design-build Firm's "overhead" and "profit" refer to Design-build Firm's Construction Services Fee.

11.3.12 Design-build Firm's Construction Fee shall cover Design-build Firm's profit, general overhead and all expenses in connection with maintaining and operating Design-build Firm's main office and any branch or field offices, including the following:

11.3.12.1 Salaries of personnel not stationed full time at the site, including but not limited to, Design-build Firm's officers, project manager(s), estimators, and schedulers.

11.3.12.2 Salaries of persons employed in the main or branch offices of Design-build Firm whose time is devoted to the general conduct of Design-build Firm's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.

11.3.12.3 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than preconstruction services) relating to accounting in Design-build Firm's office and even if at the site, except as specifically identified herein.

11.3.12.4 Interest on Design-build Firm's capital or on money borrowed by Design-build Firm, including the capital employed by Design-build Firm in the performance of the Work.

11.3.12.5 Amounts required to be paid by Design-build Firm for Federal and/or State income and franchise taxes.

11.3.12.6 Legal, accounting, or other similar professional services provided by or to Design-build Firm, in regard to contracts, disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with Owner, Design Professionals, or any other person or entity relating to the Project or otherwise.

11.3.12.7 Any professional fees, training, memberships, employee or subcontractor incentives or bonuses, and any subcontractor bonding or Sub-Guard.

11.3.12.8 Cost of hiring and/or relocation of any of the Design-build Firm's personnel

11.3.13 On a monthly basis, Construction Manger shall submit a Pay Request, in accordance with the Division 01 Specifications. Support Documentation should include, but is not limited to, a project-to-date job cost report; a current period job cost report; copies of third party invoices; receipts and other third party support documentation, sufficient to evidence each cost billed for has been incurred by Design-build Firm; a current SOV; sworn statements

and waivers of lien for all amounts paid to Design-build Firm for materials, labor, equipment and all other costs; project status report in a format acceptable to Owner; and a current Work Progress Schedule in .xer format or a format acceptable to Owner. Upon Owner's request, Design-build Firm shall submit original timesheets and other timekeeping records.

11.3.14 In no event shall Design-build Firm invoice for nor shall Owner be required to pay, any costs in excess of work put in place by Design-build Firm and its subcontractors at any given time.

11.3.15 Design-build Firm shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance of the Preconstruction Services and the construction of the Work.

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

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

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

#### 11.4 Application for Final Payment and Final Accounting

11.4.1 The final request for payment shall not be made until Design-build Firm delivers to Owner a complete release of all liens arising out of this Agreement and an affidavit that so far as Design-build Firm has knowledge or information, the release includes and covers all materials and services over which Design-build Firm has control for which a lien could be filed, but Design-build Firm may, if any agent or consultant refuses to furnish a release in full, furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design-build Firm shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

11.4.2 Upon completion of Design-build Firm's work, Design-build Firm shall submit an Application for Final Payment to Owner including all costs incurred and paid, that are payable by Owner pursuant to the Contract Documents. As a basis for the Application for Final Payment, Design-build Firm shall provide Owner with a final listing of all project costs incurred and paid by Design-build Firm, together with all reconciliations necessary to reconcile amounts billed to the final Contract Price. Design-build Firm shall also provide all support documentation as required in 10.2.11 above for all costs not previously supported. To the extent that any costs have been incurred by Design-build Firm, but have not been paid by Design-build Firm, Design-build Firm shall separately list any such costs and provide any additional support necessary to verify costs have been incurred and will be paid. Design-build Firm shall include within Design-build



Firm's Application for Final Payment the benefit of all credits, charge backs and negotiated reductions to contract, subcontractor and vendor contracts and invoices.

- 11.4.3 Upon receipt of Design-build Firm's Application for Final Payment, Owner shall have thirty (30) days to review and verify the amounts billed by Design-build Firm prior to acceptance. During this time, Design-build Firm shall cooperate with Owner, or its designee, and provide Owner with all project records and documents requested by Owner or its designee to verify the amounts billed by Design-build Firm for its Work on the Project.
- 11.4.4 Owner's auditors will review and report in writing on Design-build Firm's final accounting within thirty (30) days after delivery of the final accounting to Owner by Design-build Firm. Based upon review of amounts billed, if Owner's auditors' report substantiates Design-build Firm's final accounting and provided all other conditions for final payment have been met, Owner will, after receipt of the written report of Owners auditors, either issue to Design-build Firm a final Payment or notify Design-build Firm in writing of Owner's reasons for withholding final payment, in whole or in part.
- 11.4.5 If Owner's auditors' report finds that Design-build Firm's final accounting contract price or actual costs incurred and paid are less than claimed by Design-build Firm, Design-build Firm shall be entitled to provide, for Owner's review, additional documentation to support the final accounting costs. Additional documentation shall be provided within thirty (30) days after Design-build Firm's receipt of a copy of Owner's auditor's Final Certificate for Payment. Failure to provide additional documentation for review by Owner within the thirty (30) day period shall result in the substantiated amount reported by Owner's auditors becoming binding on Design-build Firm. Owner shall pay Design-build Firm the amount certified in the Final Certificate for Payment.
- 11.4.6 Owner shall have the right to withhold from payments due Design-build Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-build Firm or failure of Design-build Firm to perform Design-build Firm's obligations under this Agreement.
- 11.4.7 Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Design-build Firm if any one or more of the following conditions precedent exist:
- 11.4.7.1 Design-build Firm is in breach or default under this Agreement;
  - 11.4.7.2 any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement;
  - 11.4.7.3 Design-build Firm has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Design-build Firm; or
  - 11.4.7.4 if Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement, no additional payments will be due Design-build Firm unless and until Design-build Firm, at Design-build Firm's sole cost, performs a sufficient portion of the remaining services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining services.

- 11.4.7.5 Nothing contained herein shall require Owner to pay Design-build Firm an aggregate amount exceeding the GMP or to make payment if in Owner's belief the cost to complete the Work would exceed the GMP less previous payments to Design-build Firm.

## **ARTICLE 12 BONDS**

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

## **ARTICLE 13 INDEMNITY AND INSURANCE**

- 13.1 **Design-build Firm 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 Design-build Firm's activities under the Contract, including any acts or omissions of Design-build Firm, or any director, officer, employee, agent, representative, consultant, or Subcontractor of Design-build Firm, 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 DESIGN-BUILD FIRM 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 **Design-build Firm shall promptly advise Owner in writing of any claim or demand against Owner or against Design-build Firm known to Design-build Firm related to or arising out of Design-build Firm's activities under this Contract.**
- 13.2 Except for the obligation of Owner to pay Design-build Firm certain fees and expenses pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Design-build Firm or to anyone claiming through or under Design-build Firm by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design-build Firm, no present or future partner or affiliate of Owner or any Regent, director, officer, employee, or agent of Owner, or of the components comprising the University of North Texas System, or anyone claiming under

Owner has or shall have any personal liability to Design-build Firm or to anyone claiming through or under Design-build Firm by reason of the execution or performance of this Agreement.

### 13.3 Insurance

- 13.3.1 Design-build Firm shall not commence work under the Agreement until it has obtained all insurance required in accordance with this Agreement and the Uniform General Conditions and until such insurance has been reviewed and approved in writing by Owner. Approval of the insurance by Owner shall not relieve nor decrease the liability of Design-build Firm hereunder. Prior to commencing any of the Preconstruction Services, Design-build Firm shall provide evidence as required by this Article that demonstrates coverage for Employer's Liability, Workers' Compensation, Commercial General Liability, and Automobile Liability as set forth in the Uniform General Conditions are in full force and effect. Prior to commencing any construction work, Builder's Risk as set forth in the Uniform General Conditions shall be in full force and effect and shall be increased as necessary for each separate bid package, phase, or stage of construction prior to the commencement of construction for that package, phase, or stage. No retainage is to be withheld with respect to the cost of the required insurance.
- 13.3.2 Design-build Firm shall include Owner, {Campus if different from Owner}, and the Board of Regents of the University of North Texas System as loss payees and Additional Insured's on General Liability and Business Automobile Liability. The Commercial General Liability, Business Automobile Liability, and Worker's Compensation policies shall include a waiver of subrogation in favor of Owner.
- 13.3.3 Insurance policies required under this Article shall contain a provision that the insurance company must give Owner written notice transmitted in writing: (a) thirty (30) calendar days before coverage is non-renewed by the insurance company and (b) within ten (10) business days after cancellation of coverage by the insurance company. Prior to start of Services and upon renewal or replacement of the insurance policies, Design-build Firm shall furnish Owner with certificates of insurance until one year after acceptance of the Services. If any insurance policy required under this Article is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-build Firm will give Owner written notice within forty-eight (48) hours upon actual or constructive knowledge of such condition.
- 13.3.4 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as Design-build Firm.
- 13.3.5 Owner shall be entitled, upon request, and without expense, to receive copies of the policies, all endorsements thereto and documentation to support costs and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, exclusions and costs, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Any price credits determined in the insurance review will be refundable to Owner. Actual losses not covered by insurance as required by this Article shall be paid by the Design-build Firm.
- 13.3.6 Design-build Firm shall not cause or allow any of its insurance to be canceled nor permit any lapse during the term of the Agreement or as required in the Agreement.
- 13.3.7 Professional Liability Insurance. Design-build Firm shall carry professional liability and errors and omissions insurance covering the Design Services provided under this Agreement, as is acceptable to and approved by Owner with Owner being named as

Additional Insured. Such insurance shall have minimum policy limits of two million dollars (\$2,000,000) in the aggregate and one million dollars (\$1,000,000) per claim. A Certificate of Insurance indicating the expiration date of Design-build Firm's professional liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to Owner. If Design-build Firm is performing the Design Services, then the professional liability insurance shall be in Design-build Firm's name and shall include a Design/Build Endorsement in form acceptable to Owner. If Design-build Firm is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for the Project, and Design-build Firm shall also provide a Design-build Firm's Errors and Omissions policy naming it as the insured. If Design-build Firm is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.

- 13.3.8 Tail Coverage. Design-build Firm shall be responsible for the costs associated with providing required insurance. Design-build Firm shall maintain such insurance throughout the course of the Project and for a minimum of one (1) year following Substantial Completion.

#### **ARTICLE 14 TERMINATION AND OWNER'S REMEDIES**

- 14.1 With or without cause, Owner reserves and has the right to terminate this Agreement or to cancel, suspend or abandon execution of all or any Services in connection with this Agreement at any time upon written notice to Design-build Firm. Design-build Firm may terminate this Agreement upon seven (7) days written notice to Owner only if Owner substantially fails to perform obligations under Article 9 of this Agreement or fails to timely pay Design-build Firm as required under Article 11, and after adequate written notice is delivered to Owner and Owner has failed to take action within thirty (30) days in order to begin to correct the problem.
- 14.1.1 In the event of termination, cancellation, suspension, or abandonment that is not the fault of Design-build Firm, Owner shall pay to Design-build Firm as full payment for all services performed and all expenses incurred under this Agreement, the appropriate portion of sum due under Article 11 as shall have become payable because of the progress in the Work as the services actually rendered hereunder by Design-build Firm bear to the total services necessary, plus any sum due Design-build Firm for Additional Services described under Section 8.8 herein which were previously approved by Owner.
- 14.1.2 In ascertaining the services actually rendered hereunder up to the date of termination, cancellation, suspension, or abandonment of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete Drawings, and to other related documents, whether delivered to Owner or in possession of Design-build Firm.
- 14.1.3 For any said sum paid under this Article, Design-build Firm agrees to accept same in full settlement of all claims for services rendered under this Agreement.
- 14.2 If, upon payment of the amount required to be paid under this Article following the termination of this Agreement, Owner thereafter should determine to complete the original project or, substantially, the same project without major change in scope; Owner, for such purposes, shall have the right of utilization of any and all original tracings, Drawings, calculations, design analysis, Specifications, estimates, related data, and other documents including Construction Documents, prepared under this Agreement by Design-build Firm who shall make them available to Owner upon request, with compensation to Design-build Firm limited to actual reproduction costs. Owner agrees to credit

Design-build Firm with such authorship as may be due to him but is not required to renew this Agreement.

- 14.3 Upon request at the termination, cancellation, suspension, or abandonment of this Agreement, Design-build Firm agrees to furnish to Owner copies of the latest documents prepared by Design-build Firm for the Project.
- 14.4 A termination, cancellation, suspension, or abandonment under this Article shall not relieve Design-build Firm or any of its employees of liability for violations of this Agreement, or any willful, negligent or accidental act or omission of Design-build Firm. In the event of a termination under this Article, Design-build Firm hereby consents to employment by Owner of a substitute Design-build Firm to complete the services under this Agreement, with the substitute Design-build Firm having all rights and privileges of the original Design-build Firm of the Project.
- 14.5 Design-build Firm shall, at its own cost, remedy any defects in the Work as soon as Design-build Firm becomes aware of such defects or is notified of such defects. Should Design-build Firm refuse or neglect to remedy such within a reasonable time after receiving notice requesting such remedial work, then Owner shall be entitled to remedy such defective services at the expense of Design-build Firm. Should the defects be critical in nature, Design-build Firm shall provide immediate notice as well as a follow-up discussion. This commitment by Design-build Firm is in addition to, and not in substitution for, any other remedy for defective Services which Owner may have at law or in equity.
- 14.6 Design-build Firm shall keep critical activities from impacting the Longest Path and shall keep activities scheduled to finish the Work on or before the Substantial Completion Date. Should Design-build Firm neglect or refuse to remedy the scheduled activities to maintain Substantial Completion, then Owner shall be entitled to remedy such delayed scheduling at the expense of Design-build Firm.

## ARTICLE 15 MISCELLANEOUS

- 15.1 Assignment. The terms and conditions of this Agreement shall be binding upon the Parties, their partners, successors, and legal representatives. This Agreement is a personal service Agreement for the services of Design-build Firm, and Design-build Firm'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.
- 15.2 Death or Incapacity. If Design-build Firm 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 Design-build Firm is a Design-build 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 Design-build Firm; and if death or incapacity befalls the last one of such group before this Agreement is fully performed, then the rights shall be as if there had been only one Design-build Firm. 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.
- 15.3 Irreparable Injury. It is acknowledged and agreed that Design-build Firm's services to Owner are unique, which gives Design-build Firm a peculiar value to Owner and for the loss of which Owner

cannot be reasonably or adequately compensated in damages; accordingly, Design-build Firm acknowledges and agrees that a breach by Design-build Firm of the provisions hereof will cause Owner irreparable injury and damage. Design-build Firm, 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.

#### 15.4 Certifications.

- 15.4.1 Pursuant to Texas Family Code, Section 231.006, Design-build Firm 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.
- 15.4.2 Pursuant to Texas Government Code, Section 2155.004, Design-build Firm 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.
- 15.4.3 If a corporate or limited liability company, Design-build Firm 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.
- 15.4.4 Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Design-build Firm agrees that any payments owing to Design-build Firm under this Agreement may be applied directly toward any debt or delinquency that Design-build Firm 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.
- 15.4.5 Pursuant to Texas Government Code Chapter 2252, Subchapter F, Design-build Firm certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Design-build Firm acknowledges this Agreement may be terminated if this certification is inaccurate.
- 15.4.6 Pursuant to Texas Government Code Sections 2252.201-2252.205, Design-build Firm 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.
- 15.4.7 To the extent required by Texas Government Code Chapter 2270, Design-build Firm certifies that it does not currently boycott Israel and will not boycott Israel during the Term of this Agreement. Design-build Firm acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 15.4.8 Design-build Firm 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.
- 15.5 Illegal Dumping. Design-build Firm 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.
- 15.6 Asbestos Containing Materials.

- 15.6.1 Design-build Firm 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 Design-build Firm's application for Final Payment as required by the UGCs.
- 15.6.2 All materials used in this Project shall be certified as non-ACBM. Design-build Firm 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:
- 15.6.2.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763, Subpart E)
  - 15.6.2.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos)
  - 15.6.2.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295, Subchapter C, Asbestos Health Protection)
- 15.7 Business Ethics. During the performance of Design-build Firm's contract responsibilities, Design-build Firm agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest with Owner's best interests. Neither Design-build Firm 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.
- 15.8 Records. Records of Design-build Firm's costs, reimbursable expenses pertaining to the Project and payments shall be kept on a generally recognized accounting basis and shall be made available to Owner or its authorized representative during business hours for audit or other purposes as determined by Owner. Such records shall be maintained by Design-build Firm and shall be available to Owner or his authorized representative for a period of at least five (5) years after the provision of Design-build Firm's Services.
- 15.9 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:
- |                                                                                                                                                                |                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>If to Owner:</u><br/>         {Name}<br/>         {Title}<br/>         University of North Texas [System or Institution Name]<br/>         {Address}</p> | <p><u>If to Design-build Firm:</u><br/>         {Contact Name}<br/>         {Design-build Firm Name}<br/>         {Street Address}<br/>         {City, State Zip}</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.
- 15.10 Independent Contractor. Design-build Firm 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. Design-build Firm, 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. Design-build Firm 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.

- 15.11 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 Design-build Firm and Owner may terminate the Agreement. Design-build Firm acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.
- 15.12 Confidentiality. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Design-build Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Design-build Firm shall not, beginning on the date of first association or communication between Owner and Design-build Firm and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Design-build Firm's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Design-build Firm shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Design-build Firm as an independent Design-build Firm of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Design-build Firm shall obtain assurances similar to those contained in this subparagraph from persons, and subcontractors retained by Design-build Firm. Design-build Firm acknowledges and agrees that a breach by Design-build Firm of the provisions hereof will cause Owner irreparable injury and damage. Design-build Firm, 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.
- 15.13 Open Records. Owner shall release information to the extent required by the Texas Public Information Act and other applicable law. If required, Design-build Firm 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 the Design-build Firm agrees that the Agreement can be terminated if the Design-build Firm knowingly or intentionally fails to comply with a requirement of that subchapter.
- 15.14 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.
- 15.15 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.
- 15.16 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.



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

OWNER:

DESIGN-BUILD FIRM:

**UNIVERSITY OF NORTH TEXAS {SYSTEM or INSTITUTION NAME}**

**{DESIGN-BUILD FIRM NAME}**

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

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

Name: {Name}  
Title: {Title}

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: {Date}

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

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

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

\_\_\_\_\_  
Telephone

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

**EXHIBIT A**

**UNIFORM GENERAL CONDITIONS 2019**

SAMPLE

This Exhibit contains the Uniform General Conditions 2019, all of which is made part of this Agreement between Owner and Design-build Firm.

Initialed by Owner

\_\_\_\_\_

Initialed by Design-build Firm

\_\_\_\_\_

## EXHIBIT B

### GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

{PROJECT}  
Project Name

We hereby submit to the Owner for the use and benefit of the Owner pursuant to the provisions of Article 7 of the Design-Build Construction Agreement by and between the Owner and {Design-build Firm Name} , dated {Contract Month, Date, Year} ("Agreement"), a GMP for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. A not-to-exceed amount for General Conditions pursuant to the Agreement		<b>\$ {Amount}</b>
1a. Payment and Performance Bond Cost <i>(Included in General Conditions cost)</i>	\$ {Amount}	
1b. Insurance cost for Builder's Risk / Liability / Auto / etc. pursuant to Agreement <i>(Included in General Conditions cost)</i>	\$ {Amount}	
2. A not-to-exceed amount for <b>Cost of Work</b> pursuant to the Agreement		<b>\$ {Amount}</b>
2a. General Requirements (Division 1 Costs) <i>(Included in Cost of Work above)</i>	\$ {Amount}	
3. <b>Direct Construction Cost (DCC)</b> [lines 1 & 2 above]		<b>\$ {Amount}</b>
4. Design-build Firm's <b>Construction Fee</b> pursuant to the Agreement (% in Agreement x DCC)		<b>\$ {Amount}</b>
5. <b>Total Construction Cost Sum</b> = Direct Construction Cost [line 3] + CM Fee [line 4]		<b>\$ {Amount}</b>
6. Contingencies <i>(Insurance, Bonds &amp; Fee calculated and applied when used) (DCC minus Bond and Insurance x %)</i>		<b>\$ {Amount}</b>
a. Design Contingency	\$ {Amount}	
b. Construction Contingency	\$ {Amount}	
c. Owner's Contingency	\$ {Amount}	
7. <b>GMP AMENDMENT TOTAL</b> [lines 3+4+5+6]		<b>\$ {Amount}</b>

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

Design-build Firm agrees to substantially complete all Work on the Project as specified in the Agreement and Contract Documents by the {Date} day of {Month} {Year} (Substantial Completion), which shall be the total amount of time to substantially complete the Work.

Upon acceptance of the GMP by the Owner, the Owner will issue to the Design-build Firm a Notice to Proceed for the Project.

---

Presented by:  
{DESIGN-BUILD FIRM NAME}

Accepted and Agreed by:  
UNIVERSITY OF NORTH TEXAS {SYSTEM or  
INSTITUTION NAME}

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

SAMPLE

# PAYMENT BOND

Surety Bond No.

STATE OF TEXAS           §  
COUNTY OF               §

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

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

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

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

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

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

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

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

## CONSTRUCTION MANAGER-AT-RISK

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Typed Name and Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Texas Vendor ID No.)

# PERFORMANCE BOND

Surety Bond No.

STATE OF TEXAS           §  
COUNTY OF               §

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

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

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

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

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

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

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

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

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

ATTEST:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name and Title)

(SEAL)

ATTEST:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name and Title)

(SEAL)

Surety's Texas Local Recording  
Agent or Resident Agent:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(License No.)

\_\_\_\_\_  
(File No)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name and Title)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name and Title)

Surety's Home Office Agent or  
Servicing Agent:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Telephone)



# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

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

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), 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 <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.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

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

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

**SECTION 4: AFFIRMATION**

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

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

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

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

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

Rev. 2/17

Enter your company's name here: _____	Requisition #: _____
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**IMPORTANT:** If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" 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-a.pdf>

## SECTION A-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 A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-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/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

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

**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 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.

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

Rev. 2/17

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

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

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

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

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

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

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

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Enter your company's name here: _____	Requisition #: _____
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**SECTION B-4: SUBCONTRACTOR SELECTION**

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

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

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

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

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

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

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



# 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.

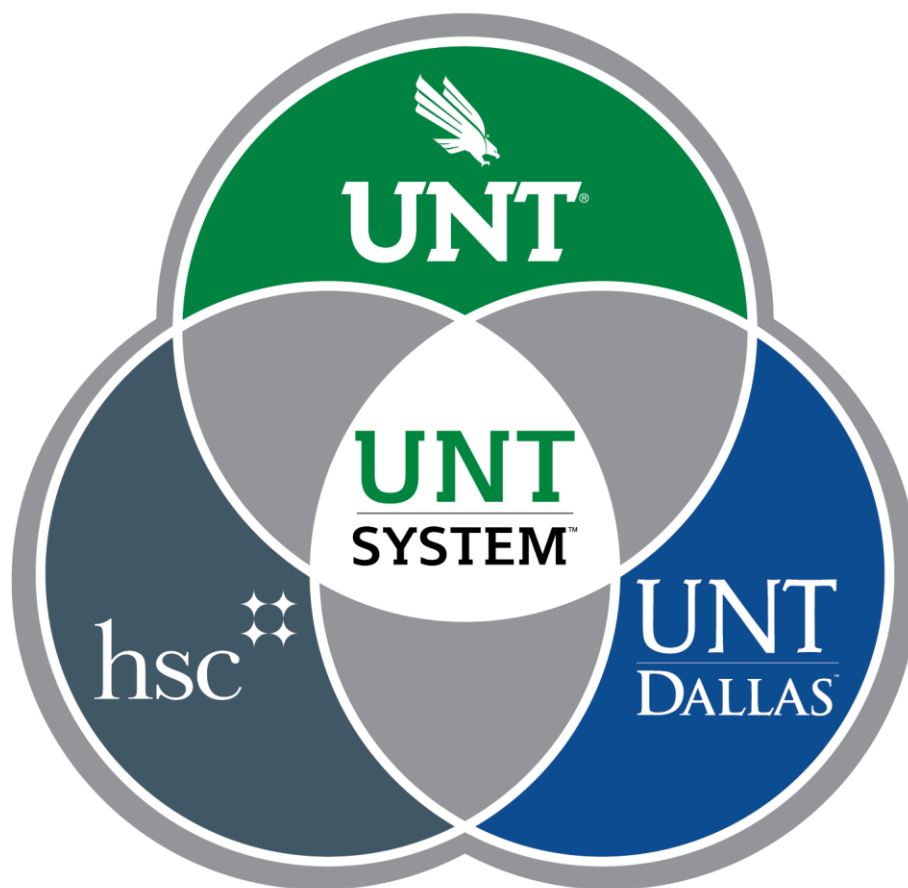
<b>SECTION A: PRIME CONTRACTOR'S INFORMATION</b>	
Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____
<b>SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name: _____	
Point-of-Contact: _____	Phone #: _____
Requisition #: _____	Bid Open Date: _____ <small>(mm/dd/yyyy)</small>
<b>SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>	
<b>1. Potential Subcontractor's Bid Response Due Date:</b>	
<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,</p> <p style="margin-left: 100px;">we must receive your bid response no later than _____ on _____ .</p> <p style="margin-left: 100px; text-align: center;"> <span style="margin-right: 100px;">Central Time</span> <span>Date (mm/dd/yyyy)</span> </p>	
<p><i>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).</i></p> <p><i>(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.)</i></p>	
<b>2. Subcontracting Opportunity Scope of Work:</b>	
<b>3. Required Qualifications:</b> <span style="float: right;">- Not Applicable</span>	
<b>4. Bonding/Insurance Requirements:</b> <span style="float: right;">- Not Applicable</span>	
<b>5. Location to review plans/specifications:</b> <span style="float: right;">- Not Applicable</span>	



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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. 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>
	<u>&lt; \$ 1,000,000</u>	<u>\$ 250</u>
<u>\$ 1,000,000</u>	<u>&lt; \$ 25,000,000</u>	<u>\$ 1,000</u>
<u>\$ 25,000,000</u>	<u>&lt; \$ 50,000,000</u>	<u>\$ 2,500</u>
<u>\$ 50,000,000</u>	<u>&lt; \$ 75,000,000</u>	<u>\$ 5,000</u>
<u>\$ 75,000,000</u>	<u>&lt; \$ 100,000,000</u>	<u>\$ 7,500</u>
<u>&gt; \$ 100,000,000</u>		<u>\$ 10,000</u>

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.