

THE TEXAS A&M UNIVERSITY SYSTEM INSTRUCTIONS FOR COMPETITIVE SEALED PROPOSALS

1.0 GENERAL:

- 1.1 In accordance with Sec. 51.783, Texas Education Code, the Board of Regents of The Texas A&M University System is requesting Competitive Sealed Proposals (CSP) from general construction contractors.
- 1.2 All data submitted with a Proposal, except as noted herein, is deemed to be a part of the terms and conditions of the Contract.
- 1.3 It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors and our purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing. Subcontracting opportunities are anticipated for this Request for Competitive Sealed Proposals (RFCSP) and therefore a HUB Subcontracting Plan (HSP), Part 3, is required.

2.0 RECEIPT OF PROPOSALS:

- 2.1 Proposals will be received at the time, place and under conditions set forth in the published RFCSP.
- 2.2 Proposal documents are obtainable from the Architect/Engineer (A/E) under conditions set forth in the RFCSP.

3.0 INFORMATION INQUIRIES:

- 3.1 Information inquiries regarding the CSP process should be directed to the Executive Director for the Office of Facilities Planning & Construction at telephone: (979) 458-7000.
- 3.2 See "Supplemental Instructions for Competitive Sealed Proposals" for information inquiries regarding the technical aspects of the Drawings and Specifications.
- 3.3 Information inquiries regarding the HUB Program and HSP process should be directed to the appropriate HUB Coordinator as listed in Part 3, HUB Subcontracting Plan.

4.0 DISCREPANCIES AND INTERPRETATIONS:

- 4.1 Proposer must notify the Project Manager and the A/E, in writing, at least eight (8) business days prior to the scheduled Proposal opening date, if discrepancies, ambiguities or omissions are found in the Proposal documents, or if further information or interpretation is desired.
- 4.2 Answers to inquiries will be provided in writing to all proposers in addenda form. All provisions and requirements of such addenda will supersede or modify affected portions

of the Proposal documents. All addenda will be incorporated into and bound with the Contract Documents. No other explanation or interpretation will be considered binding.

5.0 SUBMITTAL PROCEDURE:

- 5.1 There are two parts to the Competitive Sealed Proposal: Part 1A and Part 1B. Submit one (1) original Competitive Sealed Proposal by the time stated per part sealed in a unimailer envelope furnished by the A/E or available at The Texas A&M University System Office of Facilities Planning & Construction.
- 5.2 Enclose the Bid/Proposal Bond or other acceptable Proposal guaranty in the small envelope affixed to the outside of the unimailer envelope for Part 1A.
- 5.3 Complete the proposer identification information on the unimailer envelope.
- 5.4 Submit Part 2, Technical Proposal, Proposer's Qualifications by the time stated and in the quantity called for in the Supplemental Instructions for Competitive Sealed Proposals.
- 5.5 Submit Part 3, Technical Proposal, Historically Underutilized Business (HUB) Subcontracting Plan by the time stated and in the quantity called for in the Supplemental Instructions for Competitive Sealed Proposals. The HSP shall be submitted in a separate three ring binder(s) with sections appropriately tabbed.
- 5.6 If the Proposal is submitted by mail, place the unimailer envelope in a mailing envelope addressed per the Supplemental Instructions for Competitive Sealed Proposals. Delivery of all Proposal parts prior to the advertised time set for the Proposal receipt and subsequent submittal deadlines is the responsibility of the proposer.

6.0 PREPARATION OF COMPETITIVE SEALED PROPOSAL:

- 6.1 The Proposal must be based on conditions at the project site, the project Drawings and Specifications and any addenda issued.
- 6.2 The Proposal, Part 1, (TAMUS Form C-4 CSP) must be authoritatively executed *in blue ink* and submitted on the Proposal form furnished by the A/E.
- 6.3 If the Proposer's Qualifications form does not provide sufficient space to adequately respond to a question, the proposer should attach additional 8 1/2" X 11" white paper sheets as required, referencing the page and question numbers to which the response pertains.
- 6.4 A Proposal showing omissions, alterations, conditions, or carrying riders or other qualifiers which modify the Proposal form may be rejected as irregular.
- 6.5 The various sections of the Part 2 and Part 3 Proposal data should be separated by tabbed dividers. The tabs must identify the sections by name rather than simply a number or alphabet.

- 6.6 If the proposer chooses to issue a "No Response" (N/R) to a question on the Proposal, an explanation of this action is required. Failure to do so, may be viewed by the Owner as an incomplete response and may subject the entire Proposal to rejection.
- 6.7 Only one Part 1 Proposal shall be submitted by each proposer (A&M System Form C-4 CSP). If two or more Part 1 Proposals are submitted, either in one envelope or in separate envelopes, such multiple Proposals may be subject to rejection. The blank Proposal form bound in the Specification is for the proposer's information only.
- 6.8 A fully completed and executed Part 3, HUB Subcontracting Plan acceptable to the Owner must be submitted as directed in the Supplemental Instructions for Competitive Sealed Proposals. Failure to submit a Part 3, HUB Subcontracting Plan will constitute an irregular proposal which will be rejected. The HSP shall not be modified after the time set for receipt except as set forth in Paragraph 6.11.
- 6.9 The proposer may modify a Part 1 Proposal by means of marking an add or deduct to a line in the Part 1 Proposal on the outside of the unimailer in ink with individuals initials prior to the advertised time set for the receipt of Proposals in the published RFCSP. The add or deduct must not reveal the Proposal price but should identify the addition or subtraction or other modification(s) so that the final prices will not be known until the sealed Proposal is opened. Any such modification shall be confirmed on company letterhead and executed by a company officer and received by the presiding official within two (2) working days after the date of the Proposal opening, otherwise the Proposal modification will be ignored and the total Proposal may be rejected.
- 6.10 Proposals received after the advertised time for the Proposal receipt will be ineligible and will be returned unopened.
- 6.11 Before publicly opening the proposals, the HUB Coordinator official shall make a cursory review of the proposer's HSP to determine if a good faith effort has been made and for preliminary acceptability. If no HSP is submitted or if the submitted Plan is not complete and cannot be made complete under this procedure or is not indicative of a good faith effort as defined in the Part 3, HUB Subcontracting Plan Submittal instructions and the Owner's Policy on Utilization of HUBs, the HUB Coordinator will publicly announce this to those in attendance at the opening, reject the proposal and return all submitted proposal parts to the proposer unopened. Within five working days after the Plan receipt, the HUB Coordinator shall examine the proposer's HSP in detail. If from this detail examination of the Plan the HUB Coordinator determines that the Plan is incomplete and/or that a good faith effort has not been made, the proposal shall be declared non-responsive and will be rejected. The proposer will be notified of this action in writing and all submitted proposal parts shall be returned to the proposer.
- 6.12 After all Proposals are publicly opened, but before they are read aloud, they will be examined by the presiding official to determine if they are complete, in proper form and properly signed. If an error or omission is discovered and classified by the presiding official as a technicality which the Owner has reserved the right to waive, the proposer's representative may be permitted to make the appropriate correction. Any such correction will be announced and explained to those present at the Proposal opening. A Proposal which is not and cannot be made eligible for consideration under this procedure will not be read, nor will the Proposal prices be revealed.

6.13 A proposer will receive no compensation or reimbursement of expenses incurred in of the preparation of a CSP submission.

6.14 The Owner reserves the right to reject any or all Proposals.

7.0 PUBLIC INFORMATION AND NOTICE OF CONFIDENTIALITY

7.1 The Owner considers all Proposal information, documentation and supporting materials submitted in response to this RFCSP to be non-confidential and/or non-proprietary in nature, and therefore, shall be subject to the public disclosure under the Texas Public Information Act (*Texas Government Code*, Sec. 552.001, et seq.) after the execution of the contract.

7.2 The Proposer must identify and designate those portions of their technical Proposal which contains trade secrets or other proprietary data. If the Proposal includes such data, the proposer shall:

1. Mark the cover sheet of the Technical Proposal with the following phrase: "This Proposal includes data that shall not be disclosed outside The Texas A&M University System and the A/E design team and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this Proposal."
2. Mark each sheet and the specific data on that sheet that the proposer wishes to restrict with the following phrase: "Use or disclosure of this specifically marked data is subject to the restrictions regarding confidentiality cited on the cover sheet of this Proposal."

8.0 PROPOSAL GUARANTY:

8.1 A certified or cashier's check on a State or National Bank or a Bid/Proposal Bond on The Texas A&M University System (A&M System) Form C-2, Bid/Proposal Bond, from a Surety authorized to transact business in the State of Texas, with a rating of A- or better with A.M. Best Company and listed in the Department of Treasury list of companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies in the amount of not less than five percent (5%) of the greatest total amount of the proposed contract amount, payable without recourse to the order of the Board of Regents of The Texas A&M University System, must accompany the Proposal as a guarantee that, if awarded the Contract, the proposer will promptly enter into and execute the Contract and Performance and Payment Bonds on the forms provided.

8.2 The Bid or Proposal Bond must be accompanied by a properly dated and executed Power of Attorney with a live Surety seal on each document. Failure to do so will constitute an irregular Proposal which may be rejected. Use of a Surety company's bond form is not acceptable and will cause the Proposal to be rejected.

- 8.3 Should the successful proposer fail to execute the Contract and Bonds within fifteen (15) days after the date of transmittal of the Contract Documents for execution, the Proposal Guaranty becomes the property of the Owner, not as a penalty, but as liquidated damages.
- 8.4 Proposal guaranties of all proposers will be retained until after the Contract and Bonds have been executed.

9.0 PRE-QUALIFICATION OF PROPOSER

- 9.1 The Owner, at its option, may elect to pre-qualify proposers. If pre-qualification is to be accomplished, proposers will be required to submit all or specific parts of the information required by the RFCSP with the exception of pricing information. Pre-qualification may not be a conclusive determination that a proposer offers the best value to the Owner.
- 9.2 A pre-qualified Proposal may be rejected on the basis of subsequently discovered information, but failure to pre-qualify does not prevent a subsequent determination that a proposer offers the best value to the Owner regarding a specific proposal.

10.0 PROPOSER REQUIREMENTS:

- 10.1 As required by Chapter 231, Texas Family Code, a Proposal for a contract to be paid from state funds must include the name and social security number of the sole proprietor, each partner, shareholder or owner with an ownership interest of at least 25 percent of the business entity submitting the Proposal.
- 10.2 The Texas Family Code requires each Proposal to include the following statement: "Under Section, 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract Proposal 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." Proposer agrees with this certification statement upon submittal of a properly executed Proposal.
- 10.3 All proposals that have a contract value of \$100,000 or more shall contain a Historically Underutilized Business (HUB) Subcontracting Plan. Each Proposer must have made a good faith effort in developing the HSP. The instructions for preparing the HSP are located in the Part 3, HUB Subcontracting Plan of the C-4 CSP form.
- 10.4 Out of state corporate proposers must submit a Certificate of Good Standing or a Certificate of Authority with their Proposal. This certificate may be applied for through the office of the Texas Secretary of State.

11.0 OWNERSHIP OF THE COMPETITIVE SEALED PROPOSAL

- 11.1 Submitted Proposals, documentation and supporting materials shall become the property of the Owner.

12.0 SITE INVESTIGATION:

- 12.1 It is the responsibility of each proposer to examine the project site, existing improvements and adjacent property and be familiar with existing conditions before submission of a Proposal.
- 12.2 After investigating the project site and comparing the Drawings and Specifications with the existing conditions, the proposer should immediately notify the A/E, in accordance with paragraph 4.0 of these Instructions for Competitive Sealed Proposals, of any conditions for which requirements are not clear; or about which there is any question regarding the extent of the Work involved.
- 12.3 Should the successful proposer fail to make the required investigation and should a question arise after award of contract as to the extent of the Work involved in any particular case, after receiving recommendations from the A/E, the Owner will make the interpretation of the Contract Documents.

13.0 EVALUATION AND CONTRACT AWARD PROCESS:

- 13.1 Proposals will be opened publicly to identify the names of the proposer and their respective proposed contract amount and contract time. Other contents of the Proposals will be afforded security sufficient to preclude disclosure of the contents prior to award or rejection action.
- 13.2 Proposals will be evaluated by the Owner and the A/E. The criteria for evaluation and selection of the successful proposer for this award will be based upon the factors listed below:
 - (1) Proposed construction contract amount – 72%
 - (2) Proposed construction contract time – 8%
 - (3) Proposer's project schedule/record of maintaining schedule – 6%
 - (4) Proposer's experience and qualifications – 7%
 - (5) Litigation/claims/compliance – 2%
 - (6) Proposer's Quality Control program – 1%
 - (7) Proposer's safety record and program – 1%
 - (8) Historically Underutilized Business (HUB) Subcontracting Plan – 2%
 - (9) Proposal submittal/response – 1%
- 13.3 After opening the Proposals, the Owner will evaluate and rank each Proposal with respect to the published selection criteria described under Section 13.2. After opening and ranking, an award may be made on the basis of the initially submitted Proposal, without discussion, clarification or modification, or the Owner may discuss with the selected proposer, offers for cost adjustment and other elements of the Proposal. Other than the data read at the Proposal opening, the Owner will not disclose any information derived from the Proposals submitted by competing firms in conducting such discussions.

If the Owner determines that it is unable to reach a satisfactory agreement with the first ranked proposer, the Owner will terminate discussions with that proposer. The Owner will then proceed with negotiations with each successive proposer as they appear in the order of ranking until an agreement is reached, or until the Owner has rejected all Proposals. After termination of discussions with any proposer, Owner will not resume discussions with that proposer.

- 13.4 Immediately following the Owner's approval of the order of ranking of proposers and the Owner's contract award or Proposal rejection action, the proposers will be notified by electronic or facsimile message.
- 13.5 The Owner reserves the right to accept or reject any or all alternates or to accept any combination of alternates considered advantageous to the Owner.
- 13.6 The award or rejection action regarding this Proposal is at the sole discretion of the Owner and the Owner makes no warranty regarding this Proposal that a contract will be awarded to any proposer.
- 13.7 The Owner agrees that if the Contract is awarded, it will be awarded to the proposer offering the best value to the Owner. The Owner is not bound to accept the lowest priced Proposal if that Proposal is judged not to be the best value for the Owner, as determined by the Owner.

**THE TEXAS A&M UNIVERSITY SYSTEM
SUPPLEMENTAL INSTRUCTIONS FOR COMPETITIVE SEALED PROPOSALS**

These "Supplemental Instructions for Competitive Sealed Proposals," amend and supplement the "Instructions for Competitive Sealed Proposals" and shall govern in the event of any conflict with the "Instructions for Competitive Sealed Proposals."

1.0 PROPOSAL DOCUMENTS:

- 1.1. Drawings and Specifications have been prepared by the architectural/engineering (A/E) firm of **Kirksey Architecture** Documents include Drawings and Specifications dated **July 1, 2015**.
- 1.2. Information inquiries regarding the Competitive Sealed Proposals (CSP) method of procurement should be directed to Mr. Russ Wallace, Executive Director, Office of Facilities Planning & Construction, The Texas A&M University System at (979) 458-7000.
- 1.3. Inquiries regarding the technical aspects of the Drawings, Specifications and other CSP documents should be directed to **Kirksey Architecture, Emily Winters AIA, 713.426-7446**.

2.0 PROPOSAL DEADLINE AND REQUIRED SUBMITTALS:

- 2.1. Proposals will be received by Mr. Russ Wallace, Executive Director, The Texas A&M University System, Office of Facilities Planning & Construction, 301 Tarrow Street 2nd Floor, College Station, Texas 77840-7896, in parts, at times and dates as follows:
- 2.2. **PART 1A– BASE BID AND UNIT PRICING ONLY COMPETITIVE SEALED PROPOSAL**, will be received by Mr. Wallace at the aforementioned location **until 2:00 p.m., August 4, 2015**, then publicly opened and read aloud after review of Part 3.
 - 2.2.1. Part 1A Proposals must include the following:
 - 2.2.1.1. One (1) executed original Competitive Sealed Proposal, PART 1A(A&M SYSTEM Form C-4 CSP), sealed in the unimailer envelope provided.
 - 2.2.1.2. Certified or Cashier's Check or One (1) executed original Bid/Proposal Bond (A&M SYSTEM Form C-2), sealed in the small envelope affixed to the outside of the unimailer envelope.
 - 2.2.2. FAILURE TO SUBMIT A COMPLETE PROPOSAL WILL BE VIEWED BY THE OWNER AS A NON-RESPONSIVE PROPOSAL WHICH WILL BE SUBJECT TO REJECTION.
 - 2.2.3. FAILURE TO SUBMIT A COMPLETE PROPOSAL WILL BE VIEWED BY THE OWNER AS A NON-RESPONSIVE PROPOSAL WHICH WILL BE SUBJECT TO REJECTION.

- 2.3. **PART 1B – ALTERNATES ONLY, COMPETITIVE SEALED PROPOSAL**, will be received by Mr. Wallace at the aforementioned location **until 3:00 p.m., August 4, 2015**, then publicly opened and read aloud after review of Part 3.

2.3.1. Part 1B-ALTERNATES ONLY Technical Proposals must include the following:

2.3.1.1. One (1) executed original Competitive Sealed Proposal, **PART 1B (A&M SYSTEM Form C-4 CSP)**, sealed in the unimailer envelope provided, sealed in the unimailer envelope provided.

2.3.2. FAILURE TO SUBMIT A COMPLETE PROPOSAL WILL BE VIEWED BY THE OWNER AS A NON-RESPONSIVE PROPOSAL WHICH WILL BE SUBJECT TO REJECTION.

2.4. Six (6) copies of **PART 2, TECHNICAL PROPOSAL, PROPOSER'S QUALIFICATIONS**, will be received **until 2:00 p.m., August 4, 2015**, by Mr. Wallace at the aforementioned location. Include a copy of information on an electronic formatted media device.

2.5. One (1) copy of **PART 3, TECHNICAL PROPOSAL, HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN**, will be received **until 2:00 p.m., August 4, 2015**, by Mr. Wallace at the aforementioned location. The HUB Subcontracting Plan shall be clearly labeled "HUB Subcontracting Plan, TAMU Agriculture & Life Sciences Building 4, Project No. 06-3175". Sections shall be appropriately tabbed for easy reference.

2.5.1. FAILURE TO SUBMIT A COMPLETE AND ACCEPTABLE HUB SUBCONTRACTING PLAN WILL BE VIEWED BY THE OWNER AS A NON-RESPONSIVE PROPOSAL WHICH WILL BE REJECTED.

2.5.1.1. **NOTE TO GENERAL CONTRACTOR:**
THE HUB SUBCONTRACTING PLAN (HSP), SUBMITTED AS PART 3 OF THE CSP PROCESS, WILL BECOME A PART OF ANY CONSTRUCTION CONTRACT RESULTING FROM THIS SOLICITATION.

2.6. Proposals submitted by mail or courier shall be addressed to Mr. Russ Wallace, Executive Director, The Texas A&M University System, Office of Facilities Planning & Construction, 301 Tarrow Street 2nd Floor, College Station, TX 77840-7896. Delivery of all proposal parts prior to the submittal deadlines set forth above is the responsibility of the proposer.

2.7. Proposals will be publicly opened and the names of the respondents and the monetary proposals publicly read aloud **at 3:15 p.m on August 4, 2015**, in the Texas A&M University System Offices, Room 122, 301 Tarrow Street, College Station, Texas 77840.

3.0 PRE-PROPOSAL MEETING:

- 3.1. A Pre-Proposal meeting will be held at **10:00 am, Thursday, July 09, 2015** at the **Texas A&M University System Offices, Room 122, 301 Tarrow Street, College Station, Texas 77840**. All general contractors and subcontractors planning to submit a proposal are encouraged to attend.

4.0 ESTIMATED BUDGET:

- 4.1. The Owner has established a range of **\$22,000,000** to **\$23,000,000** as the estimated construction budget for all Work including alternates as described in the Drawings, Specifications and other Contract Documents prepared by the A/E.

5.0 ESTIMATED CONSTRUCTION TIME:

- 5.1. The Owner has determined that **600** calendar days from the Notice to Proceed should be sufficient time for performing all work including alternates in accordance with the drawings, specifications and other contract documents prepared by the A/E.

6.0 EVALUATION AND CONTRACT AWARD PROCESS:

- 6.1. The A&M System reserves the right not to award the Base Bid or any or all of the Alternates.

PART 1A

BASE PROPOSAL & UNIT PRICING

TECHNICAL PROPOSAL

COMPETITIVE SEALED PROPOSAL

(Firm Name)

(Address)

(City/State/Zip Code)

(Phone)

(Fax)

For

Agriculture & Life Sciences Building #4

Texas A&M AgriLife Research

College Station, Texas

Project No. 06-3175

Project No. 06-3175

Proposal Of: _____

(Legal Firm Name)

COMPETITIVE SEALED PROPOSAL
to
THE BOARD OF REGENTS
of
THE TEXAS A&M UNIVERSITY SYSTEM
FOR THE FOLLOWING WORK

Agriculture & Life Sciences Building #4
Texas A&M AgriLife Research
College Station, Texas

The undersigned, as a designated representative of the proposer, declares such firm is the only entity, as principal, with any interest in this Proposal and the Proposal is made without collusion with any other entity. The proposer affirms that the form of Contract, Instructions for Competitive Sealed Proposals, Supplemental Instructions for Competitive Sealed Proposal, Addenda, selection criteria, estimated budget, Specifications and the Drawings pertaining to this Proposal have been examined and the firm has also examined the locations, conditions and classes of materials for the proposed Work and agrees to provide all necessary machinery, tools, apparatus and construction means to accomplish the Work described in the Contract Documents in the manner prescribed.

The proposer agrees the quantities of Work to be performed and materials to be furnished may be increased or decreased as may be considered necessary, in the sole opinion of the Owner's Representative, to complete the Work as planned and contemplated. Adjustment for changes in Work will be in accordance with the Owner's current Uniform General and Supplementary Conditions.

Proposal amounts must be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.

The proposer acknowledges receipt and incorporation of the following addenda into this Proposal:

No.	_____	_____	_____	_____	_____
Dated	_____	_____	_____	_____	_____
No.	_____	_____	_____	_____	_____
Dated	_____	_____	_____	_____	_____

Is proposer a corporation? Check One: Yes ☐ No ☐.

If proposer is subject to the Texas Franchise Tax, a "Certificate of Good Standing" issued by the Texas Comptroller of Public Accounts must be submitted with the Proposal.

A "nonresident proposer" is equivalent to a "nonresident bidder," and a "Texas Resident Proposer" is equivalent to a "Texas Resident Bidder," as defined hereafter and may be awarded a Contract in accordance with Chapter 2252, Texas Government Code, as partially quoted below:

"...(3) "Nonresident bidder" refers to a person who is not a resident.

(4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state."

In the space below, enter the address of the proposer's place of business and, if applicable, the name and address of the proposer's ultimate parent company or majority owner.

Proposer's name and address of principal place of business:

Ultimate parent company or majority owner's name and the address of its principal place of business:

BASE PROPOSAL AMOUNT

Total amount for the furnishing of all labor, materials, services, equipment and appliances required in conjunction with and properly incidental to all Work (demolition, site work, general construction, mechanical, plumbing, electrical and data/telecommunications work not including Work listed as alternates) for construction of the _____, Texas, in conformance with Drawings and Specifications prepared by _____, Texas.

(Amount In Words)

_____ DOLLARS (\$_____) (Amount In Figures)

CONSTRUCTION TIME:

The undersigned agrees to complete all Work in the following number of calendar days from the Notice to Proceed:

_____ (Words) _____ (Proposer to complete) _____ (Numerals)

Builder's Risk Insurance:

Submit a credit amount to The Texas A&M University System for not providing the General Contractor's Builder's Risk Insurance. The Texas A&M University System has the option to insure the project under the System Builder's Risk Program which includes a \$100,000 deductible per occurrence, of which \$15,000 will be the responsibility of the contractor.

(Amount In Words)

_____ DOLLARS (\$_____) (Amount In Figures)

Accompanying this Proposal is a cashier's check or a Bid or Proposal Bond (A&M System Form C-2) in the amount of not less than five percent (5%) of the greatest total amount of this Proposal payable without recourse to the order of the Board of Regents of The Texas A&M University System. Use of a surety company bid bond form is NOT acceptable and will constitute an irregular proposal which will be rejected.

The proposer agrees that this Proposal will not be withdrawn for a period of ninety (90) days from the date of the Proposal opening.

The proposer further agrees to pay Liquidated Damages per calendar day for failure to complete the work within the contracted time in accordance with Section 9.11 of the Uniform General and Supplementary Conditions and as established in the Contract.

The proposer's attention is called to Items 10.1 and 10.2 in the Instructions for Competitive Sealed Proposals regarding delinquent child support payments under Chapter 231, Texas Family Code.

Failure to complete all portions of this Proposal form may cause the entire Proposal to be rejected.

E-mail Address: _____

Proposer:

(Legal Firm Name)

Federal Tax I. D. No. _____

By: _____
(Signature)

(Print or Type Name)

Title: _____

Address: _____

Phone No.: _____

FAX No.: _____

Name(s) of individual(s), proprietor(s), partner(s), share holders(s), or owner(s) with an ownership interest of at least 25% of the business entity executing this Proposal.

Name: _____

Name: _____

Name: _____

Name: _____

PART 1B

ALTERNATES ONLY

TECHNICAL PROPOSAL

COMPETITIVE SEALED PROPOSAL

(Firm Name)

(Address)

(City/State/Zip Code)

(Phone)

(Fax)

For

Agriculture & Life Sciences Building #4

Texas A&M AgriLife Research

College Station, Texas

Project No. 06-3175

Project No. 06-3175

Proposal Of: _____

(Legal Firm Name)

COMPETITIVE SEALED PROPOSAL
to
THE BOARD OF REGENTS
of
THE TEXAS A&M UNIVERSITY SYSTEM
FOR THE FOLLOWING WORK

Agriculture & Life Sciences Building #4
Texas A&M University
College Station, Texas

The undersigned, as a designated representative of the proposer, declares such firm is the only entity, as principal, with any interest in this Proposal and the Proposal is made without collusion with any other entity. The proposer affirms that the form of Contract, Instructions for Competitive Sealed Proposals, Supplemental Instructions for Competitive Sealed Proposal, Addenda, selection criteria, estimated budget, Specifications and the Drawings pertaining to this Proposal have been examined and the firm has also examined the locations, conditions and classes of materials for the proposed Work and agrees to provide all necessary machinery, tools, apparatus and construction means to accomplish the Work described in the Contract Documents in the manner prescribed.

The proposer agrees the quantities of Work to be performed and materials to be furnished may be increased or decreased as may be considered necessary, in the sole opinion of the Owner's Representative, to complete the Work as planned and contemplated. Adjustment for changes in Work will be in accordance with the Owner's current Uniform General and Supplementary Conditions.

Proposal amounts must be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.

The proposer acknowledges receipt and incorporation of the following addenda into this Proposal:

No.	_____	_____	_____	_____	_____
Dated	_____	_____	_____	_____	_____
No.	_____	_____	_____	_____	_____
Dated	_____	_____	_____	_____	_____

Is proposer a corporation? Check One: Yes ☐ No ☐.

If proposer is subject to the Texas Franchise Tax, a "Certificate of Good Standing" issued by the Texas Comptroller of Public Accounts must be submitted with the Proposal.

A "nonresident proposer" is equivalent to a "nonresident bidder," and a "Texas Resident Proposer" is equivalent to a "Texas Resident Bidder," as defined hereafter and may be awarded a Contract in accordance with Chapter 2252, Texas Government Code, as partially quoted below:

"...(3) "Nonresident bidder" refers to a person who is not a resident.

(4) "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state."

In the space below, enter the address of the proposer's place of business and, if applicable, the name and address of the proposer's ultimate parent company or majority owner.

Proposer's name and address of principal place of business:

Ultimate parent company or majority owner's name and the address of its principal place of business:

ADD ALTERNATE PROPOSAL ITEMS:

Refer to Specification Section 01230 for detailed description of work included in each Alternate Proposal Item.

In the spaces provided below, state amounts, both in words and figures, to be added to Base Proposal Amount, in the event that any of the described Alternate Proposal Items are accepted. Include all variations in profit, overhead, bonds, insurance and similar related items. Time of completion shall not be changed due to the acceptance of any of the Alternate bids below except for adjustments indicated for each alternate in the space provided.

A "non-response" or omission of proposal price on any Alternate may cause the total proposal to be rejected.

The Owner reserves the right to accept or reject any Alternate in the order of its own choosing.

ALTERNATE PROPOSAL ITEM NUMBER ONE – Alternate No. 1: 3rd Floor.

The amount to be added to the Base Proposal Amount to include the level shown in the documents as the 3rd Floor. Finished out as shown in the 3rd Floor Alternate No. 1 Plans detailed description of alternate including all labor, materials, services and equipment as described in the plans and specifications is:

ADD:

(Amount In Words)

_____ DOLLARS (\$ _____)
(Amount In Figures)

Adjustment to total project time for this Alternate Proposal Item, in days: _____
(Numerals)

ALTERNATE PROPOSAL ITEM NUMBER TWO – Alternate No. 2: Fire Extinguishers.

The amount to be added to the Base Proposal Amount to furnish and install fire extinguishers and wall clips as documented including all labor, materials, services, equipment and appliances as described in the plans and specifications is:

ADD

(Amount In Words)

_____ DOLLARS (\$ _____)
(Amount In Figures)

Adjustment to total project time for this Alternate Proposal Item, in days: _____
(Numerals)

Accompanying this Proposal is a cashier's check or a Bid or Proposal Bond (A&M System Form C-2) in the amount of not less than five percent (5%) of the greatest total amount of this Proposal payable without recourse to the order of the Board of Regents of The Texas A&M University System. Use of a surety company bid bond form is NOT acceptable and will constitute an irregular proposal which will be rejected.

The proposer agrees that this Proposal will not be withdrawn for a period of ninety (90) days from the date of the Proposal opening.

The proposer further agrees to pay Liquidated Damages per calendar day for failure to complete the work within the contracted time in accordance with Section 9.11 of the Uniform General and Supplementary Conditions and as established in the Contract.

The proposer's attention is called to Items 10.1 and 10.2 in the Instructions for Competitive Sealed Proposals regarding delinquent child support payments under Chapter 231, Texas Family Code.

Failure to complete all portions of this Proposal form may cause the entire Proposal to be rejected.

Proposer: Name(s) of individual(s), proprietor(s), partner(s), share holders(s), or owner(s) with an ownership interest of at least 25% of the business entity executing this Proposal.

(Legal Firm Name) Name: _____

Name: _____

Federal Tax I. D. No. _____ Name: _____

By: _____
(Signature) Name: _____

(Print or Type Name)

Title: _____

Address: _____

Phone No.: _____

FAX No.: _____

E-mail Address: _____

PART 3
HUB SUBCONTRACTING PLAN
for
CONSTRUCTION SERVICES

(Firm Name)

(Address)

(City/State/Zip Code)

(Telephone)

(Fax)

(E-Mail Address)

for

Agriculture & Life Sciences Building #4
Texas A&M AgriLife Research
College Station, Texas
Project No. 06-3175

- I. The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting.

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

The Texas A&M University System has determined that the agency's goals are higher than the State's goals. Therefore, respondents are required to use the following:

1. 11.20% for heavy construction other than building contracts;
2. 21.1% for all building construction, including general contractors and operative builders contracts;
3. 21.55% for all special trade construction contracts;
4. 32.07% for professional services contracts;
5. 12.63% for all other services contracts; and
6. 52.78% for commodities contracts.

A Historically Underutilized Business (HUB) is defined by statute as an entity with its principal place of business in this state that is: (a) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, Native Americans and Service Disabled Veterans and have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; and have a proportionate interest and demonstrate active participation in the control operation and management of the corporation's affairs; (b) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described in subdivision (a) of the subsection; (c) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons and demonstrate active participation in the control, operation and management of the partnership's affairs; (d) a joint venture in which entity in the joint venture is a HUB under this subsection; or, (e) a supplier contract between a HUB under this subsection and a prime contractor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

The System shall make a good faith effort to meet or exceed either the State of Texas Disparity Study goals or the agency's goal and to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year. It is the policy of The System to contract directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F and Comptroller of Public Accounts HUB Rules, TAC Section § 20.14.

The total expected value of this contract is \$100,000 or more and The System has determined that subcontracting opportunities are probable for this contract. Therefore, the Respondent is required to submit a HUB Subcontracting Plan (HSP) with their proposal. The Respondents will use the procedures prescribed in Article II when developing the HSP.

All Respondents must give clear evidence that good faith effort was made to comply with the HUB requirements identified in TAC, Section §20.14, and the HSP shall include the documents shown in Article II, Paragraphs 4.b.i, ii and iii.

The Owner will review the information/documentation and use it as a basis to determine if a good faith effort was made by the Respondent to utilize HUB subcontractors/suppliers on this contract. If it is determined that a good faith effort was not made, the Respondent's submittal/proposal will be determined to be non-responsive and the submittal/proposal shall be rejected and the reasons for rejection recorded in the project files. An accepted HSP Subcontracting Plan will become a part of any contract with the Respondent resulting from this solicitation and then can only be modified by contract change order.

If the Respondent can perform and intends to complete all subcontracting opportunities with its own employees and resources without using any subcontractors, the HSP submitted with the Respondent's submittal/proposal shall only include the documents shown in Article II, Paragraphs 4.c.i, ii and iii.

For information regarding The Texas A&M University System HUB Program and HUB subcontracting requirements, please contact Mr. Jeff Zimmermann, Director of Procurement & Business Services, jjzimmermann@tamus.edu, (979) 458-6410.

II. HUB SUBCONTRACTING PLAN (HSP) PROCEDURES

The following procedures are specified pursuant to the Comptroller of Public Accounts HUB Rules, TAC, Title 34, Sections §20.13 and §20.14:

1. **The System has determined that a Good Faith Effort is met in the following manner:**

If you are responding to Construction Services RFP, or CSP, you are to submit “Method B” ONLY. The State of Texas HUB Subcontracting Plan forms shall be accessed on the following website:

<http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>

The State of Texas HSP forms shall be completed according to the instructions within the form and as stated below. **PLEASE NOTE that pages 1 of 2 and 2 of 2 of “Method B” of the HSP forms must be replicated for EACH of the categories to be subcontracted by the respondent, regardless of who is performing the subcontracted services.**

- a. An HSP is required as part of bids, proposals, offers, or other applicable expression of interest valued at \$100,000 or more. Responses that do not include the HSP or if the agency determines that the HSP was not developed in good faith, shall be rejected as a material failure to comply with the advertised specifications.
- b. When the System has determined that subcontracting opportunities are probable, Respondent’s bids, proposals, offers, or other applicable expression of interest will include:
 - i. Cover sheet, Page 1;
 - ii. Letter of transmittal attesting that the respondent has read and understands the Policy on Historically Underutilized Businesses (see Attachment A of the HSP);
 - iii. State of Texas Historically Underutilized Business Subcontracting Plan explaining how the respondents made a good faith effort in the development of the HSP and identify the HUBs and non-HUBs that will be utilized for subcontracting opportunities (See State of Texas HSP Form) In Section B-4 Subcontractor Selection of the State of Texas HSP Form the approximate dollar amount and expected percentage of contract fields are not required to be filled in with this initial submission.
- c. When the System has determined that subcontracting opportunities are probable, but the respondent can perform and intends to complete all the subcontracting opportunities with its employees and resources without any subcontractors, the HSP shall include:
 - i. Cover sheet, Page 1;
 - ii. Letter of transmittal attesting that the respondent has read and

- understands the System's Policy on HUBs; and,
- iii. Self Performance affirmation attesting that the respondent shall perform the subcontracting opportunities identified by the agency, with its own employees and resources (See State of Texas HSP Form, page 2, Sections 2a, and page 3, Section 3).

Note: If the contractor decides after the award to subcontract any part of the contract, the contractor must notify the System. The contractor must comply with the good faith effort requirements relating to developing and submitting a subcontracting plan before any modifications or performance of the awarded contract involving subcontracting can be authorized by the System.

2. The respondent shall state whether it is a Texas certified HUB.
3. To meet The A&M System's good faith effort requirements, the respondents shall follow, but is not limited to, procedures listed below when developing an HSP:
 - a. Divide the contract work into reasonable portions to the extent consistent with prudent industry practice.
 - b. Provide written justification of the selection process if a non-HUB subcontractor is selected.
 - c. Provide notice to trade organizations or development centers that assist in identifying HUBs by disseminating subcontracting opportunities to their membership/participants. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. Respondent must provide notice to organizations or development centers not less than seven (7) working days prior to submission of the response (bid, proposal, offer, or other applicable expression of interest).
 - d. Notify HUBs of the subcontracting opportunities that the respondent intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the items contained in paragraph 6.c above. The notice shall be provided to potential HUB subcontractors prior to submission of the respondent's response.
 - e. The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than seven (7) working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
 - f. The respondent shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas or the A&M System Office of HUB & Procurement Programs when searching for HUB subcontractors. Respondent may rely on the services of minority, women, and community

organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program who are able to provide all or select elements of the HUB subcontracting plan.

NOTE: A complete list of all certified HUBs may be electronically accessed through the Internet at

<https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>

- g. The respondent shall provide the notice described in this section to **three (3) or more** HUBs for **each** subcontracting opportunity that provide the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and/or employees. **The A&M System encourages respondents to seek and find a “Diverse Group” of Historically Underutilized Businesses in each category in which a subcontract of services is solicited.**
 - h. Documentation showing correspondence between prime and potential HUB subcontractors includes but not limited to contact information, date of delivery confirmation, etc.
4. In making a determination whether a good faith effort has been made in the development of the required HUB subcontracting plan, the System shall require the respondent to submit supporting documentation explaining the ways the respondent has made a good faith effort according to each criterion listed above. The documentation shall include at least the following:
- a. Whether the respondent divided the contract work into reasonable portions in accordance with prudent industry practices.
 - b. Whether the respondent sent notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to **three (3) or more** qualified HUBs for **each** subcontracting opportunity allowing reasonable time for HUBs to participate effectively.
 - c. Whether the respondent negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
 - d. Whether the respondent provided notice to trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants.
 - e. A list of all vendors, including HUBs not listed in the HSP form who responded.
5. The submission of a protégé as a subcontractor in the HSP, when the respondent is a participant in a Mentor Protégé Program under the Texas Government Code §2161.065, will constitute a good faith effort for the particular work to be subcontracted with the protégé. The respondent must submit a copy of the

Mentor Protégé Agreement that has been entered into by the respondent (mentor) and a certified HUB (protégé) as part of their HSP. The Mentor Protégé Agreement must be a fully executed agreement that has been registered with the State of Texas prior to submitting the HSP. The HSP must also identify the work that will be performed by the protégé.

6. Prior to contract award, the HSP and supporting documentation shall be reviewed and evaluated by the Office of HUB and Procurement Programs (HUB Office) to determine if a good faith effort has been made in accordance with bid specifications and State of Texas HUB rules. If accepted, the HSP shall become a provision of the System contract. Any change in a subcontractor or vendor, as requested by the Respondent, will not reduce the HUB participation level presented in the initial proposal offering.
7. If the HUB Office determines that a submitted HSP was not developed in good faith, the HUB Office shall treat the lack of good faith as a material failure to comply with advertised specifications, and the subject bid or other response shall be rejected. The reason(s) for rejection shall be recorded in the procurement file.
8. Not later than sixty (60) days after the award of Contract, the selected contractor shall submit a revised HSP with all information in Section B-4 Subcontractor Selection completed. If there is a change in the subcontractor from the initial HSP the contractor shall follow Paragraph 11 below.
9. If at any time during the term of the contract, it becomes necessary to make a change to the approved HSP, such proposed change must be received for review and approval by the HUB Office before the change will be effective under the contract. The contractor must comply with provisions of TAC §20.14 relating to development and evaluation of HSP, in order to substitute or subdivide the work and/or substitute or add subcontractors prior to any alteration of the HSP. The System shall document changes to the HSP by contract change order. The reasons for proposed change(s) shall be requested on a Form C-27b Consultant/Subcontractor Substitution Form (Attachment C of the HSP) and recorded in the procurement file. In the event that a change is necessary, the requested changes will not reduce the level of HUB participation that was a part of the proposal at the time of construction contract award.
10. If a respondent has determined that it can perform all of the contract, the respondent must sign an affidavit (State of Texas HUB Form, page 3, Sections 9 and 10) and provide a statement explaining how the respondent intends to complete the contract with its own equipment, supplies, materials and/or employees submitted with the respondent's bid, proposal, offer, or other expression of interest.

If a respondent has determined it will perform all work with its own equipment, supplies, materials, and/or employees, etc., the respondent must agree to provide the following if requested by the System:

- a. evidence of existing staffing to meet contract objectives;
- b. monthly payroll records showing company staff fully engaged in the contract;
- c. onsite reviews of company headquarters or work site where services are to

- be performed; and,
- d. documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

If the contractor selected decides to subcontract any part of the contract after the award, the contractor must comply with provisions of this document relating to developing and submitting a subcontracting plan prior to any modifications or performance involving subcontracting work can be authorized by the System. If the Contractor subcontracts any of the work without prior authorization and without complying with TAC Section §20.14, the contractor is deemed to have breached the contract and be subject to any remedial actions provided by Texas Government Code, Chapter 2161, and 34 TAC §20.14. The System may report non-performance relative to its contracts to the Comptroller of Public Accounts in accordance with 34 TAC §20.105, (relating to Debarment).

11. The contractor will be required to submit a revised HSP for additional subcontracting opportunities that were not identified in the original HSP and created when the original scope of work expands through a change order, contract amendment or a contract renewal.
12. The System requires a respondent to whom a contract has been awarded, to report to the System the identity and the amount paid to its subcontractors, HUBs and non-HUBs. If the contractor fails to fulfill the HSP specified in the contract, the System shall notify the contractor of any deficiencies. The System shall require the contractor to submit documentation and explain why the failure to fulfill the HUB Subcontracting Plan should not be attributed to a lack of good faith effort by the contractor.
13. If a determination is made that the contractor failed to implement the HSP in good faith, the System, in addition to any other remedies, may report nonperformance to the Comptroller of Public Accounts in accordance with 34 TAC, Chapter §20.105 (relating Debarment).
14. During the term of the contract, the System shall determine whether the value of the subcontracts to HUBs meets or exceeds the HSP provisions specified in the contract.

Reporting Requirements

Each contractor that enters into a contract shall report to the System all subcontracting/supplier payments. The report will include the volume of work performed under the contract, the portion of the work that was performed with its own employees/resources, HUB and Non-HUB subcontractors and suppliers (See HSP Prime Contractor Progress Assessment Report Form located at the following link: <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>). The System may request payment documentation in accordance with the Comptroller of Public Accounts HUB Rules that confirms the performance of the contractor. During the course of the contract, the System shall discuss the performance of the contractor and document the contractor performance in the contract file.

Note: When the prime contractor/vendor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees, as defined by the Internal Revenue Service, in order for the Owner to receive 100% HUB credit for the entire contract.

If a HUB prime contractor's HSP identifies that it is planning to perform less than 25% of the total value of contract with its own or leased employees, the HUB contractor must report to the Owner the value of the contract that was actually performed by the HUB prime contractor and the amount to be performed by its HUB subcontractors.

The HUB Office shall audit the contractor's compliance with the HSP. If the contractor is found deficient, the System shall give the contractor an opportunity to submit documentation and explain to the System why the failure to fulfill the HSP should not be attributed to a lack of good faith effort by the contractor.

(Attachment A)

(SUBMIT ON YOUR BUSINESS LETTERHEAD)

Mr. Jeff Zimmermann
The Texas A&M University System
Moore/Connally Building
301 Tarrow, Suite 361
College Station, Texas 77840-7896

Subject: HUB Subcontracting Plan
Project Number: [XX-XXXX]
[PROJECT NAME]
[CITY], Texas

Dear Mr. Zimmermann:

I am pleased to forward this HUB Subcontracting Plan as an integral part of our written response submitted in connection with your Construction Services solicitation for Project Number [XX-XXXX].

I have read and understand The Texas A&M University System's Policy on Utilization of Historically Underutilized Businesses (HUBs) and the goals for HUB participation.

Sincerely,

(Signature)
(Printed Name)
(Printed Title)

**THE TEXAS A&M UNIVERSITY SYSTEM
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is made this ____day of_____, 2015 between _____, hereinafter called the “Contractor,” and the Board of Regents of The Texas A&M University System, hereinafter called the “Owner.” Capitalized terms used in this Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Owner’s current Uniform General and Supplementary Conditions (UGSC).

WITNESSETH, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

**ARTICLE I
SCOPE OF WORK**

The Contractor shall furnish all the materials and perform all the Work called for in the Contract Documents entitled: TAMU Agriculture & Life Sciences Building 4
Prepared by: Kirksey Archeticture

**ARTICLE II
TIME OF COMPLETION**

The Contractor shall begin Work on the date indicated in the Notice to Proceed to be issued by the Owner. The Work to be performed under the Contract shall be substantially completed by _____ **consecutive calendar days** plus any extended days approved by the Owner, in accordance with the UGSC, and shall be fully and finally completed within thirty (30) days thereafter. For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially completed, Contractor shall pay to Owner liquidated damages in accordance with the UGSC.

**ARTICLE III
THE CONTRACT SUM**

The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, the sum of _____
_____ (\$_____).

Contract Award Amount

ARTICLE IV PROGRESS PAYMENTS

The Owner shall make periodic payments as approved by the Owner in accordance with the UGSC.

ARTICLE V ACCEPTANCE AND FINAL PAYMENT

Final payment shall be made after final acceptance of the Work, provided the Work is fully completed and the Contract fully performed as provided in the UGSC.

ARTICLE VI LIENS

No mechanic, contractor, subcontractor, supplier or other person can or will contract for or in any manner have or acquire any lien upon the buildings or works covered by the Contract, or the land upon which the same is situated.

ARTICLE VII THE CONTRACT DOCUMENTS

The UGSC, the Special Conditions, the Specifications, the Drawings, the Addenda issued prior to this Agreement, the Change Orders issued after this Agreement, the Historically Underutilized Business (HUB) Subcontracting Plan, this Agreement, and, to the extent not inconsistent with the foregoing documents, the Contractor's Technical Proposal (including any unit prices stated therein), form the Contract Documents. This Agreement supersedes all prior agreements, written or oral, between the Contractor and the Owner and shall constitute the entire agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by authorized representatives of the Owner and the Contractor.

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

BOARD OF REGENTS OF
THE TEXAS A&M UNIVERSITY SYSTEM
(THE OWNER)

CONTRACTOR

Federal Tax I.D. No. _____

By _____
Executive Vice Chancellor and Chief Financial
Officer

By _____
(Signature)

(Print or Type Name)

Date _____

Date _____

APPROVAL RECOMMENDED:

Executive Director
Office of Facilities Planning & Construction

Date _____

APPROVED AS TO FORM:

General Counsel

Date _____

THE TEXAS A&M UNIVERSITY SYSTEM
Uniform General and Supplementary Conditions
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Uniform General and Supplementary Conditions For The Texas A&M University System

The Texas A&M University System has incorporated its Supplementary Conditions that apply to all A&M System and member institution construction projects into the Texas Building and Procurement Commissions' Uniform General Conditions. Material changes are indicated by the bold and italicized typeface shown here. Superseded sections of the Texas Building and Procurement Commissions' Uniform General Conditions are not included in the A&M System Uniform General and Supplementary Conditions. All users are advised to read and understand this entire document.

Article 1. Definitions

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

- 1.1 *Architect/Engineer (A/E)* 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 to Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by Owner or a design-build contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.2 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the A/E.
- 1.3 *Change Order Proposal* means a Contractor-generated document in response to a Change Order Request (COR).
- 1.4 *Close-out documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.5 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.6 *Contract Date* is the date when the agreement between the Owner and the Contractor becomes effective.

- 1.7 *Contract Documents* means those documents identified as a component of the agreement (contract) between the Owner and the Contractor. These may include, but are not limited to, Drawings, Specifications, these Uniform General and Supplementary Conditions, Special Conditions, Change Orders, and all pre-bid and/or pre-proposal addenda.
- 1.8 ***Contract Revision means a document which informs the Contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.***
- 1.9 *Contractor* means the individual, corporation, company, partnership, 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 General or Prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.10 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.11 *Contract Time* means the period between the Date of Commencement (Start Date) identified in the Notice to Proceed with Construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by Change Order.
- 1.12 *Date of Commencement* means the date designated in the Notice to Proceed for the Contractor to commence the Work.
- 1.13 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.14 *Drawings* means that product of the A/E which graphically depicts the Work.
- 1.15 *Final Completion* means the date determined and certified by the A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.16 *Owner* means the State of Texas and any Agency of the State of Texas, acting through the responsible entity of the State of Texas, identified in the Contract as the Owner.
- 1.17 *Owner's Designated Representative (ODR)* means the individual assigned by the 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.

- 1.18 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contract and warranty obligations.
- 1.19 *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.
- 1.20 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.21 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.22 *Site* means the geographical area of the location of the Work.
- 1.23 *Special Conditions* means the documents containing terms and conditions, which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over these Uniform General and Supplementary Conditions.
- 1.24 *Specifications* mean the written product of the A/E 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.
- 1.25 *Subcontractor* means a business entity that enters into an agreement with the Contractor to perform part of the Work or to provide services, materials or equipment for use in the Work.
- 1.26 *Substantial Completion* means the date determined and certified by the Contractor, A/E 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.
- 1.27 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.28 *Unilateral Change Order* means a Change Order issued by the Owner without the agreement of the Contractor. ***A Unilateral Change Order has the same effect as a contract modification.***

- 1.29 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, and/or its agents, to fulfill the Contractor's obligations under the Contract.

Article 2. Laws Governing Construction

- 2.1. Environmental Regulations. The 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, the Owner is responsible for obtaining and maintaining permits related to stormwater run-off. The Contractor shall conduct operations consistent with stormwater 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 the Contractor. The 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 the request for the Substantial Completion Inspection.

- 2.2. Wage Rates. The Contractor shall not pay less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner. The specified wage rates are minimum rates only. The Owner is not bound to pay any claims for additional compensation made by any contractor because the 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.

- 2.2.1 Notification to Workers. The Contractor 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. When requested by the Owner, the Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law.

- 2.2.1.1 The Contractor shall submit a copy of each worker wage-rate notification to the ODR 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 The "Prevailing Wage Schedule" is determined by the Owner in compliance with Tex. Gov't Code, Chapter 2258. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner's Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a Subcontractor, the Contractor shall promptly inform the ODR of the proposed wage to be paid for the skill along with a justification for same. The 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.

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

2.2.1.4 Complaints of Violations.

2.2.1.4.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation of Tex. Gov't Code, Chapter 2258, the Owner will, within 31 days, make an initial determination as to whether good cause exists that a violation occurred. The Owner will send documentation of the initial determination to the Contractor against whom the violation was alleged, and to the worker involved. Upon making a good-cause finding, the 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.

- 2.2.1.4.2 If the Contractor and claimant worker reach an agreement concerning the claim, the Contractor shall promptly notify the Owner in a written document countersigned by the worker.
- 2.2.1.4.3 Arbitration Required. If the violation is not resolved within 14 days following initial determination by the Owner, the Contractor and the claimant worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Tex. Civ. Prac. & Rem. Code, Chapter 171. If the Contractor and the claimant worker do not agree on an arbitrator within 10 days, after the date arbitration is required, a district court may be petitioned by any of the parties to the arbitration to appoint an arbitrator whose decision will be binding on all parties. (See Tex. Gov't Code, § 2258.053)
- 2.2.1.4.4 Arbitration Award. If an arbitrator assesses an award against the Contractor, the Contractor shall promptly furnish a copy of said award to the Owner. The Owner may use any amounts retained under Article 2.2.1.4.1 to pay the worker the amount as designated in the arbitration award. If the retained funds are insufficient to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor, and/or the surety to receive the amount owed, plus attorneys' fees and court costs. The Owner has no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award.
- 2.2.1.4.5 No Extension of Time. If the Owner's determination proves valid that good cause existed to believe a violation had

occurred, the Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures set forth herein.

- 2.3. Venue for Suits. ***The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Brazos County, Texas.***
- 2.4. Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to license requirements for skilled tradesmen, contractors, suppliers and/or laborers, as necessary to accomplish the Work. In the event the Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.
- 2.5. Royalties, Patents & Copyrights. The Contractor shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights, and shall save the Owner harmless from loss on account thereof.
- 2.6. State Sales and Use Taxes. The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. ***Contractor shall not be entitled to reimbursement for taxes paid on items that are exempt from taxation.***

Article 3. General Responsibilities of Owner and Contractor

- 3.1. Owner's General Responsibilities. The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
 - 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of the Notice to Proceed with Construction, a conference will be convened for attendance by the Owner, Contractor, A/E 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.

3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify the Owner's Designated Representative (ODR), who has the express authority to act and bind the Owner to the extent and for the purposes described in the Contract, including responsibilities for general administration of the Contract.

3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.

3.1.2.2 All directives on behalf of the Owner will be conveyed to the Contractor by the ODR in writing.

3.1.3 Owner Supplied Materials and Information.

3.1.3.1 The Owner will furnish to the Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, site utility locations, and other information used in the preparation of the Contract Documents.

3.1.3.2 The Owner will provide information, equipment, or services under the Owner's control to the Contractor with reasonable promptness. ***The Owner makes no representation as to the accuracy or completeness of the site information furnished to the Contractor by the Owner, and is not responsible for any interpretations or conclusions reached by the Contractor with respect to the information.***

3.1.4 Availability of Lands. The 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 the Contractor. The Contractor shall comply with all Owner-identified encumbrances or restrictions specifically related to use of lands so furnished. The Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties.

3.1.5.1 The 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. The Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. 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 the Contractor.

3.1.5.2 The Owner will not take any action in contravention of a design decision made by the A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which the A/E is licensed for the protection of the public health and safety.

3.2 Role of A/E. Unless specified otherwise in the Contract between the Owner and the Contractor, the A/E shall provide general administration services for the Owner during the construction phase of the Project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to the A/E for action. The A/E has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to the Contractor by the ODR, upon request.

3.2.1 Site Visits

3.2.1.1 The A/E will make visits to the Site at intervals as provided in the A/E's contract agreement with the Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to the Owner.

3.2.1.2 The A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Article 3.1.5.2, the Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by the ODR such clarifications or interpretations will be provided by the A/E consistent with the intent of the Contract Documents. The A/E will issue these clarifications with reasonable promptness to the Contractor as Architect'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, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

3.2.3 Limitations on A/E Authority. The A/E is not responsible for:

3.2.3.1 The Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project nor will the A/E supervise, direct, control or have authority over the same.

3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to furnishing or performing the Work.

3.2.3.3 The Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3.2.3.4 Acts or omissions of the Contractor, or of any other person or organization performing or furnishing any of the Work.

3.3 Contractor's General Responsibilities. The 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. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. ***The Contractor is responsible for having visited the Site and having ascertained all pertinent local conditions such as existing subsurface concealed conditions, location, accessibility and general character of the Site or building, the character and extent of existing work, the character and extent of existing work within adjacent sites, and any other work being performed thereon at the time Contractor's bid or proposal is submitted.***

- 3.3.1 Project Administration. The 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 the A/E and ODR in accordance with these Uniform General and Supplementary Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.
- 3.3.2 Contractor's Superintendent. The Contractor shall employ a competent resident Superintendent who will be present at the Project Site during the progress of the Work. The Superintendent is subject to the approval of the ODR. The Contractor shall not change approved Superintendents during the course of the Project without the written approval of the ODR unless the Superintendent leaves the employ of the Contractor.
- 3.3.3 Labor. The 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.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, the 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.
- 3.3.5 Non-Compliant Work. Should the A/E and/or the ODR identify Work as non-compliant with the Contract Documents, the ODR will communicate the finding to the Contractor and the Contractor will correct such Work at its expense. The approval of Work by either the A/E or ODR does not relieve the Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.6 Subcontractors. The Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection. The Contractor will not substitute Subcontractors without the acceptance of the Owner.

- 3.3.6.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the agreement between the Contractor and the Owner.
- 3.3.6.2 The 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 with the Contractor. The 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 the Contractor. The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after its execution. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies in no way relieves the 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 the Contractor in the same manner in which the Contractor is bound to the Owner.
- 3.3.7 Continuing the Work. The Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. The Contractor shall not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Contractor may agree in writing.
- 3.3.8 Cleaning. At all times, the Contractor shall keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. The 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 Completion Inspection.
- 3.3.9 Acts and Omissions of Contractor, its Subcontractors and Employees. The Contractor is responsible for acts and omissions of its employees and all its Subcontractors, their agents and

employees. The Owner may, in writing, require the Contractor to remove from the Project any of Contractor's or its Subcontractor's employees that the ODR finds to be careless, incompetent, or otherwise objectionable.

3.3.10 Indemnification of Owner. The Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the employees, officers, Regents, volunteers, and representatives of the Owner, 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 and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, its officers or employees, separate contractors or assigned 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.

3.3.10.1 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.

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

3.3.11 Ancillary Areas. The Contractor shall operate and maintain operations and associated storage areas at the Site of the Work in accordance with the following:

3.3.11.1 The Contractor shall confine all Contractor operations, including storage of materials and employee parking upon the Site of the Work, to areas designated by the Owner.

3.3.11.2 The Contractor may erect, at its own expense, temporary buildings that will remain its property. The Contractor shall remove such buildings and associated utility service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

3.3.11.3 The Contractor shall use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. The Contractor shall not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. The Contractor shall provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and shall repair any damage, thereto at the expense of the Contractor.

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

3.3.12 Separate Contracts. Additional Contractor responsibilities when the Owner awards separate contracts:

3.3.12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.

3.3.12.2 The Owner reserves the right to perform operations related to the Project with the Owner's own forces.

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

- 3.3.12.4 *The Contractor shall cooperate with other contractors employed on the Project by the Owner, including providing access to the Site and project information as requested.*

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1. General Description. *The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting.*

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

The Texas A&M University System has determined that the agency's goals are higher than the State's goals. Therefore, respondents are required to use the following: 11.2% for heavy construction other than building contracts; 22.62% for all building construction, including general contractors and operative builders contracts; 32.7% for all special trade construction contracts; 30.1% for professional services contracts; 24.6% for all other services contracts; and 44.85% for commodities contracts.

- 4.1.1 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 TAC §20.11-20.28, outline the State's policy to encourage outreach to and potential utilization of HUBs in state contracting opportunities through race, ethnic and gender neutral means.
- 4.1.2 A contractor who contracts with the State in an amount of \$100,000 or more is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 TAC §20.14 by submitting a HUB Subcontracting Plan at the time of bidding and complying with the HUB Subcontracting Plan after it is accepted by the Owner and during the term of the contract.

- 4.2. Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded the Contract in part by complying with the HUB Program statute and rules, hereby covenants to continue to comply with the HUB Program as follows:
- 4.2.1 Prior to substituting a Subcontractor, promptly notify the Owner in the event a change is required for any reason to the accepted HUB Subcontracting Plan.
 - 4.2.2 Conduct the good faith effort activities required and provide the Owner with necessary documentation to justify approval of a change to the approved HUB Subcontracting Plan.
 - 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB Subcontracting Plan as the Contractor and Owner may agree to.
 - 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB Subcontracting Plan.
 - 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by the Owner that demonstrates Contractor's performance of the HUB Subcontracting Plan.
 - 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in the Owner's investigation of the Contractor's good faith effort to fulfill the HUB Subcontracting Plan and the requirements under 34 TAC §20.14.
- 4.3. 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, the Owner may, in addition to all other remedies available to it, report the failure to perform to the Texas Procurement and Support Services under its Vendor Performance and Debarment Program and may bar the Contractor from future contracting opportunities with the Owner.

Article 5. Bonds & Insurance

- 5.1. Construction Bonds. The 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.

- 5.1.1. Performance Bond. A Performance Bond is required if the Contract Sum is in excess of \$100,000. The Performance Bond is solely for the protection of the 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. The form of the bond shall be approved by the Attorney General of Texas. The Performance Bond shall be effective through the Contractor's warranty period.
- 5.1.2. Payment Bond. 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 the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be approved by the Attorney General of Texas.
- 5.1.3. Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, on the Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than 10 percent of the surety's capital and surplus, the 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 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to the Owner.
- 5.1.4. Power of Attorney. Each bond shall be accompanied by a valid power-of-attorney issued by the surety company, attached to the bond, and signed and sealed with the corporate embossed seal, authorizing the attorney in fact who signs the bond to commit the surety to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5. 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, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

- 5.1.6. 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.
- 5.1.7. Claims on Payment Bonds. Claims on Payment Bonds must be sent directly to the 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 the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The 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.
- 5.1.8. Payment Claims when Payment Bond 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 the Owner and the Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9. Sureties. Sureties shall be listed on the US Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570) ***and have a rating of A- or better with A.M. Best Company.***

5.2. Insurance Requirements.

The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property in the care, custody and control of Contractor prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to the Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. The 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 the Owner.

5.2.1 The Contractor shall provide and maintain the insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Special Conditions. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated through Substantial Completion notices, acceptance notices and/or other means as deemed appropriate by the Owner.

5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner, and shall include:

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

\$500,000 each accident
\$500,000 disease each employee
\$500,000 disease policy limit

5.2.2.2 Commercial General Liability Insurance, including 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 Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence
\$1,000,000 general aggregate
\$1,000,000 products and completed operations aggregate

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-Aggregate Limits of Insurance (Per Project) or its equivalent.

- 5.2.2.3 Asbestos Abatement Liability Insurance₁ 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.

If this Contract is for asbestos abatement only, the All-Risk Builder's Risk or All-Risk Installation Floater (e) is not required.

- 5.2.2.4 Comprehensive Automobile Liability Insurance₁ covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit 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.

- 5.2.2.5 All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the Project involves solely the installation of equipment). Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials. If Builder's Risk, limit shall be equal to 100 percent of the Contract. If Installation Floater, limit shall be equal to 100 percent of the contract cost.

The policy shall be written jointly in the names of the Owner, the Contractor, Subcontractors and, Subcontractors shall be named as additional insured. The policy shall have endorsements as follows:

5.2.2.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.

5.2.2.5.3 Loss, if any, shall be adjusted with and made payable to the Owner as Trustee for the insureds as their interests may appear; the right of subrogation under the Builder's Risk policy shall be waived as to the Owner. The Owner shall be named as Loss Payee. For renovation projects or projects that involve portions of work contained within an existing structure, refer to Special Conditions for possible additional Builder's Risk insurance requirements.

5.2.2.6 "Umbrella" Liability Insurance. The Contractor shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring the Contractor (or Subcontractor) for an amount of not less than the amount specified in the Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

If the Contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required.

5.2.3 Policies must include the following clauses, as applicable:

- 5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the Owner.
- 5.2.3.2 It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner for liability arising out of operations under the Contract with the Owner.
- 5.2.3.3 The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.
- 5.2.3.4 The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.
- 5.2.4 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, 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, the Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the Subcontractors are included as additional insureds and that Contractor agrees to provide Workers' Compensation for the Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these certificates.
- 5.2.5 Workers' Compensation Insurance Coverage must meet the statutory requirements of Tex. Lab. Code, §401.011(44), and

those specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

Article 6. Contract Documents

6.1. Drawings and Specifications

6.1.1 Copies Furnished. The Contractor will be furnished one (1) digital copy of Drawings and Specifications free of charge.

6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of one contract set for each party to the Contract, are to be returned to the A/E, upon request, following completion of the Work.

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

6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement ***shall be required*** and shall be the basis of Contractor pricing. The Contractor shall notify the A/E and the ODR for resolution of the issue prior to executing the work in question.

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

6.1.6 Discrepancies and Omissions in Drawings and Specifications

6.1.6.1 The Contractor shall promptly report to the ODR and to the A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

- 6.1.6.2 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3. It is further recognized that the Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm.
- 6.1.6.4 When performing as a Design-Build firm, the Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, the Contractor has a shared responsibility for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, the Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints, but does not establish a liability for design.
- 6.1.6.6 The Contractor has no liability for errors, omissions, or inconsistencies in the Drawings and Specifications unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build contract as outlined above. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.
- 6.1.6.7 ***The 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.***

6.2 Requirements for Record Documents.

The Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, contract modifications, and all Project correspondence. The Contractor shall 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. The Contractor shall provide Owner and A/E access to these documents.

6.2.1 The Contractor shall maintain the record set of Drawings and Specifications which reflect the "As Constructed" conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. The Contractor shall make available all records prescribed herein for reference and examination by the Owner and its representatives and agents.

6.2.2 The Contractor shall update the "As-Constructed" Drawings and Specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.

6.2.3 Prior to requesting the Substantial Completion Inspection by the ODR and A/E, the Contractor shall furnish the ODR a complete set of the marked up "As-Constructed" set maintained at the Site and one photocopy of same. Concurrently with furnishing these record drawings, the Contractor shall furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the A/E and the ODR.

6.2.4 Once determined acceptable, the Contractor shall provide to Owner mylar prints of professionally drafted "As-Constructed" drawings, along with an electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with an electronic copy on CD, two sets of photocopies or prints of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents. ***All electronic copies shall be provided in a format acceptable to the ODR.***

Article 7. Safety

7.1. General. It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970 (OSHA), and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit it to the ODR and A/E prior to commencing Work. In addition,

the 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.

7.2. Notices. The Contractor shall provide notices as follows:

7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement of their facilities, and with respect to access to their facilities and/or utilities.

7.2.2 Coordinate the exchange of material safety data sheets 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 MSDS for all materials in use on Site throughout the construction phase and make such file available to the Owner and its agents as requested.

7.3. Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.

7.3.1 Have authorized agents of Contractor respond immediately upon call at anytime 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.

7.3.2 Give the ODR and A/E prompt notice of all such events.

7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the Owner within 72 hours of the emergency response event.

7.3.4 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 the Contractor.

7.4. Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify the ODR and other parties as may be directed within 24 hours of the event.

7.4.1 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.

7.4.2 Supply the ODR and A/E with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three 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 by Contractor to Owner within one week after occurrence, unless otherwise directed by Owner's legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of a full report.

7.5. 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 the ODR immediately.

7.5.1 The Contractor shall bind all Subcontractors to the same duty.

7.5.2 Upon receiving such notice, the ODR 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, the ODR will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.

7.5.3 The Owner may hire third-party contractors to perform any or all such steps.

7.5.4 Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, the Owner will make an equitable adjustment to the Contract Sum and/or the Contract Time, and modify the Contract in writing accordingly.

- 7.6. Trenching Plan. When the Project requires excavation which either exceeds a depth of four feet, or results in any worker's upper body being positioned below grade level, the Contractor is required to submit a trenching plan to the ODR prior to commencing trenching operations. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and employed by the Contractor. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this Project.

Article 8. Quality Control

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

8.2. Testing

- 8.2.1 *Contractor Testing.* The Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents. This "quality control" testing shall include any particular testing required by the Specifications and the following general tests:

8.2.1.1 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.

8.2.1.2 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.

8.2.1.3 Routine, 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.

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

- 8.2.2 Owner Testing. The Owner reserves the right to subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the A/E to insure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such "quality assurance" testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.
- 8.2.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, A/E and the Contractor.
- 8.2.4 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 proving compliance remains with the Contractor. The tests are subject to the following conditions:
- 8.2.4.1 The Contractor's selected laboratory must be acceptable to the Owner.
 - 8.2.4.2 The quality and nature of the tests must be acceptable to the Owner.
 - 8.2.4.3 All tests must be taken in the presence of the A/E and/or ODR, or their representatives.
 - 8.2.4.4 If tests confirm that the material/systems comply with Contract Documents, the Owner will pay the cost of the test.
 - 8.2.4.5 If tests reveal noncompliance, the Contractor will pay the laboratory fees and costs of that particular test and all future tests of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 8.2.4.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.2.5 Notice of Testing. The Contractor shall give the ODR and the A/E timely notice of its readiness and the date arranged so the ODR and A/E may observe such inspection, testing or approval.

8.2.6 Test Samples. The 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.

8.2.7 Covering Up Work If the Contractor covers up any Work without providing the Owner an opportunity to inspect, the Contractor shall, if requested by the ODR, uncover and recover the Work at Contractor's expense.

8.3 Submittals

8.3.1 Contractor's Submittals. The Contractor shall submit with reasonable promptness consistent with the Work 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, the Contractor shall review each submittal for compliance with the Contract Documents and certify its approval by an approval stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.

8.3.1.1 Within twenty-one (21) calendar days of the effective date of the Notice to Proceed with construction, the Contractor shall submit to the ODR, and the A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by the A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the Specifications.

8.3.1.2 The 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 the A/E 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. The Contractor shall show and allow a minimum of thirty (30)

calendar days duration after receipt by the A/E and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. ***Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.***

8.3.1.3 The 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. The Contractor shall revise and/or update both schedules monthly to ensure consistency and current project data. The Contractor shall provide to the ODR the updated submittal register and schedule with each application for progress payment. The Contractor shall refer to the 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.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies 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.

8.3.2 Review of Submittals. A/E and ODR 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 the Contractor of responsibility for any deviation

from the requirements of the Contract unless the Contractor informs the A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains the **A/E's and** Owner's written specific approval of the particular deviation.

- 8.3.3 Correction and Resubmission. The 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. When applicable, the Contractor shall direct attention of the A/E and the ODR in writing to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Approvals. The Contractor shall not commence any Work requiring a submittal until approval of the submittal. The Contractor shall construct all such work in accordance with approved submittals. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The A/E's and ODR's approval, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 8.3.5 No Substitutions Without Approval. The ODR and the A/E may receive and consider the Contractor's request for substitution when the Contractor agrees to reimburse the Owner for review costs and satisfies 8.3.5.1, 8.3.5.2, and 8.3.5.3 in combination with one or more of the items in 8.3.5.4 through 8.3.5.11 of the following conditions, as determined by the Owner. If the Contractor does not satisfy these conditions, the ODR and A/E will return the request without action except to record noncompliance with these requirements. The Owner will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.
- 8.3.5.1 The Contract Documents do not require extensive revisions.
- 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of the A/E and do not result in an increase in cost to the Owner.
- 8.3.5.3 The request is timely, fully documented, and properly submitted.

- 8.3.5.4 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
 - 8.3.5.5 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.
 - 8.3.5.6 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
 - 8.3.5.7 The requested substitution offers the Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities the Owner must assume.
 - 8.3.5.8 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.
 - 8.3.5.9 The Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and the Contractor certifies that the substitution will overcome the incompatibility.
 - 8.3.5.10 The Contractor cannot coordinate the specified product, assembly or method of construction with other materials and the Contractor certifies it can coordinate the proposed substitution.
 - 8.3.5.11 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and the Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.6 Unauthorized Substitutions at Contractor's Risk. The Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. The Contractor shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 Field Mock-up.

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

8.4.1.1 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.

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to the ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by the Owner.

8.4.1.3 The Contractor shall include field mock-ups in their Work Progress Schedule and shall notify the ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

8.5 Inspection During Construction.

8.5.1 The 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 the Owner and its agents.

8.5.2 The Contractor shall not cover up any work with finishing materials or other building components prior to providing the Owner and its agents an opportunity to perform an inspection of the Work.

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

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

Article 9. Construction Schedules

- 9.1. 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 the Date of Commencement (Start Date) and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time, and Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will cause damage to the Owner and may subject the Contractor to Liquidated Damages as provided in Article 9.11.
- 9.2. Notice to Proceed. The Owner will issue a Notice to Proceed which shall state the dates for beginning Work (the Date of Commencement) and for achieving Substantial Completion and Final Completion of the Work.
- 9.3. Work Progress Schedule. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit to the ODR and the A/E its initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be based upon a computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. When acceptable to the Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration.
- 9.3.1 Schedule Requirements. The Contractor shall submit an electronic and a paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of the Contractor's actual plans for its completion. The Contractor shall organize and provide adequate detail so the Work Progress Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 9.3.1.1 The Contractor shall re-submit initial Schedule as required to address review comments from A/E and ODR until such Schedule is accepted as the Baseline Schedule.

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

9.3.2 Schedule Updates. The Contractor shall update the Work Progress Schedule and the Submittal Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, and submit a paper and electronic copy of the update to the A/E and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. The Contractor shall identify all proposed changes to the schedule logic to the Owner and to the A/E via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.

9.3.3 The Work Progress Schedule is for the Contractor's use in managing the Work, and submittal of the Schedule and successive updates or revisions, is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule, schedule update or revision, constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.

9.3.3.1 Acceptance of the Work Progress Schedule, or an update and/or revision thereto does not indicate any approval of the Contractor's proposed sequences and duration.

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

9.3.3.3 The 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 completion date(s) and Contract Time.

9.4. Ownership of Float. Unless indicated otherwise in the Contract Documents, the Contractor shall develop the Work Progress Schedule and its execution plan to provide a minimum of 10 percent total float at the project level at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5. Completion of Work. The Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of the 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, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

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

9.5.1.4 Expediting delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

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

9.6 Modification of the Contract Time

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the number of calendar days lost because of excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.

9.6.2.1 "A Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the Site prevent Work from proceeding, the Contractor shall immediately notify the ODR for confirmation of the conditions. At the end of each calendar month, the Contractor shall submit to the ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by the ODR, any time extension granted will be issued by Change Order **for those weather days during that month which exceed the number expected, as shown in the Rainfall Table located in Special Conditions**. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a Unilateral Change Order for a fair and reasonable time extension.

9.6.2.2 Excusable Delay. The Contractor is entitled to an equitable adjustment of time, issued via Change Order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design which the A/E corrects by means of changes in the Drawings and Specifications.

- 9.6.2.2.2 Unanticipated physical conditions at the Site which the A/E corrects by means of changes to the Drawings and Specifications or for which the ODR directs changes in the Work identified in the Contract Documents.
- 9.6.2.2.3 Changes in the Work that affect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the ODR or the A/E.
- 9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of the Contractor.
- 9.6.2.2.5 Suspension of Work for convenience of the ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.3 The Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of the Contractor's schedule. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant to the provisions of Article 11.

9.7 No Damages for Delay. *The Contractor has no claim for monetary damages for delay or hindrances to the Work from any cause, including without limitation any act or omission of the Owner.*

9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.

9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by the Owner shall be included with the Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by paragraph 9.6.2.1 above. If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, it shall give the ODR written notice, stating the

nature of the delay and the activities potentially affected, within five (5) calendar days after the onset of the event or circumstance giving rise to the delay. The Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one ***notice of delay*** is necessary. The Contractor shall state claims for extensions of time in numbers of whole or half calendar days.

9.9.1 Within ten (10) calendar days after the cessation of the delay, the Contractor shall formalize its request for extension of time in writing to include a full analysis of the impact of the delay on the Work Progress Schedule and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.

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

9.9.3 Contents of Time Extension Requests. The Contractor shall provide with each time extension request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. The Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

9.9.3.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.

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

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

9.9.4 Owner's Response. The Owner will respond to the Time Extension Request by providing to the 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 the Contractor.

9.9.4.1 The Owner will not grant time extensions for delays that do not affect the Contract Completion Date.

9.9.4.2 The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt. If the Owner cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner will notify the Contractor in writing. Unless otherwise agreed by the Contractor, the Owner has no more than fifteen (15) additional calendar days to prepare a final response. If the Owner fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.

9.10 Failure to Complete Work Within the Contract Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** The Contractor's failure to substantially complete the Work within the Contract Time or to achieve Final Completion as required will cause damage to the Owner. These damages are liquidated by agreement of the Contractor and the Owner, as set forth in Article 9.11 below.

9.11 Liquidated Damages. *For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially completed, Contractor shall pay to Owner, within ten (10) days following written demand, an amount determined by the following schedule:*

AACC		Liquidated Damages
<u>From</u>	<u>To</u>	<u>per day</u>
\$1,000,000	\$14,999,999.99	\$ 2,500
\$15,000,000	\$29,999,999.99	\$ 5,000
\$30,000,000	\$44,999,999.99	\$ 7,500
\$45,000,000	\$59,999,999.99	\$10,000
\$60,000,000	\$69,999,999.99	\$12,500
\$70,000,000	\$79,999,999.99	\$15,000
\$80,000,000	\$99,999,999.99	\$17,500
\$100,000,000 and over		\$20,000

not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that Owner will sustain for late completion. 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 Owner in Special Conditions.

The parties stipulate and agree that the actual damages sustained by Owner for late completion of the Project 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.

Payment of the liquidated damages does not preclude recovery by Owner of other damages or losses under other provisions of 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 UGSC or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay the liquidated damages.

Article 10. Payments

10.1. Schedule of Values. The Contractor shall submit to the ODR and the A/E for acceptance a Schedule of Values, or Work Breakdown, accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and using the same activity names and terms as the Work Progress Schedule. The accepted Schedule of Values will be the basis for the progress payments under the Contract.

10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by the ODR, and submitted not less than twenty-one calendar (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include costs for general conditions, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract Sum. As appropriate, the Contractor shall assign labor and/or material values to each item, the subtotal thereof equaling the value of the Work in place when complete.

10.1.2 The 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. make the worksheets available to the ODR at the time of Contract execution. Thereafter the Contractor shall grant the Owner during normal business hours access to said notarized copy of worksheets at any time during the period commencing upon

execution of the Contract and ending one year after final payment.

10.2. Progress Payments. The Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by the Owner and the Contractor. Payment is not due until receipt by the ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Special Conditions or Division 1 Specifications, and certified by the A/E. Progress payments are made provisionally and do not constitute acceptance of Work not in accordance with the Contract Documents. The Owner will not process progress payment applications for Change Order work until all parties execute the Change Order.

10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to the A/E and the ODR a complete, clean copy of a preliminary pay worksheet or Preliminary Pay Application, to include the following:

10.2.1.1 The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values.

10.2.1.2 An updated Work Progress Schedule including the Executive Summary and all required schedule reports.

10.2.1.3 HUB Subcontracting Plan reports.

10.2.1.4 Such additional documentation as Owner may require as set forth elsewhere in the Contract Documents.

10.2.2 Contractor's Application for Progress Payment. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the A/E and ODR will meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. Based on this review, the ODR and the A/E may require modifications to the Preliminary Pay Worksheet prior to the submittal of an application for progress payment, and will promptly notify the Contractor of revisions necessary for approval. As soon as practicable, the Contractor shall submit its Invoice on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by the A/E and/or ODR. The Contractor shall attach all

additional documentation required by the ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No invoice is complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

10.2.3 Certification by A/E. Within five days or earlier following the A/E's receipt of the Contractor's formal invoice, the A/E will review the application for progress payment for completeness, and forward to the ODR. The A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Invoice for processing.

10.3 Owner's Duty to Pay. The Owner has no duty to pay the Contractor except on receipt by the ODR of: 1) a complete Invoice certified by the A/E, and 2) the Contractor's updated Work Progress Schedule, and 3) confirmation that the Contractor's as-built documentation at the Site is kept current.

10.3.1 Payment for stored materials and/or equipment confirmed by the Owner and A/E to be on-site or otherwise properly stored is limited to 85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

10.3.2 Retainage. The Owner will withhold from each progress payment, as retainage, 5 percent of the total earned amount, or the amount authorized by law. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Government Code, subchapter B.

10.3.2.1 The Contractor shall provide written consent of its Surety for any request for reduction or release of retainage.

10.3.2.2 At least sixty-five (65) percent of the total Contract must be completed before the Owner can consider a retainage reduction or release.

10.3.3 Price Reduction to Cover Loss. The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to

payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor including, but not limited to:

- 10.3.3.1 Defective or incomplete Work not remedied.
- 10.3.3.2 Damage to Work of a separate Contractor.
- 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.
- 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents.
- 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum.
- 10.3.3.6 Assessment of fines for violations of Prevailing Wage Rate law; or
- 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

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

- 10.3.4.1 Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

10.4 Progress payments to the Contractor do not release the Contractor or its surety from any obligations under the Contract.

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

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

- 10.4.3 The Contractor shall 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.
- 10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when the Owner's representative approves the application for payment.
- 10.5 Off-Site Storage. With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by the Owner.
 - 10.5.1 Store materials in a Bonded Commercial Warehouse.
 - 10.5.2 Provide separate 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, made out to insure the Owner must be filed with the Owner's representative.
 - 10.5.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.
 - 10.5.4 Materials for this Project are 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.
 - 10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Project if they do not meet Contract requirements regardless of any previous progress payment made.
 - 10.5.6 With each monthly payment estimate, submit a report to the ODR, A/E, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.
 - 10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
 - 10.5.8 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 at a location near the jobsite as directed by the ODR. 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.

Article 11. Changes

11.1. Change Orders. A Change Order issued after execution of the Contract is a written order to the Contractor, signed by the ODR, the Contractor, and the A/E, 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 the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Contractor to proceed with work of a Change Order in advance of final execution by all parties. ***In the absence of an agreement with the Contractor on a Change Order, the Owner may issue a Unilateral Change Order that will have the full force and effect of a contract modification. The issuance of a Unilateral Change Order does not prejudice the Contractor's rights to make claims or to appeal disputed matters under terms of the Contract.***

11.1.1 The Owner, without invalidating the Contract, ***and without prior approval of the 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, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

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

quantum meruit, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise in any wise incident to, arising out of, or resulting directly or indirectly from the work performed by Contractor under such Change Order.

- 11.1.3 Procedures for administration of Change Orders shall be established by the Owner and stated elsewhere in the Contract Documents.
 - 11.1.4 Except as provided above, no order, oral statement, or direction of the Owner or his duly appointed representative shall be treated as a change under this article or entitle the Contractor to an adjustment.
 - 11.1.5 The Contractor agrees that the Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. Further, the Contractor agrees to include in all its subcontracts a provision to the effect that the Subcontractor agrees that the 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 this Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a **Contract Revision** that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into the Change Order.
- 11.3 Claims for Additional Costs

- 11.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, it shall give the Owner and the A/E 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 give rise to the additional cost or time, except in an emergency endangering life or property in which case the Contractor shall act in accordance with Article 7.2.1. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.
- 11.3.2 If the 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 the Owner to stop the Work pursuant to Article 14 where the Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Article 11.4, the Contractor shall make such claim as provided in Article 11.3.1.
- 11.3.3 Should the Contractor or its Subcontractors fail to call attention of the A/E to obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/pre-proposal period, but claim additional costs for corrective work after contract award, the Owner may assume intent to circumvent competitive bidding for necessary corrective work. In such case, the Owner may choose to let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by the Owner.
- 11.4. Minor Changes. The A/E, with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which the Contractor shall carry out promptly and record on as-built record documents.
- 11.5. Concealed Site Conditions. 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 bid/proposal documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in work of the character shown and specified, the ODR and the A/E shall be notified in

writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, the A/E, with the approval of the ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and 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, subject to the prior approval of the ODR.

- 11.6. Extension of Time. All Changes to the Contract Time shall be made as a consequence of requests as required under Article 9.6, and as documented by Change Order as provided under Article 11.1.
- 11.7. Administration of Change Orders. All changes in the Contract shall be administered in accordance with procedures approved by the Owner, and when required make use of such electronic information management system(s) as the Owner may employ.
 - 11.7.1 Routine changes in the Contract shall be formally initiated by the **ODR or A/E** by means of a **Contract Revision** form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the Contractor. Except for emergency conditions described below, approval of the Contractor's cost proposal by the Owner will be required for authorization to proceed with the Work being changed. The Owner will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove work so installed.
 - 11.7.2 All proposed costs 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, to permit analysis by the A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR. Contractor shall provide written response to a Contract Revision within twenty-one (21) calendar days of receipt.
 - 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by **written** communication and authorization between the Contractor and Owner. A limited scope not-to-exceed

estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, the ODR may authorize the use of detailed cost records of such Work to establish and confirm the actual costs and time for documentation in a formal Change Order.

11.7.4 Emergency changes to save life or property may be initiated by the Contractor alone (see Article 7.3) 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.

11.7.5 The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.

11.8 Pricing Change Order Work. The amounts that the Contractor and/or its Subcontractors add to a Contract Revision for profit and overhead will also be considered by the Owner before approval is given and a Change Order issued. The amounts established hereinafter are the maximums that are acceptable to the Owner.

11.8.1 For work performed by its forces, the Contractor will be allowed its actual costs for materials, **equipment charges**, the total amount of wages paid for labor, the total cost of Federal Old Age Benefit (Social Security Tax) and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the Contractor. To the total of the above costs, the Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general home office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's work, all subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a

maximum mark-up of 10 percent if the total of all subcontracted work is less than or equal to \$10,000, 7.5 percent if the total of all subcontracted work is between \$10,000 and \$20,000 and 5 percent if the total of all subcontractor work is over \$20,000.

11.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. The Owner does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay.

11.8.4 *On contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Build Firm shall NOT be entitled to a percentage mark-up on any change order work unless the Change Order increases the Guaranteed Maximum Price.*

Article 12. Project Completion and Acceptance

12.1. Closing Inspections

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

12.1.1.1 Prior to the Substantial Completion Inspection, the Contractor shall furnish a copy of its marked-up As-Built Drawings 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. Delivery of these items is a prerequisite for requesting the Substantial Completion Inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the open items list, the A/E, ODR, the Contractor and other Owner representatives as determined by the Owner, will jointly attend the Substantial Completion Inspection, which shall be conducted by the ODR or their delegate. If the ODR determines that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the A/E, Owner and Contractor, establishing the date of Substantial Completion, **and identifying responsibilities for security, maintenance, and insurance**. A/E will provide with this certificate a list of punchlist items (the Pre-Final Punchlist) for completion prior to final inspection. This list may include items in addition to those on the Contractor's punchlist, which the inspection team deems necessary to correct or complete prior to Final Inspection. If the Owner occupies the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes.

12.1.2 Final Inspection. The Contractor shall complete the list of items identified on the Pre-Final Punchlist prior to requesting a Final Inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, the Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the Pre-Final Punchlist work, the Contractor shall give written notice to the ODR and A/E that the Work will be ready for Final Inspection on a specific date. The Contractor shall accompany this notice with a copy of the updated Pre-Final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, the ODR, A/E and the Contractor will inspect the Work. The A/E will submit to the Contractor a Final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

- 12.1.2.1 The Contractor must correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Contractor shall notify the A/E and ODR in writing stating the disposition of each Final Punchlist item. The A/E, Owner and Contractor shall promptly inspect the completed items. When the Final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents the ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.
- 12.1.3 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 the Owner.
- 12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete punchlist items or failure of the 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 the Owner's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.
- 12.1.5 Additional Inspections
- 12.1.5.1 If the Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion Inspection, the ODR or A/E will give the Contractor written notice listing cause(s) of the rejection. The ODR will set a time for completion of incomplete or defective work. The Contractor must complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.
- 12.1.5.2 If the Owner's inspection team determines that the Work is not complete at the Final Inspection, the

ODR or the A/E will give the Contractor written notice listing the cause(s) of the rejection. The ODR will set a time for completion of incomplete or defective work. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to the Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of the Contractor. The Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the 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.

12.1.6 Phased Completion. The Contract may provide, or project conditions may warrant, as determined by the 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.

12.2 Owner's Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the

convenience of the Owner so as to not disrupt Owner's use of, or access to, occupied areas of the Project.

12.3 Acceptance & Payment

12.3.1 Request for Final Payment. Following the certified completion of all Work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment. The Contractor must include in the Application of Final Payment all sums held as retainage and forward to the A/E and the ODR for review and approval.

12.3.2 Final Payment Documentation. The 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. The Contractor shall submit Consent of Surety to Final Payment 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, or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. The 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. The Contractor may not subsequently submit a claim on behalf of a Subcontractor or vendor unless the Contractor's affidavit notes that claim as an exception.

12.3.3 A/E Approval. The A/E 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, the A/E will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it, note its approval and send to Owner.

12.3.4 Offsets and Deductions. The Owner may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or any defects not remedied, the Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, the Owner will identify each deduction, the amount, and the explanation of the deduction on or by the 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 Unilateral Change Order as may be applicable.

12.3.5 Final Payment Due. Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on the 31st day following the Owner's approval of the final Application for Payment. If the Contractor disputes any amount deducted by the Owner, the 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.

12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:

12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects); and/or

12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents; and/or

12.3.6.3 Terms of any warranties required by the Contract, or implied by law; and/or

12.3.6.4 Claims arising from personal injury or property damage to third parties.

12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article 13. Warranty and Guarantee

13.1. Contractor's General Warranty and Guarantee. Contractor warrants to the 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 best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The 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, the 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 by the Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

13.2. Warranty Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.

13.3. Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Contractor.

13.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.

13.4. 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 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:

13.4.1 Observations by Owner and/or A/E;

13.4.2 Recommendation to pay any progress or final payment by A/E;

13.4.3 The issuance of a Certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;

- 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 13.4.5 Any acceptance by Owner or any failure to do so;
 - 13.4.6 Any review of a Shop Drawing or Sample submittal; or
 - 13.4.7 Any inspection, test or approval by others.
- 13.5 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 the Contractor. The ODR will certify the date of service commencement in the Certificate of Substantial Completion.
- 13.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 13.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. The Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA–40 CFR 763-99 (7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to the 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 the Contractor's application for Final Payment.

Article 14. Suspension and Termination

14.1 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, the 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.

14.1.1 The Owner will give the 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, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If it is confirmed that the cause was within the control of the Contractor, the Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of the Contractor, and the suspension has prevented the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension will be granted through a Change Order.

14.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

14.2 Suspension of Work for Owner's Convenience. Upon seven (7) calendar days written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty days for its own convenience. The Owner will give the Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, will be suspended and the date on which the suspension of Work will cease. When a suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar days written notice to the Contractor. If the Owner suspends the Work for its convenience for more than sixty (60)

consecutive calendar days, the Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 Termination by Owner for Cause.

14.3.1 The Owner may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of the following circumstances:

14.3.1.1 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; and/or

14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the ODR; and/or

14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract; and/or

14.3.1.4 Failure to remedy defective work condemned by the ODR; and/or

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

14.3.1.6 Persistent endangerment to the safety of laborers or of the Work; and/or

14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract; and/or

14.3.1.8 Any material breach of the Contract; and/or

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

14.3.2 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

- 14.3.3 Should the Owner decide to terminate the employment of the Contractor under the provisions of Article 14.3.1, it will provide to the Contractor and its Surety thirty (30) days prior written notice.
- 14.3.4 Should the Contractor or its Surety, after having received notice of termination, remedy to the satisfaction of the Owner the condition(s) upon which the notice of termination was based, the notice of termination shall be rescinded in writing by the Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If the Contractor or its Surety fails to remedy the condition(s) to the satisfaction of the Owner within thirty (30) days following receipt of notice, the Owner may ***immediately terminate the Contract, make arrangements*** for completion of the Work, and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.5.1 Cost of completion includes additional Owner costs such as A/E services, the cost of other consultants, and contract administration.
- 14.3.5.2 The Owner will make no further payment to the Contractor or its Surety until all costs of completing the Work are paid. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Contractor will receive the excess funds. If such costs exceed the unpaid balance, the Contractor or its Surety will pay the difference to the Owner.
- 14.3.5.3 This obligation for payment survives the termination of the Contract.
- 14.3.5.4 The Owner reserves the right in termination for cause to take assignment of all contracts between the Contractor and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Termination for Convenience of Owner. The 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:

- 14.4.1 The Owner will immediately notify the Contractor and the A/E in writing, specifying the reason for and the effective date of contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- 14.4.2 Upon receipt of the notice of termination, the 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:
- 14.4.2.1 Stop all work.
- 14.4.2.2 Place no further subcontracts or orders for materials or service.
- 14.4.2.3 Terminate all subcontracts.
- 14.4.2.4 Cancel all materials and equipment orders as applicable.
- 14.4.2.5 Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.
- 14.4.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed ***before the notice of termination along with the actual and reasonable cost of any additional work required to secure the Project and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost business opportunities.***
- 14.5 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 the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed **before the work**

stoppage along with the actual and reasonable cost of securing the Project and property related to the Contract during the period of work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost business opportunities. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract ***but may be entitled to an equitable adjustment in the Contract Sum and Contract Time.***

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

Article 15. Dispute Resolution

- 15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, shall be used by the Owner and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor, that is not resolved under procedures described throughout these Uniform General and Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. The Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.
- 15.3 ***Nothing in the Contract shall prevent or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.***
- 15.4 ***Nothing in the Contract shall waive or be construed to waive the state's sovereign immunity.***

Article 16. Miscellaneous

- 16.1 Special Conditions. When the Work contemplated by the Owner is of such a character that the foregoing Uniform General and Supplementary Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Special Conditions. Special Conditions shall relate to a particular project and be

peculiar to that project but shall not weaken the character or intent of the Uniform General and Supplementary Conditions.

16.2 Federally Funded Projects. On Federally funded projects, the Owner may waive, suspend or modify any Article in these Uniform General and Supplementary Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the 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.

16.3 Internet-based Project Management Systems. At its option, the Owner may administer its design and construction management through an Internet-based management system. In such cases, the 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.

16.3.1 Accessibility and Administration.

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

16.3.1.2 The Owner shall administer the software.

16.3.2 Training. When used, the Owner shall provide training to the project team members.

END OF UNIFORM GENERAL AND SUPPLEMENTARY CONDITIONS

SPECIAL CONDITIONS

The following supplements modify, change, delete from or add to the "UNIFORM GENERAL AND SUPPLEMENTARY CONDITIONS," of The Texas A&M University System. Where any Article of the Uniform General Conditions or Supplemental Uniform General Conditions is modified or any paragraph or clause thereof is modified or deleted by these supplements, the unaltered conditions of the article, paragraph, sub-paragraph or clause shall remain in effect.

Article 2 Laws Governing Construction

2.2.1.2.1 Prevailing Wage Schedules

The rates of pay for some classifications which prevail in the locality of this Project are included at the end of these Special Conditions. Contributions by a worker toward retirement plans, health insurance, apprentice programs, etc., are part of the worker's pay; contributions by the employer are not. Contractors shall identify, briefly describe, and request a predetermination of rates for crafts (or apprentice programs) not included in the following Wage Predetermination. Such request shall be made within 15 days after contract award to the Assistant Director, Facilities Planning & Construction, The Texas A&M University System, phone number 979-458-7000.

2.2.1.2.2 Apprenticeship Program

Apprentices who are enrolled in a federally certified apprenticeship program may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement.

2.7 Legal Restrictions on Specific Activities

~~2.7.1 PCB Ballast Disposal Requirements~~

~~The transporting and disposal of lighting ballasts is subject to Environmental Protection Agency (EPA), D.O.T. and State of Texas laws, codes and guidelines. Any ballast that is not specifically marked "No PCB's" shall be considered to contain PCB's and shall be transported to an EPA approved incinerator and destroyed by incineration. Contractor shall furnish Owner with copies of tickets before and after transportation and a certificate of destruction from the firm that destroys the ballasts. The disposal company must be approved by the Owner.~~

2.7.2 Asbestos Removal:

If, in the process of performing the Work, the Contractor suspects that asbestos has been found, the Owner shall be notified immediately. The Owner shall cause the suspicious material to be tested and, if found to be asbestos, will be responsible for its removal. It will be the Contractor's responsibility to protect its workers and other persons by regulating access to the affected area.

2.7.3 Endangered Species

2.7.3.1 No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species. The Owner has previously coordinated with the appropriate agencies and has determined that there is no known occurrence of threatened or endangered species at the project site.

2.7.3.2 If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with endangered species act and applicable State statutes. These actions shall include reporting the encounter to the Texas Parks and Wildlife Department, and obtaining any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the encounter until authorized to do so by the ODR.

2.7.4 Airport Restrictions:

Prior to construction, the contractor will be responsible for submitting and obtaining clearance documentation from the Federal Aviation Administration for the construction crane(s) from the FAA's Obstruction Evaluation Group. Reference is made to the following FAA website for applicability and procedure: <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>. The local airport manager shall be copied on all correspondence to and from the FAA.

2.8 Archeological Discoveries:

~~2.8.1 No activity which may affect a State Archeological Landmark is authorized until the Owner has complied with the provisions of the Texas Antiquities Code. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during Construction. Should an encounter occur the Contractor shall cease all work in the affected area and immediately notify the ODR. The ODR will take the appropriate notification steps and work will not resume until authorized by the ODR.~~

2.9 Underground Utilities

2.9.1 In accordance with State Law, all persons performing Work requiring digging or ground penetration are required to call 811 in advance and provide detailed information regarding planned Work. Notification shall occur not earlier than the 14th day prior to the date excavation is to begin or later than 48 hours before the excavation is to begin, excluding weekends and holidays. Additional information can be found at <http://www.texas811.org>

The following is excerpted from TAMU Standard Administrative Procedure (SAP)

24.99.99.M0.01

To increase the level of safety, TAMU has a policy that is more strict than State law* and requires an advance locate be performed for 1) any ground penetration on campus, to any depth, when mechanized equipment such as augers, trenchers, excavators, etc. will be used, and 2) for all other ground penetrations to a depth greater than 12 inches. Hand-digging or soft excavation is required whenever any excavation is performed to a depth less than 12 inches without a utility locate. An advance utility locate is always required if the excavation will be deeper than 12 inches. In the case of ground penetration resulting from agricultural tilling or other recurring instructional or research-based agricultural work on the TAMU campus, an exception to the requirement to perform an advance utility locate will be made after an initial utility locate is performed to determine that the area to be tilled or worked is clear of underground utilities.

*State law requires that all persons performing work requiring digging or ground penetration to a depth of 16 inches or more are required to call 811 in advance and provide detailed information regarding planned work. By Texas Utilities Code, Title 5, Chapter 251 - Underground Facility Damage Prevention and Safety, a person who intends to excavate shall notify Texas 811 not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays. Failure to comply with the Texas Utilities Code could result in a fine up to \$1000 for the first offense, in addition to other potential liabilities.

TAMU is a member of the Texas 811 utility locate program. TAMU owns and is directly responsible for performing locates for the following utility systems: electrical, domestic water, chilled and heating hot water, sanitary and storm sewer, TAMU-owned natural gas, irrigation, and TAMU-owned telecommunications. **A locate request for all utility systems on campus is initiated by calling 811.**

SSC Grounds Management is a contract service at TAMU responsible for all irrigation systems located on campus. Communications with SSC Grounds Management is through the TAMU Aggieworks Center at 979-458-5500, or the TAMU Communications Center at 979-845-4311. **A locate request for irrigation systems on campus is initiated by calling 811.** By calling 811, the TAMU Communications Center and SSC Grounds Management will be notified of the need for an irrigation system locate.

Other utility systems NOT owned by TAMU, such as Atmos Energy's natural gas distribution and other third-party systems such as telecom, water, electrical, etc. must also be located prior to excavating or penetrating the ground. **A locate request for third-party owned utility systems on campus is initiated by calling 811.**

For additional information and assistance contact Utilities & Energy Services 979-845-3234 or go to this website <http://utilities.tamu.edu> and look under **Digging on**

Campus?

FOR EMERGENCIES: An emergency excavation is sometimes necessary to respond to a situation that endangers life, health or property, or when service to the customer will be interrupted. When an emergency locate is needed on the TAMU campus, both Texas 811 and the TAMU Communications Center (at 979-845-4311) shall be contacted promptly with details of the emergency. The same information required on the Texas 811 Utility Locate Required Information form under normal conditions will also be required with an emergency.

2.9.1.1 Routine Utility Locate Request Procedure:

- 2.9.1.1.1 The locate requestor is responsible to clearly mark the site perimeter to be excavated or penetrated, by using water-based white paint and/or white flags, prior to calling Texas 811.
- 2.9.1.1.2 Call 811 to request a utility locate. After clearly marking the site perimeter where locate will be performed, requestor must have the [Texas 811 Utility Locate Required Information](#) form completed and available.
- 2.9.1.1.3 The utility locator(s) will mark buried lines with paint and/or flags within the marked excavation perimeter. Utility flag colors are red for electric, orange for telecom, yellow for fuel gas, green for sanitary sewer, and blue for all other water systems.
- 2.9.1.1.4 The requestor shall not commence any digging, excavation, or ground penetration for at least two full working days (48 hours, excluding weekends and holidays) after the locate request is made.
- 2.9.1.1.5 If digging, excavation, or ground penetration must be performed more than 14 days after the initial locate is performed, then the requestor/excavator must request another locate at least 48 hours (excluding weekends and holidays) in advance of ground penetration so the locate markings can be refreshed.

Article 3. General Responsibilities of the Owner & Contractor

3.3 Contractor's General Responsibilities

Delete Paragraph 3.3.2 "Contractor's Superintendent" and replace with the following:

- 3.3.2 Contractor's Personnel: As a minimum the Contractor's on-site personnel shall consist of the following and shall be in attendance at the site during the progress of the Work. Full-time is defined as an average 40 hr work week.
 - 3.3.2.1 The Contractor shall employ a full-time Project Manager with a minimum of ten (10) years' experience on projects of similar size and complexity. The Project Manager shall be satisfactory to the Owner and shall not be changed without approval of the Owner at least fourteen (14) days prior to the change unless the Project Manager leaves the employment of the Contractor. The Project Manager shall have authority to

act on the Contractor's behalf. All communications with the Project Manager shall be as binding as if given to the Contractor. All verbal communications shall be confirmed in writing.

- 3.3.2.2 The Contractor shall employ a full-time Superintendent for the project with a minimum of ten (10) years' experience on projects of similar size and complexity. The Superintendent shall be satisfactory to the Owner and shall not be changed without approval of the Owner at least fourteen (14) days prior to the change unless the Superintendent leaves the employment of the Contractor.
- 3.3.2.3 The Contractor shall employ a full-time Project Scheduler/Expediter with a minimum of five (5) years' experience on projects of similar size and complexity on-site to provide the project team with complete scheduling information; expediting and status of material delivery; shop drawing and other submittal status and request for information status. The Project Scheduler/Expediter shall be experienced with the CPM scheduling software proposed by the Contractor and have project experience of similar scope and size.
- 3.3.2.4 The Contractor shall employ full-time (40 hr/wk) Project Engineers as determined by the Contractor for proper execution of the Work and to meet the conditions of the Contract Documents.
- 3.3.2.5 Quality Control Program: The Contractor shall establish a Quality Control Program that shall include two full-time Quality Control Supervisors (QCS), one for Architectural/Structural Expediter, and one for Mechanical, Plumbing and Electrical work. The QCS will assist the Owner's representative in the verification of the materials and installation of the Work. The Contractor shall be responsible for Quality Control and the Owner will provide Quality Assurance. The QCS shall not have less than 10 years experience with projects of similar size and scope.

Article 5. Bonds and Insurance

5.2.2.2 Additional Insurance is required as follows:

~~5.2.2.2.1 In addition to the insurance required under Article 5, of the Uniform General and Supplementary Conditions, the Contractor's Public Liability and Property Damage Insurance shall include an umbrella policy in the amount of \$_____ for Flood insurance.~~

5.2.2.2.2 In addition to the insurance required under Article 5, of the Uniform General and Supplementary Conditions, the Contractor's Public Liability and Property Damage Insurance shall include an umbrella policy in the amount of \$5,000,000.00.

~~5.2.2.2.3 In addition to the insurance required under Article 5, of the Uniform General and Supplementary Conditions, the Contractor's Public Liability and Property Damage Insurance shall include \$_____ insurance coverage for asbestos abatement work and/or demolition work.~~

5.2.2.5 Insert the following at beginning of paragraph:

The Owner reserves the right to extend coverage for builder's risk insurance for the project at its sole discretion. Contractor shall provide builder's risk insurance cost for the project. The Owner may accept the builder's risk program submitted by Contractor or may choose to place it under its own builder's risk program.

If Owner chooses to place project under its own builder's risk program delete remainder of paragraph 5.2.2.5 and replace with the following:

All Risk Builder's Risk Insurance will be provided by the Owner. Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials. The Builder's Risk policy limit shall be equal to 100 percent of the Contract. The policy shall be written in the name of the Owner. The policy shall have endorsements as follows:

Delete paragraph 5.2.2.5.3 and replace with the following:

- 5.2.2.5.3 Loss, if any, shall be adjusted with and made payable to the Owner as Trustee for the insureds as their interests may appear. Owner, General Contractor and all subcontractors hereby mutually waive their rights of recovery against one another with respect to losses covered under the builder's risk policy and shall provide mutual waivers of subrogation with regard to losses covered by the builder's risk insurance. It is hereby agreed and understood that said waivers apply even if the contractor's negligence causes a covered loss, and regardless of the extent of that contractor's insurable interest in the covered property. The Owner and Contractor shall be named as Loss Payee. For renovation projects or projects that involve portions of work contained within an existing structure, refer to Special Conditions for possible additional Builder's Risk insurance requirements.

Article 6. Contract Documents

- 6.1.1.1 The Contractor will be furnished an electronic copy of the Contract Drawings and Specifications for their use in making copies.

Article 9. Construction Schedule

9.6.2.1.1 Rainfall Table

The number of weather days expected for each month during the term of this Contract is compiled by the State Climatologist, based on U.S. Weather Bureau records. The number of weather days shown in the Rainfall Table for the first and last months of the Contract will be prorated in determining the total number of weather days expected during the term of this Contract.

Texas A&M University (College Station/Bryan)

January	5	May	5	September	6
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February	5	June	4	October	4
March	5	July	4	November	4
April	5	August	4	December	5

9.6.2.2.6 Unanticipated asbestos material, hazardous material, archeological artifacts, or endangered species are discovered on a part of the construction site where Contractor is performing his work.

Article 10. Payments

10.1.3 Each line item on the Schedule of Values and subsequent Change Orders shall be coded with one of the following category codes:

<u>CODE</u>	<u>CATEGORY</u>
001	General Condition Items
002	Demolition
003	Asbestos Abatement
004	Parking Lots & Driveways
005	Paved Area - Non Parking
006	Sidewalks & Paved Walk Areas
007	Streets or Roads - (includes curbs & gutters)
008	Electrical Distribution (Site) - (includes elec. lines, equipment & site lighting)
009	Telephone Distribution - (includes site lines other than fiber optic phone lines)
010	Fiber Optics - (all site fiber optic lines including fiber optic phone lines)
011	Natural Gas Lines (Site)
012	Water Distribution (Site) - (includes heated & chilled water & steam lines)
013	Sanitary & Storm Sewers (Site)
014	Fences and Gates (other than temporary)
015	Landscaping
016	Irrigation System
017	Retaining Walls & Mow Strips
018	Improvements - General (Site) - (includes benches, monuments, statues, markers)
019	Tunnels (Utility)
020	Tunnels (Other)
021	Septic Systems
022	Golf Course Facilities
023	Stadiums
024	Outdoor Swimming Pools and Tennis Courts
025	Athletic Fields & Recreation Areas (Intramural, Track & Field, Practice Fields)
026	Fountains
027	Plazas and Pavilions for Bus Stops
028	Fire Field Training Areas
029	Paths and Trails (Bicycle, Jogging)
030	Airport Runways/Strip/Taxiways/Aprons
031	Seawalls/Bulkheads/Piers/Broadwalks
032	Non-Componentized Building & Building Improvements (\$100,000 - \$999,999)

055 Infrastructure & Infrastructure Improvements (chillers serving multiple buildings)

Plus the following 11 component categories for EACH building with a cost of \$1,000,000 or greater.

NOTE: If the project includes construction of only one building, the following category codes should be used, however, if a second building is included in the project the category codes should be 201.0 through 211.0, and if a third building is included the codes should be 301.0 - 311.0, etc.

- 101 Building Shell
- 102 Roof Coverings
- 103 Elevator System
- 104 Floor Coverings
- 105 Interior Finishes
- 106 HVAC System
- 107 Plumbing System
- 108 Electrical and Lighting System
- 109 Fire Protection System
- 110 Fixed Equipment Assets
- 111 Miscellaneous Construction Features
- 146 Sprinkler System
- 152 Security System
- 153 Network Cabling/Telephone

Componentization Descriptions:

Code

- 101.0 Building shell: the exterior walls, foundation, floors and roof structural system and decking. The walls consist of the wall layers starting with the exterior building skin and ending at the inner thermal layer;
- 102.0 Roof Coverings: includes the covering material used to establish the water barrier on the building's roof deck. The roof covering starts with the first membrane above the roof decking materials including the urethane layer, coating, shingles, films, metal panels, clay tiles and all materials installed above the roof deck;
- 103.0 Elevator system: comprised of the elevator and escalator conveyance systems including controls;
- 104.0 Floor Coverings: includes carpet, ceramic tile, stone, terrazzo, vinyl tile, wood, laminate and linoleum floor coverings, and other types of floor coverings and all padding and barrier sheeting installed above the concrete slab or wooden deck;
- 105.0 Interior finishes: all walls, partitions, ceiling and millwork that are inside the building shell walls. This will include but not limited to, all framework, interior doors, interior windows, sheet rock, paneling, paint and any other wall and ceiling coverings;
- 106.0 HVAC: includes the chillers, condensers, exhaust fans and coil units, heating strips, chilled/heating water supply and return piping, air ducts, registers, climate control panels and all circuitry connected to the power supply panel within the

- perimeter of the building;
- 107.0 Plumbing system: all piping, drains, fixtures, and associated equipment within the perimeter of the building used for moving domestic water, other fluid gases, compressed air or sewage;
- 108.0 Electrical and lighting systems: all telecommunication and alarm wiring, lighting fixtures, electrical conduit, wire, cables, circuits, switches and controls within the perimeter of the building;
- 109.0 Fire protection system: comprised of the piping, sprinkler heads and controls (Circuitry for fire detection, alarms, and warning devices are included in “Electrical”);
- 110.0 Fixed equipment assets: is any equipment other than equipment comprised of the HVAC system, electrical system, fire protection system, plumbing system of elevator system that is installed and permanently attached to some part of the building’s structure;
- 111.0 Miscellaneous construction features: any building component that does not fit into one of the other ten categories.
- 146.0 Sprinkler System: Building interior
- 152.0 Security System: Installed within building, not easily removed.
- 153.0 Network Cabling/Telephone: Installed within building, not easily removed (not fiber optics)

Article 13. Warranty and Guarantee

- 13.2.1 Specific requirements for warranties and guarantees to include parts, labor, and other costs are noted in various sections of the technical specifications. Warranties and guarantees are required for, but not limited to, the following:

Membrane Waterproofing.....	2 years
Urethane Roofing System	10 years
Joint Sealers	2 years
Insulated Glass	5 years
Aluminum Doors & Frames.....	3 years
Wood & Plastic Faced Doors.....	Life of installation
Upward Acting Doors	5 years
Mirror Glazing	5 years
Window Wall System	2 years
Access Flooring.....	5 years
Dampproofing	2 years
Water Repellant Coating.....	5 years
Sheet Metal & Flashing.....	2 years
Roof Hatches	2 years
Door Closers	5 years
Metal Windows	2 years
Curtain Wall/Skylights.....	2 years
Fixed Seating.....	10 years
Carpet	15 years
Chalkboard Surfaces	50 years
Dock Lift	2 years

Prefabricated Environmental Box	10 years
Environmental Box Refrigeration Systems and Controls	2 years
Air Conditioning and Refrigeration Systems	2 years
HVAC Controls.....	2 years
Variable Speed Controllers	3 years

Until receipt of these guarantees, final inspection will not be conducted nor final payment released.

- 13.8. Service Contracts. The Contractor shall, prior to completion of the Work, deliver to the Owner service contracts for equipment furnished and/or installed by the Contractor in connection with the Work. Specific requirements for service contracts are noted in various sections of the technical specifications. Service contracts are required for, but not limited to, the following:

Elevators

Until receipt of these contracts, where applicable, final payment will not be released.

16.4 Business Ethics Expectations

During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, 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.

Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Contractor's employees, agents, subconsultants, subconsultants' employees and other persons under their control.

Contractor's employees, agents, subconsultants (and their representatives) shall not make or offer, or cause to be made or offered, any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Contractor's employees, agents and subconsultants (and their relatives) shall not receive or accept any cash payments, commissions, employment, gifts valued at \$50 dollars or more, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of contractors, subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with a Project.

Contractor agrees to notify Phillip Ray, Vice Chancellor for Business affairs for The Texas A&M University System within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by a Contractor representative selected by Owner in a form agreeable to Owner stating that the representative is not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.

Contractor agrees to include provisions similar to this Article in all contracts with subconsultants receiving more than \$25,000 in funds in connection with a Project.