

# 2005 Uniform General and Supplementary General Conditions for University of Texas System Building Construction Contracts

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## 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 Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by Owner or 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 Architect/Engineer.
- 1.3 *Change Order Proposal* means a Contractor-generated document in response to a Change Order Request (COR).
- 1.4 *Change Order Request (COR)* means a document which informs the contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.
- 1.5 *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.
- 1.6 *Contract* means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.7 *Contract Date* is the date when the agreement between the owner and the contractor becomes effective.
- 1.8 *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, General, Supplementary and Special Conditions, and all pre-bid and/or pre-proposal addenda.
- 1.9 *Contractor* means the individual, corporation, company, partnership, firm or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a General or Prime Contractor. The contract documents refer to *Contractor* as if singular in number.
- 1.10 *Contract Sum* means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the contract.
- 1.11 *Contract Time* means the period between the Start Date identified in the Notice to Proceed with Construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by Change Order.
- 1.12 *Date of Commencement* means the date designated in the Notice to Proceed for the Contractor to commence the Work.

- 1.13 *Day* means a calendar day, unless otherwise specifically stipulated.
- 1.14 *Drawings* means that product of the Architect/Engineer which graphically depicts the Work.
- 1.15 *Final Completion* means the date determined and certified by the Architect/Engineer and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.16 *Owner* means the State of Texas and any Agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as the Owner.
- 1.17 *Owner's Designated Representative (ODR)* means the individual assigned by the Owner to act on its behalf, and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the contract.
- 1.18 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contract and warranty obligations.
- 1.19 *Samples* means representative physical examples of materials, equipment or workmanship, used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.20 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.
- 1.21 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.22 *Site* means the geographical area of the location of the Work.
- 1.23 *Special Conditions* means the documents containing terms and conditions, which may be unique to the project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.24 *Specifications* means the written product of the Architect/Engineer that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.25 *Subcontractor* means a business entity that enters into an agreement with the Contractor to perform part of the Work or to provide services, materials or equipment for use in the Work.
- 1.26 *Substantial Completion* means the date determined and certified by the Contractor, Architect/Engineer and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.27 *Supplementary General Conditions* means procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. ***The University of Texas System has adopted Uniform Supplementary General Conditions that apply to all U.T. System and component institution construction projects. The U.T. System Uniform Supplementary General Conditions are indicated by the bold and italicized typeface shown here. Superseded sections of the State Building and Procurement Commissions'***

**Uniform General Conditions are not included in the U.T. System Uniform General and Supplementary General Conditions.**

- 1.28 *Unit Price Work* means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.29 *Unilateral Change Order (ULCO)* means a Change Order issued by the Owner without the agreement of the Contractor.
- 1.30 *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 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 request for 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 employee 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 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. & Rev. Code, Chapter 171. For a period not to exceed 10 days, after which, if no agreement reached, 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.

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 of the arbitration procedures set forth herein.

2.3. Venue for Suits. The venue for any suit arising from this contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise designated in the Supplementary General Conditions.

2.4. Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to license requirements for skilled tradesmen, contractors, suppliers

and or laborers, as necessary to accomplish the Work. In the event the Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.

- 2.5. Royalties, Patents & 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. **Owner is not required to reimburse Contractor for taxes paid on items that qualify for tax exemption.**

### **Article 3. General Responsibilities of Owner & 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 Notice to Proceed with Construction, a conference will be convened for attendance by the Owner, Contractor, Architect/Engineer (AE) and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the project site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the project team members.
  - 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify the Owner's Designated Representative (ODR), who has the express authority to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
    - 3.1.2.1 Unless otherwise specifically defined elsewhere in the contract documents, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, 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.

- 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 AE in preparation of the Contract Documents, when such actions are in conflict with statutes under which the AE is licensed for the protection of the public health and safety.
- 3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between the Owner and the Contractor, the AE 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 AE for action. The AE 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 AE will make visits to the site at intervals as provided in the AE'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 AE 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 AE consistent with the intent of the Contract Documents. The AE 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 Architect/Engineer Authority. The AE 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 AE 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 the 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 visiting the site and being familiar with local conditions such as the location, accessibility, and general character of the site and/or building.***

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 AE and ODR in accordance with these General Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.

3.3.1.1 ***The Contractor shall furnish to the ODR one copy of the current edition of Means Facility Cost Data at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.***

3.3.1.2 ***The Contractor shall furnish to the ODR one copy of the current edition of the "Rental Rate Blue Book for Construction Mobilization Costs" at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.***

3.3.2 Contractor's Superintendent. 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. Do 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. Provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents. Maintain good discipline and order at the Site at all times.

3.3.4 Services, Materials, and Equipment. Unless otherwise specified, 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 AE 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 AE or ODR does not relieve the Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.6 Subcontractors. Do 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. 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. 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. Carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. Do 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, 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 inspection.
- 3.3.9 Acts and Omissions of Contractor, its Subcontractors and Employees. The Contractor is responsible for acts and omissions of his 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 elected officials, employees, officers, directors, 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 the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, 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 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. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
  - 3.3.11.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of 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. 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 Use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and 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 site and project information as requested.***

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

- 4.1. General Description. The purpose of the Historically Underutilized Business (HUB) Program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB Program annual procurement utilization goals per 1 Texas Administrative Code (TAC) §111.13 are: 11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts and 12.6 percent 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. 1 TAC §111.11-111.28, 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 is required to make a good faith effort to award subcontracts to HUBs in accordance with 1 TAC §111.14 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 this Contract in part by complying with the HUB Program statute and rules, hereby covenants to continue to comply with the HUB Program as follows:
  - 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 Plans 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 1 TAC §111.14.
- 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 Building and Procurement Commission Vendor Performance 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. A Performance Bond is required if the Contract Price 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. A Payment Bond is required if the Contract Price 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 and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
  - 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 shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

5.2. Insurance Requirements.

The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property in the care, custody and control of Contractor prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to the Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the Owner, and/or its 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 Supplementary General Conditions. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated through Substantial Completion Notices, Acceptance Notices and/or other means as deemed appropriate by the Owner.
- 5.2.2. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner.

5.2.2.1. Insurance coverage required includes:

- 5.2.2.1.1. 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, Employer's Liability insurance of not less than:
  - \$100,000 each accident
  - \$100,000 disease each employee
  - \$500,000 disease policy limit

- 5.2.2.1.2. Commercial General Liability Insurance. Including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of :
- \$1,000,000 per occurrence
  - \$1,000,000 general aggregate
  - \$1,000,000 products and completed operations aggregate
- Coverage shall be on an "occurrence" basis.
- The policy shall include coverage extended to apply to completed operations and explosion, collapse, underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent.
- 5.2.2.1.3. Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Work or the Project includes asbestos containing materials.
- The Combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.
- \*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.
- 5.2.2.1.4. Comprehensive Automobile Liability Insurance, 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.
- 5.2.2.1.5. 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:

- 5.2.2.1.5.1. This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- 5.2.2.1.5.2. 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.
- 5.2.2.1.5.3. 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.
- 5.2.2.1.6. "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 amount specified in the Supplementary General Conditions or 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 this 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 the Tex. Lab. Code, §401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

**A. Definitions:**

**Certificate of coverage ("certificate")-** *A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.*

**Duration of the project -** *includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.*

**Persons providing services on the project ("subcontractor" in §406.096) -** *includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.*

**B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.**

**C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.**

**D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.**

**E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:**

**(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and**

**(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.**

**F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.**

**G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.**

**H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.**

**I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:**

**(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;**

**(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;**

**(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;**

**(4) obtain from each other person with whom it contracts, and provide to the contractor:**

**(a) a certificate of coverage, prior to the other person beginning work on the project; and**

**(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;**

**(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;**

**(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and**

**(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.**

**J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.**

**K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.**

## **Article 6. Contract Documents**

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

- 6.1.1 Copies Furnished. The Contractor will be furnished, free of charge, the number of complete sets of the Drawings and Specifications as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the AE 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 Architect/Engineer, 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**. The Contractor shall notify the AE and the ODR **of any conflict before** 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 Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner.*** The Contractor shall promptly report to the ODR and to the AE 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 or a Construction Manager-at-Risk.

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 unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk 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.

6.2 Requirements for Record Documents

Maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and AE access to these documents.

6.2.1 Maintain this 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. Make available all records prescribed herein for reference and examination by the Owner and its representatives and agents.

- 6.2.2 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 Substantial Completion Inspection by the ODR and AE, furnish 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, furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the AE and the ODR.
- 6.2.4 Once determined acceptable, provide mylar prints of professionally drafted "As-Constructed" drawings, along with electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with 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. Construction 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 AE 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, and 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 AE 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 twenty-four (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 AE 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 within one week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of 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 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 price and/or the time of completion, 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, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 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 AE to ensure 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, Architect/Engineer 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 proof remains with the Contractor, subject to:
  - 8.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.
  - 8.2.4.2 Acceptance by the Owner of the quality and nature of tests.
  - 8.2.4.3 All tests taken in the presence of the Architect/Engineer 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 those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
  - 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 AE timely notice of its readiness and the date arranged so the ODR and AE 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 their 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 ODR, uncover and recover the work at Contractor's expense.

### 8.3 Submittals

- 8.3.1 Contractor's Submittals. Submit with reasonable promptness consistent with the Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, the Contractor shall review each submittal for compliance with Contract Documents and certify by 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, submit to the ODR, and the AE, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by the Architect/Engineer 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 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 Architect/Engineer 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. Show and allow a minimum of thirty (30) calendar days duration after receipt by the Architect/Engineer 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 Coordinate the submittal register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to the ODR the updated submittal register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that they have 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. AE 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 AE and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains the Owner's written specific approval of the particular deviation.

- 8.3.3 Correction and Resubmission. Make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to the AE and the ODR, when applicable, 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. 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 AE'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 AE 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 AE 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 AE 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 where 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 where the Contractor certifies they 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 where 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 Mockups 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. Mockups 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 Architect/Engineer 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, do not cover up corrected Work until the Owner indicates approval.
  - 8.5.2.2 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. Project Scheduling Requirements**

- 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 commencement of the Work and for achieving Substantial Completion and Final Completion. The Contract Time can be modified only by Change Order. Failure to

achieve Substantial Completion within the Contract Time, 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 the Contract Documents.

- 9.2. Notice to Proceed. The Owner will issue a Notice to Proceed which shall state the dates for beginning Work 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. ***This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification.*** Unless indicated otherwise in those documents, Contractor shall submit their 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 to the ODR and the AE. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be 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. Submit electronic and 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. Organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
    - 9.3.1.1 Re-submit initial Schedule as required to address review comments from AE 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. 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 paper and electronic copy of the update to the AE and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. 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. Identify all proposed changes to schedule logic to Owner and to the AE 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 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 schedule and their 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 Expedite 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. 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, take additional steps or make adjustments as necessary to its plan of action until it meets with the ODR's approval.
- 9.6 Modification of the Contract Time
- 9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.
  - 9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the number of calendar days lost because of excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in

calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project completion date.

9.6.2.1 "A Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, immediately notify the ODR for confirmation of the conditions. At the end of each calendar month, submit to the ODR and AE 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. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a ULCO for 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 AE corrects by means of changes in the drawings and specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site which the AE 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 effect 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 AE.

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, they 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 excusable delay. Provide sufficient

written evidence to document the delay. In the case of a continuing cause of delay, only one **notice of delay** is necessary. State claims for extensions of time in numbers of whole or half calendar days.

- 9.9.1 Within ten (10) calendar days after the cessation of the delay, the Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All Changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.
- 9.9.2 No extension of time releases the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. 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. 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 may be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.
- 9.11 Liquidated Damages. The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Contract Documents.

## Article 10. Payments

- 10.1. Schedule of Values. The Contractor shall submit to the ODR and the AE 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 price. As appropriate, assign each item labor and/or material values, 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. Make the worksheets available to the ODR at the time of Contract execution. Thereafter 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 Supplementary General Conditions, Special Conditions or Division 1 Specifications, and certified by the AE. 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 Architect/Engineer 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 in the Supplementary General Conditions or 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 AE 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 AE 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 AE and/or ODR. Attach all additional documentation required by the ODR and/or AE, 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 Architect/Engineer. Within five days or earlier following the AE's receipt of the Contractor's formal invoice, the AE will review the application for progress payment for completeness, and forward to the ODR. The AE 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 AE 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 AE to be on-site or otherwise properly stored may be 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, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions. 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 this Contract.
  - 10.4.1 Upon the Owner's request, the Contractor shall furnish 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 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 State Agency which is signatory to the contract, 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 Contract 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, AE, 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 Architect/Engineer, 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 with it, 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 approval of the Contractor's Surety***, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, 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 The parties acknowledge that the specifications and drawings may not be complete or free from errors, omissions or imperfections and that they may require changes or additions in order for the work to be completed to the satisfaction of Owner. Therefore, and notwithstanding any other provisions in this Contract, the parties agree that any errors, omissions or imperfections in the specifications and drawings, or any changes in or additions to them 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. The parties agree that the Change Order sum, together with any extension of time contained in the Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arise out of, or result directly or indirectly from 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 in Supplementary General Conditions, Special Conditions, or 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 giving the Owner or any of its duly authorized representatives access to and the right to

examine any directly pertinent books, documents, papers and records of any subcontractor relating to any claim arising from this Contract, whether or not the subcontractor is a party to the claim. The right of access and examination described herein shall continue for the duration of any claims brought under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract until final disposition of such claims, appeals or litigation.

- 11.2. Unit Prices: The Contract Documents may require the Contractor to provide certain work or materials on the basis of unit prices. If the quantity originally contemplated in determining any unit price is **materially** changed such that application of the agreed unit price to the actual quantity of work required will cause substantial inequity to the Owner or the Contractor, the applicable unit price shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into Change Order.
- 11.3. Claims for Additional Costs
- 11.3.1 The Contractor shall provide written notice to the Owner and the Architect/Engineer within twenty-one (21) days of the occurrence of any event or the discovery of any condition that the Contractor claims will cause an increase in the Contract Sum or Contract Time that is not related to a requested change. The Contractor shall not proceed with any work for which it will assert a claim for additional cost or time before providing the written notices, except for emergency situations governed by Article 7.3. Failure to provide the required notices is sufficient grounds for rejecting any claim for an increase in the Contract Sum or the Contract Time arising from the event or the condition. Any adjustment in the Contract Sum or Contract Time for any additional Work shall be authorized by Change Order.
- 11.3.2 The notice provisions of Article 11.3.1 apply to, but are not limited to, any claims for additional cost or time brought by the Contractor as a result of: 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.
- 11.3.3 Should the Contractor or his Subcontractors fail to call attention of the AE 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 AE, 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 disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the ODR and the Architect/Engineer shall be notified in writing of such conditions before they are disturbed. Upon such

notice, or upon its own observation of such conditions, the Architect/Engineer, 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 Order Requests
- 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 Construction Contract shall be formally initiated by the Architect/Engineer by means of a Change Request form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, AE 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 Architect/Engineer and ODR 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 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between the Contractor and Owner, with written confirmation following within twenty-four (24) hours. 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.
- 11.7.3 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.
- 11.7.4 ***The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.***
- 11.8. Pricing Change Order Work
- 11.8.1 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 AE and ODR using current estimating guides and/or practices.
- 11.8.1.1 Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR.
- 11.8.1.2 Contractor shall provide written response to change request within twenty-one (21) calendar days of receipt.

- 11.8.1.3** *If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.*
- 11.8.1.4** *If the parties cannot agree on an equitable adjustment for equipment rental charges attributable to a change, they shall use the Rental Rate Blue Book for Construction Mobilization as a basis of negotiation.*
- 11.8.2 The amounts that the Contractor and/or its Subcontractors add to a Change Order for profit and overhead will also be considered by the Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to the Owner.
- 11.8.2.1 For work performed by its forces, the Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, the total cost of Federal Old Age Benefit (Social Security Tax) and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the Contractor. To the total of the above costs, the Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.
- 11.8.2.1.1** *On contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Build Firm shall NOT be entitled to a percentage mark-up on any change order work unless the Change Order increases the Guaranteed Maximum Price.*
- 11.8.2.2 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.
- 11.8.2.3 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.

## **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 building from the use to which it is 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, the AE, 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 **concurs with the AE and Contractor in a determination** determines that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the AE, Owner and Contractor, establishing the date of Substantial Completion **and identifying responsibilities for security, maintenance, and insurance**. AE 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 AE 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, AE and the Contractor will inspect the Work. The AE 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 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, notify the AE and ODR in writing stating the disposition of each Final Punchlist item. The AE, 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 AE will give the Contractor written notice listing cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. 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 AE will give the Contractor written notice listing the cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.
- 12.1.5.3 The Contract Agreement 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 Substantially 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 **or notice**.

12.2 Owner's Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing **and identify responsibilities for security, maintenance, and insurance**. 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 that includes all sums held as retainage and forward to the AE and the ODR for review and approval.
- 12.3.2 Final Payment Documentation. Prior to or with the Application for Final Payment, Contractor shall submit 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. 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. 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 Architect/Engineer Approval. The AE 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 AE will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it, note their 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 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 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 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. **Submission of an Application for Final Payment by the Contractor** 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 & 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 Price 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, Architect/Engineer 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 less than all of the Work is accepted as substantially complete (Partial Substantial Completion), the warranty period for the Work accepted begins on the date of Partial Substantial Completion, or as otherwise stipulated on the Certificate of Partial Substantial Completion for the 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 not 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 AE.
  - 13.4.2 Recommendation to pay any progress or final payment by AE.
  - 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 Substantial Completion Certificate.
  - 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 their 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 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 the notice, the Contractor shall immediately cease all activities related to the identified Work. As soon as practicable following the issuance of a suspension notice, the Owner will conduct an investigation into the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If the cause of the suspension is due to actions or omissions within the control of the Contractor, the Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause of the suspension is something not within the control of the Contractor and the suspension will prevent 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 its own convenience. Upon resumption of the Work, if the 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 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of the contract.
- 14.3. Termination by Owner for Cause
- 14.3.1 ***Upon thirty (30) days written notice to the Contractor and its Surety,*** 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 labor 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 Upon receipt of a termination notice, the Contractor or its Surety has thirty days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 14.3.4 If at the conclusion of the thirty day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may **immediately terminate the employment of the Contractor**, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
  - 14.3.4.1 Recoverable costs include additional Owner expenses for items such as AE services, other consultants, and contract administration.
- 14.3.5 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 costs of completing the Work exceed the unpaid balance, the Contractor or its Surety will pay the difference to the Owner.
  - 14.3.5.1 This obligation for payment survives the termination of the Contract.
- 14.3.6 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. Upon written notice to the Contractor and the AE, the Owner may, without breach, terminate the Contract for any reason.
  - 14.4.1 The notice will specify the reason for and the effective date of contract termination. The 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:
    - 14.4.2.1 Stop all work.
    - 14.4.2.2 Place no further subcontracts or orders for materials or services.

- 14.4.2.3 Terminate all subcontracts.
- 14.4.2.4 Cancel all materials and equipment orders as applicable.
- 14.4.2.5 Take appropriate action 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 profits or 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 and the actual and reasonable cost of securing the project and property related to the Contract during the 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 profits or lost business opportunities.** If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.
- 14.6 Settlement on Termination. Within 180 days of the effective date of Contract termination for any reason, 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 a settlement proposal within the time allowed, the Owner may **unilaterally** determine the amount due to the Contractor because of the termination.

## 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 the Uniform General Conditions, Supplemental 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 **Before submitting any matter not resolved in the ordinary course of business to the dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, the Contractor shall make a written request to the Owner's designated official in charge of construction contract administration for a determination of the matter in dispute. The written request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that the Contractor wants the official to consider in reaching his/her determination. The official shall issue a written notice of decision on the request. Within 30 days of the notice of decision, the Contractor may submit a request for reconsideration to the official that particularly states the factual and legal basis for the**

**Contractor's objections to the official's decision. The official will review his/her decision and consider the basis for reconsideration asserted in the request. The official will issue a written notice of decision following reconsideration which shall be final and conclusive on all matters except for claims of breach of contract which are then subject to the dispute resolution process provide by Chapter 2260.**

- 15.4 **Nothing herein shall hinder, prevent or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.**
- 15.5 **Nothing herein shall waive or be construed as a waiver of the state's sovereign immunity.**

## **Article 16. Miscellaneous**

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

## **End of Uniform General Conditions**

