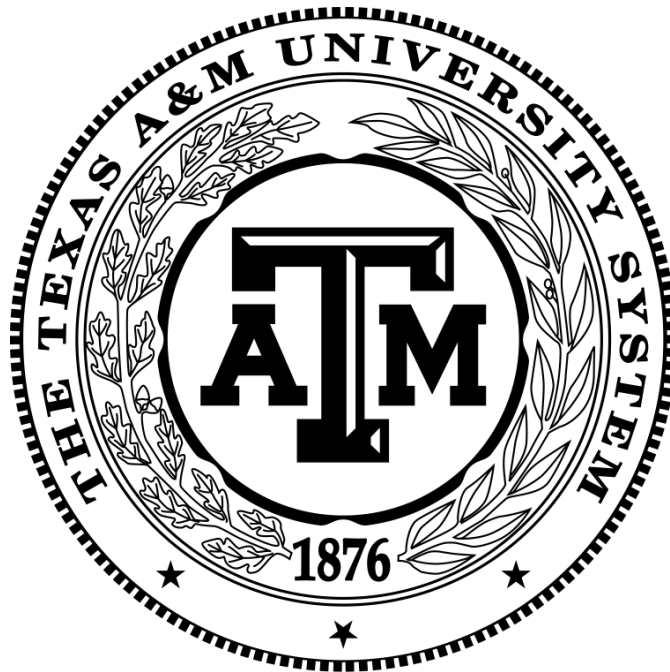


**AGREEMENT**  
**BETWEEN**  
**THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY**  
**SYSTEM**  
**AND**  
**THOS. S. BYRNE, INC.,**  
**CONSTRUCTION MANAGER-AT-RISK**



## 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  
SYSTEM  
AND  
THOS. S. BYRNE, INC.,  
CONSTRUCTION MANAGER-AT-RISK**

This Agreement is effective as of March 21, 2020 (the “Effective Date”), by and between the **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“Owner”) and Thos. S. Byrne, Inc., Construction Manager at Risk (“Contractor”) for the: New Recreation Center construction project (the “Project”). The parties acknowledge that Marmon Mok, LLP shall serve as the architect/engineer (hereafter “A/E”).

Owner intends to construct the Project at Texas A&M University-San Antonio, San Antonio, Texas, within a construction cost limit of Twenty-Nine Million, Nine Hundred Forty-Six Thousand and no/100 dollars (\$29,946,000.00). 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 and Supplementary 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 **“Building Information Modeling” or “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.

2.4 **“Contract Documents”** means this Agreement and all exhibits and attachments listed, contained or referenced in this Agreement specifically including the Uniform General and Supplementary 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.

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

2.6 **“Construction Documents”** means, collectively, the Uniform General and Supplementary 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.

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

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

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

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

2.11 **“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.

2.12 **“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.

2.13 **“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.

2.14 **“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.

2.15 **“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.

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

2.17 **“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.

2.18 **“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.

2.19 **“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.

2.20 **“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.

2.21 **“Subcontractor”** means a person or entity who has an agreement with Contractor to perform any portion of the Work. The term Subcontractor does not include A/E or any person or entity hired directly by Owner.

2.22 **“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.

2.23 **“Work Progress Schedule”** or **“WPS”** shall have the meaning given in Paragraph 5.3.1.

2.24 **“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 BIM360 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 BIM360 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/system-offices-hub-program/>  
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 UGSC.

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 Provide and implement a system 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. The decision tracking system shall be in a format approved by Owner and updated by Contractor at least monthly during the Pre-Construction Phase.

### 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 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 and Subcontractor Buyout Strategy**

- 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 Develop a bid/proposal package strategy in coordination with A/E that addresses the entire scope of each phase and stage of the Project. In developing the bid/proposal package strategy, Contractor shall identify all bid/proposal packages on which Contractor intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be presented to the Owner for approval prior to submitting a GMP and reviewed with Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and Owner.
- 5.6.5 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.
- 5.6.6 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.

- 5.6.7 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.
- 5.6.8 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.
- 5.6.9 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 Obtaining Bids/Proposals for the Project**

- 5.7.1 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. 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 shall notify Owner in advance in writing of the date it will receive the bids/proposals.
- 5.7.2 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.
- 5.7.3 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 recommend to Owner, in a format acceptable to Owner, the bid/proposal(s) that provides the best value for the Project. Upon Owner's written concurrence with the recommendation, Contractor may negotiate the terms of the subcontract with the apparent best value bidder/proposer.
- 5.7.4 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by the Executive Director 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.
- 5.7.5 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.

- 5.7.6 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.
- 5.7.7 For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Contractor shall bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least two other interested trade contractors. 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 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". 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 performed on a lump sum. Otherwise, no self-performed work will be allowed to be performed on a lump sum basis.
- 5.7.8 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.
- 5.7.9 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.

5.7.10 There are no third party beneficiaries of this Agreement.

## 5.8 Safety

- 5.8.1 In accordance with the UGSC, 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.
- 5.8.2 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 include, without limitation, a breakdown of Contractor's estimated General Conditions Costs 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 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 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 UGSC, 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 UGSC, 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 UGSC'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 UGSC 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 UGSC 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](http://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  
<http://window.state.tx.us/procurement/prog/hub/hub-forms/ProgressAssessmentReportForm.xls>

## 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	15%
Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	5%

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 UGSC 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 UGSC 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. If an item is not fully consumed in the construction of the Work, its cost shall be prorated based on depreciable life or based on actual cost of the item less its fair market salvage value.
- 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 UGSC.

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 UGSC.

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 approved by Owner in advance and in writing, 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 bases 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 UGSC. 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: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the UGSC.

17.3.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the UGSC.

17.3.3 Prior to commencing any construction work, Contractor shall provide evidence of Builder's Risk coverage as set forth in the UGSC, 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 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 – San Antonio 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 UGSC 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.

## **ARTICLE 19 INDEMNITY**

19.1 SEE PARAGRAPH 3.3.10 OF THE UGSC 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.

Upon Owner's written request, Contractor will provide specified public information exchanged or created under this Agreement for or on behalf of A&M System to Owner in a non-proprietary format acceptable to Owner.

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*.

Contractor certifies that the requirements of Subchapter J, Chapter 552, and *Texas Government Code*, (added by SB 943 during the 86<sup>th</sup> Legislative Session) may apply to this RFQ and resultant agreement and the Respondent agrees that the resultant agreement can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

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 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 and 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

**[SIGNATURES PROVIDED ON FOLLOWING PAGE]**

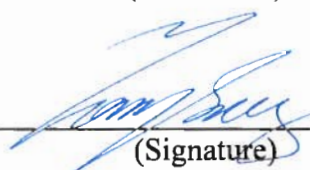
BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

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

  
Deputy Chancellor and Chief Financial Officer

Date 3/21/20

THOS. S. BYRNE, INC.  
(Contractor)

By   
(Signature)

Tony Battle  
(Print or Type Name)

Date 03-04-2020

APPROVAL RECOMMENDED:

  
Executive Director  
Office of Facilities Planning & Construction

Date 03.16.2020.

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.

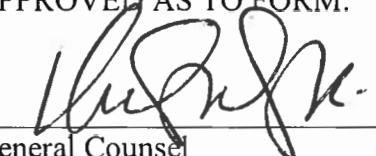
Name: John Avila

APPROVED AS TO FORM:

Name: Matthew Avila

Name: Paul Avila

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

  
General Counsel

Date 3-16-2020



**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:

Twenty-Nine Million, Nine Hundred Forty-Six Thousand and no/100 Dollars  
(\$29,946,000.00);

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

Seventy Thousand and no/100 Dollars (\$70,000.00);

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 \_\_\_\_\_, Owner shall pay Contractor  
\_\_\_\_\_ Dollars (\$0.00).

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:

Seven Hundred Ninety-Three Thousand, Five Hundred Sixty-Nine and no/100 Dollars  
(\$793,569.00);

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 June 17, 2022.

5. Liquidated Damages

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

Five Thousand and no/100 Dollars per day (\$5,000/day)

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 and once paid shall represent owner's sole and exclusive remedy for late completion. Owner may also recover the liquidated damages from any money due or that becomes due Contractor.

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. 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.

6. 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, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

With Copies to:

Russ Wallace, Executive Director  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

Brett McCully, Area Manager  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

If to Contractor:

Tony Battle  
Thos. S. Byrne, Inc.  
5851 Sebastian Place  
San Antonio, Texas 78249

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

7. Party Representatives

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

Brett McCully, Area Manager  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> 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:

Tony Battle  
Thos. S. Byrne, Inc.  
5851 Sebastian Place  
San Antonio, Texas 78249

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 AND SUPPLEMENTARY CONDITIONS**

[Insert Uniform General and Supplementary Conditions]

**THE TEXAS A&M UNIVERSITY SYSTEM**  
**Uniform General and Supplementary Conditions**  
**Table of Contents**

<b>ARTICLE</b>	<b>PAGE #</b>
<b>Article 1</b>	<b>Definitions .....2</b>
<b>Article 2</b>	<b>Laws Governing Construction ..... 5</b>
<b>Article 3</b>	<b>General Responsibilities of Owner &amp; Contractor ..... 8</b>
<b>Article 4</b>	<b>Historically Underutilized Business (HUB) Subcontracting Plan .... 15</b>
<b>Article 5</b>	<b>Bonds &amp; Insurance..... 17</b>
<b>Article 6</b>	<b>Contract Documents ..... 23</b>
<b>Article 7</b>	<b>Construction Safety..... 25</b>
<b>Article 8</b>	<b>Quality Control..... 27</b>
<b>Article 9</b>	<b>Schedules..... 34</b>
<b>Article 10</b>	<b>Payments .....41</b>
<b>Article 11</b>	<b>Changes..... 45</b>
<b>Article 12</b>	<b>Project Completion and Acceptance ..... 50</b>
<b>Article 13</b>	<b>Warranty and Guarantee..... 55</b>
<b>Article 14</b>	<b>Suspension and Termination ..... 57</b>
<b>Article 15</b>	<b>Dispute Resolution..... 62</b>
<b>Article 16</b>	<b>Miscellaneous .....62</b>

# **Uniform General and Supplementary Conditions For The Texas A&M University System**

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

## **Article 1. Definitions**

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

- 1.1 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant to Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by Owner or a design-build contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.2 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the A/E.
- 1.3 *Change Order Proposal* means a Contractor-generated document in response to a Change Order Request (COR).
- 1.4 *Close-out documents* means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.5 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.6 *Contract Date* is the date when the agreement between the Owner and the Contractor becomes effective.

- 1.7 *Contract Documents* means those documents identified as a component of the agreement (contract) between the Owner and the Contractor. These may include, but are not limited to, Drawings, Specifications, these Uniform General and Supplementary Conditions, Special Conditions, Change Orders, and all pre-bid and/or pre-proposal addenda.
- 1.8 *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.
- 1.9 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.10 *Contract Time* means the period between the Date of Commencement (Start Date) identified in the Notice to Proceed with Construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by Change Order.
- 1.11 *Date of Commencement* means the date designated in the Notice to Proceed for the Contractor to commence the Work.
- 1.12 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.13 *Drawings* means that product of the A/E which graphically depicts the Work.
- 1.14 *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.
- 1.15 *Owner* means the State of Texas and any Agency of the State of Texas, acting through the responsible entity of the State of Texas, identified in the Contract as the Owner.
- 1.16 *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.
- 1.17 *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.

- 1.18 *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.
- 1.19 *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.
- 1.20 *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.
- 1.21 *Site* means the geographical area of the location of the Work.
- 1.22 *Special Conditions* means the documents containing terms and conditions, which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over these Uniform General and Supplementary Conditions.
- 1.23 *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.
- 1.24 *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.
- 1.25 *Substantial Completion* means the date determined and certified by the Contractor, A/E and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.26 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.27 *Unilateral Change Order* means a Change Order issued by the Owner without the agreement of the Contractor. ***A Unilateral Change Order has the same effect as a contract modification.***
- 1.28 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, and/or its agents, to fulfill the Contractor's obligations under the Contract.



## **Article 2. Laws Governing Construction**

- 2.1. Environmental Regulations. The Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, the Owner is responsible for obtaining and maintaining permits related to stormwater run-off. The Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of the Contractor. The Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with the request for the Substantial Completion Inspection.
- 2.2. Wage Rates. The Contractor shall not pay less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner. The specified wage rates are minimum rates only. The Owner is not bound to pay any claims for additional compensation made by any contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The "Prevailing Wage Schedule" is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. The Contractor shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by the Owner, the Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law.
- 2.2.1.1 The Contractor shall submit a copy of each worker wage-rate notification to the ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.
- 2.2.1.2 The "Prevailing Wage Schedule" is determined by the Owner in compliance with Tex. Gov't Code, Chapter 2258. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner's Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a Subcontractor, the Contractor shall

promptly inform the ODR of the proposed wage to be paid for the skill along with a justification for same. The Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the Prevailing Wage Schedule. In no case shall any worker be paid less than the wage indicated for Laborers.

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

2.2.1.4 Complaints of Violations.

2.2.1.4.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation of Tex. Gov't Code, Chapter 2258, the Owner will, within 31 days, make an initial determination as to whether good cause exists that a violation occurred. The Owner will send documentation of the initial determination to the Contractor against whom the violation was alleged, and to the worker involved. Upon making a good-cause finding, the Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.1.4.2 If the Contractor and claimant worker reach an agreement concerning the claim, the Contractor shall promptly notify the Owner in a written document countersigned by the worker.

2.2.1.4.3 Arbitration Required. If the violation is not resolved within 14 days following initial determination by the Owner, the Contractor and the claimant worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Tex. Civ. Prac. & Rem. Code, Chapter 171. If the Contractor and the claimant worker do not agree on an arbitrator within 10 days, after the date

arbitration is required, a district court may be petitioned by any of the parties to the arbitration to appoint an arbitrator whose decision will be binding on all parties. (See Tex. Gov't Code, § 2258.053)

2.2.1.4.4 **Arbitration Award.** If an arbitrator assesses an award against the Contractor, the Contractor shall promptly furnish a copy of said award to the Owner. The Owner may use any amounts retained under Article 2.2.1.4.1 to pay the worker the amount as designated in the arbitration award. If the retained funds are insufficient to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor, and/or the surety to receive the amount owed, plus attorneys' fees and court costs. The Owner has no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award.

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

2.3. Venue for Suits. ***The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Brazos County, Texas.***

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

2.5. Royalties, Patents & Copyrights. The Contractor shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights, and shall save the Owner harmless from loss on account thereof.

2.6. State Sales and Use Taxes. The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by

the State Comptroller of Public Accounts. ***Contractor shall not be entitled to reimbursement for taxes paid on items that are exempt from taxation.***

### **Article 3. General Responsibilities of Owner and Contractor**

3.1. Owner's General Responsibilities. The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.

3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of the Notice to Proceed with Construction, a conference will be convened for attendance by the Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the project team members.

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

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

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

3.1.3 Owner Supplied Materials and Information.

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

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

3.1.4 Availability of Lands. The Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by the Contractor. The Contractor shall comply with all Owner-identified encumbrances or restrictions specifically related to use of lands so furnished. The Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties.

3.1.5.1 The Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. The Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of the Contractor.

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

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

otherwise modified by written instrument, which will be furnished to the Contractor by the ODR, upon request.

### 3.2.1 Site Visits

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

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

3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by the ODR such clarifications or interpretations will be provided by the A/E consistent with the intent of the Contract Documents. The A/E will issue these clarifications with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI) or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

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

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

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

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

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

3.3 Contractor's General Responsibilities. The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the

Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. ***The Contractor is responsible for having visited the Site and having ascertained all pertinent local conditions such as existing subsurface concealed conditions, location, accessibility and general character of the Site or building, the character and extent of existing work, the character and extent of existing work within adjacent sites, and any other work being performed thereon at the time Contractor's bid or proposal is submitted.***

- 3.3.1 Project Administration. The Contractor shall provide project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the A/E and ODR in accordance with these Uniform General and Supplementary Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.
- 3.3.2 Contractor's Superintendent. The Contractor shall employ a competent resident Superintendent who will be present at the Project Site during the progress of the Work. The Superintendent is subject to the approval of the ODR. The Contractor shall not change approved Superintendents during the course of the Project without the written approval of the ODR unless the Superintendent leaves the employ of the Contractor.
- 3.3.3 Labor. The Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents, and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, the Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 Non-Compliant Work. Should the A/E and/or the ODR identify Work as non-compliant with the Contract Documents, the ODR will communicate the finding to the Contractor and the Contractor will correct such Work at its expense. The approval of Work by either the

A/E or ODR does not relieve the Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.6 Subcontractors. The Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection. The Contractor will not substitute Subcontractors without the acceptance of the Owner.

3.3.6.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the agreement between the Contractor and the Owner.

3.3.6.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through the Contractor. The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after its execution. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies in no way relieves the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.

3.3.7 Continuing the Work. The Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. The Contractor shall not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Contractor may agree in writing.

3.3.8 Cleaning. At all times, the Contractor shall keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. The Contractor shall ensure that the entire Project is thoroughly cleaned



prior to requesting Substantial Completion Inspection and, again, upon completion of the Project prior to the Final Completion Inspection.

**3.3.9 Acts and Omissions of Contractor, its Subcontractors and Employees.**

The Contractor is responsible for acts and omissions of its employees and all its Subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the Project any of Contractor's or its Subcontractor's employees that the ODR finds to be careless, incompetent, or otherwise objectionable.

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

3.3.10.1 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

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

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

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

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

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

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

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

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

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

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

**3.3.12.4 *The Contractor shall cooperate with other contractors employed on the Project by the Owner, including***

*providing access to the Site and project information as requested.*

## **Article 4. Historically Underutilized Business (HUB) Subcontracting Plan**

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

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

*The Texas A&M University System has determined that the agency's goals are higher than the State's goals. Therefore, respondents are required to use the following: 11.2% for heavy construction other than building contracts; 15% for all building construction, including general contractors and operative builders contracts; 8% for all special trade construction contracts; 36% for professional services contracts; 10% for all other services contracts; and 47% for commodities contracts.*

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

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

- 4.2.1 Prior to substituting a Subcontractor, promptly notify the Owner in the event a change is required for any reason to the accepted HUB Subcontracting Plan.
  - 4.2.2 Conduct the good faith effort activities required and provide the Owner with necessary documentation to justify approval of a change to the approved HUB Subcontracting Plan.
  - 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB Subcontracting Plan as the Contractor and Owner may agree to.
  - 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB Subcontracting Plan.
  - 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by the Owner that demonstrates Contractor's performance of the HUB Subcontracting Plan.
  - 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in the Owner's investigation of the Contractor's good faith effort to fulfill the HUB Subcontracting Plan and the requirements under 34 TAC §20.14.
- 4.3. Failure to Demonstrate Good Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good faith effort to fulfill the HUB Subcontracting Plan or any contract covenant detailed above, the Owner may, in addition to all other remedies available to it, report the failure to perform to the Texas Procurement and Support Services under its Vendor Performance and Debarment Program and may bar the Contractor from future contracting opportunities with the Owner.

## **Article 5. Bonds & Insurance**

- 5.1. Construction Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253.
- 5.1.1. Performance Bond. A Performance Bond is required if the Contract Sum is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful performance of the Work in

accordance with the Contract Documents. The form of the bond shall be approved by the Attorney General of Texas. The Performance Bond shall be effective through the Contractor's warranty period.

- 5.1.2. Payment Bond. A Payment Bond is required if the Contract Sum is in excess of \$25,000. The Payment Bond is to be for the Contract Sum and is payable to the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be approved by the Attorney General of Texas.
- 5.1.3. Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, on the Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to the Owner.
- 5.1.4. Power of Attorney. Each bond shall be accompanied by a valid power-of-attorney issued by the surety company, attached to the bond, and signed and sealed with the corporate embossed seal, authorizing the attorney in fact who signs the bond to commit the surety to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5. Bond Indemnification. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6. Furnishing Bond Information. Owner shall furnish certified copies of the Payment Bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code, § 2253.026.
- 5.1.7. Claims on Payment Bonds. Claims on Payment Bonds must be sent directly to the Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All Payment Bond claimants are cautioned that no

lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.1.8. Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code, §§53.231 – 53.239 when the value of the Contract between the Owner and the Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

5.1.9. Sureties. Sureties shall be listed on the US Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570) ***and have a rating of A- or better with A.M. Best Company.***

## 5.2. Insurance Requirements.

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

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

5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Owner, and shall include:

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

Coverage	Limit
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for the Owner. No 'alternative' form of insurance will be permitted

5.2.2.2 Commercial General Liability Insurance, including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

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

- 5.2.2.3 Asbestos Abatement Liability Insurance<sub>1</sub> including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

\*Specific Requirement for Claims-Made Form: Required period of coverage will be determined by the following formula: Continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

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

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

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

- 5.2.2.5 All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the Project involves solely the installation of equipment). Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials. If Builder's Risk, limit shall be equal to 100 percent of the Contract. If Installation Floater, limit shall be equal to 100 percent of the contract cost. The policy shall be written jointly in the names of the Owner, the Contractor, Subcontractors and, Subcontractors shall be named as additional insured. The policy shall have endorsements as follows:



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

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

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

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

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

5.2.3 Policies must include the following clauses, as applicable:

5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the Owner.

5.2.3.2 It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner for liability arising out of operations under the Contract with the Owner.

5.2.3.3 The Owner, its officials, directors, employees, representatives, and volunteers are added as additional

insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.

5.2.3.4 The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.

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

5.2.5 Workers' Compensation Insurance Coverage must meet the statutory requirements of Tex. Lab. Code, §401.011(44), and those specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

## **Article 6. Contract Documents**

### **6.1. Drawings and Specifications**

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

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

Contract, are to be returned to the A/E, upon request, following completion of the Work.

- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the agreement between the Owner and the Contractor, are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement ***shall be required*** and shall be the basis of Contractor pricing. The Contractor shall notify the A/E and the ODR for resolution of the issue prior to executing the work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.6 Discrepancies and Omissions in Drawings and Specifications
  - 6.1.6.1 The Contractor shall promptly report to the ODR and to the A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
  - 6.1.6.2 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
  - 6.1.6.3. It is further recognized that the Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm.
  - 6.1.6.4 When performing as a Design-Build firm, the Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.

6.1.6.5 When performing as a Construction Manager-at-Risk, the Contractor has a shared responsibility for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, the Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints, but does not establish a liability for design.

6.1.6.6 The Contractor has no liability for errors, omissions, or inconsistencies in the Drawings and Specifications unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build contract as outlined above. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.

**6.1.6.7 *The Owner makes no representations, express or implied, about the adequacy or accuracy of the Drawings, Specifications or other Construction Documents provided or their suitability for their intended use. Owner expressly disclaims any implied warranty that the Construction Documents are adequate, accurate or suitable for their intended use.***

## 6.2 Requirements for Record Documents.

The Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, contract modifications, and all Project correspondence. The Contractor shall keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. The Contractor shall provide Owner and A/E access to these documents.

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

6.2.2 The Contractor shall update the "As-Constructed" Drawings and Specifications monthly prior to submission of periodic partial pay

estimates. Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.

- 6.2.3 Prior to requesting the Substantial Completion Inspection by the ODR and A/E, the Contractor shall furnish the ODR a complete set of the marked up "As-Constructed" set maintained at the Site and one photocopy of same. Concurrently with furnishing these record drawings, the Contractor shall furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the A/E and the ODR.
- 6.2.4 Once determined acceptable, the Contractor shall provide to Owner mylar prints of professionally drafted "As-Constructed" drawings, along with an electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with an electronic copy on CD, two sets of photocopies or prints of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents.  
***All electronic copies shall be provided in a format acceptable to the ODR.***

## **Article 7. Safety**

- 7.1. General. It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970 (OSHA), and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit it to the ODR and A/E prior to commencing Work. In addition, the Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss, and erect and maintain all necessary safeguards for such safety and protection.
- 7.2. Notices. The Contractor shall provide notices as follows:
  - 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement of their facilities, and with respect to access to their facilities and/or utilities.
  - 7.2.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in connection

with laws and regulations. Maintain a complete file of MSDS for all materials in use on Site throughout the construction phase and make such file available to the Owner and its agents as requested.

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

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

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

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

7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due the Contractor.

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

7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.

7.4.2 Supply the ODR and A/E with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided by Contractor to Owner within one week after occurrence, unless otherwise directed by Owner's legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of a full report.

- 7.5. Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by

hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify the ODR immediately.

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

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

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

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

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

## **Article 8. Quality Control**

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

### **8.2. Testing**

8.2.1 *Contractor Testing.* The Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents.

This “quality control” testing shall include any particular testing required by the Specifications and the following general tests:

8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

8.2.1.3 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

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

8.2.2 Owner Testing. The Owner reserves the right to subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the A/E to insure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such “quality assurance” testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.

8.2.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, A/E and the Contractor.

8.2.4 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the contract requirements, the burden of proving compliance remains with the Contractor. The tests are subject to the following conditions:

8.2.4.1 The Contractor’s selected laboratory must be acceptable to the Owner.

8.2.4.2 The quality and nature of the tests must be acceptable to the Owner.



- 8.2.4.3 All tests must be taken in the presence of the A/E and/or ODR, or their representatives.
- 8.2.4.4 If tests confirm that the material/systems comply with Contract Documents, the Owner will pay the cost of the test.
- 8.2.4.5 If tests reveal noncompliance, the Contractor will pay the laboratory fees and costs of that particular test and all future tests of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 8.2.4.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.5 Notice of Testing. The Contractor shall give the ODR and the A/E timely notice of its readiness and the date arranged so the ODR and A/E may observe such inspection, testing or approval.
- 8.2.6 Test Samples. The Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with the Work Progress Schedule to avoid delay.
- 8.2.7 Covering Up Work If the Contractor covers up any Work without providing the Owner an opportunity to inspect, the Contractor shall, if requested by the ODR, uncover and recover the Work at Contractor's expense.

### 8.3 Submittals

- 8.3.1 Contractor's Submittals. The Contractor shall submit with reasonable promptness consistent with the Work Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, the Contractor shall review each submittal for compliance with the Contract Documents and certify its approval by an approval stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.
  - 8.3.1.1 Within twenty-one (21) calendar days of the effective date of the Notice to Proceed with construction, the Contractor shall submit to the ODR, and the A/E, a submittal schedule/register, organized by specification section, listing all items to be

furnished for review and approval by the A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the Specifications.

8.3.1.2 The Contractor shall indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from the A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. The Contractor shall show and allow a minimum of thirty (30) calendar days duration after receipt by the A/E and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. ***Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.***

8.3.1.3 The Contractor shall coordinate the submittal register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. The Contractor shall revise and/or update both schedules monthly to ensure consistency and current project data. The Contractor shall provide to the ODR the updated submittal register and schedule with each application for progress payment. The Contractor shall refer to the requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop

Drawing and Sample with the requirements of the Work and the Contract Documents.

- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains the **A/E's and** Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. The Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. When applicable, the Contractor shall direct attention of the A/E and the ODR in writing to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Approvals. The Contractor shall not commence any Work requiring a submittal until approval of the submittal. The Contractor shall construct all such work in accordance with approved submittals. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The A/E's and ODR's approval, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 8.3.5 No Substitutions Without Approval. The ODR and the A/E may receive and consider the Contractor's request for substitution when the Contractor agrees to reimburse the Owner for review costs and satisfies 8.3.5.1, 8.3.5.2, and 8.3.5.3 in combination with one or more of the items in 8.3.5.4 through 8.3.5.11 of the following conditions, as determined by the Owner. If the Contractor does not satisfy these conditions, the ODR and A/E will return the request without action except to record noncompliance with these requirements. The Owner will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.
- 8.3.5.1 The Contract Documents do not require extensive revisions.

- 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of the A/E and do not result in an increase in cost to the Owner.
  - 8.3.5.3 The request is timely, fully documented, and properly submitted.
  - 8.3.5.4 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
  - 8.3.5.5 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.
  - 8.3.5.6 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
  - 8.3.5.7 The requested substitution offers the Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities the Owner must assume.
  - 8.3.5.8 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.
  - 8.3.5.9 The Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and the Contractor certifies that the substitution will overcome the incompatibility.
  - 8.3.5.10 The Contractor cannot coordinate the specified product, assembly or method of construction with other materials and the Contractor certifies it can coordinate the proposed substitution.
  - 8.3.5.11 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and the Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.6 Unauthorized Substitutions at Contractor's Risk. The Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. The

Contractor shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 8.4 Field Mock-up.

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

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

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

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

#### 8.5 Inspection During Construction.

8.5.1 The Contractor shall provide sufficient, safe, and proper facilities, including equipment, as necessary for safe access at all reasonable times for observation and/or inspection of the Work by the Owner and its agents.

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

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

8.5.2.2 The Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover-up inspection. Should the ODR fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but

is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## **Article 9. Construction Schedules**

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

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

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

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

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

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

9.3.3.3 The Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Time.

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

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

9.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

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

9.5.1.4 Expediting delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

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

## 9.6 Modification of the Contract Time

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

9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the number of calendar days lost because of



excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.

9.6.2.1 "A Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable 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.

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

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

9.6.2.2.2 Unanticipated physical conditions at the Site which the A/E corrects by means of changes to the Drawings and Specifications or for which the ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Changes in the Work that affect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the ODR or the A/E.

9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called “acts of God”), civil unrest, strikes or other events which are not within the reasonable control of the Contractor.

9.6.2.2.5 Suspension of Work for convenience of the ODR, which prevents Contractor from completing the Work within the Contract Time.

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

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

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

9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by the Owner shall be included with the Contractor’s proposed costs for such change. Time extensions requested for inclement weather are covered by paragraph 9.6.2.1 above. If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, it shall give the ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) calendar days after the onset of the event or circumstance giving rise to the delay. The Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one **notice of delay** is necessary. The Contractor shall state claims for extensions of time in numbers of whole or half calendar days.

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

- 9.9.2 No extension of time releases the Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. The Contractor shall provide with each time extension request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. The Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. The Owner will respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor.
- 9.9.4.1 The Owner will not grant time extensions for delays that do not affect the Contract Completion Date.
- 9.9.4.2 The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt. If the Owner cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner will notify the Contractor in writing. Unless otherwise agreed by the Contractor, the Owner has no more than fifteen (15) additional calendar days to prepare a final response. If the Owner fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.
- 9.10 Failure to Complete Work Within the Contract Time. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** The Contractor's failure to substantially complete the Work within the Contract Time or to achieve Final Completion

as required will cause damage to the Owner. These damages are liquidated by agreement of the Contractor and the Owner, as set forth in Article 9.11 below.

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

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

*not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that Owner will sustain for late completion. Owner may also recover the liquidated damages from any money due or that becomes due Contractor. The amount of liquidated damages may be adjusted by Owner in Special Conditions.*

*The parties stipulate and agree that the actual damages sustained by Owner for late completion of the Project will be uncertain and difficult to ascertain, that calculating Owner's actual damages would be impractical, unduly burdensome, and cause unnecessary delay, and that the amount of daily liquidated damages set forth above is a reasonable estimate.*

*Payment of the liquidated damages does not preclude recovery by Owner of other damages or losses under other provisions of the Contract, except for claims related to delays in Substantial Completion or Final Completion. Owner's right to receive liquidated damages shall not affect Owner's right to terminate the Contract as provided in these UGSC or elsewhere in the Contract Documents, nor shall termination of the Contract release Contractor from the obligation to pay the liquidated damages.*

## **Article 10. Payments**

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

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

10.1.2 The Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal, and. make the worksheets available to the ODR at the time of Contract execution. Thereafter the Contractor shall grant the Owner during normal business hours access to said notarized copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

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

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

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

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

10.2.1.3 HUB Subcontracting Plan reports.

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

10.2.2 Contractor's Application for Progress Payment. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the A/E and ODR will meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. Based on this review, the ODR and the A/E may require modifications to the Preliminary Pay Worksheet prior to the submittal of an application for progress payment, and will promptly notify the Contractor of revisions necessary for approval. As soon as practicable, the Contractor shall submit its Invoice on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by the A/E and/or ODR. The Contractor shall attach all additional documentation required by the ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No invoice is complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

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

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

10.3.1 Payment for stored materials and/or equipment confirmed by the Owner and A/E to be on-site or otherwise properly stored is limited to

85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

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

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

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

10.3.3 Price Reduction to Cover Loss. The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor including, but not limited to:

10.3.3.1 Defective or incomplete Work not remedied.

10.3.3.2 Damage to Work of a separate Contractor.

10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.

10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents.

10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum.

10.3.3.6 Assessment of fines for violations of Prevailing Wage Rate law; or

10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

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

10.3.4.1 Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final

acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

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

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

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

10.4.3 The Contractor shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when the Owner's representative approves the application for payment.

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

10.5.1 Store materials in a Bonded Commercial Warehouse.

10.5.2 Provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the Owner must be filed with the Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Project if they do not meet Contract requirements regardless of any previous progress payment made.



10.5.6 With each monthly payment estimate, submit a report to the ODR, A/E, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.

10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

## **Article 11. Changes**

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

11.1.1 The Owner, without invalidating the Contract, ***and without prior approval of the surety***, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

11.1.2 It is recognized by the parties hereto and agreed by them that the Drawings and Specifications may not be complete or free from errors,

omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Drawings and Specifications, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, *quantum meruit*, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise in any wise incident to, arising out of, or resulting directly or indirectly from the work performed by Contractor under such Change Order.

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

### 11.3 Claims for Additional Costs

11.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, it shall give the Owner and the A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the work considered to give rise to the additional cost or time, except in an emergency endangering life or property in which case the Contractor shall act in accordance with Article 7.2.1. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

11.3.2 If the Contractor claims that additional cost is involved because of, but not limited to: 1) any written interpretation of the Contract Documents, 2) any order by the Owner to stop the Work pursuant to Article 14 where the Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Article 11.4, the Contractor shall make such claim as provided in Article 11.3.1.

11.3.3 Should the Contractor or its Subcontractors fail to call attention of the A/E to obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/pre-proposal period, but claim additional costs for corrective work after contract award, the Owner may assume intent to circumvent competitive bidding for necessary corrective work. In such case, the Owner may choose to let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by the Owner.

11.4. Minor Changes. The A/E, with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which the Contractor shall carry out promptly and record on as-built record documents.

11.5. Concealed Site Conditions. If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the bid/proposal documents, or if unknown conditions of an unusual nature are discovered

differing materially from the conditions usually inherent in work of the character shown and specified, the ODR and the A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, the A/E, with the approval of the ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of the ODR.

11.6. Extension of Time. All Changes to the Contract Time shall be made as a consequence of requests as required under Article 9.6, and as documented by Change Order as provided under Article 11.1.

11.7 Administration of Change Orders. All changes in the Contract shall be administered in accordance with procedures approved by the Owner, and when required make use of such electronic information management system(s) as the Owner may employ.

11.7.1 Routine changes in the Contract shall be formally initiated by the **ODR, 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 by the A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR. Contractor shall provide written response to a Contract Revision within twenty-one (21) calendar days of receipt.

11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by **written** communication and authorization between the Contractor and Owner. A limited scope not-to-exceed estimate of cost

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

11.7.4 Emergency changes to save life or property may be initiated by the Contractor alone (see Article 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.

11.7.5 The method of incorporating approved 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.

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

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's work, all subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a maximum mark-up of 10 percent if the total of all subcontracted work is less than or equal to \$10,000, 7.5 percent if the total of all subcontracted work is

between \$10,000 and \$20,000 and 5 percent if the total of all subcontractor work is over \$20,000.

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

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

## **Article 12. Project Completion and Acceptance**

### **12.1. Closing Inspections**

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

12.1.1.1 Prior to the Substantial Completion Inspection, the Contractor shall furnish a copy of its marked-up As-Built Drawings and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. Delivery of these items is a prerequisite for requesting the Substantial Completion Inspection.

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

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

12.1.2.1 The Contractor must correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Contractor shall notify the A/E and ODR in writing stating the disposition of each Final Punchlist item. The A/E, Owner and Contractor shall promptly inspect the completed items. When the Final Punchlist is complete, and the Contract is fully satisfied

according to the Contract Documents the ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.

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

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

12.1.5 Additional Inspections

12.1.5.1 If the Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion Inspection, the ODR or A/E will give the Contractor written notice listing cause(s) of the rejection. The ODR will set a time for completion of incomplete or defective work. The Contractor must complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

12.1.5.2 If the Owner's inspection team determines that the Work is not complete at the Final Inspection, the ODR or the A/E will give the Contractor written notice listing the cause(s) of the rejection. The ODR will set a time for completion of incomplete or defective work. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.

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



Contractor's written request, the Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections.

- 12.1.6 Phased Completion. The Contract may provide, or project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to Closing Inspections, Occupancy and Acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.
- 12.2 Owner's Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of the Owner so as to not disrupt Owner's use of, or access to, occupied areas of the Project.
- 12.3 Acceptance & Payment
- 12.3.1 Request for Final Payment. Following the certified completion of all Work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment. The Contractor must include in the Application of Final Payment all sums held as retainage and forward to the A/E and the ODR for review and approval.
- 12.3.2 Final Payment Documentation. The Contractor shall submit, prior to or with the Application for Final Payment, final copies of all Close-Out Documents, maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract. The Contractor shall submit Consent of Surety to Final Payment and an affidavit that all payrolls, bills for materials and

equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. The Contractor may not subsequently submit a claim on behalf of a Subcontractor or vendor unless the Contractor's affidavit notes that claim as an exception.

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

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

12.3.5 Final Payment Due. Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on the 31<sup>st</sup> 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 (30<sup>th</sup>) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

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

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

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

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

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

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

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

## **Article 13. Warranty and Guarantee**

13.1. Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by the Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

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

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

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

undertake maintenance or operation due to the neglect of the Contractor.

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

13.4 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

13.4.1 Observations by Owner and/or A/E;

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

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

13.4.4 Use or occupancy of the Work or any part thereof by Owner;

13.4.5 Any acceptance by Owner or any failure to do so;

13.4.6 Any review of a Shop Drawing or Sample submittal; or

13.4.7 Any inspection, test or approval by others.

13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The ODR will certify the date of service commencement in the Certificate of Substantial Completion.

13.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.

13.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the

Owner on all elements of the required warranty not provided by the assigned warranty.

- 13.6 Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. The Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to the Owner that all equipment and materials used in fulfillment of its contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than the Contractor's application for Final Payment.

## **Article 14. Suspension and Termination**

- 14.1 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, the Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 The Owner will give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of the Contractor, the Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of the Contractor, and the suspension has prevented the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension will be granted through a Change Order.

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

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

14.3 Termination by Owner for Cause.

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

14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials; and/or

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

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

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

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

- 14.3.1.6 Persistent endangerment to the safety of laborers or of the Work; and/or
  - 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract; and/or
  - 14.3.1.8 Any material breach of the Contract; and/or
  - 14.3.1.9 The Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 14.3.2 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should the Owner decide to terminate the employment of the Contractor under the provisions of Article 14.3.1, it will provide to the Contractor and its Surety thirty (30) days prior written notice.
- 14.3.4 Should the Contractor or its Surety, after having received notice of termination, remedy to the satisfaction of the Owner the condition(s) upon which the notice of termination was based, the notice of termination shall be rescinded in writing by the Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If the Contractor or its Surety fails to remedy the condition(s) to the satisfaction of the Owner within thirty (30) days following receipt of notice, the Owner may ***immediately terminate the Contract, make arrangements*** for completion of the Work, and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.5.1 Cost of completion includes additional Owner costs such as A/E services, the cost of other consultants, and contract administration.
  - 14.3.5.2 The Owner will make no further payment to the Contractor or its Surety until all costs of completing the Work are paid. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Contractor will receive the excess funds. If such costs exceed the unpaid balance, the Contractor or its Surety will pay the difference to the Owner.
  - 14.3.5.3 This obligation for payment survives the termination of the Contract.

14.3.5.4 The Owner reserves the right in termination for cause to take assignment of all contracts between the Contractor and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

14.4 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:

14.4.1 The Owner will immediately notify the Contractor and the A/E in writing, specifying the reason for and the effective date of contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

14.4.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

14.4.2.1 Stop all work.

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

14.4.2.3 Terminate all subcontracts.

14.4.2.4 Cancel all materials and equipment orders as applicable.

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

14.4.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed ***before the notice of termination along with the actual and reasonable cost of any additional work required to secure the Project and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost business opportunities.***



- 14.5 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed **before the work stoppage along with the actual and reasonable cost of securing the Project and property related to the Contract during the period of work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost business opportunities.** If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract ***but may be entitled to an equitable adjustment in the Contract Sum and Contract Time.***
- 14.6 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to 180 days after the effective date of termination, the Contractor shall submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under the Contract. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and pay the determined amount to the Contractor.

## **Article 15. Dispute Resolution**

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

## Article 16. Miscellaneous

- 16.1 Special Conditions. When the Work contemplated by the Owner is of such a character that the foregoing Uniform General and Supplementary Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Special Conditions. Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the Uniform General and Supplementary Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, the Owner may waive, suspend or modify any Article in these Uniform General and Supplementary Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the Owner of such Federal funds for the Project. In the case of any project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, the Owner may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers or payment requests and processing, amendment, change orders and other administrative activities.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, the Owner will make the software accessible via the Internet to all project team members.
- 16.3.1.2 The Owner shall administer the software.
- 16.3.2 Training. When used, the Owner shall provide training to the project team members.
- 16.4 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.

Upon Owner's written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code,

to Owner in a non-proprietary format acceptable to Owner. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Owner has a right of access.

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 AND SUPPLEMENTARY CONDITIONS**

**EXHIBIT “C”**  
**SPECIAL CONDITIONS, WAGE RATES AND OWNER’S SPECIFICATIONS**

[Insert Special Conditions, Wage Rates and Division 1 Sections as they appeared in the Request for Proposals or as modified during Negotiations for this Agreement]

## SPECIAL CONDITIONS

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

### Article 2 Laws Governing Construction

#### 2.2.1.2.1 Prevailing Wage Schedules

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

#### 2.2.1.2.2 Apprenticeship Program

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

### 2.8 Legal Restrictions on Specific Activities

#### ~~2.8.1 PCB Ballast Disposal Requirements~~

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

#### 2.8.2 Asbestos Removal:

If, in the process of performing the Work, the Contractor suspects that asbestos has been found, the Owner shall be notified immediately. The Owner shall cause the suspicious material to be tested and, if found to be asbestos, will be responsible for its removal. It

will be the Contractor's responsibility to protect its workers and other persons by regulating access to the affected area.

### 2.8.3 Endangered Species

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

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

### 2.8.4 Airport Restrictions:

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

### ~~2.9 Archeological Discoveries:~~

~~2.9.1 No activity which may affect a State Archeological Landmark is authorized until the Owner has complied with the provisions of the Texas Antiquities Code. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during Construction. Should an encounter occur the Contractor shall cease all work in the affected area and immediately notify the ODR. The ODR will take the appropriate notification steps and work will not resume until authorized by the ODR.~~

### 2.10 Underground Utilities

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

<http://www.texas811.org>

The following is excerpted from TAMU Standard Administrative Procedure (SAP)  
[24.99.99.M0.01](#)

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

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

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

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

---

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

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

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

#### 2.10.1.1 Routine Utility Locate Request Procedure:

- 2.10.1.1.1 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.
- 2.10.1.1.2 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.
- 2.10.1.1.3 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.
- 2.10.1.1.4 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.
- 2.10.1.1.5 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.

#### 2.11 Unmanned Aerial System Operations

- 2.11.1 Prior to any use of an unmanned aerial system the contractor or 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 the Owner & Contractor

#### 3.3 Contractor's General Responsibilities.

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

#### 3.3.2 Contractor's Personnel: As a minimum the Contractor's on-site personnel shall consist of the following and shall be in attendance at the site during the progress of the Work.

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 full-time Project Engineers as determined by the Contractor for proper execution of the Work and to meet the conditions of the Contract Documents.

3.3.2.5 Quality Control Program: The Contractor shall establish a Quality Control Program that shall include two full-time Quality Control Supervisors (QCS), one for Architectural/Structural, 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 10 years of experience with projects of similar size and scope.

### Article 5. Bonds and Insurance

#### 5.2.2.2 Additional Insurance is required as follows:

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

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

5.2.2.5 Insert the following at beginning of paragraph:

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

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

All Risk Builder's Risk Insurance will be provided by the Owner. Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials. The Builder's Risk policy limit shall be equal to 100 percent of the Contract. Each builder's risk claim shall be subject to a \$15,000 deductible payable by the Contractor. The policy shall be written in the name of the Owner. The policy shall have endorsements as follows:

Delete paragraph 5.2.2.5.3 and replace with the following:

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

5.2.2.7 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.

~~Article 6. Contract Documents *[Use only on Competitive Sealed Proposal Projects]*~~

~~6.1.1.1 The Contractor will be furnished \_\_\_\_\_ complete sets of the Contract Drawings and Specifications.~~

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-San Antonio

January	2	May	5	September	4
February	2	June	4	October	4
March	2	July	2	November	3
April	3	August	3	December	2

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

Article 11. Changes

11.8.1 For work performed by its forces, the Contractor will submit an itemized Change Order Proposal covering the additional Work and/or the Work to be deleted. The proposal 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 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 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 paragraphs 11.8.1.6 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 paragraphs 11.8.1.6 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 change order 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 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 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.

- 11.8.1.7 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.
- 11.8.1.8 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.
- 11.8.1.9 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.
- 11.8.1.10 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 price, a final contract 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 price. 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.
- 11.8.5 Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to 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 agrees 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, subcontractor and sub-sub- contractor agrees that any designated Owner's

representative will have the right to examine (copy or scan) the records of the Contractor, 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 agrees 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 price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or 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, subcontractor agrees to provide and require all Subcontractors and sub-subcontractors to 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.

## Article 12. Project Completion and Acceptance

- 12.1.1.3 As part of each partial substantial completion, substantial completion and final completion the Contractor shall provide a breakdown of the contract costs in the following categories in Excel format:

<u>CODE</u>	<u>CATEGORY</u>
001	General Condition Items
002	Demolition
003	Asbestos Abatement
004	Parking Lots & Driveways
005	Paved Area - Non Parking
006	Sidewalks & Paved Walk Areas
007	Streets or Roads - (includes curbs & gutters)
008	Electrical Distribution (Site) - (includes elec. lines, equipment & site lighting)
009	Telephone Distribution - (includes site lines other than fiber optic phone lines)
010	Fiber Optics - (all site fiber optic lines including fiber optic phone lines)
011	Natural Gas Lines (Site)
012	Water Distribution (Site) - (includes heated & chilled water & steam lines)
013	Sanitary & Storm Sewers (Site)

- 014 Fences and Gates (other than temporary)
- 015 Landscaping
- 016 Irrigation System
- 017 Retaining Walls & Mow Strips
- 018 Improvements - General (Site) - (includes benches, monuments, statues, markers)
- 019 Tunnels (Utility)
- 020 Tunnels (Other)
- 021 Septic Systems
- 022 Golf Course Facilities
- 023 Stadiums
- 024 Outdoor Swimming Pools and Tennis Courts
- 025 Athletic Fields & Recreation Areas (Intramural, Track & Field, Practice Fields)
- 026 Fountains
- 027 Plazas and Pavilions for Bus Stops
- 028 Fire Field Training Areas
- 029 Paths and Trails (Bicycle, Jogging)
- 030 Airport Runways/Strip/Taxiways/Aprons
- 031 Seawalls/Bulkheads/Piers/Broadwalks
- 032 Non-Componentized Building & Building Improvements (\$100,000 - \$999,999)
- 055 Infrastructure & Infrastructure Improvements (chillers serving multiple buildings)

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

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

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

Componentization Descriptions:

## Code

- 101.0 Building shell: the exterior walls, foundation, floors and roof structural system and decking. The walls consist of the wall layers starting with the exterior building skin and ending at the inner thermal layer;
- 102.0 Roof Coverings: includes the covering material used to establish the water barrier on the building's roof deck. The roof covering starts with the first membrane above the roof decking materials including the urethane layer, coating, shingles, films, metal panels, clay tiles and all materials installed above the roof deck;
- 103.0 Elevator system: comprised of the elevator and escalator conveyance systems including controls;
- 104.0 Floor Coverings: includes carpet, ceramic tile, stone, terrazzo, vinyl tile, wood, laminate and linoleum floor coverings, and other types of floor coverings and all padding and barrier sheeting installed above the concrete slab or wooden deck;
- 105.0 Interior finishes: all walls, partitions, ceiling and millwork that are inside the building shell walls. This will include but not limited to, all framework, interior doors, interior windows, sheet rock, paneling, paint and any other wall and ceiling coverings;
- 106.0 HVAC: includes the chillers, condensers, exhaust fans and coil units, heating strips, chilled/heating water supply and return piping, air ducts, registers, climate control panels and all circuitry connected to the power supply panel within the perimeter of the building;
- 107.0 Plumbing system: all piping, drains, fixtures, and associated equipment within the perimeter of the building used for moving domestic water, other fluid gases, compressed air or sewage;
- 108.0 Electrical and lighting systems: all telecommunication and alarm wiring, lighting fixtures, electrical conduit, wire, cables, circuits, switches and controls within the perimeter of the building;
- 109.0 Fire protection system: comprised of the piping, sprinkler heads and controls (Circuitry for fire detection, alarms, and warning devices are included in "Electrical");
- 110.0 Fixed equipment assets: is any equipment other than equipment comprised of the HVAC system, electrical system, fire protection system, plumbing system of elevator system that is installed and permanently attached to some part of the building's structure;
- 111.0 Miscellaneous construction features: any building component that does not fit into one of the other ten categories.
- 146.0 Sprinkler System: Building interior
- 152.0 Security System: Installed within building, not easily removed.
- 153.0 Network Cabling/Telephone: Installed within building, not easily removed (not fiber optics)

## Article 13. Warranty and Guarantee

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



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

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

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

Elevators

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

#### Article 16. Miscellaneous

##### 16.4 Business Ethics Expectations

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

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

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

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

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

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

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

#### 16.5 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, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

With Copies to:

Russ Wallace, Executive Director  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

Area Manager  
Office of Facilities Planning & Construction  
The Texas A&M University System  
301 Tarrow Street, 2<sup>nd</sup> Floor  
College Station, Texas 77840-7896

#### 16.6 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.

Upon Owner's written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to Owner in a non-proprietary format acceptable to Owner. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Owner has a right of access.

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*.



**THE TEXAS A&M UNIVERSITY SYSTEM**

**301 Tarrow Street, 2<sup>nd</sup> Floor**

**College Station, Texas 77840**

**Minimum Prevailing Wage Rate**

**County: Bexar**

CLASSIFICATION	RATE	NOTES
Acoustic Ceiling Installer	15.19	
Asbestos Abatement Worker	12.61	
Carpenter	15.40	
Concrete – Pour and Finish	14.87	
Crane Operator	25.50	
Driver	13.97	
Drywall Installer	15.65	
Electrician – Journeyman	24.82	
Electrician – Apprentice	19.65	
Elevator Mechanic – Journeyman	53.92	
Elevator Mechanic – Apprentice	46.46	
Fire Protection – Controls	17.12	
Fire Protection – Pipefitter	19.91	
Formwork Builder	14.08	
Glazier	17.09	
HVAC – Journeyman	24.24	
HVAC – Apprentice	15.27	
HVAC – Controls	21.06	
Insulator	15.47	
Ironworker	16.82	
Laborer/Helper	12.30	
Mason	18.48	
Equipment Operator – Light	14.46	
Equipment Operator – Heavy	16.19	
Painter	12.73	
Pipefitter – Journeyman	31.40	
Pipefitter - Apprentice	18.69	
Plasterer	14.98	
Plumber – Journeyman	29.69	
Plumber – Apprentice	19.62	
Reinforcing Steel Worker	15.25	
Roofer	19.26	
Stone Mason	17.50	
Terrazzo Installer	12.64	
Tile Setter	15.19	
Waterproofer	14.40	

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

Job Photos/Videos

Project Specific Signage

Postage/Special Shipping

Project Record Drawings

Project Milestone Event(s)\*\*

Employee Identification System

Small Tools and Storage Trailers

Monthly Office Trailer Rental Costs

Safety Material and Equipment

First Aid Supplies

Reprographic Services

Monthly Office Supplies

Remote Parking Expenses

Project Reference Manuals

Move-In/Out and Office Setup

Drinking Water and Accessories

Office Clean-Up/Janitorial Services

Security System/Watchman

\* 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 [Project Name], Project No. [Project Number], 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 [Project Name], [System Member], [City], Texas, Project No. [Project Number] 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)

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.

The Contractor further agrees to pay, as Liquidated Damages, the sum of [Liquidated Damages Amount from UGSC, Article 9] per calendar day for failure to complete the work within the contracted time in accordance with the Contractor at Risk Agreement between Owner and Contractor.

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.

\_\_\_\_\_  
Executive Director  
Office of Facilities Planning & Construction

Date \_\_\_\_\_

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel

Date \_\_\_\_\_

**EXHIBIT "F"**  
**SECURITY BOND**

Surety Bond No. N/A

STATE OF TEXAS §

COUNTY OF Bexar §

KNOW ALL MEN BY THESE PRESENTS:

That we, Thos. S. Byrne, Inc. dba Byrne Construction Services, as Principal, and Liberty Mutual Insurance Company, as Surety, are hereby held and firmly bound unto The Board of Regents of The Texas A&M University System as Oblige in the penal sum of Five Percent (5%) of Twenty nine million nine hundred forty six thousand and no/100----- (\$ 29,946,000.00), 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 Oblige dated March 21 2020 (the "Contract"), for New Recreation Center, Project No. 25-3305 (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 Oblige the difference in money between the amount of the Guaranteed Maximum Price Proposal of the said Principal and the amount for which the Oblige 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 17 day of March in the year 2020 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)

ATTEST:

By: Michelle L. Pelke - Project Mgt.  
(Typed Name and Title)

Thos. S. Byrne, Inc. dba Byrne Construction Services  
Principal

By: Tony Battle, President-South Texas  
(Typed Name and Title)

(SEAL)

WITNESS:

By: Roberta H. Erb  
Roberta H. Erb, Witness  
(Typed Name and Title)

Liberty Mutual Insurance Company  
Surety

By: Tracy Tucker  
Tracy Tucker, Attorney-in-Fact  
(Typed Name and Title)



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

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.

Certificate No. 7743271

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Kevin J. Dunn; Steven Tucker; Tanner Langston; Tracy Tucker; W. Lawrence Brown

all of the city of Ft. Worth, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 25th day of April, 2017.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 25th day of April, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 17th day of March, 20 20.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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.

Employee			Estimated Employer's Monthly Contributions							Monthly Salary Rate
Title	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/Expediter		\$	\$	\$	\$	\$	\$	\$	\$	\$
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:  
Project Number:  
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			

List of lead BIM contacts for each organization on the project. Additional contacts can be included later in the document.

Organization	Contact Name	Role/Title	Location	Email	Phone

Describe the collaboration strategies used for developing the BIMs for the following applicable processes. Identify project team participants for each.

Existing Conditions  
Design Authoring  
Design Reviews  
Space Tracking  
Energy Analysis  
Daylighting Analysis  
Cost Estimation  
3D Coordination (design and construction)  
Model Updates during Construction  
Facilities Management Data  
Record Modeling  
Other (describe)

Document the information exchanges and file transfers that will occur on the project.

[illegible]



## BIM AND FACILITY DATA REQUIREMENT

Describe the methods to be used to fulfill the data requirements described in the Facility Design Guidelines.

## 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			
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

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.