



**Uniform General Conditions
for
Construction Projects
2022**



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Article 1. Definitions

Unless the context clearly requires another meaning and except as otherwise provided in the (respective) Agreement, the following terms have the meaning assigned herein.

- 1.1 *Agreement* when referred to as “the Agreement” means the Agreement between the Owner and the Contractor (including the Construction Manager at Risk or Design-Build firm) which incorporates these Uniform General Conditions into the Contract Documents for the Project.
- 1.2 *Applicable Law (Applicable Laws)* means all laws, statutes, ordinances, regulations, guidelines or requirements now in force or hereafter enacted by any applicable local, state or federal governmental authority relating to or affecting the Project or arising from this Agreement, including, if and as applicable (1) the United States Occupational Safety and Health Administration requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (2) the Americans with Disabilities Act requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (3) requirements under Title VII of the Civil Rights Act of 1964, as amended, (4) the Age Discrimination in Employment Act requirements, (5) requirements of the Fair Labor Standards Act and applicable state wage and hour laws, (6) applicable local, state, and published Texas State University System or System Components building codes and requirements, (7) storm water, street, utility and other related infrastructure requirements, and (8) requirements related to the use, removal, storage, transportation, disposal and remediation of hazardous materials.
- 1.3 *Application for Payment* means Contractor’s monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.4 *Application for Final Payment* means Contractor’s final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor’s retainage.
- 1.5 *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 firm to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.6 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.7 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner’s information and acceptance that conveys Contractor’s and Subcontractors’ activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract



- Documents. The schedule clearly demonstrates the critical path of activities, durations, float, and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.8 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other Close-Out documents required by the Contract Documents.
- 1.9 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.
- 1.10 *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.
- 1.11 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.12 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project and that describe the scope and quality of the Project and the materials, supplies, equipment, systems, and other elements required for construction of the Work that are acceptable to the Owner. Construction Documents become part of the Contract Documents when listed in or otherwise incorporated into the Agreement or any Change Order.
- 1.13 *Construction Manager-at-Risk*, in accordance with Tex. Educ. Code § 51.782, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.14 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.15 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.16 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General Conditions and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.17 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.18 *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 a Change Order.
- 1.19 *Contractor* means the individual, corporation, limited liability 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.
- 1.20 *Contractor-Designed Work* means that portion of the Work in a contract, other than a Design-Build Contract, for which the Contract Documents require the Contractor to provide professional services by a person licensed or registered under Title 6 of the Texas Occupations Code in order to carry out the Contractor's responsibilities for its completion of that specified portion of the Work.
- 1.21 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.22 *Day* means a calendar day unless otherwise specifically stipulated. A *business day* means a calendar day other than a weekend day or a national or state holiday.
- 1.23 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Educ. Code § 51.780.
- 1.24 *Drawings* mean that product of A/E or such other design professional which graphically depicts the Work.
- 1.25 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.26 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.27 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.28 *Insurance Requirements in the Special Conditions* means any insurance requirements expressly set forth in the Special Conditions which supplement or replace the insurance requirements set out in Article 5.
- 1.29 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.30 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.31 *Ordinary Diligence* means the observations of the plans, specifications, or other design documents or the improvement to real property furnished by the Owner or its licensed design professionals



- that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work (as applicable) under normal circumstances. Ordinary diligence does not require that the contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills except for Contractor-Designed Work or a Design-Build Contract.
- 1.32 *Owner* means the Board of Regents of The Texas State University System, acting through the responsible entity of The Texas State University System or one of its institutions (Components) as identified in the Agreement as Owner.
- 1.33 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party, other than the Chancellor, authorized to direct changes to the scope, cost, or time of the Contract.
- 1.34 *Project* means all activities necessary for realization of Owner's desired building or other structure including all ancillary and related work as further described in the Contract Documents. This includes design, contract award(s), execution of the Work itself, work by Owner's forces and/or other contractors and fulfillment of all Contract and warranty obligations.
- 1.35 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.36 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.37 *Punchlist* means a list of items of Work to be completed or corrected by Contractor before Final Completion. The Punchlist(s) indicates items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.38 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, A/E's Supplemental Instructions, Change Orders, and postings and markings that record the "as-constructed" conditions of the Work and all changes made during construction. Record Documents is distinguishable from "Record Drawings" which, if required by the Contract Documents, are prepared by the A/E as part of its Construction Administration Services and reflect the on-site changes the CM noted in the "As-Built" drawings.
- 1.39 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.40 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.41 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.42 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts,



- brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.43 *Site* means the geographical area of the location of the Work.
- 1.44 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project and identified in the Agreement as the “Special Conditions of the Contract” for the Project (or simply as the “Special Conditions”). Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.45 *Specifications* mean the written product of A/E or such other design professional that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.46 *Subcontractor* means a person or a business entity that has an agreement with or through the Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work. The term Subcontractor includes what is commonly referred to as a “trade contractor” and a “supplier” (who furnishes materials or equipment only) and Sub-Subcontractors, except to the extent clearly not applicable in the context of its use in the Contract Documents. The term Subcontractor does not include the A/E or any person or entity hired directly by the Owner for design or construction services. The term “Sub-subcontractor” refers to a trade contractor, subcontractor, or supplier contracting under or directly with a Subcontractor or another Sub-subcontractor (of any tier).
- 1.47 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.48 *Substantial Completion* means, except as otherwise expressly provided by the Agreement or the Special Conditions, the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.49 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.50 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.51 *Work* means the administration, procurement, materials, equipment, construction, and all services necessary for Contractor, and/or its agents, to fulfill Contractor’s obligations under the Contract.
- 1.52 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.
- 1.53 *Working Day* means Monday through Friday (other than New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day) and those Saturdays on which critical path Work has been “regularly scheduled” to be performed or which had been previously scheduled with the Owner’s written consent.



Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with Applicable Law, including but not limited to all laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law (Tex. Gov't Code, Chapter 2258) and the addresses of all workers.
- 2.2.1.1 Consistent with the foregoing, pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or Subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and the Owner's agents at all reasonable hours for the duration of the contract.
- 2.2.1.2 Contractor shall submit a copy of each worker's wage-rate notification to ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.
- 2.2.1.3 With each application for progress payment. Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.



- 2.2.1.4 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.
- 2.2.1.5 Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.
- 2.2.1.6 Pursuant to Tex. Labor Code § 214.008 (Misclassification of Workers; Penalty), the Owner requires Contractor and all Subcontractors properly classify individuals as Employees or Independent Contractors.
- 2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.
- 2.2.3 Complaints of Violations.
 - 2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.
 - 2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.
 - 2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.
 - 2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Section 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.



- 2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas.
- 2.4 Licensing of Trades. 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 Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.
- 2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax-exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Agreement 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 Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind 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, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.



instrument, which will be furnished to Contractor by ODR, upon request.

3.2.1 Site Visits.

3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract (or the Design/Build Contract, if applicable) with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.

3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Section 3.1.5.2, 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 ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.

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

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

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

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

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

3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all Applicable Law and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures, and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion. Without limiting the foregoing, Contractor shall, at all times (a) prior to Substantial Completion and turnover of the Work to Owner and (b) after Substantial Completion in those areas where punchlist Work is being performed prior to Final Completion, use reasonable measures and to cause its Subcontractors to use reasonable measures to protect the Work (including Work in progress and installed Work) from damage caused by weather and casualties.



Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility, and general character of the Site and/or building.

- 3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions, Division 1 of the Specifications, and other provisions of the Contract, and as outlined in the pre-construction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents, and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Contract Documents.
- 3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents, and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection, and completion of the Work.
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Upon Contractor's written request, Owner shall furnish to Contractor the respective values of such materials or equipment and shall make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance furnished by Contractor covering such equipment or material.
- 3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work or the failure to find non-compliant Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other



person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.

3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.

3.3.7.2 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 Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.

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

3.3.9 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.

3.3.10 Acts and Omissions of Contractor, its Subcontractors and Employees. Contractor shall be responsible for acts and omissions of its employees and all its Subcontractors, their agents, and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.

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

3.3.11.1 All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by Owner.

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

3.3.11.3 Contractor shall use only established roadways or construct and use such



temporary roadways as may be authorized by Owner. Contractor shall not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Contractor shall 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 Contractor.

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

3.3.12 Separate Contracts. Owner reserves the right to award other contracts in connection with the Project under the same or substantially similar contract terms, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.

3.3.13 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.

3.3.14 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site, integration of activities within Contractor's Work Progress Schedule and Project information as requested.

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

3.4 Indemnification of Owner.

3.4.1 **To the fullest extent permitted by Applicable Law and without limiting any indemnity obligation set out in the Agreement, the Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death or property damage, made upon Owner and such other indemnified parties identified herein directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, or any agent, officer, director, representative, employee, consultant or 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 Section 3.4.1 does not apply to any liability resulting from the negligence of the Owner or such other indemnified parties identified herein or their officers or employees, separate contractors or assigned contractors, design professionals, or consultants, to the extent 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 (INCLUDING OWNER) UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 3.4.2 **Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments, and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by the Contractor or the use by Contractor, or by Owner at the direction of Contractor, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. Contractor does not warrant against infringement by reason of Owner's or A/E's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Contractor and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.**
- 3.4.3 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.
- 3.4.4 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract. In the event that Contractor defends the Owner with regard to any claim subject to this indemnification, any such defense shall be coordinated with the Office of the Attorney General or its designated outside counsel and Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General.
- 3.4.5 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.284.
 - 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.281-298 outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender-neutral means.
 - 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. §



20.285 by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.

- 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 adding or substituting a Subcontractor, promptly notify 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 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 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 Owner that demonstrates Contractor's performance of the HUB subcontracting plan.
 - 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at <https://comptroller.texas.gov/purchasing/vendor/hub/>).
 - 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.285.
- 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, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5. Bonds and Insurance

- 5.1 Construction Bonds. Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253. On Construction Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.
- 5.1.1 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 Owner, on Owner's form,



and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.

5.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's Call-Back Warranty period established in Section 13.2.

5.1.1.2 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 Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.

5.1.2 Security Bond. The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price (GMP) to Owner but is unable to deliver the required payment and performance bonds within the time period stated below.

5.1.3 When Bonds Are Due

5.1.3.1 Security bonds are due within seven (7) days of signing a Construction Manager-at-Risk or Design-Build Contract.

5.1.3.2 Payment and performance bonds are due within the earlier of seven (7) days of a fully executed Contract on competitively bid or competitive sealed proposal projects or a fully executed Owner's acceptance of a GMP proposal on Construction Manager at Risk or Design-Build projects, or the commencement of Work at the Project site.

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, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD 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 Contractor and its surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or its surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee.
- 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 Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 5.1.10 Subcontract Bonds and Subcontractor Default Insurance. Contractor may elect to require selected Subcontractors to furnish subcontractor payment and performance bonds or to enroll selected Subcontractors in a subcontractor default insurance ("SDI") program. However, except as may be expressly authorized by the Agreement or the Special Conditions expressly incorporated into the Agreement, the premiums or other charges related to such bonds or SDI shall not be reimbursable as Cost of the Work or otherwise separately chargeable to the Owner. To the extent that the Agreement or the Special Conditions expressly authorize premiums or other charges related to such bonds to be reimbursable as Cost of the Work or otherwise separately chargeable to the Owner, such bonds shall be in form and substance satisfactory to the Owner and furnished prior to the commencement of construction of the Work of the respective Subcontract under the Contract Documents and shall be subject to the following requirements:
- 5.1.10.1 For each subcontractor bond, Contractor shall obtain from each such subcontractor and the subcontractor's surety a Dual or Multiple Obligee Rider, on a form acceptable to the Owner, naming the Owner and such other persons or entities as reasonably required for Owner's financing as additional Obligees.
- 5.1.10.2 Each such surety bond must be executed by a responsible corporate surety meeting the requirements for sureties for Contractor's payment and performance bonds under Section 5.1.9 above.
- 5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article or as otherwise required in the Insurance Requirements in the Special Conditions, if any, for the duration of the Contract. The required insurance shall include coverage for Owner's property prior to construction, during construction and during the Warranty Period (see Section 13.2). The insurance shall be evidenced by delivery to 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, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.

5.2.1 Contractor, consistent with its status as an independent contractor, shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in any Insurance Requirements in the Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated by any means deemed appropriate by Owner.

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

5.2.2.1 Insurance Coverage Required.

5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

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

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

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$5,000 Medical Expense each person;

\$1,000,000 Personal Injury and Advertising Liability;

\$2,000,000 products and completed operations aggregate;



\$50,000 Damage to Premises Rented to You; and

Coverage shall be on an “occurrence” basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

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

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.

Employer’s liability limits for asbestos abatement will be:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

If this Contract is for asbestos abatement only, the All-Risk Builder’s Risk or all-risk installation floater (5.2.2.1.5.e) is not required.

5.2.2.1.4 Business Automobile Liability Insurance, covering all owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage. If a Contractor owns no vehicles and separate Business Automobile Liability is not available, coverage for hired and non-owned automobile liability may be endorsed on the Commercial General Liability policy with Owner’s written consent.



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

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

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 material and/or equipment), unless otherwise expressly provided by the Agreement or any Insurance Requirements in the Special Conditions. Coverage shall be maintained during the performance of the Work and is determined by the Contract Sum, as detailed, below.

5.2.2.1.5.1 Contractor shall purchase and maintain in force during the performance of the Work (through Substantial Completion of the entire Work as determined and certified in accordance with the Contract Documents) builders risk insurance on the entire Work. Such insurance shall be written on the completed value basis in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising the total value for the entire Project at the site (the "Total Value of the Project"). The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least twenty (20) percent of the Total Value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value of the Project. (If Installation Floater, limit shall be equal to one hundred percent (100%) of the contract cost.)

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

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

5.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 5.2.2.1.5.1, including, but not limited to, the following:



- Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework, and temporary buildings
- Offsite Storage
- Portions of the work in transit
- Debris removal
- Extra Expense
- Expediting Expenses
- Demolition and Increased Cost of Construction
- Pollutant Clean-Up and Removal
- Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
- Errors & Omissions (applicable to purchase of Builders Risk policy only)

5.2.2.1.5.5 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy or begin beneficial occupancy before the parties have determined Substantial Completion.

5.2.2.1.5.6 This insurance shall be specific as to coverage and shall be primary (and not contributing) to any permanent insurance or self-insurance that may be maintained on the property by Owner.

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

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

5.2.2.1.5.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance, in a form acceptable to the Owner but in compliance with Applicable Law, that provides specific evidence of all requirements outlined in Section 5.2.2.1.5. A copy of the policy itself shall be provided to Owner within seven (7) days after Notice to Proceed.

5.2.2.1.5.10 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.11 Coverage shall include Owner-furnished equipment and



existing property as specified in the Agreement or the Insurance Requirements in the Special Conditions.

5.2.2.1.5.12 Losses or claims not paid by such insurance because such losses or claims fall within the deductible shall be borne by the Contractor.

5.2.2.1.5.13 Refer to the Insurance Requirements in the Special Conditions, if any, for possible additional Builders Risk insurance requirements for the respective Project.

5.2.2.1.6 “Umbrella” or “Excess” Liability Insurance. Contractor shall obtain, pay for and maintain umbrella or excess liability insurance during the Contract term, insuring Contractor that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required above to the full extent such primary coverage’s limits are designated to the Project and for such period that such primary coverage provides for coverage, including any extended period for Products / Completed Operations coverage. The policy shall provide “drop down” coverage where underlying primary insurance coverage is lacking, or limits are insufficient or exhausted.

5.2.2.1.6.1 Except as may otherwise be provided in the Special Conditions, Contractor shall provide, at a minimum, the following Coverage Limits:

- a. If the Contract Sum is \$1,000,000 or less, no Umbrella or Excess Liability coverage over the minimum primary limits for coverages set forth in Subsection 5.2.2.1.2 above is required;
- b. If the Contract Sum is greater than \$1,000,000 up to \$3,000,000, Umbrella or Excess Liability coverage is required with limits of at least \$1,000,000 each occurrence and \$2,000,000 annual aggregate over the minimum primary limits for coverages set forth in Subsection 5.2.2.1.2 above;
- c. If the Contract Sum is greater than \$3,000,000 up to \$5,000,000, Umbrella or Excess Liability coverage is required with limits of at least \$5,000,000 each occurrence and \$5,000,000 annual aggregate over the minimum primary limits for coverages set forth in Subsection 5.2.2.1.2 above.
- d. If the Contract Sum exceeds \$5,000,000, Umbrella or Excess Liability coverage is required with limits of at least \$10,000,000 each occurrence and \$10,000,000 annual aggregate over the minimum primary limits for coverages set forth in Subsection 5.2.2.1.2 above.



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

5.2.3.1 Contractor must provide to Owner immediate notice of cancellation, material change, or non-renewal to any insurance coverages required herein above. This requirement may be satisfied by the Contractor providing a copy of the notice received by the insurer to Owner within two (2) business days of date of receipt or by Endorsement of the policies that require Insurer to provide notice to Owner.

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

5.2.3.3 Owner and the respective Component institution and their 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 Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

5.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.

5.2.3.5 If Owner is damaged by the failure of Contractor (or Subcontractor) to maintain insurance as required herein and/or as further described in the Agreement or the Insurance Requirements in the Special Conditions, if any, then Contractor shall bear all reasonable costs properly attributable to that failure.

5.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at 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 (provided the Umbrella Liability coverage limits applicable to the Subcontractors shall apply on the basis of the "Contract Sum" of the respective Subcontracts). As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

5.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

5.2.5.1 Definitions:

5.2.5.1.1 "Certificate of coverage" (or "certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Workers'



Compensation Division of the Texas Department of Insurance (the “Division”), or a coverage agreement (Division forms DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

5.2.5.1.2 “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 Owner.

5.2.5.1.3 Person(s) “providing Services on the Project” – 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 other entity which furnish 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.

5.2.5.2 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.

5.2.5.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

5.2.5.4 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 Owner showing that coverage has been extended.

5.2.5.5 The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

- (1) a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing Services on the Project; and,
- (2) no later than seven (7) 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.

5.2.5.6 The Contractor shall retain all required certificates of coverage for the duration of



the Project and for one year thereafter.

- 5.2.5.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing Services on the Project.
- 5.2.5.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance Division of Workers' Compensation, informing all persons providing Services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.5.9 The Contractor shall contractually require each person with whom it contracts to provide services on the 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 Owner in writing by certified mail or personal delivery, within ten (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 these subsections (1) - (7) and to provide the certificates of coverage as required hereunder to the person for whom they are providing services.

5.2.5.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner 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 Division' Self-Insurance Regulation Section. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

5.2.5.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

Article 6. Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications.

- 6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or the Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complementary, 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 within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Special Conditions; (d) Drawings; (e) Specifications (but Specifications shall control over Drawings as to quality of materials and installation); and (f) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.



- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the 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 Promptly and timely report to ODR and to A/E the discovery of any apparent error, omission, or inconsistency in the Contract Documents.
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional unless it is performing as a Design-Build firm or except to the extent the Contract Documents have specified Contractor-Designed Work.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies not reasonably discoverable by the exercise of Ordinary Diligence or to ascertain compliance with Applicable Laws, including building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk (see Subsection 6.1.6.5 below) or except to the extent the Contract Documents have specified Contractor-Designed Work.
- 6.1.6.4 When performing as a Design-Build firm, 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, Contractor has a shared responsibility with A/E for discovery (by the exercise of Ordinary Diligence) and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies not reasonably discoverable by the exercise of Ordinary Diligence, unless Contractor knowingly failed to report a recognized problem to Owner, or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above or except to the extent the Contract Documents have specified Contractor-Designed Work. Should Contractor fail to perform the examination and promptly and timely report such errors, omissions, or inconsistencies discovered, or which reasonably should have been discovered using Ordinary Diligence, Contractor is responsible for avoidable costs and direct and/or consequential damages.
- 6.1.6.7 Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or its representatives.



6.2 Requirements for Record Documents. Contractor shall:

- 6.2.1 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 A/E access to these documents.
- 6.2.2 Maintain the Record Documents which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available the Record Documents and all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) hard copy and one (1) electronic media copy in a format acceptable to the ODR of all Record Documents, unless otherwise required by the Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

6.3 Requirements for Contractor-Designed Work. Except for a Design-Build Contract, the Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering except and to the extent such services are specifically required by the Contract Documents for Contractor-Designed Work. In such event, the Contractor shall provide design and other professional services for Contractor-Designed Work consistent with the applicable standard of care for such design professionals (that is, the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license), in full compliance with Applicable Law, and as provided herein.

- 6.3.1 When such services are required to be performed by a properly licensed professional, the Contractor shall cause such services or certifications to be provided by such properly licensed professional, whose signature and seal shall appear on all Contractor-Designed



Drawings (see below). Shop Drawings and other submittals related to the Work designed or certified by such design professional, if prepared by others, shall bear such professional's written approval when submitted to the A/E.

6.3.1.1 Without limiting the foregoing, Contractor shall prepare or cause its respective Subcontractors to prepare and submit to the Contractor and Owner for review and approval by the A/E, complete drawings and specifications as may be required for the installation of the Contractor-Designed Work (such drawings and specifications are referred to herein as the "Contractor-Designed Drawings"). The Contractor-Designed Drawings shall be prepared and submitted in accordance with a submittal schedule approved by the A/E and the Owner. The Contractor or appropriate Subcontractor shall revise the Contractor-Designed Drawings for the Contractor-Designed Work as may be required by the A/E to conform the Contractor-Designed Drawings to the Contract Documents.

6.3.1.2 Contractor shall cause the design of the Contractor-Designed Work, the Contractor-Designed Drawings, and the installation of the Contractor-Designed Work to comply with (i) the requirements of the Contract Documents; and (ii) Applicable Law and all requirements of, and conditions of any approvals, certifications or permits given by, any and all governmental authorities and agencies having jurisdiction over the design, construction, existence or use of the Project, whichever are more stringent, all without necessity of variance unless specifically consented to or requested by the Owner. Contractor shall obtain or cause the appropriate Subcontractor(s) to obtain, all required approvals prior to the commencement of installation of the Contractor-Designed Work.

6.3.1.3 Contractor-Designed Drawings, specifications, and such other design-related documents prepared by Contractor or any of its Subcontractors or their design professional for such Contractor-Designed Work are instruments of service. The Owner shall be permitted to retain copies, including reproducible copies and CADD copies, of the instruments of service for information and reference in connection with the Owner's use and occupancy of the Project. By entering into the Agreement, Contractor and its respective Subcontractor(s) and design professionals furnishing such instruments of service grant Owner an irrevocable, fully paid-up, perpetual license and right to use the instruments of service furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose for the Project, regardless of whether their services for the Project are completed, modified, or terminated. This license shall survive the termination of the Agreement.

6.3.2 The Owner and the A/E shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals employed by or through Contractor for Contractor-Designed Work, provided the Owner and A/E have specified to the Contractor all performance and design criteria that such services must satisfy.

6.3.2.1 If the Contract Documents require the Contractor's design professional to certify that the Contractor-Designed Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the A/E at the time and in the form specified by the A/E.



- 6.3.3 Contractor shall be responsible to the Owner for loss, damage and expense suffered by Owner because of any error or omission of the Contractor or Subcontractor in the design and engineering of the Contractor-Designed Work in violation of the applicable standard of care for the performance of such professional design services. In the performance of its obligations under the Contract Documents with respect to the Contractor-Designed Work, Contractor shall perform, or cause the appropriate Subcontractor to perform the Contractor-Designed Work in a manner to avoid any errors, omissions, or negligence which would result in: (a) the documents prepared by the Contractor or appropriate Subcontractor containing conflicts, errors, or omissions; violations of Applicable Law; or variations from any decision or instruction from the Owner or the A/E communicated in writing to the Subcontractor or the Contractor; or (b) the failure of the design of the Contractor-Designed Work to comply with Owner's or the A/E's requirements for the Project identified in the Contract Documents and other requirements of the Contract Documents pertaining to the Contractor-Designed Work and free of design deficiencies that materially and adversely affect such use.
- 6.3.4 Contractor shall cause the design and installation of all Contractor-Designed Work to interface properly with the design and construction of the entire Project and the Drawings and Specifications prepared by the A/E and the other consultants engaged by the Owner. Contractor shall cause the appropriate Subcontractor to be responsible for the proper coordination of the Contractor-Designed Work with the design and engineering work of the A/E and the other consultants.
- 6.3.5 Once the Contractor-Designed Drawings have been submitted to Owner and A/E and revised as may be required hereunder, Contractor shall not permit any change in such Contractor-Designed Drawings without submission to Owner and A/E pursuant to Section 6.3.1, and the Work performed by or through Contractor shall conform to such Contractor Designed Drawings that have been prepared consistent with the requirements of this Section 6.3. However, neither the review nor approval nor other action by the A/E or the other consultants of the Owner with respect to the Contractor-Designed Drawings, nor any other working drawings or other documents prepared by the Subcontractor (or any Subcontractor(s) hereunder, shall relieve Contractor or the respective Subcontractor of its responsibility for the proper design, furnishing and installation of the Contractor-Designed Work under the Contract Documents and for the proper coordination of the Contractor-Designed Work with other work for the Project.
- 6.3.6 In the event that Contractor retains a licensed design professional for Contractor-Designed Work, Contractor shall require that licensed design professional to carry comprehensive general liability and errors and omissions (professional liability) insurance coverage in the same amounts and forms as that required of the A/E on this Project or as otherwise set forth in the Agreement or Special Conditions. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms required of the A/E on this Project or as otherwise set forth in the Agreement or Special Conditions.

Article 7. Construction Safety

- 7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar



with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all Applicable Law, including 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. 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 safety data sheets (SDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of SDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.

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

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

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

7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (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 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 ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

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 ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all



investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide 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 ODR immediately.
- 7.5.1 Bind all Subcontractors to the same duty.
- 7.5.2 Upon receiving such notice, 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, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 7.5.3 Owner may hire third-party contractors to perform any or all such steps.
- 7.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum 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 (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

Article 8. Quality Control

- 8.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 Testing.
- 8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents.
- 8.2.2 Contractor shall provide the following testing as well as any other testing required of



Contractor by the Specifications:

- 8.2.2.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.2.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.2.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 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 Owner. Results of all tests shall be provided promptly to ODR, A/E, and 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 Contractor, subject to:
 - 8.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.
 - 8.2.4.2 Acceptance by Owner of the quality and nature of tests.
 - 8.2.4.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
 - 8.2.4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
 - 8.2.4.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 8.2.4.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.5 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.
- 8.2.6 Test Samples. 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 Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover, and recover the work at Contractor's expense.



8.3 Submittals.

8.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp of approval will be returned without review or comment. Any delay resulting from Contractor's failure to certify approval of the Submittal is Contractor's responsibility.

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

8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals and must show and allow a minimum of fifteen (15) days duration after receipt by A/E and ODR for review and approval. If re-submittal required, allow a minimum of an additional fifteen (15) days for review. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. 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, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.



- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission and obtains Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. Changes to the Construction Documents shall be accomplished only in accordance with Section 3.2.2 and Article 11 Changes.
- 8.3.5 No Substitutions Without Approval. ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:
- 8.3.5.1 The Contract Documents do not require extensive revisions; and
 - 8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
 - 8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 8.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - 8.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - 8.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;



- 8.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
- 8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an Authority Having Jurisdiction, and ODR can approve the requested substitution;
- 8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
- 8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
- 8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.5.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

8.3.6 Unauthorized Substitutions at Contractor's Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment, or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 Field Mock-up.

- 8.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.
 - 8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.
 - 8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.
 - 8.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.



8.5 Inspection During Construction.

- 8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. “Reasonable times” of inspection must allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.
- 8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing 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, Contractor shall not cover up corrected Work until Owner indicates approval.
 - 8.5.2.2 Contractor shall provide notification of at least five (5) Working Days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 9. Construction Schedules

- 9.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time or as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents.
 - 9.1.1 If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion or such other time as required in the Agreement or the Special Conditions, Contractor shall be responsible for Owner’s damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor’s failure to achieve Final Completion.
- 9.2 Notice to Proceed. Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 Work Progress Schedule. Refer to Special Conditions and Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit its initial Work Progress Schedule (which may also be referred to in the Agreement as the “CPM 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 ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents, acceptance of all the Work of the Contract, weather days, and float. When acceptable to Owner, the initially accepted



schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

Note: 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 the respective Contract Documents for those Projects.

9.3.1 Schedule Requirements. Contractor shall 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 Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail, so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

9.3.1.1 Contractor shall re-submit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.

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

9.3.2 Schedule Updates. Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. 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. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.

9.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with 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 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 Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to



damages for Contractor's failure to do so.

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

9.4 Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Total float should not be shown as a single activity, but rather the relationship between the early and late finish dates or early and late start dates of each activity. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner but belongs to the Project and may be consumed by either party. Before Contractor uses any portion of the float Contractor must confirm that the float is directly tied to a critical path activity and submits a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.

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

9.5.1 When it appears to Owner, A/E, or Contractor that the Work is behind schedule and the rate of placement of the Work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, Contractor shall promptly, no more than ten (10) calendar days after notice from ODR (or otherwise becoming aware of such delay), develop with Owner a recovery plan consistent with the requirements of the Contract and a budget (for a delay that constitutes an excusable delay under Section 9.6.2.2) to meet such a situation by accelerating the Work and/or supplementing the workforce or otherwise re-ordering the Work to overcome the delays, and which shall specifically include, as appropriate, the following:

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 Upon Owner's written approval, Contractor shall promptly implement such recovery plan. Contractor shall not be entitled to compensation from the Owner or any increase in the GMP for the scheduled recovery efforts, except as to causes of excusable delay to the critical path, in which case Owner's written approval shall be a condition precedent to any additional compensation or increase in the GMP to cover the costs of such recovery efforts. When Contractor is not entitled under the Contract Documents to an extension of the Contract Time requirements as a result of any such delay, in the absence of a recovery plan approved by Owner, Contractor shall, without additional compensation (no additional reimbursement as Cost of the Work), cause its employees, Subcontractors, and all other parties covered by this Construction Contract to perform and work at hours and on days, in addition to the normal working hours and normal Working Days, whatever overtime



work or shift work is necessary to recover the schedule and achieve the Contract Time requirements. No approval or consent by the Owner or any plan for re-sequencing or acceleration of the Work submitted by Contractor pursuant to this Section shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such re-sequencing or the failure of the Contractor to meet the Substantial Completion Date or other requirements of the Contract with regard to the Contract Time.

9.5.3 Should Owner deem the recovery plan inadequate; Contractor shall take additional steps or make adjustments as necessary to its recovery plan until it meets with 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 Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days; however, the number of calendar days will be computed on the basis of the impact to the critical path due to Working Days lost to excusable delay or Weather 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 Substantial Completion date(s).

9.6.2.1 Except as otherwise expressly provided in the Agreement or the Special Conditions, inclement weather (other than unusual weather events for the period of time and location of the Project and extreme weather events such as a hurricane, tornado, or severe flooding, which shall be referred to herein as "Unusual and Extreme Weather Events") and/or related site conditions from such weather ("adverse weather conditions") are not anticipated to impact the progress of the Contractor's work. Allowance shall be made in the Baseline Schedule and the Contract Time requirements for adverse weather conditions, other than those caused by Unusual and Extreme Weather Events. A "Weather Day" is a Working Day on which Contractor's current schedule indicates Work is to be done, and on which adverse weather conditions caused by Unusual and Extreme Weather Events ("Unusual and Extreme Weather Conditions") prevent Contractor from performing seven (7) continual hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Such Weather Days are excusable delays. When conditions at the site as a result of adverse weather conditions prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, Contractor shall submit to ODR and A/E a list of Working Days lost to the critical path occurring in that month due to adverse weather conditions, along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted for critical path delay due to Unusual and Extreme Weather Conditions will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.1.1 Any such Working Day lost due to Unusual and Extreme Weather



Conditions shall be made up by Contractor performing work on the ensuing Saturday (if not already scheduled as a Working Day) or on the ensuing Sunday or by extended hours during that week, and treating such as a Working Day for the purpose of complying with and meeting the Contract Time requirements. Notwithstanding the foregoing, the inability of the Contractor to “make up” a Working Day lost during the week on a Saturday or Sunday due to adverse weather conditions shall not count as an additional day of weather delay (over and above the Working Day lost due to such adverse weather conditions during that week). Additionally, except as may be agreed by the Owner, the maximum number of Working Days of delay in any given calendar week shall not exceed five (5) days per week, except for those periods (if any) where the critical path Work has been “regularly scheduled” as provided in Section 1.51 above for six (6) days per week, in which case the maximum shall be six (6) days for such period(s).

9.6.2.1.2 Unusual and Extreme Weather Conditions may include, if appropriate, “dry-out” or “mud” days for precipitation only if there is a hindrance to site access or sitework, such as excavation, backfill, and footings.

9.6.2.2 Excusable Delay. Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays to the critical path caused by the following:

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

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

9.6.2.2.3 Failure of Owner to have complied with any express obligations under the Contract Documents to secure property, right of way, or easements necessary for Work to being or progress,

9.6.2.2.4 Changes in the Work that affect activities identified in Contractor’s schedule as “critical” to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.

9.6.2.2.5 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 Contractor.

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

9.6.3 Contractor’s relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor’s schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subsection 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time



are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

9.7 Limitation on Remedies / No Damages for Delay.

- 9.7.1 An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, those damages prohibited or limited in Section 9.7.2 below. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, in response to any breach or failure by the Contractor to comply with the terms of the Contract Documents or the Contractor's obligations arising therefrom, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.
- 9.7.2 Without limiting the foregoing, except as otherwise expressly provided in the Agreement or the Special Conditions of the Contract incorporated therein, in calculating the amount of any claim recoverable by Contractor, the following limitations on the recovery of damages shall apply:
- 9.7.2.1 No indirect or consequential damages will be allowed.
- 9.7.2.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- 9.7.2.3 Damages, to the extent recoverable, are limited to the additional, actual costs specifically shown to have been directly incurred by the Contractor and caused by the proven wrong.
- 9.7.2.4 No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation.
- 9.7.2.5 No exemplary damages or unjust enrichment damages shall be recoverable.
- 9.7.2.6 No recovery of attorney's fees shall be recoverable except as expressly permitted under the Agreement.
- 9.7.2.7 No profit will be allowed on any damage claim, except as expressly recoverable under the Agreement as Fee on Cost of the Work incurred.
- 9.7.3 Consistent with the foregoing, in the event that the Contractor complies with the requirements of the Contract Documents regarding notice to the Owner and is allowed by Applicable Law to recover damages arising from a delay for which the Owner is responsible, any such recoverable damages shall be limited as provided in Section 9.7.2



above. Further, for Contracts in which the Contract Sum is computed on the basis of the Cost of the Work incurred by the Contractor in the performance of the Work, any such recoverable damages for delay for which the Owner is responsible shall not exceed the amount that would otherwise be recoverable under the Contract for additional General Conditions Costs for the period of delay caused by such interference.

- 9.7.4 Nothing in this Section shall constitute an express authorization in the Contract for the recovery of compensation for increased cost to perform the Work as a direct result of owner-caused delays or acceleration pursuant to Section 114.004 of the Civil Practice and Remedies Code.
- 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, 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 Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for adverse weather conditions are covered by Section 9.6.2.1 above. If 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 ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one notice of claim is necessary. State claims for extensions of time in numbers of whole or half days.
- 9.9.1 Within ten (10) days after the cessation of the delay, 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 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. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of 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 Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to



Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

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

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

9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages may be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.

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

Article 10. Payments

10.1 Schedule of Values. Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.

10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (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 itemized costs for general conditions, costs for preparing Close-Out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.

10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.

10.1.2 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 ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal



business hours access to said copy of worksheets at any time during the period commencing upon execution of the Agreement and ending one (1) year after final payment.

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

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

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

10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;

10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Section 4.2.5.1;

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

10.2.1.5 Construction payment affidavit.

10.2.2 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications and attaches all required documentation including Contractor's affidavit.

10.2.3 Certification by Architect/Engineer. Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.



- 10.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor has maintained and updated the Record Documents kept at the Site.
- 10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
- 10.3.2 Retainage. Except as otherwise provided in the Agreement or the Special Conditions, Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount until the Work is finally completed and accepted. Such retainage shall be managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
- 10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
- 10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.
- 10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection.
- 10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
- 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 Owner upon payment.



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

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

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

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by 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 ODR approves the Application for Payment.

10.5 Off-Site Storage. With prior approval by 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 Owner.

10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.

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

10.5.3 Inspection by Owner's representative is allowed at any time. 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 ODR and A/E 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 ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

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

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

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

Article 11. Changes

11.1 Change Orders. A Change Order issued after execution of the Agreement is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates its agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.

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

11.1.2 Owner and Contractor acknowledge and agree that the Specifications and Drawings may not be complete or free from errors, omissions, and imperfections and that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner. Therefore, any minor errors, omissions or imperfections in the Specifications or Drawings, or any changes in or additions to the Specifications or Drawings to correct minor errors or omissions or to the Work ordered by Owner shall not constitute or give rise to any claim, demand, or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise. However, should the nature of the errors or omissions necessitate substantial changes in the Work such that a Change Order is appropriate, 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 sum established in any Change Order, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses, and damages to Contractor for the changes in the Work described in the Change Order, as permitted under Tex. Gov't Code, Chapter 2260.



- 11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in the Special Conditions, or elsewhere in the Contract Documents.
- 11.1.4 No verbal order, verbal statement, or verbal direction of Owner or its duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 11.1.5 Contractor agrees that 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 Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the dispute resolution provisions of the Agreement, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon and if the quantities originally contemplated in setting the unit prices are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 11.3 Claims for Additional Costs.
- 11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, it shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event or discovery of any conditions giving rise to such claim. Contractor must notify Owner and A/E before proceeding to execute any Work considered to add additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1., and failure to provide the required notice will invalidate any subsequent notice or claim for additional cost or time for the Work. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.
- 11.3.3 Should Contractor or its Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents that were discovered prior to the Contract award or that reasonably should have been discovered by the Contractor or its Subcontractors using Ordinary Diligence applicable to such circumstances but claim additional costs for



corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

- 11.4 Minor Changes. A/E, with concurrence of 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 Contractor shall carry out promptly and record on the Record Documents.
- 11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of 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 ODR.
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a



delay in progress of the Work may be expedited by verbal communication and authorization between 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, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.

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

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

11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner but amounts actually recoverable shall be subject to such specific pricing terms, limitations, and conditions as may be provided in the Special Conditions.

11.8.1 For Work performed by its forces, Contractor will be allowed its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for worker's compensation and comprehensive general liability insurance, plus its actual additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, 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.

Except as may otherwise be provided in the Special Conditions, allowable percentages for overhead and profit on changes will not exceed fifteen percent (15%) if the total of self-performed work is less than or equal to \$10,000, ten percent (10%) if the total of self-performed work is between \$10,000 and \$20,000 and seven and a half percent (7.5%) if the total of self-performed work is over \$20,000, for any specific change priced.

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work. All Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten percent (10%) if the total of all subcontracted work is less than or equal to \$10,000, seven and half percent (7.5%) if the total of all subcontracted work is between \$10,000 and \$20,000 and five percent (5%) if the total of all subcontractor work is over \$20,000.

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



- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design-Build Contractor shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
- 11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights to dispute the ULCO amount, subject to Article 15.
- 11.10 Finality of Changes—Contractor. Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.
- 11.11 Audit of Changes—Owner. All Changes Orders are subject to audit by Owner or its representative at any time in accordance with Article 17.4 and Change Order amounts may be adjusted lower as a result of such audit.

Article 12. Project Completion and Acceptance

12.1 Closing Inspections.

- 12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR and A/E in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced, or conditions are not as represented on Contractor's list.
- 12.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.



- 12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR concurs with the determination of Contractor and A/E that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, insurance, and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.
- 12.1.2 Final Inspection. 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, 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, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. 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, ODR, A/E and Contractor will inspect the Work. A/E will submit to 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 A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.
- 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 Owner.
- 12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not



constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.

12.1.5 Additional Inspections.

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

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

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion or assessing the cost of additional inspections.

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate or notice.

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



12.3 Acceptance and Payment.

- 12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.
- 12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all Close-Out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.
- 12.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, certify their approval, and send to Owner.
- 12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by 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);
 - 12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;



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

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

12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to 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 Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the applicable warranty periods.

Article 13. Warranty and Guarantee

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

13.2 Call-Back Warranty Period. Except as may be otherwise specified or agreed and without limiting Contractor's warranty obligations arising under Section 13.1, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one (1) year from the date of Substantial Completion of the Work (the "Call-Back Warranty Period"). If Substantial Completion occurs by phase, then the Call-Back Warranty Period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Establishment of the Call-Back Warranty Period relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the nonconforming or defective Work that was discovered or reasonably discoverable during the Call-Back Warranty Period.

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 Contractor.

13.3.2 Normal wear and tear under normal usage after acceptance of the Work by 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 relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E;
 - 13.4.2 Recommendation to pay any progress or final payment by A/E;
 - 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
 - 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 13.4.5 Any acceptance by Owner or any failure to do so;
 - 13.4.6 Any review of a Shop Drawing or sample submittal; or
 - 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
- 13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.



Article 14. Suspension and Termination

- 14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work if, after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension 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) days' written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to sixty (60) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days' written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 14.3 Termination by Owner for Cause.
- 14.3.1 Upon thirty (30) days' written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
- 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;
- 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public Authority Having Jurisdiction, including ODR;
- 14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to



- ensure its completion within the time, or any approved extension thereof, specified in the Contract;
- 14.3.1.4 Failure to remedy defective work condemned by ODR;
- 14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 14.3.1.6 Persistent endangerment to the safety of labor or of the Work;
- 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
- 14.3.1.8 Any material breach of the Contract; or
- 14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Upon receipt of a termination notice, the Contractor or its surety has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 14.3.4 If at the conclusion of the thirty (30) day cure period the Contractor or its surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the 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 Owner's cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.
 - 14.3.4.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 14.3.4.3 This obligation for payment survives the termination of the Contract.
 - 14.3.4.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to



effect such assignment.

- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
- 14.5.1 Owner will notify Contractor and A/E in writing specifying the reason for and the effective date of the Contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any dispute in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all work.
 - 14.5.2.2 Place no further subcontracts or orders for materials or services.
 - 14.5.2.3 Terminate all subcontracts for convenience.
 - 14.5.2.4 Cancel all materials and equipment orders as applicable.
 - 14.5.2.5 Take appropriate action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
 - 14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits or lost business opportunities.
- 14.6 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public Authority Having Jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days' written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not 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, Contractor may not terminate the Contract.
- 14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may unilaterally determine the amount due to Contractor because of the termination and pay the



determined amount to Contractor.

Article 15. Dispute Resolution

- 15.1 Unresolved Contractor Disputes. To the extent that it is applicable, the dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, shall be used by Contractor to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described in these Uniform General Conditions or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 In any litigation between the Owner and the Contractor arising from this Contract or this Project, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.
- 15.5 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

Article 16. Certification of No Asbestos Containing Material or Work

- 16.1 Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 16.2 Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.
- 16.3 The Contractor shall insure compliance with the following acts from all of its subcontractors and assigns:
- Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
 - National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos);
 - Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection)

Article 17. Miscellaneous

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



- 17.2 Federally Funded Projects. On Federally funded projects, 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 Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 17.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
- 17.3.1 Accessibility and Administration.
- 17.3.1.1 When used, Owner will make the software accessible via the Internet to Project team members.
- 17.3.1.2 Owner shall administer the software.
- 17.3.2 Training. When used, Owner shall provide training to the Project team members.
- 17.4 Right to Audit.
- 17.4.1 Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, Owner, any successor agency and their representatives, including independent auditors, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with any party conducting the audit or investigation, including providing all records requested.
- 17.4.2 Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the terms of this Contract, the requirements of Owner, and with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and Owner's property for a period of four (4) years after the date of submission of a request for Final Payment or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice and for reasonable periods all documents and other information related to the Work of this Contract.
- 17.4.3 Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

End of 2022 Uniform General Conditions