

AGREEMENT
BETWEEN
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY
SYSTEM
AND
CLARK CONTRACTORS, LLC,
CONSTRUCTION MANAGER-AT-RISK

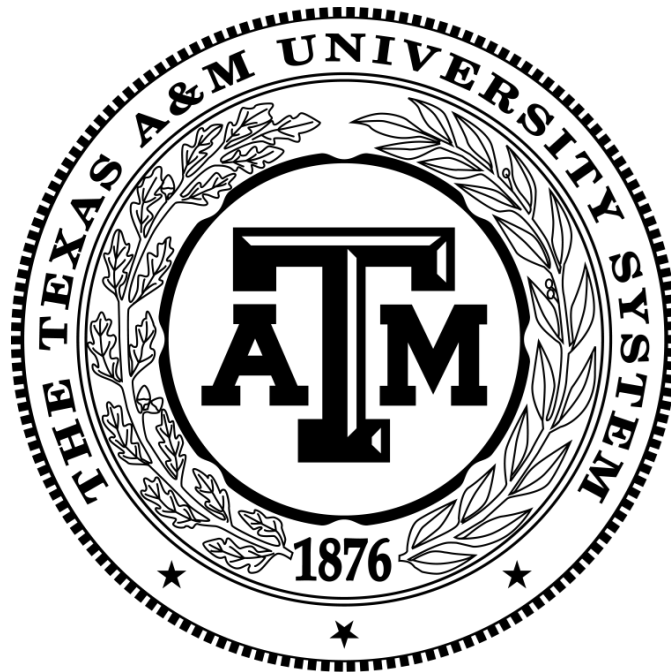


TABLE OF CONTENTS

ARTICLE

- 1 SCOPE OF WORK
- 2 DEFINITIONS
- 3 CONTRACTOR'S GENERAL RESPONSIBILITIES
- 4 OWNER RESPONSIBILITIES
- 5 PRE-CONSTRUCTION PHASE SERVICES
- 6 PRE-CONSTRUCTION PHASE FEE
- 7 GUARANTEED MAXIMUM PRICE PROPOSAL
- 8 CONSTRUCTION PHASE SERVICES
- 9 CONSTRUCTION PHASE FEE
- 10 PAYMENTS
- 11 DIRECT CONSTRUCTION COST
- 12 CONTRACT SAVINGS, REBATES & REFUNDS
- 13 OWNERSHIP AND USE OF DOCUMENTS
- 14 TIME
- 15 PROJECT TERMINATION AND SUSPENSION
- 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS
- 17 BONDS AND INSURANCE
- 18 DISPUTE RESOLUTION
- 19 INDEMNITY
- 20 SPECIAL WARRANTIES
- 21 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK
- 22 BUSINESS ETHICS EXPECTATION
- 23 MISCELLANEOUS PROVISIONS

List of Exhibits

- | | |
|-------|---|
| Ex. A | Fees, Costs and other Contract Variables |
| Ex. B | Uniform General & Supplementary Conditions |
| Ex. C | Special Conditions, Wage Rates and Owner's Specifications |
| Ex. D | Allowable General Conditions Line Items |
| Ex. E | Guaranteed Maximum Price Proposal Form |
| Ex. F | Security Bond |
| Ex. G | Personnel and Monthly Salary Rates |
| Ex. H | BIM Execution Plan |

**AGREEMENT
BETWEEN
THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY
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This Agreement is effective as of July 18, 2023 (the “Effective Date”), by and between the **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“Owner”) and **Clark Contractors, LLC**, Construction Manager at Risk (“Contractor”) for the: Business, Engineering, and Technology Building construction project (the “Project”). The parties acknowledge that TreanorHL shall serve as the architect/engineer (hereafter “A/E”).

Owner intends to construct the Project at Texas A&M University-Texarkana, Texarkana, Texas, within a construction cost limit of Thirty-Three Million, Six Hundred Ninety-Two Thousand, One Hundred and Twenty-Five and no/100 dollars (\$33,692,125.00). This sum is referred to as the Amount Available for the Construction Contract (“AACC”), which is further defined in Paragraph 2.1

Owner and Contractor agree as follows:

**ARTICLE 1
SCOPE OF WORK**

Contractor has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services (the “Work”) and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the terms of this Agreement.

**ARTICLE 2
DEFINITIONS**

The terms, words and phrases used in this Agreement have the meanings given in the Uniform General Conditions for The Texas A&M University System and as follows:

2.1 “**Amount Available for the Construction Contract**” or “**AACC**” means the maximum monetary amount budgeted by Owner for all Construction Phase services, materials, labor and other work required of Contractor for completion of the Work in accordance with this Agreement. The AACC includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee, and Contractor’s Contingency. The AACC may be adjusted by the Owner for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The AACC does not include Contractor’s Pre-Construction Phase Fee. The Final Amount Available for the Construction Contract is the AACC after the Project has been approved by The Texas A&M University System Board of Regents.

2.2 “**A/E**” or “**Architect/Engineer**” refers to the professional firm employed by Owner as architect/engineer of record for the Project, and its consultants.

2.3 “**Contract Documents**” means this Agreement and all exhibits and attachments listed, contained or referenced in this Agreement specifically including the Uniform General Conditions; Special Conditions and Owner’s Specifications; the Drawings, Specifications, details and other documents developed by A/E or Owner’s consultants, if any, and accepted by Owner which describe the Project; all Addenda issued prior to the Effective Date of this Agreement; the Guaranteed Maximum Price Proposal when accepted by Owner and executed by the parties; all Change Orders issued after the Effective Date of this Agreement; and the HUB Subcontracting Plan submitted by Contractor. These Contract Documents form the entire and integrated contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

2.4 “**Contractor’s Contingency**” has the meaning set forth in Paragraph 11.3.

2.5 “**Construction Documents**” means, collectively, the Uniform General Conditions; Owner’s Special Conditions and Specifications; and the Drawings, Specifications, details, Change Orders and other documents prepared by A/E, its consultants, and by Owner’s consultants, that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by Owner.

2.6 “**Construction Phase Fee**” means the amount set forth in Paragraph 3 of Exhibit “A” attached to this Agreement.

2.7 “**Construction Phase Services**” means the coordination, implementation and execution of the Work required by this Agreement, which are further defined in Article 8.

2.8 “**Cost of the Work**” means those costs described in Paragraph 11.2.

2.9 “**Direct Construction Cost**” shall have the meaning set forth in Article 11.

2.10 “**Estimated Construction Cost**” or “**ECC**” means the amount calculated by Contractor for the total cost of all elements of the Work based on this Agreement available at the time(s) that the ECC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates and contingencies, designed and specified by A/E and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall include all the cost elements included in the AACC, as defined above, and shall represent Contractor’s best current estimate of the Guaranteed Maximum Price it will propose for the Project based on the information then available. The ECC shall not include Contractor’s Pre-Construction Phase Fee, A/E’s Fees, the cost of the land and rights-of-way, or any other costs that are the direct responsibility of Owner.

2.11 “**Guaranteed Maximum Price**” or “**GMP**” means the amount proposed by Contractor and accepted by Owner as the maximum cost to Owner for construction of the Project in accordance with this Agreement. The GMP includes Contractor’s Construction Phase Fee, the General Conditions Cost, the Cost of the Work, and Contractor’s Contingency amount.

2.12 **“General Conditions Cost”** means costs incurred and minor work performed by Contractor without the need for competitive bids/proposals. The allowable General Conditions items are limited in Paragraph 11.1 and are further described on Exhibit “D”. The maximum allowable General Conditions Cost payable to Contractor during the Construction Phase of the Project is set out in Exhibit “E” attached to this Agreement.

2.13 **“Monthly Salary Rate”** means the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Phase to account for the monthly salary costs of Contractor’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Contractor’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by Contractor for services performed. The Monthly Salary Rate is included in Exhibit “G” attached to this Agreement.

2.14 **“Owner’s Specifications”** means the construction and contract administration requirements and standards detailed in Exhibit “C” attached to this Agreement, consisting of Division 1 of the Specifications.

2.15 **“Pre-Construction Phase Fee”** means the amount set forth in Paragraph 2 of Exhibit “A” attached to this Agreement.

2.16 **“Pre-Construction Phase Services”** means the participation, documentation and execution of Contractor’s Pre-Construction Phase deliverables as required by this Agreement and further defined in Article 5.

2.17 **“Program Manager”** refers to the professional management firm selected by the Owner as the Owner’s representative for the Project, and its employees and consultants.

2.18 **“Project Team”** means Owner, Contractor, A/E and consultants, any separate Contractors employed by Owner, and others employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated in writing by Owner and may be modified from time to time in writing by Owner.

2.19 **“Reimbursable Services”** are the services specifically identified in Paragraph 10.2.2 that are provided by the Contractor in conjunction with the delivery of Pre-Construction Services under this Agreement.

2.20 **“Work”** means the provision of all construction services, labor, materials, supplies, and equipment that are required of Contractor to complete the Project in strict accordance with the requirements of this Agreement. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from this Agreement. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

2.21 **“Worker Wage Rate”** means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage Rate Form required by the Construction Documents. The Worker Wage Rate must be reasonable and customary for their industry, must equal or exceed the prevailing wage established by Owner and must be approved in writing by Owner in advance of any Application for Payment. All payments for non-salaried personnel working on the Project are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by employer for services performed for the Project.

ARTICLE 3 CONTRACTOR’S GENERAL RESPONSIBILITIES

3.1 Contractor shall perform all services specifically allocated to it by the Contract Documents, BIM Execution Plan, “Facility Design Guidelines” as well as those services reasonably inferable from the Contract Documents as necessary for completion of the Work and the Project. Contractor agrees to perform these services using its best efforts, skills, judgments and abilities.

3.2 Contractor shall collaborate and cooperate with A/E and endeavor to further the interests of Owner and the Project. Contractor shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of Owner and in accordance with the Work Project Schedule.

3.3 Contractor shall designate a representative authorized to act on Contractor’s behalf with respect to the Project.

3.4 Contractor shall establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

3.5 Contractor shall utilize Owner’s project management software applications e-Builder® and Autodesk Build as the primary systems for all project documentation through all phases of the Project. Contractor shall follow Owner’s guidelines on the use of e-Builder® and Autodesk Build.

3.6 If Owner elects to “fast-track” or develop the Project in multiple stages, Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific AACC, at Owner’s discretion.

3.7 Contractor shall identify to Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate or Worker Wage Rate for each of them. Contractor shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by Owner, Contractor shall not remove or replace the persons or entities assigned to the Project except with Owner’s written consent, which consent shall not be unreasonably withheld. Contractor shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Contractor shall promptly update the list of persons and consultants if they change during the course of the Project.

3.8 The Owner's HUB Subcontracting Plan for Construction Services is available on the following website: <https://www.tamus.edu/business/hub-procurement/hub-programs-3/> Contractor, as a provision of the Agreement, must comply with the requirements of the Owner's HUB policies and adhere to the HUB Subcontracting Plans submitted for Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by Contractor without the prior written approval of Owner.

3.9 Contractor shall coordinate its services and work collaboratively with the A/E design team and provide cost information to the design team and the Owner at all stages of the design. It is the Contractor's responsibility to keep the design within the project AACC.

3.10 The Architect/Engineer shall utilize a Building Information Modeling (BIM) authoring software compliant with Industry Foundation Class and BIM based design processes to produce a building information model(s) (model) for this project. The Contractor shall be knowledgeable of BIM use for all phases of the design and construction process.

3.11 The Contractor shall develop a project BIM Execution Plan documenting BIM uses, analysis technologies and workflows. The BIM Execution Plan (Exhibit H) shall be submitted to the Owner within 30 days of the execution of this Agreement. A combined BIM Execution Plan from both Architect/Engineer and Contractor is also acceptable.

3.12 Participation of Contractor or its subcontractors and suppliers in contributions to the BIM process or model(s) shall not constitute the performance of design services.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 Owner has designated A/E as the Architect/Engineer for the Project.

4.2 Owner will provide the AACC and general schedule for the Project. The AACC provided by Owner will be established with due consideration for separate contingencies for changes in the Project during construction, and for other Project costs that are the responsibility of Owner. The general schedule will set forth Owner's plan for milestone dates and completion of the Project.

4.3 Owner will identify a person as its Owner's Designated Representative ("ODR") who is authorized to act on Owner's behalf with respect to the Project, including final determination of fees and costs earned by Contractor and equitable back charges against Contractor. The ODR shall examine the documents submitted by Contractor and shall render decisions on behalf of Owner. The ODR shall have all the responsibilities and authorities allocated to him/her in the UGC.

4.4 Owner, at its sole cost, will secure the services of existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

4.5 Owner shall arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents.

4.6 Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

4.7 Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of Contractor's services and of the Work.

4.8 Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Contractor's responsibility for the Project. Contractor is fully and solely responsible for constructing the Project in strict accordance with this Agreement.

4.9 Owner shall have the right to reject any defective Work on the Project. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand.

4.10 Owner shall cause A/E to provide Contractor documents and data files derived from the model at review milestones for its use in performing reviews, preparing cost estimates and a GMP proposal, obtaining bids/proposals for the work and constructing the Project. Owner shall also make available to Contractor any supplemental Contract Documents such as addenda, equipment procurement packages, RFI or RFP responses and change order documentation. Contractor shall be responsible for preparing all copies of these documents needed for its use and that of any of its consultants or Subcontractors for performing reviews, preparing cost estimates and a GMP proposal, obtaining bids/proposals for the work and constructing the Project as set forth in this Agreement. Contractor shall also be responsible for maintaining a register of document distribution, and distributing documents to its consultants, Subcontractors, bidders, proposers and plan rooms.

ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase shall be deemed to commence upon the date specified in a written Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Contractor is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the written Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall perform the following Pre-Construction Phase Services:

5.1 General Coordination

5.1.1 Contractor's Pre-Construction Phase Services team shall attend Project Team meetings with Owner, Owner representatives, and A/E at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to Owner acceptance of the GMP and during completion of the Construction Documents.

5.1.2 Provide a preliminary evaluation of "Facility Design Guidelines", Program of Requirements and the AACC, each in terms of the other.

5.1.3 Review and understand the standards and requirements in Owner's Specifications

and perform all services in accordance with those standards and requirements.

5.1.4 Visit the site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.

5.1.5 Participate as a member of the Project Team in the development of the Program of Requirements if such program has not been developed prior to the Effective Date of this Agreement.

5.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Contractor and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Work Progress Schedule (as defined below) and the AACC. Notwithstanding the above, Contractor shall not be required to provide A/E services unless specifically required by the Contract Documents and Contractor's recommendations and information are furnished in its capacity as a Contractor.

5.1.7 Assist Owner in selecting and directing the services of existing facility surveys, testing and balancing, environmental surveys or other special consultants hired by Owner to develop additional information for the design or construction of the Project.

5.1.8 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.1.9 Contractor shall use all Construction Documents returned to A/E from the Subcontractor proposers.

5.2 **Constructability Program**

5.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be reviewed by Owner at design milestones. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

5.2.2 Prepare a "Constructability Report" that identifies items that, in Contractor's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of model(s), Drawings, Specifications, details and schedules and identify discrepancies that may generate Change Orders or claims once Project construction commences. Contractor shall provide Owner with an update to the

Constructability Report at every milestone meeting during the Pre-Construction Phase.

5.2.3 Utilize Owner's project management information systems (PMIS) for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the model(s), Drawings and Specifications for the Project.

5.2.4 Utilize Owner's PMIS to identify critical clashes in models and lead a review of these clashes with the design team for their resolution. The review of model clashes shall begin no later than the Design Development review meeting and continue through Construction Documents on a regular schedule as identified in the BIM Execution Plan.

5.3 **Scheduling**

5.3.1 Develop a Work Progress Schedule for Project Team review and Owner's approval that coordinates and integrates activities on the Project, including Contractor's services, A/E's design services, the work of other consultants and suppliers, and Owner's activities with the anticipated construction schedules for other contractors. The WPS must identify all major milestones through Project Final Completion. The WPS shall be created and maintained in accordance with Owner's Specifications Section 01 32 00 using Owner-specified format and software.

5.3.2 Contractor shall update the WPS throughout the Pre-Construction and Construction Phases as described in Owner's requirements and Specifications.

5.3.3 The WPS shall include other detailed schedule activities as directed by Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

5.4 **Budget and Cost Consultation**

5.4.1 Contractor is responsible for the construction budget and for preparing and updating all procurement and Estimated Construction Costs and distributing them to the Project Team throughout the duration of the Project.

5.4.2 Contractor shall prepare and update an Estimated Construction Cost (ECC) report at the completion of Schematic Design, Design Development, and at the twenty-five (25%), fifty percent (50%) seventy-five (75%) and the hundred percent (100%) completion stages of the Construction Documents phase of the Project. The GMP Proposal, when submitted, will have as its basis a current ECC report. The ECC report for Schematic Design shall be a detailed estimate organized in Construction Specifications Institute, MasterFormat 2012. The ECC reports for the Design Development and Construction Documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in Construction Specifications Institute, MasterFormat 2012 for each portion of the Work.

5.4.3 Contractor shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the

scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if Contractor has reason to believe that the most current ECC will exceed the AACC or not meet WPS requirements and recommend reasonable strategies for bringing the Project in line with the AACC and the WPS.

5.4.4 Contractor shall promptly identify all variances between estimated costs and actual costs during the Construction Phase and shall promptly report such variances to the Project Team, in a format acceptable to Owner, along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

5.4.5 Should any ECC exceed or fall significantly below the approved AACC, Owner and Contractor shall negotiate changes to the Project scope, requirements or the AACC as required.

5.5 **Coordination of Design and Construction Contract Documents**

5.5.1 Review model(s), Drawings, Specifications and other Construction Documents as they are developed by A/E during the Schematic Design, Design Development, and Construction Documents design phases of the Project.

5.5.2 Consult with Owner and A/E on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.5.3 Advise Owner of any error, inconsistency or omission discovered in the model(s), Drawings, Specifications, and other Construction Documents.

5.5.4 Advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the AACC.

5.5.5 Review the model(s) and Construction Documents for compliance with all applicable laws, rules and regulations, the Contract Documents, and Owner requirements.

5.5.6 It is not the Contractor's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, but Contractor will report any variances which should have reasonably been discovered.

5.6 **Construction Planning**

5.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner and A/E on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

5.6.2 Make recommendations to the Project Team regarding organization of the

Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, Owner's goals for HUB Contractor participation, and other constraints.

5.6.3 Review the model(s) and Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

5.6.4 Assist Owner, A/E, Owner's other consultants, and Owner's separate contractors in obtaining all applicable LEED documentation, risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and Owner's insurance provider.

5.6.5 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to Owner for the Project.

5.6.6 Review the model(s) and Construction Documents to ensure that they contain adequate provision for job site areas required for construction, all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Project.

5.6.7 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.

5.6.8 Consult with and make recommendations to Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with Owner as may be required to meet the WPS.

5.7 Subcontractor Buyout Strategy

5.7.1 Provide a written buyout package strategy for procuring subcontracts including self-performed work (other than General Conditions), prior to submitting the GMP Proposal. The buyout package strategy shall be submitted to the A/E and Owner for review and comments. The revised buyout package strategy shall be submitted as part of the GMP Proposal.

5.7.2 The buyout strategy shall identify packages of work that are most advantageous to the project and align with the Contractor's HUB Good Faith Effort.

5.7.3 For each buyout package identify the level of completeness of the drawings and specifications that are intended to be bid. If the drawings and specifications are less than

100% construction documents include your methodologies to package, receive competitive bids or proposals and construct a complete project.

5.7.4 The buyout strategy shall include the Contractor's anticipated selection criteria with weighted values and questions that shall be consistent across all bid packages as well as identify where and how the Contractor will advertise the packages. Include an anticipate date for the execution of subcontracts.

5.7.5 The buyout strategy shall include a schedule indicating key milestones dates, including package issuance, schedule for posting and receiving bids/proposals, evaluation of bids/proposals, review/approval of each buyout package, and completion of buyout for 85% of the cost of work. Completion of buyout for 85% of the total cost of work shall be completed no later than 25% of the construction duration from the notice to proceed unless otherwise approved by Owner.

5.7.6 Each package shall include the UGC, Special Conditions, Wage Rates, Owner's Division 1 Specifications, Drawings and Specification and other items the Contractor determines that is important to the scope of work covered in the package.

5.7.7 Contractor shall update the buyout strategy monthly as a minimum, as conditions change, or as proposal dates are revised. Updates to the plan during the buyout process shall be submitted to and reviewed by the Owner and the A/E.

5.8 Obtaining Bids/Proposals for the Project

5.8.1 Contractor shall publicly advertise and solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the Project other than the minor work that may be included in General Conditions. Publicly advertise means an open listing of the request for bids or proposals to obtain multiple proposals. Publicly advertise DOES NOT mean by invitation only. Criteria for determining the bid/ proposal that provides the best value to Owner shall be established by the Project Team and included in the request for bids or proposals. Contractor may pre-qualify bidders; however, they shall accept and evaluate all bids received by the same criteria. Contractor shall notify Owner in advance in writing of the date it will receive the bids/proposals.

5.8.2 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

5.8.3 Contractor and Owner shall review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, Contractor shall through e-Builder®, list all bid/proposals received, evaluate all bid/proposals received and recommend to Owner, the bid/proposal(s) that provides the best value for the Project. Upon Owner's concurrence through e-Builder® with the recommendation, Contractor may negotiate the terms of the subcontract with the apparent best value bidder/proposer. After a subcontract is executed, the contractor shall make all bids/proposals public within seven (7) days. Owner shall keep

all evaluations and recommendations confidential until after a subcontract award has been made by the Contractor.

5.8.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Chief Facilities Officer for the Office of Facilities Planning & Construction or designee. Upon Owner's concurrence in the final terms of the subcontract, Contractor shall enter into a written subcontract for the subcontract work and upon request provide a copy to Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

5.8.5 If Contractor reviews, evaluates, and recommends to Owner a bid/proposal from a qualified trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Contractor by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk Contractor incurs because of Owner's requirement that the other bid/proposal be accepted.

5.8.6 Contractor may seek to self-perform portions of the Project identified for self-performance in the bid/proposal strategy. Contractor must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. Owner will, at its sole discretion, determine whether Contractor's bid/proposal provides the best value for Owner, and its determination shall be final.

5.8.7 Contractor may self-perform work bid packages typically performed by subcontractors. The Contractor shall bid all self-perform bid packages against at least two other interested trade contractors. If the Contractor acquires competitive bids/proposals for the self-performed work, the Owner at its sole determination may allow the self-performed work to be accomplished as a lump sum. Otherwise, all self-performed work shall be subject to an agreed upon guaranteed maximum price with a fixed fee. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this Agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this Agreement unless otherwise agreed to by the Owner and with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work."

5.8.8 The maximum fee payable to the Contractor on GMP self-performed work for scopes of work typically performed by subcontractors, including but not limited to concrete and steel erection scopes, will be 15% on the cost of self-performed labor, labor burden, materials and equipment. If the Contractor does not self-perform the majority of the scope of self-performed work, and as a result subcontracts more than 50% of the self-perform amount to other trade contractors, then no self-performed work fee will apply to the cost of any such sub-subcontracted work. Scopes of work where the contractor received no

competitive bids, including but not limited to rough carpentry, daily clean-up, temporary enclosures and other work typically characterized as “miscellaneous items” or “general requirements” may be self-performed with a maximum fee of 7.5% on the cost of self-performed labor, labor burden, materials and equipment. Cost associated with General Conditions are specifically excluded from receiving a fee under this section.

5.8.9 Contractor shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to Owner in e-Builder, including a HUB Subcontracting Plan. Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Contractor shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner’s acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner’s written consent, which shall not be unreasonably withheld.

5.8.10 If a selected trade contractor or Subcontractor fails to execute a subcontract after being selected in accordance with this Paragraph or defaults in the performance of its work, Contractor may, in consultation with Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

5.8.11 The goal of the Contractor shall be to have all work procured through advertised competitive proposals, however if a minor procurement condition arises during the project the following procurement guidelines may be used with Owner’s prior approval. This does not apply to change order pricing.

Less than \$7,500	No requirements
Over \$7,500 & less than \$25,000	Obtain three (3) solicitations/proposals
Over \$25,000	Obtain three (3) advertised competitive Proposals as identified above.

5.8.12 There are no third-party beneficiaries of this Agreement.

5.9 Safety

5.9.1 In accordance with the UGC, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

5.9.2 Contractor shall provide recommendations and information to Owner and A/E regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

The Pre-Construction Phase Fee is the total compensation payable to Contractor for the performance of Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by Owner. The Pre-Construction Phase Fee shall be a lump sum amount based on the AACC established in this Agreement.

6.1 Except as specifically allowed by Owner, Contractor shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

6.2 Costs associated with the following items are specifically, but not exclusively, included in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

6.3 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee shall be equitably adjusted. If the AACC is changed materially before acceptance of the GMP Proposal, the Pre-Construction Phase Fee shall be adjusted in writing in proportion to the change in the AACC. There shall be no adjustments in the Pre-Construction Phase Fee following acceptance of the GMP Proposal.

6.4 For Additional Pre-Construction Phase Services that are approved in advance and in writing by Owner, Contractor shall be entitled to additional compensation computed as follows:

6.4.1 A pre-established lump sum amount; or

6.4.2 The hourly cost of Contractor's employees or consultants who actually perform the Additional Services based on the employee's Worker Wage Rate or prorated Monthly Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Pre-Construction Phase Services, plus an overhead and profit markup of ten percent (10%) of the total cost; or

6.4.3 As otherwise agreed in advance and in writing.

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 At the conclusion of the Design Development phase the Contractor shall prepare and submit a Guaranteed Maximum Price Proposal to Owner based on the Design Development phase documents and review comments. The GMP shall be delivered to the Owner within three (3) weeks of the Design Development review meeting or a date established by the Owner. The GMP Proposal must be prepared in accordance with the guidelines established by Owner and delivered in the format specified by Owner in Exhibit "E" attached to this Agreement. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Contractor shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to Owner.

7.2 In developing the GMP Proposal, Contractor shall coordinate efforts with A/E to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. Contractor shall review development of the GMP Proposal with Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by Contractor in the GMP and the monetary amounts attributable to them. The GMP Proposal shall indicate any pricing that was supplied by a single trade contractor. The GMP Proposal shall include, without limitation, a breakdown of Contractor's estimated General Conditions Costs in a format as indicated in Exhibit "D" and estimated Cost of the Work organized by trade and MasterFormat 2012; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion. As a part of the General Conditions cost the contractor shall provide a completed Exhibit "G" for their personnel required for the project. Notwithstanding the breakdown of Contractor's estimated costs, there are no line item guaranteed maximum amounts except for general conditions.

7.4 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.5 The GMP Proposal shall include a Contractor's Contingency amount.

7.6 Included with its GMP Proposal, Contractor shall provide three complete and signed copies of Exhibit E. The GMP Proposal shall also indicate the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The supporting documents shall be referenced in and incorporated into the GMP Proposal.

7.7 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the GMP. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.

7.8 In submitting the GMP Proposal, Contractor represents that it will provide every item, system or element of performance that is identified, shown or specified in the GMP Proposal or the supporting documents, along with those necessary or ancillary materials that are reasonably inferable and equipment for their complete operating installation, unless specifically accepted in writing by Owner. Upon Owner's written acceptance of the GMP Proposal, Contractor shall not be entitled to any increase in the GMP due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.

7.9 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to Owner in writing separate from the GMP Proposal and specifically accepted in writing by Owner in an amendment to this Agreement. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

7.10 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Contractor. Upon acceptance by Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal (Exhibit "E") which shall become part of this Agreement. If Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, Owner may terminate this Agreement.

7.11 Following Owner's acceptance of the GMP Proposal, Contractor shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, Contractor and A/E shall jointly deliver a monthly written status report to Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

7.12 Contractor shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.13 The parties may agree to convert the GMP to a lump sum contract amount at any time after Contractor has received bids or proposals from trade Contractors or Subcontractors for the performance of all major elements of the Project. In proposing a lump sum amount, Contractor shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized. In preparing a lump sum conversion proposal, Contractor must provide the following information:

- 7.13.1 The stage of completion of the Project;
- 7.13.2 The trade packages that have been completely bought out;
- 7.13.3 The trade packages remaining that have not been bought out;
- 7.13.4 A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
- 7.13.5 An accounting of all savings amounts that are to be returned to Owner as part of the lump sum calculation; and
- 7.13.6 Any other Project information requested by Owner.

7.14 Contractor shall document the actual Cost of the Project at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to Owner monthly and with Contractor's recommendation for selection of a bid/proposal for each subcontracting package.

7.15 Notwithstanding anything to the contrary herein, Contractor shall have no liability for delay or liquidated damages if the parties are unable to reach an agreement on the GMP.

ARTICLE 8 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a written Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall not incur any Subcontractor costs for construction of the Project prior to issuance by Owner of written authorization to commence such Work. Contractor shall perform the following Construction Phase Services:

8.1 Construct the Work in strict accordance with this Agreement and as required by the UGC, Special Conditions and Owner's Specifications within the time required by the Work Progress Schedule approved by Owner.

8.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

8.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and Owner. The designated representative shall be authorized to act on behalf of and bind Contractor in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

8.4 Attend regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.

8.5 In addition to attending regularly scheduled Project progress meetings, Contractor shall schedule, direct and attend interim progress meetings (i.e., commissioning meetings, coordination meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. Contractor shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

8.6 Coordinate delivery and installation of Owner-procured material and equipment.

8.7 In accordance with Owner's UGC, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

8.8 Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist Owner or A/E in obtaining all approvals required from authorities having jurisdiction over the Project.

8.9 Coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

8.10 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall keep Owner informed of the progress and quality of the Work.

8.11 Contractor shall promptly correct any defective Work at Contractor's sole expense unless Owner specifically agrees to accept the Work in writing.

8.12 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. Contractor shall be responsible for correcting all items that do not comply with the Construction Documents at its sole expense without cost to Owner.

8.13 In accordance with the UGC's provisions regarding record documents and Owner's Specifications, Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "Record Drawings" of the completed Work.

ARTICLE 9 CONSTRUCTION PHASE FEE

Contractor's Construction Phase Fee is the maximum amount payable to Contractor for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by Owner elsewhere in this Agreement. References in the UGC to Contractor's "overhead" and "profit" mean Contractor's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items:

9.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; all employee stock option plans including retirement plans if in addition to a 401k or any other like expenses of Contractor.

9.2 Salaries of Contractor's officers, executives, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

9.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are limited to: costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, any and all computer hardware, computer software and computer services beyond what is allowed in General Conditions, copiers and other business equipment, and specialized telephone systems, including cellular/digital phones, smartphones and pdas; trade or professional association dues; training; cost for hiring and/or relocation of any of Contractor's personnel; and travel, per diem and subsistence expense of Contractor, its officers or employees except as specifically allowed under the General Conditions. See Exhibit D for reimbursable General Conditions Cost versus non-reimbursable General Conditions Cost.

9.4 Any financial costs incurred by Contractor including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

9.5 Any legal, accounting, professional or other similar costs incurred by Contractor, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

9.6 Any Federal and/or State income and franchise taxes paid by Contractor. Any fines, penalties, sanctions or other levies assessed by any governmental body against Contractor.

9.7 Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Contractor, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet WPS milestones; costs arising from Contractor's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

9.8 The cost of any and all insurance deductibles payable by Contractor and costs due to the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by this Agreement.

9.9 Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

9.10 Any and all costs not specifically identified as an element of the Direct Construction Cost.

ARTICLE 10 PAYMENTS

10.1 General Requirements

10.1.1 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Contractor's overhead and profit, shall not exceed the unpaid balance of the GMP less the retainage held by Owner on Work previously completed.

10.1.2 Expenses of transportation and overnight living expenses in connection with Owner approved out-of-state travel shall be identified separately in each Application for Payment. All travel must be approved in writing and in advance by Owner to be eligible for payment.

10.1.3 Expenses specifically excluded from reimbursement include telephone charges, FAX services, alcoholic beverages, laundry service, valet service, entertainment expenses and any non-Project related items. Tips are included in the per diem rates.

10.1.4 Retainage, as specified in the UGC Paragraph 10.3.2 will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work, General Conditions, and Contractor's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

10.1.5 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

10.1.6 This Agreement is subject to the assessment of liquidated damages against Contractor as set forth in Exhibit "A" attached to this Agreement. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Contractor.

10.1.7 Owner shall have the right to withhold from payments due Contractor such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Contractor or any Subcontractor or failure of Contractor or any Subcontractor to perform their obligations under this Agreement.

10.1.8 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to Contractor under any of the following circumstances:

10.1.8.1 Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;

10.1.8.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, Owner shall pay for those services performed in accordance with the Construction Documents;

10.1.8.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;

10.1.8.4 Contractor is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Contractor;

10.1.8.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP, less retainage, is not sufficient to complete the Work in accordance with the Construction Documents;

10.1.8.6 Contractor has failed to complete the Work in accordance with the Work Progress Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the agreed

timeframe;

10.1.8.7 Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

10.1.8.8 Contractor fails to obtain, maintain or renew insurance coverage as required by this Agreement.

10.1.8.9 Contractor fails to comply with conditions set forth in the HUB Subcontracting Plan, including but not limited to the submission of the HSP - Prime Contractor Progress Assessment Report with each monthly invoice.

10.1.9 No partial payment made by Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by Owner shall constitute, or be construed to constitute, a release of Contractor from any of its obligations or liabilities with respect to the Project.

10.1.10 Owner shall have the right to verify and audit the details of Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Contractor during normal business hours; (2) examining any reports with respect to the Project; (3) interviewing Contractor's employees; (4) visiting the Project site; and (5) any other reasonable action. Contractor's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board and organized by each Application for Payment period.

10.1.11 All payments to Contractor for Pre-Construction Phase Services and Construction Phase Services shall be by electronic direct deposit. Contractor is required to complete and submit to Owner a Vendor Direct Deposit Authorization prior to first payment request. Form can be accessed at www.window.state.tx.us/taxinfo/taxforms/74-176.pdf.

10.1.12 All payments to Contractor for Pre-Construction Phase Services and Construction Phase Services shall be accompanied by a HSP-Prime Contractor Progress Assessment Report in the form located at <https://www.tamus.edu/business/hub-procurement/hub-programs/>

10.2 Pre-Construction Phase Payments

10.2.1 Payment for Pre-Construction Phase Services shall be made in accordance with the following schedule and upon approval by Owner:

Schematic Design Stage	10%
Design Development Stage	20%
GMP Development Stage	15%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	15%

10.2.2 Reimbursable Services are a part of the Pre-Construction Phase Services. These include actual not-to-exceed expenditures made by the Contractor incurred solely and directly in connection with Contractor's performance of its services hereunder for the following expenses:

- 10.2.2.1 Cost of printing.
- 10.2.2.2 Cost of geotechnical investigations.
- 10.2.2.3 Other items agreed to by the Owner in writing.

10.2.3 Expenses not allowed for reimbursement include the cost of telephone charges, cell phone and PDA charges, FAX service, alcoholic beverages, laundry, car washes, valet service, entertainment and any non-project related items.

10.2.4 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursable identified in 10.2.2.1 through 10.2.2.2 above. A mark-up shall not be paid on lodging, meals or travel expenses. Contractor shall submit receipts for all reimbursable services along with any reimbursement request.

10.2.5 Owner must authorize all Reimbursable Services prior to the performance of the reimbursable item. Charges for Reimbursable Services must not exceed the established category amounts unless authorization, in writing, is obtained from the Owner.

10.2.6 All payment requests for Pre-Construction Phase Services shall be submitted through e-Builder®.

10.3 Construction Phase Payments

10.3.1 Payments for Construction Phase Services shall be made as provided for in the UGC and Owner's Specifications. All payment requests shall be submitted through e-Builder® with a Schedule of Values and include all required attachments. Payment for approved Change Orders shall be made as part of Contractor's Application for Payment. Failure to submit a Prime Contractor Progress Assessment Report form with each Application for Payment will cause rejection of the application by Owner and its return to Contractor.

10.3.1.1 Contractor's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of Contractor's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

10.3.1.2 For General Conditions Costs, Contractor's Application for Payment shall be submitted on a Schedule of Values approved by the Owner and include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for

General Conditions Costs in any Application for Payment if Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the Schedule of Values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

10.3.1.3 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective Schedule of Values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.

10.3.1.4 Contractor's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of the surety to release of final payment; and an affidavit that, to the best of Contractor's information, knowledge and belief, the release includes and covers all materials and services over which Contractor has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Contractor may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Contractor shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all court costs and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.

10.3.1.5 Owner shall have no obligation to make Final Payment until a complete and final accounting of all the Direct Construction Cost has been submitted by Contractor and has been audited and verified by Owner or Owner's representatives.

10.3.1.6 Nothing contained herein shall require Owner to pay Contractor an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Contractor. The total amount of all Construction Phase payments to Contractor shall not exceed the actual verified Direct Construction Cost for the Project plus Contractor's Construction Phase Fee.

10.3.1.7 The acceptance by Contractor or Contractor's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Contractor, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Contractor as unsettled at the time of the Request for Final Payment.

ARTICLE 11 DIRECT CONSTRUCTION COST

Direct Construction Cost means the sum of the amounts that Contractor actually and necessarily incurs constructing the Project in strict compliance with the Construction Documents. Direct

Construction Cost includes only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted. References in the UGC to adjustments in “cost” or “costs” mean the Direct Construction Cost.

General Conditions Costs

11.1 Contractor is entitled to receive payment for the actual cost of the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from Owner through Substantial Completion of the Project, plus 30 calendar days. Contractor is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion, plus 60 calendar days, must be approved in advance by Owner.

Allowable General Conditions items are identified below and in Exhibit “D” attached to this Agreement. These items shall be included in the General Conditions Cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit “D” will not be allowed as General Condition Costs.

11.1.1 Personnel Costs. The actual Worker Wage Rate for Contractor’s hourly employees but only for the time actually stationed at the Project site. The actual Monthly Salary Rate (Exhibit “G”) of Contractor’s salaried personnel who are identified to Owner as part of the GMP proposal but only for the time actually stationed at the Project site. Changes to the list of Contractor personnel shall have Owner’s approval prior to any billing. The salary burden of Contractor’s personnel identified by title in Special Conditions may include an amount equal to \$1.75 per straight time hour for computer hardware, computer software and computer services. The Project Manager’s Monthly Salary Rate may be included in the General Conditions Costs only when the Project Manager is directly located on and managing the Project. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Contractor for services performed for the Project.

11.1.2 Costs of long-distance telephone calls from the job-site, telegrams, postage, package delivery and courier service, hardwired internet and telephone service located on the job-site, and reasonable expenses of Contractor’s jobsite office if incurred at the Project site and directly and solely in support of the Work.

11.1.3 Costs of materials, supplies, temporary facilities, equipment and hand tools (except those customarily owned by construction workers), supplied to the Project site by Contractor if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition line items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. Materials, supplies, temporary facilities, equipment and hand tools with a per unit cost less than \$800 are considered fully consumed in the construction of the Work. If an item is not fully consumed in the construction of the Work, its cost shall be prorated based on a depreciable life or the cost to the project shall be based on actual cost of the item less its fair market salvage value at the time reimbursement is requested.

11.1.4 Rental charges for temporary facilities, equipment, and hand tools (except those

customarily owned by construction workers), supplied to the Project site by Contractor, provided they are included in the list of allowable General Condition line items and Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by Owner and shall be in accordance with the “Rental Rate Blue Book for Construction Equipment” published by Penton Business Media dba Equipment Watch, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

11.1.5 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Contractor shall purchase the equipment and turn it over to Owner upon Final Completion of the Work or, at Owner’s option, credit Owner with the fair market resale value of the item.

11.1.6 Permit and inspection fees that are not subject to exemption.

11.1.7 Premiums for insurance and bonds to the extent directly attributable to this Project.

11.1.8 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

11.1.9 Cost associated with special training that is required to execute a part of the Work with Owner’s prior approval of training and cost.

11.2 Cost of the Work

Contractor is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner’s written authorization to commence the Construction Phase Work through Final Completion of the Project. Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner’s written authorization.

Cost associated with Contractor’s computer hardware, computer software and computer services shall not be procured as cost of work.

Cost of the Work includes the following:

11.2.1 Costs of materials and equipment purchased directly by Contractor and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the UGC.

11.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise specifically provided for under the General Conditions Costs.

11.2.3 Payments made to Subcontractors and their vendors or suppliers by Contractor for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

11.2.4 Payments earned by Contractor for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by Owner.

11.2.5 Testing fees borne by Contractor pursuant to the UGC.

11.2.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

11.3 Contractor's Contingency

11.3.1 The Guaranteed Maximum Price Proposal shall include a Contractor's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

11.3.2 Any re-allocation of funds from Contractor's Contingency to cover increases in the Direct Construction Cost must be submitted through e-Builder® and approved by Owner in advance, such approval not to be unreasonably withheld. In written requests to use Contractor's Contingency, Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs.

11.3.3 Contractor's Contingency is specifically not to be used for Contractor rework, or cost increases caused by lack of coordination or communication with A/E or trade Subcontractors.

11.3.4 As the Construction Documents are finalized and the buyout of the Work progresses, Contractor's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in Contractor's Contingency fund remaining at the end of the Project shall be returned to Owner as savings.

ARTICLE 12 CONTRACT SAVINGS, REBATES & REFUNDS

12.1 If the allowable amount of the General Conditions Costs, Cost of the Work, and Contractor's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to Owner as savings, and the final Contract Sum shall be adjusted accordingly. When buyout of the Project is at least 85% complete, Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

12.2 Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by Contractor:

12.2.1 The fair market value of all tools, surplus materials, construction equipment, and

temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by Owner. Upon completion of the Work or when no longer required, Contractor shall either credit Owner for the fair market value (as approved by Owner) for all surplus tools, construction equipment and materials retained by Contractor or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to Owner's account.

12.2.2 Discounts earned by Contractor through advance or prompt payments funded by Owner. Contractor shall obtain all possible trade and time discounts on bills for material furnished and shall pay bills within the highest discount periods. Likewise, late payment fees on any vendor invoice shall not be charged to the Owner. Contractor shall purchase materials for the Project in quantities that provide the most advantageous prices to Owner.

12.2.3 Rebates, discounts, or commissions obtained by Contractor from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

12.2.4 Deposits made by Owner and forfeited due to the fault of Contractor.

12.2.5 Balances remaining on Contractor's Contingency or any other identified contract savings. Owner shall be entitled to recover any net savings realized between the GMP and the buyout price for subcontracting work once the buyout is complete. During the buyout Contractor may use savings from one procurement effort to offset overages in other procurement efforts, so long as the total Cost of the Work proposed in the GMP does not increase.

12.3 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

ARTICLE 13 OWNERSHIP AND USE OF DOCUMENTS

13.1 Drawings, specifications and other documents prepared by A/E or its consultants, or consultants retained by Owner for the Project that describe the Work to be executed by Contractor are instruments of service and shall remain the property of their authors whether the Project for which they are made is constructed or not. Contractor shall be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents shall be returned to their respective authors or suitably accounted for. Contractor and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. Contractor and its Subcontractors shall not use the Construction Documents on any other projects.

13.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish A/E's or other author's rights.

ARTICLE 14 TIME

14.1 *TIME LIMITS STATED ARE OF THE ESSENCE OF THIS AGREEMENT AND THE OTHER CONTRACT DOCUMENTS.*

14.2 Unless otherwise approved, Owner and Contractor shall perform their respective obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

14.3 Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Contractor shall submit an up-to-date WPS for the performance of Construction Phase Services as specified. The WPS shall include reasonable periods of time for Owner's and A/E's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project.

14.4 Contractor shall achieve Substantial Completion of the Work on or before the date agreed to in the GMP Proposal, subject to time extensions granted by Change Order.

14.5 THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED AND THE GMP PROPOSAL ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT.

14.6 The Construction Phase shall be deemed to commence on the date specified in a written Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal.

14.7 Fast Track/Multiple Completion Times. Owner may elect, at its option, to stage or "fast-track" portions of the Work. In such event Owner, may issue a separate written Notice to Proceed or written Change Order for each such stage. Each such stage, at Owner's sole option, may have a separate substantial completion date and a separate liquidated damages amount, in accordance with Exhibit "A". If Owner elects to "fast-track" or develop the Project in multiple stages, Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific AACC, at Owner's discretion.

ARTICLE 15 PROJECT TERMINATION AND SUSPENSION

15.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and the breach is not cured or a plan to cure the breach acceptable to the non-breaching party is not established within the fifteen (15) day period.

15.2 This Agreement may be terminated by Owner during the Pre-Construction Phase upon at least three (3) business days written notice to Contractor in the event that the Project is to be temporarily or permanently abandoned.

15.3 This Agreement may be terminated by Owner and/or CMAR at the GMP Proposal stage upon at least three (3) business days written notice to Contractor in the event that the parties are

unable or unwilling to agree on a GMP Proposal.

15.4 In the event of termination that is not the fault of Contractor, Contractor shall be entitled to compensation for all services performed to the termination date provided Contractor has delivered to Owner such statements, accounts, all reports, documents and other materials as required by Owner together with all reports, documents and other materials prepared by Contractor prior to termination. Upon such payment, Owner shall have no further obligation to Contractor.

15.5 Termination of this Agreement shall not relieve Contractor or any of its employees, Subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Contractor related to the Project. In the event of a termination, Contractor expressly acknowledges the right of Owner to employ a substitute contractor to complete the services under this Agreement.

15.6 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

15.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, Contractor shall be compensated for all services performed prior to receipt of written notice from Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, Contractor's compensation for Pre-Construction Services shall be equitably adjusted if such adjustment is warranted.

ARTICLE 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

16.1 Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

16.2 Contractor acknowledges that as part of its Pre-Construction Phase Services it shall participate in the development and review of the Construction Documents. Contractor's participation in the design development process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Contractor shall review the drawings, specifications and other Construction Documents and notify Owner of any errors, omissions or discrepancies in the documents of which it is aware. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's Pre-Construction Phase design review process that Contractor did not bring to the attention of Owner and A/E in a timely manner. Contractor's review is made in the capacity as a contractor and not as a design professional. It is not the Contractor's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules

and regulations, but Contractor will report any variances which should have reasonably been discovered.

ARTICLE 17 BONDS AND INSURANCE

17.1 Upon execution of this Agreement, Contractor shall provide a security bond on the form attached as Exhibit “F” in the amount of 5% of the AACC. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.

17.2 Upon acceptance by Owner of a Guaranteed Maximum Price Proposal, Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UGC. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3 Contractor shall not commence work under this Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by Owner. Owner’s review of the insurance shall not relieve nor decrease the liability of the Contractor. Prior to commencing any work under this Agreement, Contractor shall provide evidence of the following insurance coverages:

17.3.1 Pre-Construction Phase: Workers’ Compensation, Commercial General Liability and Business Automobile Liability in the amounts as set forth in the UGC.

17.3.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase include Builder’s Risk in the amounts as set forth in the UGC.

17.3.3 Prior to commencing any construction work, Contractor shall provide evidence of Builder’s Risk coverage as set forth in the UGC, which coverage shall remain in full force and effect throughout the term of the Work and shall be increased as necessary for each separate bid package, phase, change order, or stage of construction prior to the commencement of construction for that package, phase, or stage.

17.3.4 Contractor shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals.

17.3.5 In the event the Contractor elects to utilize a subcontractor default insurance (SDI) program, the maximum amount to be considered reimbursable costs under this contract will be 1% of the total amount of subcontracts enrolled in such insurance program unless a different percent is agreed to in writing by the Chief Facilities Officer. Any costs incurred in connection with the SDI program that exceeds the amount reimbursed by the Owner shall be included in the Contractor’s fee.

17.3.6 Contractor shall include the The Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and Texas A&M University-

Texarkana as additional insured on the Commercial General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

17.4 Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of this Agreement. If Contractor fails to obtain, maintain or renew any insurance required by this Agreement, Owner may obtain insurance coverage directly and recover the cost of that insurance from Contractor or deduct such cost of insurance from Contractor's fee.

17.5 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of this Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry in general and the claims history of Contractor.

17.6 Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the parties or the underwriter of any of such policies. Damages caused by Contractor and not covered by insurance shall be paid by Contractor upon demand, or, to the extent of unpaid fees, shall be deducted by Owner from Contractor's fee.

17.7 The cost of premiums for any additional insurance coverage desired by Contractor in excess of that required by this Agreement, the UGC or the other Contract Documents shall be borne solely by Contractor out of its fees and not included in the GMP Proposal as a Direct Construction Cost.

17.8 If the Guaranteed Maximum Price is increased by Change Orders by more than 10% the Contractor shall provide revised bonds and insurance that reflect the new project amount.

ARTICLE 18 DISPUTE RESOLUTION

18.1 The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Contractor shall submit written notice of a claim of breach of contract under this Chapter to the Chancellor of The Texas A&M University System, who shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.

18.2 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part. Owner and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this Paragraph 18.2.

18.3 It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Contractor, except at Owner's sole option. If Owner makes a claim against

Contractor and Contractor then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner's original claim against Contractor does not become a counterclaim and is not subject to the mandatory counterclaim provisions of Chapter 2260 of the *Texas Government Code*, except at the sole option of the Owner.

18.4 All disputes against the Owner that arise from this Agreement or the Project shall be resolved in accordance with the procedures and limitations of *Texas Government Code* Chapter 2260 and Article 15 of the Uniform General Conditions for The Texas A&M University System.

ARTICLE 19 INDEMNITY

19.1 SEE PARAGRAPH 3.3.11 OF THE UGC FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.

19.2 CONTRACTOR SHALL PROTECT AND INDEMNIFY OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSSES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY CONTRACTOR OR THE USE BY CONTRACTOR, OR BY OWNER AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR A/E'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONTRACTOR AND THE PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

19.3 The indemnities contained in this Agreement shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 20 SPECIAL WARRANTIES

20.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Contractor agree and acknowledge Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction management services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

20.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable federal, state, and municipal, laws, regulations, codes, ordinances, or orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants and Subcontractors, and any harm caused by the negligent or improper work or services.

20.3 Contractor's duties shall not be diminished by any approval by Owner, nor shall Contractor

be released from any liability by any approval by Owner, it being understood that Owner is ultimately relying upon Contractor's skill and knowledge in performing the services required hereunder.

20.4 Contractor represents and agrees that all persons connected with Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if such registration and/or license is required.

20.5 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Contractor (by Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

20.6 Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

20.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

20.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

20.9 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future affiliate of Owner or any agent, officer, director, employee, or regent of Owner, or of the members comprising The Texas A&M University System, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 21 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

21.1 Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

21.2 Contractor shall ensure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

21.3 Contractor shall provide at Substantial Completion, a certificate, or at Owner's election, a notarized affidavit to Owner and A/E stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

21.4 Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

21.5 A person is prohibited by law from installing Asbestos Containing Building Materials (ACBM) or ACBM replacement parts in a public building unless it is demonstrated that there is no alternative material or part (25 TAC §295.34(i)). All materials used on this Project shall be certified as non- ACBM. Contractor shall ensure compliance with the following acts from all of its Subcontractors and assigns:

21.5.1 Asbestos Hazard Emergency Response Act and the Regulations promulgated under the Act (AHERA—40 CFR 763, Subpart E);

21.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos);

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

21.6 Every Subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

21.7 Contractor shall obtain and review material data safety sheets (MSDS) for all building materials or replacement parts listed in ***but not limited to*** 25 TAC §295.34(j) to ensure that no ACBM is used in the Project. Contractor shall provide, in hard copy and electronic form, all necessary MSDS of all products used in the construction of the Project to the Owner, along with the certification or affidavit required in Section 21.3 above.

21.8 At Final Completion Contractor shall provide a certification statement (notarized if required by Owner) that no ACBM was used during construction of the Project.

ARTICLE 22 BUSINESS ETHICS EXPECTATION

22.01 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.

22.02 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.

22.03 Contractor agrees to notify Billy C. Hamilton, Deputy Chancellor and Chief Financial Officer for the Office of Facilities Planning & Construction within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

22.04 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.

22.05 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.

ARTICLE 23 MISCELLANEOUS PROVISIONS

23.1 Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, its duties and/or the fees due to Contractor may not be assigned or delegated to a third party.

23.2 Records Requirements. Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by Owner or Owner's authorized representative on reasonable notice.

23.3 Child Support Certification. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or Owner with an Ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Family Code requires the following statement: "Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

23.4 Eligibility Certification. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Government Code requires the following statement: "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

23.5 Franchise Tax Certification. If Contractor is a taxable entity subject to the Texas Franchise

Tax (Chapter 171, *Texas Tax Code*), then Contractor certifies that it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of franchise taxes.

23.6 Payment of Debt or Delinquency to the State. Pursuant to Section 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full. "Debt or delinquency" means a debt, tax delinquency, student loan delinquency, or child support delinquency that results in a payment law prohibiting the comptroller from issuing a warrant or initiating an electronic funds transfer.

23.7 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and 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 written amendment signed by Contractor and Owner.

23.8 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

23.9 Governing Law and Venue. This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in the country in which the Project is located; however, mandatory venue for all legal proceedings against Owner is to be in the county in which the primary office of the chief executive officer is located.

23.10 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of this Agreement.

23.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

23.12 Records Availability and Retention. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

23.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

23.14 Illegal Dumping. Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

23.15 Notices. All notices, consents, approvals, demands, requests or other communications

relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or Owner for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Agreement shall be sent to the persons and at the locations set forth in Exhibit "A" attached to this Agreement.

23.16 Public Information. Contractor acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to this project as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Contractor acknowledges that Owner *may be* required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

23.17 Contractor Certification regarding Boycotting Israel. Contractor acknowledges that Owner is obligated to comply with Chapter 2271, *Texas Government Code*. By executing this Agreement, Contractor certifies it does not and will not, during the performance of this Agreement, boycott Israel. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

23.18 Contractor Certification regarding Business with Certain Countries and Organizations. Contractor acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas Government Code*. By executing this Agreement, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

23.19 Prohibition on Contracts Related to Persons Involved in Human Trafficking. Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

23.20 Contractor is responsible to ensure that employees participating in work for any A&M

System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy [32.02, Section 4](#). Non-conformance to this requirement may be grounds for termination of this agreement.

23.21 Disclosure of Interested Parties. By signature hereon, Contractor certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

23.22 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Service Provider certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project is produced in the United States.

23.23 Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. [Note: This provision does not apply to: (1) contracts below \$100,000; (2) contracts with a sole-source provider; and (3) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than 10 full time employees. This provision should not be included in a contract if the University did not receive any bids from a company that is able to provide the written verification required above.

23.24 Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

23.25 Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify Owner.

23.26 In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

23.27 Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contractor or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

23.28 Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

23.29 List of Exhibits

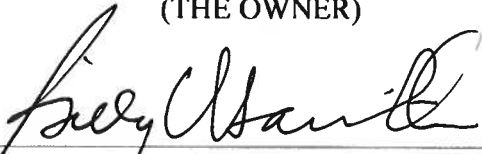
The following exhibits are fully incorporated into this Agreement by reference:

- Ex. A Fees, Costs and Other Contract Variables
- Ex. B Uniform General Conditions
- Ex. C Special Conditions, Wage Rates and Owner's Specifications
- Ex. D Allowable General Conditions Line Items
- Ex. E Guaranteed Maximum Price Proposal Form
- Ex. F Security Bond
- Ex. G Personnel and Monthly Salary Rates
- Ex. H BIM Execution Plan


[SIGNATURES PROVIDED ON FOLLOWING PAGE]

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.


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

By 
Deputy Chancellor and Chief Financial Officer
Date 7/18/23

Clark Contractors, LLC
(Contractor)

By 
(Signature)
Matt Morrow
(Print or Type Name)
Date June 22, 2023


APPROVAL RECOMMENDED:


Chief Facilities Officer
Office of Facilities Planning & Construction
Date 7/14/23

Name(s) of individual(s), sole proprietors, partner(s), shareholder(s) or owner(s) with an ownership interest of at least 25% of the business entity executing this Contract.

Name: William Clark

APPROVED AS TO FORM:


Assistant General Counsel
Date 07/13/2023

Name: Shannon Earls

Name: _____

Name: _____

EXHIBIT "A"
FEES, COSTS AND OTHER CONTRACT VARIABLES

1. Guaranteed Maximum Price

The anticipated Guaranteed Maximum Price for the Project at the time this Agreement is executed is:

Thirty-Three Million, Six Hundred Ninety-Two Thousand, One Hundred and Twenty-Five and no/100 Dollars (\$33,692,125.00);

2. Pre-Construction Phase Fee

A. For Pre-Construction Phase Services, Owner shall pay Contractor a Pre-Construction Phase Fee in the total stipulated amount of

Thirty-Three Thousand, Seven Hundred and no/100 Dollars (\$33,700.00);

B. Refer to Paragraph 10.2.1 for the percentages of each stage of work within the Pre-Construction Phase Fee for payment purposes;

C. For Reimbursable Services for potholing, selected demolition in existing building or other items needed during the design phase, Owner shall pay Contractor

Twenty-five Thousand and no/100 Dollars (\$25,000.00).

3. Construction Phase Fee

A. For Construction Phase Services, based on the anticipated GMP established at the time of this Agreement, Owner shall pay Contractor a stipulated Construction Phase Fee amount of:

One Million, Eleven Thousand and no/100 Dollars (\$1,011,000.00);

B. If the Owner agrees to an increase or decrease in the Guaranteed Maximum Price, the Construction Phase Fee shall be equitably adjusted.

4. Time of Completion

The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed is February, 2026.

5. Names and Addresses for Notices:

If to Owner:

Billy C. Hamilton, Deputy Chancellor and Chief Financial Officer
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

With Copies to:

Brett McCully, Chief Facilities Officer
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

J. Brett Cumpton, Director
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

If to Contractor: Matt Morrow
 Clark Contractors, LLC
 2875 Exchange Boulevard
 Southlake, Texas 76392

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

6. Party Representatives

A. The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

J. Brett Cumpton, Director
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

B. The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Matt Morrow
Clark Contractors, LLC
2875 Exchange Boulevard
Southlake, Texas 76392

C. The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 22.15.

EXHIBIT "B"
UNIFORM GENERAL CONDITIONS

**Uniform General Conditions
for
THE TEXAS A&M UNIVERSITY SYSTEM**

**For use on all Texas A&M University System and Institutional
Construction Projects**

Table of Contents

ARTICLE		PAGE #
Article 1	Definitions	2
Article 2	Wage Rates and Other Laws Governing Construction	7
Article 3	General Responsibilities of Owner & Contractor	11
Article 4	Historically Underutilized Business (HUB) Subcontracting Plan	19
Article 5	Bonds & Insurance.....	21
Article 6	Contract Documents, Coordination Documents and Record Documents	33
Article 7	Construction Safety.....	36
Article 8	Quality Control.....	38
Article 9	Construction Schedules	45
Article 10	Payments	52
Article 11	Changes.....	57
Article 12	Project Completion and Acceptance	66
Article 13	Warranty and Guarantee.....	71
Article 14	Suspension and Termination	73
Article 15	Dispute Resolution.....	77
Article 16	Certification of No Asbestos Containing Materials or Work	78
Article 17	Miscellaneous	78

Article 1. Definitions

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

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the Project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 *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.
- 1.5 *Baseline Schedule* means the accepted comprehensive work progress schedule, taking into account subcontractor and supplier input, incorporating all prior comments received from the ODR on the previous work progress schedules. This Baseline Schedule shall be submitted by the contractor within 90 days of the NTP. This schedule is prepared by the Contractor for the Owner's information and acceptance which conveys Contractor's and its Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions which drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents. All subsequent

Uniform General Conditions for Texas A&M University System

Work Progress Schedules shall make comparisons to the Baseline Schedule as a means of analyzing progress.

- 1.6 *Building Information Modeling (BIM)* is a digital representation of physical and functional characteristics of a facility. As such it serves as a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle from inception onward. A basic premise of BIM is collaboration by different stakeholders at different phases of the life cycle of a facility to insert, extract, update or modify information in the BIM process to support and reflect the roles of that stakeholder. The BIM is a shared digital representation founded on open standards for interoperability.
- 1.7 *Certificate of Final Completion* means the certificate issued by Owner that documents, to the best of all parties' knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.8 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that documents to the best of A/E's and ODR's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.9 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the A/E.
- 1.10 *Close-out Documents* means the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, Record Documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.11 *Construction Manager-at-Risk*, in accordance with Tex. Educ. Code § 51.782, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.12 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.13 *Contract Date* is the date when the agreement between the Owner and the Contractor becomes effective.

Uniform General Conditions for Texas A&M University System

- 1.14 *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 Conditions, Special Conditions, Change Orders, and all pre-bid and/or pre-proposal addenda.
- 1.15 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.16 *Contract Time* means the period between the date identified in the Notice to Proceed and the Substantial Completion date or as subsequently amended by Change Order.
- 1.17 *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.
- 1.18 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.19 *Design-Build*, in accordance with Tex. Educ. Code § 51.780, means a team, partnership, or legal entity that includes design professionals and a builder in which the design and subsequent construction is provided through a single Contract with a Design-Build firm.
- 1.20 *Drawings* means that product of the A/E which graphically depicts the Work.
- 1.21 *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.
- 1.22 *Final Payment* means the last and final monetary compensation made to a Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved Change Orders, and release of Contractor's retainage.
- 1.23 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Ch. 2161, means a for-profit entity that has not exceeded the size standard prescribed by 34 TAC §20.294, and has its principal place of business in Texas, and is at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and /or Service Disabled Veteran with a Service related disability of 20% or greater,

Uniform General Conditions for Texas A&M University System

who reside in Texas and actively participate in the control, operations and management of the entity's affairs.

- 1.24 *Notice to Proceed* means the written document informing Contractor of the date to commence Work and fully complete the Work within the time specified in the Contract.
- 1.25 *Owner* means The Board of Regents of The Texas A&M University System, acting through the delegated entity of The Texas A&M University System or one of its Institutions as identified in the Contract as Owner.
- 1.26 *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.
- 1.27 *Potential Change Log (PC)* means a Contractor maintained document that informs the Owner of a potential change in the Work and appropriately describes or otherwise documents such change including a preliminary cost and time impact. An item on the Potential Change Log does not modify the Contract.
- 1.28 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.29 *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.
- 1.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all Addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that needs to be clarified in may be omitted from the Contract Documents.

Uniform General Conditions for Texas A&M University System

- 1.33 *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.
- 1.34 *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.
- 1.35 *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.
- 1.36 *Site* means the geographical area of the location of the Work.
- 1.37 *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 Conditions.
- 1.38 *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.
- 1.39 *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.
- 1.40 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.41 *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. Fit for use intended would include but not be limited to the authority having jurisdiction designation that the Work or a designated portion thereof can be occupied.
- 1.42 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.

Uniform General Conditions for Texas A&M University System

- 1.43 *Unilateral Change Order* means a Change Order issued by the Owner without the complete agreement of the Contractor as to cost and/or time.
- 1.44 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.45 *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.
- 1.46 *Work Progress Schedule* means the initial and subsequent updated time schedules prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1. Environmental Regulations. 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. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site. When requested by Owner, Contractor shall furnish evidence of

Uniform General Conditions for Texas A&M University System

compliance with the Texas Prevailing Wage Law and the addresses of all workers.

- 2.2.1.1 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or its Subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the Contract.
- 2.2.1.2 With each application for progress payment, Contractor shall provide classification and wage information for all new workers to the Work and make available upon request certified payroll records, including from its Subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and its Subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.
- 2.2.1.3 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. Contractor shall identify, briefly describe, and request a predetermination of rates for crafts (or apprentice programs) not included in the Project's Prevailing Wage Schedule. Such request shall be made within 15 days after Contract award to the Chief Facilities Officer, Facilities Planning & Construction, The Texas A&M University System, phone number 979-458-7000.
- 2.2.1.4 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.
- 2.2.1.5 The Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills

Uniform General Conditions for Texas A&M University System

or trades identified on the Prevailing Wage Schedule. In no case shall any worker be paid less than the wage indicated for Laborers.

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

2.2.2 Penalty for Violation. The Contractor and its 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.

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation

2.2.3.2 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.

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

Uniform General Conditions for Texas A&M University System

- 2.2.3.4 Notification to Owner. In the event Contractor or its Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.
- 2.3. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Brazos County, Texas, or as may otherwise be designated in the Owner's Special Conditions.
- 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 and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 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. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. 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. Owner acknowledges not all items qualify for exemption. Contractor shall not be entitled to reimbursement for taxes paid on items that are exempt from taxation.
- 2.7. Domestic Iron and Steel Requirement. Pursuant to Sections 2252.201-2252.205 of the Tex. Gov't Code, Contractor shall require that any iron or steel product produced through a manufacturing process and used in the Project be produced in the United States. Contractor will require that the bid documents provided to all bidders and the contract include this same requirement.

- 2.8 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>. Prior to beginning excavation, the Contractor shall verify that all utility providers have responded to the 811 ticket.
- 2.9 Prior to any use of an unmanned aerial system the Contractor or its Subcontractor shall complete the TAMUS UAS Flight Application, which is located at the following website <https://www.tamus.edu/business/risk-management/uas/>. This application shall be submitted a minimum of 14 days prior to the planned flight. The Contractor shall provide the ODR the application and the approval notification.

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 various Articles of 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,

Uniform General Conditions for Texas A&M University System

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.

3.1.2.3 The ODR will furnish or cause to be furnished, free of charge, a digital set of the Drawings, Specifications, and Addenda.

3.1.2.4 The ODR will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various Project team members that have a key role in these duties.

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

Uniform General Conditions for Texas A&M University System

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 observe 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

Uniform General Conditions for Texas A&M University System

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 and protection of the installed work as part of the Contract until Substantial Completion of the Project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion. The Contractor shall visit the Site and ascertain all pertinent local conditions including but not limited to 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 in the location.

3.3.1 Project Administration. The Contractor shall provide project administration for all its 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 the uniform general conditions and other provisions of the Contract and Contract Documents, and as outlined in the Pre-construction Conference. Contractor's Project Administration includes but not limited to daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.

Uniform General Conditions for Texas A&M University System

- 3.3.2 Contractor's Management Personnel. Contractor shall employ competent individuals who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent individuals are subject to the approval of ODR. Contractor shall not change approved staff during the course of the Project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide the project staff as stated in the Special Conditions.
- 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 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment for any increase in cost of Builder's Risk insurance.
- 3.3.6 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 no additional cost to the Owner. 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.
- 3.3.7 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. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner

Uniform General Conditions for Texas A&M University System

- 3.3.7.1 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.
- 3.3.7.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of its 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 its 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, at Owner's request, 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.
- 3.3.8 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 alternative resolution processes, except as the Owner and the Contractor may agree in writing.
- 3.3.9 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.
- 3.3.10 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, unsafe, uncooperative, disruptive, or otherwise objectionable.

3.3.11 Indemnification of Owner. Contractor covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of 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 or property damage, made upon 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, or any agent, officer, director, representative, employee, consultant or the 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.**

3.3.11.1 Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by the Contractor or the use by Contractor, or by Owner at the direction of Contractor, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. Contractor does not warrant against infringement by reason of Owner's or Project Architect's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Contractor and parties shall be entitled, in connection

with any such litigation, to be represented by counsel at their own expense.

3.3.11.2 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.

3.3.11.3 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.

3.3.11.4 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.

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

3.3.12.1 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.

3.3.12.2 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.

3.3.12.3 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.

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

3.3.13 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or

Uniform General Conditions for Texas A&M University System

substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.

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

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

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

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

4.1. General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161 and 34 TAC § 20.282) to contract with agencies and institutions of higher education in the state of Texas in accordance with the goals established by the applicable agency or institution. The HUB program annual procurement utilization HUB goals are as established by the Owner and stated within the Owner's current HUB Subcontracting Plan (HSP) form. The HUB goals are established as allowed in 34 TAC §20.284.

4.1.1 The Owner is required by statute to make a good faith effort to assist HUBs in participating in state procurement and contracting opportunities. 34 TAC §20.281, outlines the state's policy to encourage the utilization of HUBs in state procurement and contracting opportunities through race, ethnic and gender-neutral means.

4.1.2 For any project in an amount of \$100,000 or more, the Contractor is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 TAC §20.285 by submitting an HSP according to the requirements of the Owner's solicitation documents. The approved HSP shall become a provision of the Owner's Contract.

4.2. Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded the Contract in part by complying with the HUB Program

Uniform General Conditions for Texas A&M University System

statute and rules, hereby covenants to continue to comply with the HUB Program as follows:

- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify the Owner in the event a change is required for any reason to the accepted HUB Subcontracting Plan. Notification shall occur through the Owner's project management system.
 - 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 Submit to Owner a compliance report, in the format required by the Owner that demonstrates Contractor's performance of the HUB Subcontracting Plan.
 - 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/>).
 - 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 the Contractor has failed to demonstrate a good faith effort to fulfill the HUB Subcontracting Plan or any Contract covenant detailed above, the Owner, in addition to all other remedies available to it, may report nonperformance to the state Comptroller in accordance with 34 TAC §20.585-20.586. In addition, if the Contractor failed to implement the HSP in good faith; the Owner may revoke the Contract for breach of Contract and make a claim against the Contractor

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 Payment and performance bonds are due before execution of a Contract on competitively bid or competitively sealed proposal projects or before execution of a GMP proposal on Construction Manager-at-Risk projects or Design-Build projects.
- 5.1.5 Power of Attorney. Each bond shall be accompanied by a valid power-of-attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond), authorizing the attorney in fact who signs the bond to commit the surety to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

Uniform General Conditions for Texas A&M University System

- 5.1.6 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.
- 5.1.7 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.
- 5.1.8 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 its 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.
- 5.1.9 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.
- 5.1.10 Sureties. Sureties shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Fiscal Service (FMS), www.fiscal.treasury.gov/, stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).
- 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

Uniform General Conditions for Texas A&M University System

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, consistent with its status as an independent 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- , VII 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, and Employer's Liability insurance of not less than:

\$1,000,000 each accident;
\$1,000,000 disease each employee; and
\$1,000,000 disease policy limit.

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside of the state of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

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

\$1,000,000 per occurrence;
\$2,000,000 general aggregate;
\$2,000,000 products and completed operations aggregate;
\$1,000,000 personal/advertising injury
\$300,000 damage to rented premises

Uniform General Conditions for Texas A&M University System

\$5,000 medical payments
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.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

- 5.2.2.3 Contractors Pollution Legal Liability Insurance, 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. Independent review of scope and magnitude may increase this minimum limit requirement.

*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 two (2) 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 Business Automobile Liability Insurance covering all owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

Uniform General Conditions for Texas A&M University System

Contractor or any of its Subcontractors responsible for transporting asbestos or other hazardous materials shall provide pollution coverage for any vehicle hauling asbestos or other hazardous material containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

- 5.2.2.5 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. 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. Each builder's risk claim shall be subject to a \$25,000 deductible, except for water losses which shall have a \$100,000 deductible payable by the Contractor. The policy shall be written in the name of the Owner.

- 5.2.2.6 If Project is not carried on the Texas A&M University System's builder's risk program, an All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the Project involves solely the installation of equipment). Coverage is determined by the Contract Sum, as detailed below.

Builders Risk Requirement for Projects with a Contract Sum <\$20 million

- 5.2.2.6.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original Contract, plus any subsequent Change Orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the Site. The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the

Uniform General Conditions for Texas A&M University System

Total Value for the entire Project at the Site. (If Installation Floater, limit shall be equal to 100 percent of the Contract cost.)

- 5.2.2.6.2 This insurance shall name as insureds the Owner, the Contractor, and all its Subcontractors and sub-subcontractors in the Work.
- 5.2.2.6.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.
- 5.2.2.6.4 This insurance shall cover the entire work at the Site as required in 5.2.2.6.1, including, but not limited to, the following:
- Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings
 - Offsite Storage
 - Portions of the work in transit
 - Debris removal
 - Extra Expense
 - Expediting Expenses
 - Demolition and Increased Cost of Construction
 - Pollutant Clean-Up and Removal
 - Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
 - Errors & Omissions (applicable to purchase of Builders Risk policy only)
- 5.2.2.6.5 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.
- 5.2.2.6.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.

Uniform General Conditions for Texas A&M University System

- 5.2.2.6.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all its Subcontractors and sub-subcontractors in the work.
- 5.2.2.6.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the Project values in place at the time of the loss.
- 5.2.2.6.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 5.2.2.5.1. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.
- 5.2.2.6.10 Refer to Special Conditions for possible additional Builders Risk insurance requirements.
- 5.2.2.6.11 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 its 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.

Builders Risk Requirement for Projects with a Contract Sum \geq \$20 million

- 5.2.2.6.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the

Uniform General Conditions for Texas A&M University System

original Contract, plus any subsequent Change Orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the Site. The insurance shall apply on a replacement cost basis with no coinsurance provision and shall include a margin clause of plus/minus 10% on project value. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. A sublimit of \$50 million or the Total Value of the Project, whichever is less, is acceptable for Earthquake. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Project at the Site. (If Installation Floater, limit shall be equal to 100 percent of the Contract cost.)

5.2.2.6.2 This insurance shall name as insureds the Owner, the Contractor, and all its Subcontractors and sub-subcontractors in the Work.

5.2.2.6.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.

5.2.2.6.4 This insurance shall cover the entire work at the Site as required in 5.2.2.6.1, including, but not limited to, the following:

Coverage	Minimum Limit Required
Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings	\$1 million
Offsite Storage	Sufficient to cover the anticipated maximum values stored offsite.

Portions of the work in Transit

Uniform General Conditions for Texas A&M University System

	Sufficient to cover the anticipated maximum values in transit.
Debris Removal	25% of Physical damage amount subject to maximum of \$5 million or 25% of Total Value of Project whichever is higher.
Expediting Expenses	\$1 million
Extra Expense	\$5 million
Demolition and Increased Cost of Construction	\$2 million or 10% of Total Value of Project whichever is higher.
Pollutant Clean-Up and Removal	\$250,000
Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)	\$2,500 per item subject to a maximum of \$1 million.
Errors & Omissions (applicable to purchase of Builders Risk policy only)	\$2.5 million

5.2.2.6.5 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.

5.2.2.6.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.

5.2.2.6.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all its Subcontractors and sub-subcontractors in the work.

5.2.2.6.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.

Uniform General Conditions for Texas A&M University System

5.2.2.6.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 5.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.

5.2.2.6.10 Refer to Special Conditions for possible additional Builders Risk insurance requirements.

5.2.2.6.11 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 its 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.

5.2.2.7 "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 below 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.

"Umbrella" Liability Insurance coverage shall be in the following amounts:

- Contract sum is \$1,000,000 or less:
No Umbrella Required

Uniform General Conditions for Texas A&M University System

- Contract Sum greater than \$1,000,000 up to \$3,000,000: \$1,000,000 each occurrence and \$2,000,000 annual aggregate
- Contract Sum greater than \$3,000,000 up to \$5,000,000: \$5,000,000 each occurrence and \$5,000,000 annual aggregate
- Contract Sum greater than \$5,000,000: \$10,000,000 each occurrence and \$10,000,000 annual aggregate

If the Contract is for asbestos abatement only, depending on scope of Project, an umbrella policy may be required to follow underlying form.

5.2.2.8 Aviation Insurance - In the event any fixed, rotary aircraft or drones are used in connection with this Agreement and in the execution of the work, a minimum of \$1,000,000 of aviation liability insurance must be maintained with the following requirements: the Owner must be named as an "additional insured" and a waiver of hull damage must be provided in favor of the Contractor and Owner. Also, if any aircraft is to be used to perform lifts at the Project Site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment or material being lifted. All such lifts must be coordinated with the Contractor for approval prior to lift execution. There shall be no restriction of coverage or specific exclusion on the aviation policy as it relates to invasion of privacy. If drones are to be used, all use must be in compliance with FAA regulations.

5.2.3 All Policies must include the following clauses, as applicable:

5.2.3.1 Contractor must provide to Owner immediate notice of cancellation, material change, or non-renewal to any insurance coverages required herein above. This requirement may be satisfied by the Contractor providing a copy of the notice received by the insurer to Owner within two business days of date of receipt or by Endorsement of the policies that require Insurer to provide notice to 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.

Uniform General Conditions for Texas A&M University System

- 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 A waiver of subrogation in favor of the Owner shall be provided on all policies.
- 5.2.3.5 If Owner is damaged by the failure of Contractor (or its Subcontractors) to maintain insurance as required herein and/or as further described in Special Conditions, then Contractor shall bear all reasonable costs properly attributable to that failure.
- 5.2.4 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each of its Subcontractors 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.
- 5.2.4.1 For the umbrella liability policy the contractor shall determine the dollar amount of coverage required for its subcontractors.
- 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.

Uniform General Conditions for Texas A&M University System

- 5.2.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- 5.2.7 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- 5.2.9 The Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Department of Insurance Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.9 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 5.2.10 The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Article 6. Contract Documents, Coordination Documents and Record 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 the Contract record set and electronic

Uniform General Conditions for Texas A&M University System

versions needed for warranty operations, 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 of a conflict within the Contract Documents in a reasonable time on becoming aware of the issue and 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 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.

Uniform General Conditions for Texas A&M University System

6.1.6.5 When performing as a Construction Manager-at-Risk, the Contractor has a shared responsibility with the A/E 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 Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or its representatives.

6.2 Requirements for Record Documents. The Contractor shall maintain all Drawings, Specifications, Addenda, approved submittals, Contract modifications, and all Project correspondence in Owner's project management system. 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 A/E shall also have access to these documents.

6.2.1 The Contractor shall maintain the Record Documents including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise.

6.2.2 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.

6.2.3 Prior to requesting Substantial Completion inspection Contractor shall transmit to the A/E, by submittal in Owner's project management system, a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the

Uniform General Conditions for Texas A&M University System

Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)

- 6.2.4 Once determined acceptable by A/E with input from ODR, upload a copy of all Record Documents to Owner's project management system, unless otherwise required by the Special Conditions.
- 6.2.5 Contractor shall be responsible for updating the digital Record Documents for all changes to the Contract Documents.

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 safety data sheets (SDS) 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 SDS for all materials in use on Site throughout the construction phase and make a digital file available to the Owner and its agents.
- 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.

Uniform General Conditions for Texas A&M University System

- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 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 its 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

Uniform General Conditions for Texas A&M University System

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. This plan shall meet or exceed all OSHA 1926 Subpart P Excavation requirements. During trenching operations, the Contractor shall update the trenching plan daily, or when trench conditions change, to identify and remove any potential hazards. The plan shall be maintained by the Contractor's competent person and shall include the soil classification observed, maximum allowable slopes per 1926 Subpart P Appendices A and B, protective system that will be used for that day's work, any back up data or engineered plans as required for the protective system, and the contact number for the Contractor's competent person.

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 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:

Uniform General Conditions for Texas A&M University System

- 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 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 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.
- 8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
 - 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
 - 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
 - 8.2.3.3 All tests must be taken in the presence of the A/E and/or ODR, or their representatives.
 - 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, the Owner will pay the cost of the test.
 - 8.2.3.5 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.
 - 8.2.3.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the

Uniform General Conditions for Texas A&M University System

ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

- 8.2.4 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.
- 8.2.5 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.
- 8.2.6 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, using Owner's project management system, 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 approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
 - 8.3.1.1 Contractor shall within twenty-one (21) calendar days of the effective date of the Notice to Proceed with construction, 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, items identified as delegated design 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. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) calendar days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

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

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 to the extent possible from existing conditions and design information provided by A/E prior to fabrication; 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. All review of submittals will be in Owner's project management system. 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 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 corrected version 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 Review. The Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. The Contractor shall construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or ODR shall not make formal changes to the Construction Documents via the submittal process. Changes to the Construction Documents shall be accomplished via Section 3.2.2 and Article 11 Changes.

8.3.5 No Substitutions Without Approval. The ODR and the A/E may receive and consider the Contractor's request for substitution, through Owner's project management system, when the Contractor agrees to reimburse the Owner for review and redesign costs and satisfies the requirements of this section. 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. Contractor's request for a substitution may be considered by ODR and A/E when:

8.3.5.1 The Contract Documents do not require extensive revisions;
and

Uniform General Conditions for Texas A&M University System

- 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; and
- 8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 8.3.5.3.1 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
 - 8.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.
 - 8.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
 - 8.3.5.3.4 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.
 - 8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.
 - 8.3.5.3.6 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
 - 8.3.5.3.7 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.
 - 8.3.5.3.8 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.

Uniform General Conditions for Texas A&M University System

8.3.5.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence

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 all equipment and training, as necessary for safe access at all reasonable times for observation and/or inspection of the Work by the Owner and its agents. "Reasonable times" of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work

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 ten (10) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover-up inspection. Failure of the ODR to respond does not relieve Contractor 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 commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time or as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time but no longer than 90 days after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

9.2. Notice to Proceed. The Owner will issue a Notice to Proceed which shall state the dates for beginning 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 fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all 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

Uniform General Conditions for Texas A&M University System

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 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 Register 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 but as a minimum with each request for payment. 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. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.

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.

Uniform General Conditions for Texas A&M University System

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 Baseline 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 Baseline 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. Before Contractor uses any portion of the float, Contractor must submit a written request through the monthly payment application process to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld. Float cannot be used for weather days per paragraph 9.6.2.1, unless specifically approved in writing by ODR.

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 substantial completion date on the monthly updated Baseline Schedule is thirty (30) days later than the substantial completion date on the original Baseline Schedule (notice not required) or 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.

Uniform General Conditions for Texas A&M University System

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 hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable non-compensatory 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.

Uniform General Conditions for Texas A&M University System

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 recommended by A/E and ordered by ODR.

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.

9.6.2.2.6 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.

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 baseline schedule and updates. In the event that the Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract Sum and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

9.7 No Damages for Delay. An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of

Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.

- 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 is not 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 claim 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 schedule impact of the delay 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

Uniform General Conditions for Texas A&M University System

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 Substantial 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 Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor's request for a time extension shall be deemed rejected by Owner.

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 Substantial Completion as required will cause damage to the Owner. These damages are liquidated by agreement of the Contractor and the Owner.

9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Agreement or the Owner's Special Conditions.

The amount is collected 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 uniform general conditions 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 accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. 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, costs for preparing Close-out Documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract Sum. As appropriate, 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.

Owner requires that the Work items be inclusive of the cost of the Work items only. Any Contract markups for overhead and profit, general conditions, submittals, Shop Drawings, etc., shall be

Uniform General Conditions for Texas A&M University System

contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.

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 Progress Assessment Report as required in Paragraph 4.2.5.1.

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

Uniform General Conditions for Texas A&M University System

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, 2) the Contractor's updated Work Progress Schedule, and 3) confirmation that Contractor has maintained and updated the digital Record Documents.
- 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 Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must

Uniform General Conditions for Texas A&M University System

be completed before Owner can consider a retainage reduction or release.

10.3.2.3 After Substantial Completion Owner will release retainage in proportion to the amount of Work completed in Owner's opinion in the Project. All remaining retainage due the Contractor will be released with the Final Payment at Final Completion of the Project.

10.3.2.4 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection.

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 and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the

Uniform General Conditions for Texas A&M University System

restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract. Contractor shall include these provisions in all subcontracts.

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 its 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 chief facilities officer 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 commercial warehouse meeting the criteria stated below.

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.

Uniform General Conditions for Texas A&M University System

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.

10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2251.022.

10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date Contractor receives the payment.

10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment

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 accordance with Section 11.9.

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 or Unilateral Change Order (ULCO), and shall be

Uniform General Conditions for Texas A&M University System

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 or ULCO.

- 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, 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 for the changes in the Work described in the Change Order as permitted under Tex. Gov't Code, Ch. 2260.
- 11.1.3 Procedures for administration of Change Orders shall be established by the Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
- 11.1.4 No verbal order, verbal statement, or verbal direction of the Owner or its 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

Uniform General Conditions for Texas A&M University System

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 Change Order 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 Supplementary General Conditions or 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 be additional cost or time, except in an emergency endangering life or property in which case the Contractor shall act in accordance with Subsection 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 or a ULCO.

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 Section 11.4, the Contractor shall make such claim as provided in Subsection 11.3.1.

11.3.3 Should the Contractor or its Subcontractors fail to call attention of the A/E to discrepancies or omissions but claim additional costs for corrective work after Contract award, 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 ULCO 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 affected

Uniform General Conditions for Texas A&M University System

by written order which the Contractor shall carry out promptly and record on Record Documents.

- 11.5. Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, the ODR and the A/E shall be notified in writing of such conditions before they are further disturbed or subsequent related work proceeds. Upon such notice, or upon its own observation of such conditions, 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 Section 9.6, and as documented by Change Order as provided under Section 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, Contractor or A/E by means of a Contract change 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

Uniform General Conditions for Texas A&M University System

by the A/E and ODR using current estimating guides and/or practices. Copies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR. Contractor shall provide written response to a Change Order 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 Change Orders 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 Change 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. The Contractor shall not stop Work during the negotiation of a change order. Contractor shall include these provisions in all subcontracts.
- 11.8.1 For work performed by its forces, the Contractor will submit an itemized Change Order covering the additional Work and/or the Work to be deleted. The Change Order shall be itemized for the various components of Work and divided by labor, materials and equipment in a detailed format satisfactory to the Owner. The Contractor shall include same detailed information from all its Subcontractors regardless of tier.
- 11.8.1.1 Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the Change Order work. Estimated labor hours shall include hours only

Uniform General Conditions for Texas A&M University System

for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in Subsections 11.8.1.7 and 11.8.2. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a Change Order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages as outlined in Subsections 11.8.1.7 and 11.8.2

- 11.8.1.2 Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing Change Orders. However, the percentage used for labor burden to price Change Orders will be examined at the conclusion of the Project and an adjustment to the approved Change Orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)
- 11.8.1.3 Employee Stock Ownership Plan (ESOP) related fringe benefit costs are specifically considered non-reimbursable labor burden and any ESOP costs are considered covered by the allowable Change Order markups to cover overhead and profit.
- 11.8.1.4 Estimated material costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the Change Order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates. Price

Uniform General Conditions for Texas A&M University System

quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

- 11.8.1.5 Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order work (defined as tools and equipment with an individual purchase cost of more than \$750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work. Further, for Contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all Change Order work shall be limited to 50% of the fair market value of the piece of equipment when the first Change Order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the Change Order work.
- 11.8.1.6 Allowable Change Order estimated costs may include manufacturing (shop rate) labor rate; manufacturing supplies pertaining to the particular change order (including miscellaneous supplies used for fabrication, finishing, tooling, shipping, etc.); manufacturing maintenance (including maintenance employees and repair parts for equipment, waste pick-up, et.) and miscellaneous expenses (includes consumables and waste not included above). Items not allowed are utilities, property taxes, depreciation on manufacturing equipment, delivery truck maintenance and indirect labor.
- 11.8.1.7 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.
- 11.8.1.8 Change Order cost adjustments due an increase or decrease in bond or insurance costs (if applicable) shall not be subject to any markup percentage fee.

Uniform General Conditions for Texas A&M University System

11.8.1.9 As a further clarification, the agreed upon markup percentage fee is intended to cover the Contractor's profit and all indirect costs associated with the Change Order work. Items intended to be covered by the markup percentage fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; Shop Drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; ESOP related costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the markup percentage fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.

11.8.1.10 In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

11.8.1.11 In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base Contract Sum, a final Change Order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with Change Orders to Contractor's base Contract Sum. Note: If a Change Order or a separate payment is made to reimburse the Contractor for the cost of a Performance and/or Payment Bond. The Contractor will be required to remit any bond dividend or rebate that it will receive from the surety after the successful completion of the Project.

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

Uniform General Conditions for Texas A&M University System

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.
- 11.8.5 Contractor shall submit accurate cost and pricing data to support its Change Order or other Contract Sum adjustments under the Contract. Contractor shall submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of Change Orders. Contractor shall agree that any "buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" here are defined as any savings negotiated by the Contractor with a Subcontractor or a material supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or supplier for the approved Change Order work.
- 11.8.6 Contractor, shall agree that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, its Subcontractor or sub-sub contractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor shall agree that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Sum adjustment will be made. Such post-approval Contract Sum adjustments will apply to all levels of Contractors and/or its Subcontractors and to all types of Change Order proposals specifically including lump sum Change Orders, unit price Change Orders, and cost-plus Change Orders.
- 11.8.7 Contractor shall provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of

the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Sum and/or the Contract Time.

11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The issuance of a ULCO does not prejudice the Contractor's rights to make claims or to appeal disputed matters under, Article 15 and paragraph 12.3.7.

11.10 Finality of Changes. Upon execution of a Change Order and /or a ULCO by Owner, Contractor and A/E, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.

11.11 Audit of Changes. All Changes Orders are subject to audit by Owner or its representative(s) at any time in accordance with Article 17.5 and Change Order amounts may be adjusted lower as a result of such audit.

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 Record 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 as described in the Contract Documents. 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, insurance and utilities. Provided with this Certificate will be a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) 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

Uniform General Conditions for Texas A&M University System

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 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

Uniform General Conditions for Texas A&M University System

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 and identify responsibilities for security, maintenance, insurance and utilities. 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

Uniform General Conditions for Texas A&M University System

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. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. 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

Uniform General Conditions for Texas A&M University System

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 30th 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. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

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 required 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

Uniform General Conditions for Texas A&M University System

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, its 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;

Uniform General Conditions for Texas A&M University System

- 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.

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.

Uniform General Conditions for Texas A&M University System

- 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 Upon thirty (30) days written notice to Contractor and its surety, 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

Uniform General Conditions for Texas A&M University System

Contract, to supply enough properly skilled workmen or proper materials;

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

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

14.3.1.4 Failure to remedy defective work condemned by the ODR;

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

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

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

14.3.1.8 Any material breach of the Contract; 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 Upon receipt of a termination notice, the Contractor or its Surety has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.

14.3.4 If at the conclusion of the thirty (30) day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the Contract, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

Uniform General Conditions for Texas A&M University System

- 14.3.4.1 Owners cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.
 - 14.3.4.2 Owner will make no further payment to Contractor or its Surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its Surety. If such costs exceed the unpaid balance, Contractor or its Surety will pay the difference to Owner.
 - 14.3.4.3 This obligation for payment survives the termination of the Contract.
 - 14.3.4.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper by a court of competent jurisdiction, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 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:
- 14.5.1 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.
 - 14.5.2 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:
 - 14.5.2.1 Stop all work.

Uniform General Conditions for Texas A&M University System

14.5.2.2 Place no further subcontracts or orders for materials or service.

14.5.2.3 Terminate all subcontracts for convenience.

14.5.2.4 Cancel all materials and equipment orders as applicable.

14.5.2.5 Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.

14.5.3 When the Contract is terminated for the Owner's convenience, Contractor may recover from the Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

14.6 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 its 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 but not lost profits on other work or lost business opportunities. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

14.7 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 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 Conditions, 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 herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.

15.4 Nothing herein shall waive or be construed as a waiver of the state's sovereign immunity.

Article 16. Certification of No Asbestos Containing Material or Work

16.1 Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

16.2 Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's Application for Final Payment.

16.3 The Contractor shall insure compliance with the following acts from all of its Subcontractors and assigns:

- Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
- National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos;
- Texas Asbestos Health Protection Rules (25 TAC §296).

Article 17. Miscellaneous

17.1 Special Conditions. When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include 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 Conditions. In the event of a conflict between the Uniform General Conditions and the Special Conditions, the Special Conditions shall govern.

Uniform General Conditions for Texas A&M University System

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

17.3 Web-based Project Management System(s). The Owner shall administer its design and construction management through Internet-based project management systems. The Contractor shall conduct communication through this media and perform all Project related functions utilizing these management systems. This includes correspondence, submittals, requests for information, vouchers or payment requests and processing, Change Orders and other administrative activities.

17.3.1 Accessibility and Administration.

17.3.1.1 The Owner will make the software accessible via the Internet to all Project team members.

17.3.1.2 The Owner shall administer the software.

17.3.2 Training. The Owner shall provide training to the Project team members.

17.4 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, its subcontractors, subcontractors' employees and other persons under their control.

Contractor's employees, agents, its subcontractors (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.

Uniform General Conditions for Texas A&M University System

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, its 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 its subcontractors receiving more than \$25,000 in funds in connection with a Project.

17.5 Right to Audit.

17.5.1 Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, Owner, any successor agency and their representatives, including independent auditors, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with any party conducting the audit or investigation, including providing all records requested.

17.5.2 Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the terms of this Contract, the requirements of Owner, and with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and Owner's property for a period of seven (7) years after the date of submission of a request for Final Payment or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice and for reasonable

Uniform General Conditions for Texas A&M University System

periods all documents and other information related to the Work of this Contract.

17.5.3 Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by its Subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

17.7 179 D Benefit Allocation. Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through its Agreement with Contractor

If the Owner and the Internal Revenue Service (IRS) determine that the Contractor is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Contractor could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Contractor hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project Architect. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Contractor fees or both.

Owner reserves the right to retain a third-party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

Contractor agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

17.8 Force Majeure. Neither party will be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. "Force Majeure event" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11)

Uniform General Conditions for Texas A&M University System

interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.

17.9 Confidentiality and Safeguarding of Owner Records; Press Releases; Public Information. Under the Contract, Contractor may (1) create, (2) receive from or on behalf of Owner, or (3) have access to, Owner records or record systems (collectively, "Owner Records"). Contractor represents, warrants, and agrees that it will: (1) hold all Owner Records in strict confidence and will not use or disclose Owner Records except as (a) permitted or required by the Contract, (b) required by applicable laws, or (c) otherwise authorized by Owner in writing; (2) safeguard Owner Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) comply with the Owner's rules, policies, and procedures regarding access to and use of Owner's computer systems. At the request of Owner, Contractor agrees to provide a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of Owner Records.

17.9.1 Notice of Impermissible Use. If an impermissible use or disclosure of any Owner Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide Owner with all information requested by University regarding the impermissible use or disclosure.

17.9.2 Return of University Records. Contractor agrees that within thirty (30) days after the expiration or termination of the Contract, for any reason,

Uniform General Conditions for Texas A&M University System

all Owner Records created or received from or on behalf of University will be (1) returned to Owner, with no copies retained by Contractor; or (2) if return is not feasible, destroyed following twenty (20) days written notice to the Owner. Contractor will confirm in writing the destruction of any Owner Records.

17.9.3 Disclosure. If Contractor discloses any Owner Records to its Subcontractor or agent, Contractor will require the Subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

17.9.4 Press Releases. Except as required by the Contract, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of Owner in connection with the Project or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of Owner.

17.10 Public Information

Contractor acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to this project as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Contractor acknowledges that Owner may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

END OF UNIFORM GENERAL CONDITIONS

EXHIBIT "C"
SPECIAL CONDITIONS, WAGE RATES AND OWNER'S SPECIFICATIONS

SPECIAL CONDITIONS

The following supplements modify, change, delete from or add to the “UNIFORM GENERAL 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. The following supplements shall control over any inconsistencies or conflicts with the UGC.

Article 2 Laws Governing Construction

2.2 Wage Rates

The rates of pay for some classifications which prevail in the locality of this Project are included at the end of these Special Conditions.

~~2.8.1~~ Underground Utilities at Texas A&M University & Texas A&M University at Galveston

~~To increase the level of safety, Texas A&M University (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. SSC Grounds Maintenance has responsibility for maintenance of the TAMU-owned irrigation system which includes which includes responsibility for utility locates on the TAMU College Station campus and TAMUG SSC Facilities Services has responsibility of the TAMU-owned system which includes responsibility for utility locates on the TAMU Galveston campus.~~

~~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.**~~

~~If unfamiliar with the utility locate process, contact Utilities & Energy Services at 979-845-3234 for the TAMU College Station campus and SSC Facilities Service at 409-740-4547 for the TAMU Galveston campus for additional guidance and support. For emergencies or after normal work hours of 7am to 3:30pm, Mon-Fri, contact the TAMU Communications Center (staffed 24/7/365) at 979-845-4311 for the TAMU College Station campus and TAMUG Police Department at 409-770-4545 for the TAMU Galveston campus.~~

~~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.**~~

~~2.8.1.1 Routine Utility Locate Request Procedure:~~

~~2.8.1.1.1 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.~~

~~2.8.1.1.2 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.~~

~~2.8.1.1.3 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.~~

~~2.8.1.1.4 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.~~

~~2.8.1.1.5 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.~~

~~2.8.1 Underground Utilities at Tarleton State University~~

~~————— Tarleton State University is not a member of the Texas Excavation Safety System and is not notified for utility locates by 811. In addition to notifying 811 Contractor shall notify the campus through an online form located at <https://web.tarleton.edu/forms/view.php?id=22863> A minimum of 72 hours prior to digging. Upon the occurrence of any contact with or damage to any pipe, cable or its protective coating, or any other underground facility or utility the Tarleton State University Control Center (254) 968-9265 shall be notified immediately by the person or company responsible for the operation causing the contact or damage. Under no circumstances shall the excavator back fill or conceal the damaged area until university personnel arrive at the site.~~

Refer to

~~<https://web.tarleton.edu/safety/wp-content/uploads/sites/158/2022/07/TarletonStateUniversityProjectDigPolicy.pdf> for additional requirement concerning utility locates and digging on Tarleton State University.~~

2.10 Legal Restrictions on Specific Activities

2.10.1 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.

~~2.10.2 Endangered Species~~

~~2.10.2.1 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.~~

~~2.10.2.2 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.~~

2.10.3 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.

~~2.10.4 Archeological Discoveries~~

~~2.10.4.1 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.~~

Article 3. General Responsibilities of the Owner & Contractor

3.3 Contractor's General Responsibilities.

3.3.2.1 The Contractor shall employ a full-time Project Manager. 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. 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 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 a full-time Project Engineer 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, and one for Mechanical, Plumbing and Electrical work, for all Architectural, 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 5 years of experience with projects of similar size and scope.
- 3.3.2.6 The Contractor shall employ a VDC individual as determined by the Contractor for proper execution of the Work and to meet the conditions of the Contract Documents.

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-Texarkana

January	3	May	5	September	4
February	4	June	4	October	4
March	5	July	3	November	5
April	4	August	3	December	5

Article 10. Payments

- 10.1. 3 As part of each payment application the Contractor shall provide a breakdown of the contract costs in the following categories in Excel format provided by Owner:

<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
- 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.
- 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 17. Miscellaneous

17.11 Notices.

All notices, consents, approvals, demands, requests or other communications relied on by

the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or Owner for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Agreement shall be sent to the Owner:

Billy C. Hamilton, Deputy Chancellor and Chief Financial Officer
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

With Copies to:

Brett McCully, Chief Facilities Officer
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896

Brett Cumpton, Director
Office of Facilities Planning & Construction
The Texas A&M University System
301 Tarrow Street, 2nd Floor
College Station, Texas 77840-7896



THE TEXAS A&M UNIVERSITY SYSTEM

301 Tarrow Street, 2nd Floor

College Station, Texas 77840

Minimum Prevailing Wage Rate

County: Bowie

CLASSIFICATION	RATE	NOTES
Acoustic Ceiling Installer	15.21	
Asbestos Abatement Worker	12.63	
Carpenter	15.42	
Concrete – Pour and Finish	14.89	
Crane Operator	25.53	
Driver	13.99	
Drywall Installer	15.67	
Electrician – Journeyman	24.85	
Electrician – Apprentice	19.68	
Elevator Mechanic – Journeyman	53.99	
Elevator Mechanic – Apprentice	46.52	
Fire Protection – Controls	17.14	
Fire Protection – Pipefitter	19.93	
Formwork Builder	14.10	
Glazier	17.11	
HVAC – Journeyman	24.27	
HVAC – Apprentice	15.29	
HVAC – Controls	21.08	
Insulator	15.49	
Ironworker	16.84	
Laborer/Helper	12.31	
Mason	18.50	
Equipment Operator – Light	14.48	
Equipment Operator – Heavy	16.21	
Painter	12.75	
Pipefitter – Journeyman	31.43	
Pipefitter - Apprentice	18.72	
Plasterer	15.00	
Plumber – Journeyman	29.72	
Plumber – Apprentice	19.65	
Reinforcing Steel Worker	15.26	
Roofer	19.28	
Stone Mason	17.53	
Terrazzo Installer	12.65	
Tile Setter	15.21	
Waterproofer	14.42	

Note: Listed minimum prevailing wage rate is the base hourly wage rate including fringes.

EXHIBIT “D”
ALLOWABLE GENERAL CONDITION LINE ITEMS

On-Site Project Management Staff

Persons as identified in the approved Guaranteed Maximum Price proposal
Out-of-State Project Specific Travel*

Bonds and Insurance

Builder’s Risk Insurance
General Liability Insurance
Contractor Payment and Performance Bonds
Other Project Insurance as Required by Contract

Temporary Project Utilities

Temporary Toilets
Temporary Fire Protection
Dumpsters
Project Electricity and Water
Fencing, Covered Walkways and Barricades
Monthly Telephone /Internet Service (Field Offices Only, No Cell Phones, PDAs)
Telephone / Internet System Installation (Field Offices Only, No Cell Phones or PDAs)
Temporary Water Distribution and Meters (Field Offices Only)
Temporary Electrical Distribution and Meters (Field Offices Only)
Site Erosion Control (BMP) and Project Entrance(s)

Field Offices & Office Supplies

Partnering Costs	First Aid Supplies
Job Photos/Videos	Reprographic Services
Project Specific Signage	Monthly Office Supplies
Postage/Special Shipping	Remote Parking Expenses
Project Record Drawings	Project Reference Manuals
Project Milestone Event(s)**	Move-In/Out and Office Setup
Employee Identification System	Drinking Water and Accessories
Small Tools and Storage Trailers	Office Clean-Up/Janitorial Services
Monthly Office Trailer Rental Costs	Security System/Watchman
Safety Material and Equipment	

* Specific justification and all estimated costs shall be submitted and approved by the Owner prior to any travel.

** Milestone Events are limited to Groundbreaking and Building Dedication upon request from Owner and all estimated costs shall be submitted and approved by Owner prior to the event.

EXHIBIT "E"
GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

The Contractor hereby submits to The Board of Regents of The Texas A&M University System, pursuant to the provisions of Article 7 of the Agreement by and between the Board of Regents of The Texas A&M University System and Contractor the following Guaranteed Maximum Price Proposal for the Business, Engineering, and Technology Building, Project No. 22-3385, based on Plans and Specifications dated [Date on Drawings Month Day, Year].

1. A not-to-exceed amount for the Cost of the Work pursuant to the Agreement:
(\$ _____)
(In Numerals)

2. A not-to-exceed amount for the General Conditions Costs pursuant to the Agreement:
(\$ _____)
(In Numerals)

3. A not-to-exceed amount for the Contractor's Contingency pursuant to the Agreement:
(\$ _____)
(In Numerals)

4. A lump sum amount for Contractor's Construction Phase Fee, pursuant to the Agreement is:
(\$ _____)
(In Numerals)

5. TOTAL OF ITEMS 1 THROUGH 4
This amount is the Guaranteed Maximum Price (GMP) which the Contractor hereby guarantees to the Owner for constructing the Business, Engineering, and Technology Building, Texas A&M University-Texarkana, Texarkana, Texas, Project No. 22-3385 complete in place and operational. All attached breakdowns shall total this GMP amount:
(\$ _____)
(In Numerals)

6. CONSTRUCTION TIME:
The undersigned agrees to complete all Work in the following number of calendar days from the Notice to Proceed:
(_____)
(In Numerals)

7. 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, the Owner may deduct the amount of:

_____ Dollars per day (\$ _____/day)

From the money due or that becomes due the Contractor, 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.

The parties stipulate and agree, 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 is reasonable.

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. Owner's right to receive liquidated damages shall not affect Owner's right to terminate the Agreement as provided in the General Conditions or elsewhere in the Contract Documents, nor shall termination of the Agreement release Contractor from the obligation to pay the liquidated damages.

This GMP Proposal will not be withdrawn for a period of ninety (90) days from the date of receipt of this offer by the Owner.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Proposal.

(Contractor)

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

By _____
(Signature)

By _____
Deputy Chancellor and Chief Financial Officer

(Print or Type Name)

Date _____

Date _____

APPROVAL RECOMMENDED:

Name(s) of individual(s), sole proprietors,
partner(s), shareholder(s) or owner(s) with an
ownership interest of at least 25% of the
business entity executing this Contract.

Chief Facilities Officer
Office of Facilities Planning & Construction

Date _____

Name: _____

Name: _____

Name: _____

Name: _____

APPROVED AS TO FORM:

Assistant General Counsel

Date _____

**ATTACHMENT 1 to EXHIBIT “E”
GUIDELINES FOR PREPARATION OF THE GUARANTEED MAXIMUM PRICE
PROPOSAL**

Tab 1 Executive Summary

Summary of Work
Summary of Procurement
Key Dates including Notice to Proceed and Substantial Completion

Tab 2 Staffing Plan

Listing of onsite staff and duties

Tab 3 Budget Summary

Estimate summary including all alternates
Detailed estimate by MasterFormat 2012
Estimate by bid/trade package

Tab 4 Qualifications and Assumptions

Listing of qualifications and assumptions in the GMP by MasterFormat 2012
Description of Alternates including last date to accept alternates
Site Logistics and Utilization Plan

Tab 5 List of Documents

Drawing Index
Specification Index

Tab 6 Schedule

Project schedule

Tab 7 Subcontractor Buyout Strategy

Buyout Package Strategy
Self-Performed List

Tab 8 HUB Subcontracting Plan

Update to HUB Participation Plan

Tab 9 BIM Execution Plan

Update to BIM Execution Plan
Example BIM Execution Plan for Subcontractor Buyout

Tab 10 GMP Proposal

Exhibit “E”

EXHIBIT "F"
SECURITY BOND

Surety Bond No. SU1195376

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Bowie §

That we, Clark Contractors, LLC, as Principal, and Arch Insurance Company, as Surety, are hereby held and firmly bound unto The Board of Regents of The Texas A&M University System as Obligee in the penal sum of Five Percent (5%) of Thirty Three Million Six Hundred Ninety Two Thousand One Hundred Twenty-Five and 00/100 (\$ 33,692,125.00), the Amount Available for the Construction Contract (AACC) for the Project defined herein below, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Whereas the Principal has executed a contract with Obligee dated June 16th, 2023 (the "Contract"), for Business, Engineering and Technology Building, Project No. 22-3385 (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to all parties, the said Principal will, within the time required by the Contract, give Performance and Payment Bonds, as required by the Contract, to secure the performance of the terms and conditions of the Contract, then this obligation to be void; otherwise the Principal and Surety will pay to the Obligee the difference in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal and the amount for which the Obligee legally contracts with another party to perform the work if the latter amount be in excess of the former, but in no event shall liability hereunder exceed the penal sum hereof.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this 22nd day of June in the year 2023, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

Clark Contractors, LLC
Principal

ATTEST:

By: [Signature]
Logan Alexander Project Manager
(Typed Name and Title)

By: [Signature]
Matt Morrow Vice President
(Typed Name and Title)

(SEAL)

Arch Insurance Company
Surety

ATTEST:

By: [Signature]
Pamela Dunlap - Witness
(Typed Name and Title)

By: [Signature]
Sherese Escovedo - Attorney-in-Fact
(Typed Name and Title)

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Erika Jackson, Felecia Prince, Sherese Escovedo, Stanley G. Payne and Stephanie R. Jones of Little Rock, AR (EACH)

is true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00). This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 10, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 10, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 8th day of April, 2022.

Attested and Certified

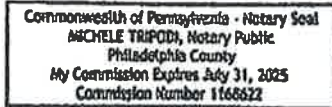
Regan A. Shulman
Regan A. Shulman, Secretary



Arch Insurance Company
Stephen C. Ruschak
Stephen C. Ruschak, Executive Vice President

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Michele Tripodi
Michele Tripodi, Notary Public
My commission expires 07/31/2025

CERTIFICATION

I, Regan A. Shulman, Secretary of the Arch Insurance Company, do hereby certify that the attached **Power of Attorney dated April 8, 2022** on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 22nd day of June 2022

Regan A. Shulman
Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance - Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.

Exhibit G
Personnel and Monthly Salary Rates

The following Monthly Salary Rate (MSR) shall identify the estimated billable rate prior to execution of the Guaranteed Maximum Price proposal (GMP) for use throughout Construction Phase services on the Schedule of Values for all salaried General Conditions personnel according to the executed Agreement. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employee contributions not identified below shall be included in the Construction Phase Fee according to Article 9 of the executed Agreement.

Title	Employee		Estimated Employer's Monthly Contributions							Monthly Salary Rate
	Employee Name	Estimated Monthly Direct Salary Expense	Federal & State Unemployment (Less than 1%)	Social Security & Medicare (Less than 7.65%)	Worker's Compensation	Health & Insurance	Pension / 401(k) Note 1	Vacation / Holiday	Computer Hardware, Software & Services \$1.75/hr straight time Note 2	
1. Project Manager		\$	\$	\$	\$	\$	\$	\$	\$	\$
2. Superintendent		\$	\$	\$	\$	\$	\$	\$	\$	\$
3. Scheduler/Expeditier		\$	\$	\$	\$	\$	\$	\$	\$	\$
4. Project Engineer		\$	\$	\$	\$	\$	\$	\$	\$	\$
5. Quality Control Supervisor		\$	\$	\$	\$	\$	\$	\$	\$	\$
6. Quality Control Supervisor		\$	\$	\$	\$	\$	\$	\$	\$	\$
7.		\$	\$	\$	\$	\$	\$	\$	\$	N/A
8.		\$	\$	\$	\$	\$	\$	\$	\$	N/A
9.		\$	\$	\$	\$	\$	\$	\$	\$	N/A
10.		\$	\$	\$	\$	\$	\$	\$	\$	N/A
11.		\$	\$	\$	\$	\$	\$	\$	\$	N/A
12.		\$	\$	\$	\$	\$	\$	\$	\$	N/A

Note 1 - All cost associated with employee stock option plans shall be included in Contractor's Fee

Note 2 - The computer hardware, software & services cost is only allowed for the employees required in Special Conditions and can only be charged against straight time hours and not overtime hours.

**EXHIBIT “H”
BIM Execution Plan**

DEVELOPED BY
(Name and Company)

PROJECT INFORMATION

The intent of this BIM Execution Plan is to provide a framework that will let the owner, design team, and contractor deploy building information modeling (BIM) technology and best practices on this project faster and more cost-effectively. If the delivery method is competitive sealed proposal then the contractor will be included in this Execution Plan at a later date. This plan delineates roles and responsibilities of each party, the detail and scope of information to be shared, relevant business processes and supporting software.

To successfully implement Building Information Modeling (BIM) on a project, the project team has developed this detailed BIM Project Execution Plan. The BIM Project Execution Plan defines uses for BIM on the project (e.g. design authoring, cost estimating, and design coordination), along with a detailed design of the process for executing BIM throughout the project lifecycle.

Project Name:
Brief Project Description:

Additional Project Information:

Construction Delivery Method:

Project Schedule/Phases/Milestones:
Include BIM milestones, pre-design activities, major design reviews, stakeholder reviews, and any other major events which occur during the project lifecycle.

Project Phase/Milestone	Estimated Start Date	Estimated Completion Date	Project Stakeholders Involved
Schematic Design			
Design Development			
Construction Documents			
Facility Data Review			
Construction			

--	--	--	--	--	--	--	--	--	--

BIM AND DATA QUALITY CONTROL

Describe the strategy to control the quality of the model(s) and the checks to be performed to assure quality.

Checks	Definition	Responsible Party	Software	Frequency
Visual Check	Ensure there are no unintended model components and the design intent has been followed			
Interference Check	Detect problems in the model where two building components are clashing including soft and hard	Design team uploads models Construction Managers leads meeting to review critical clashes	Autodesk BIM Collaborate	Begins with Detailed Design Review and shall occur at each Construction Documents review meeting
Standards Check	Ensure that the BIM and CADD Standard have been followed (fonts, dimensions, line styles, levels/layers, etc.)			
Model Integrity Checks	Describe the QC validation process used to ensure that the Project Facility Data set has no undefined, incorrectly defined or duplicated elements and the reporting process on non-compliant elements and corrective action plans			
Other				

MODEL STRUCTURE

File Naming Structure (Do not include project number or project name in file name. Do include at the end the software version number)

File Name Formatting	
Architectural Model	
Structural Model	
Mechanical Model	
Plumbing Model	
Fire Sprinkler Model	
Electrical Model	

Model Structure

Describe and diagram how the model is separated (building, floor, zone, area and/or discipline).

Measurement and Coordinate System

Describe the measurement system and coordinate system used.

Model Accuracy and Tolerances

Models should include all appropriate dimensioning as needed for design intent, analysis, and construction. Level of detail and included model elements are provided in the Information Exchange Worksheet.

Phase	Discipline	Tolerance
Design Documents		ACCURATE TO +/- [#] OF ACTUAL SIZE AND LOCATION
Shop Drawings		ACCURATE TO +/- [#] OF ACTUAL SIZE AND LOCATION
		ACCURATE TO +/- [#] OF ACTUAL SIZE AND LOCATION

PROJECT DELIVERABLES

In this section, list the BIM deliverables for the project and the format in which the information will be delivered.

BIM Submittal Item	Stage	Approximate Due Date	Format	Notes

ATTACHMENTS

List any supporting information and attach.