



2010 Uniform General Conditions

Texas Tech University System Uniform General Conditions and Supplementary General Conditions for Construction Contracts [UGSC]

The Texas Tech University System has incorporated its Supplementary Conditions that apply to all Texas Tech System and member institution construction projects into the Uniform General Conditions promulgated by the Texas Facilities Commission (2010 edition). Material changes are indicated by the bold typeface shown here; however, deleted provisions of the Texas Facilities Commission's Uniform General Conditions are not included in the Texas Tech System Uniform General Conditions and Supplementary General Conditions [UGSC]. All users are advised to read and understand this entire document.

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Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein. Capitalized terms not defined herein shall have the meaning assigned to such terms in the Agreement or any Special Conditions.

- 1.1 ***Agreement*** means the contract between Texas Tech and the Contractor that is part of the Contract Documents.
- 1.2 ***Agreement Amendment*** means an amendment to the Agreement. Reference Article 11.
- 1.3 ***Allowance(s)*** means a fixed sum for a specific portion of the Work used when the exact character or quality of an element of the Work is not known. The Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Unless otherwise provided in the Contract Documents (1) Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts; (2) Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum but not in the Allowances; and (3) whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. Any unused Allowance will be required to be moved to Owner's Contingency and will not be allowed to be moved to Buyout Contingency.
- 1.4 ***Alternates*** means all project scopes identified by Texas Tech to be separated (materials and labor costs) from base services in an attempt to evaluate costs relative to project scope.
- 1.5 ***Applicable Law (Applicable Laws)*** means all laws and relevant designated authorities having statutory enforcement authority related thereto, expressly including the laws of the state of Texas, 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 Contract, 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 Tech University System 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.

1.6 *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. **The application shall include, but not limited to the following items:**

- **Signed Voucher/Invoice**
- **Schedule of Values/Backup**
- **Construction Payment Affidavit**
- **Waiver/Release Form**
- **HUB PAR**
- **Current Construction Schedule**
- **Payment Projection Form**
- **Allowance Log matching GMP**
- **Tool Log**
- **Landscape Enhancement Log**
- **Approved CCP Backup tied to this AFP**
- **Subcontractor partial lien waivers monthly**
- **Worker Wage Rate Form**
- **Stored Materials – Refer to Article 10**
- **At fifty (50) percent Billing-Updated HSP**
- **At one hundred (100) percent Billing-Updated HSP**

1.7 *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.

- 1.8 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural **and**/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.
- 1.9 *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, **using longest duration methodology**, durations and necessary predecessor conditions that drive the end date of the schedule. **The Baseline Schedule shall include commissioning and functional testing of all building automation systems (BAS), lighting control systems, and all activities such as TAB, Commissioning, installation of all IT, AV, wireless devices, security systems, access controls installation and functional testing.** The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.10 *Buyout Contingency* – reference Article 11.
- 1.11 *Buyout Contingency Log* means a written report identifying all variances between estimated and actual costs.
- 1.12 *Certificate of Final Completion* means the certificate **or other written notification** 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.
- 1.13 *Certificate of Substantial Completion* means the certificate executed by the A/E, Owner, and Contractor that documents to the best of A/E's and Owner's knowledge and understanding, Contractor's Substantial Completion of the Work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.14 *Change Directive* is a written order (which may or may not be prepared or agreed to by the A/E) signed by the Owner, directing a change in the Work, including the performance of Work which Contractor disputes as being

included in its scope of the Work under the Contract Documents (“disputed Work”), prior to agreement on adjustment, if any, of the Contract Sum or Contract Time, or both. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work or the performance of disputed Work consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly (to the extent such adjustment is required by the Contract Documents). Owner may issue a Change Directive to accept a Construction Change Proposal (CCP) in whole or in part.

- 1.15 *Change Order* means a written modification **to the Agreement via amendment** of the Contract between Owner and Contractor, signed by Owner and Contractor.
- 1.16 *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.
- 1.17 *Competitive Sealed Proposal (CSP)* means the delivery method provided for pursuant to Texas Education Code 51.783, through which Texas Tech may select the best value Contractor under certain procurement criteria including but not limited to lump sum budget, schedule, project scope or other factors Texas Tech determines relevant to the project.
- 1.18 *Construction Change Proposal (CCP)* means a Contractor generated document, in response to a Construction Change Request (CCR), Proposed Change Order (PCO), or Change Directive in such form to clearly detail associated costs as required for approval using the e-Builder CCP process.
- 1.19 *Construction Change Request (CCR)* means a document which describes a proposed change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor, Owner, and A/E of the nature of the proposed change. All CCR’s require ODR’s approval via the CCP process. CCR’s do not increase the contract amount. They are funded with allowances or contingencies within the GMP.
- 1.20 *Contract* means the entire Agreement between Owner and Contractor, including all of the Contract Documents.
- 1.21 *Contract Date* is the date when the Agreement between Owner and Contractor becomes effective.
- 1.22 *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, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.

- 1.23 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.24 *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.
- 1.25 *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 **(this includes a Contractor selected via a CSP delivery method). To the extent contracts other than construction contracts incorporate these Uniform General Conditions and Supplementary General Conditions, and to the extent appropriate under the terms of the particular type of contract in question, the term Contractor means the party Texas Tech is contracting with (e.g., A/E, Testing and Balancing Agent, Commissioning Agent).** The Contract Documents refer to Contractor as if singular in number.
- 1.26 *Contractor's Contingency (CM Contingency)* means an amount included in the **Guaranteed Maximum Price (GMP) for increases approved at the sole discretion of Texas Tech in the Cost of the Work for costs incurred by the Construction Manager for changes in the market place and for unforeseen causes or details not anticipated by the Construction Manager at the time of the execution of the amendment approving the Guaranteed Maximum Price and for which the Construction Manager is not entitled to an increase in the Guaranteed Maximum Price under the Contract Documents. The Construction Manager may use the Construction Manager Contingency only with the prior written approval of Texas Tech, who retains final discretionary authority for approval of use of the Construction Manager Contingency. The Construction Manager shall report to Texas Tech the status of the Construction Manager Contingency with each Application for Payment. Texas Tech will not increase the Construction Phase fee for any funds approved by Texas Tech and expended from the Construction Manager Contingency.**
- 1.27 *Construction Documents* mean the Drawings, Specifications, and other documents **including any applicable Addenda** issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

- 1.28 ***Construction Manager-Agent (CMA)* means a sole proprietorship, partnership, corporation, or other legal entity that acts as a fiduciary and provides consultation to Texas Tech regarding construction, rehabilitation, alteration, or repair of a facility. The term “Construction Manager-Agent” is defined in section 51.781 Tex. Educ. Code (as amended or modified).**
- 1.29 ***Construction Manager-at-Risk (CMAR)*, in accordance with section 51.782 Tex. Educ. Code (as amended or modified), 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 the **prime Contractor, enters into an Agreement with the Owner**, and provides consultation to Owner regarding construction during and after the design of the facility.**
- 1.30 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.31 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.32 ***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 section 51.780 Tex. Educ. Code (as amended or modified).**
- 1.33 ***Design Professional (DP)* as used in the Agreement means the Architect/Engineer (A/E).**
- 1.34 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.35 ***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. The Contractor shall obtain Final Completion by correcting all identified deficiencies for Owner acceptance within thirty (30) days.**
- 1.36 ***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.**
- 1.37 ***Historically Underutilized Business (HUB)* pursuant to Tex. Gov’t Code, Chapter 2161, means a business that is at least **fifty-one (51) percent** 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.**

- 1.38 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.39 *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.
- 1.40 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner. **The term “Owner” or “Texas Tech” herein refers to the Board of Regents of the Texas Tech University System or other applicable Texas Tech University System component institutions as identified in the Contract.**
- 1.41 *Owner’s Contingency* means an amount, if any, that is included in the Base Proposal for authorizing additional Work in connection with the Project. **The use thereof requires the written approval or directive of the ODR by Change Order or Change Directive. Any unused amount from the Owner’s Contingency will be returned to the Owner.**
- 1.42 *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 authorized to direct changes to the scope, cost, or time of the Contract.
- 1.43 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.44 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of **all Owner’s requirements and** all Contract and warranty obligations.
- 1.45 *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. **The documents used to define a Proposed Change Orders will be a Construction Change Request.**
- 1.46 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.47 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect’s Supplemental

Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.

- 1.48 *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.
- 1.49 *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.
- 1.50 *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.
- 1.51 *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.
- 1.52 *Site* means the geographical area of the location of the Work.
- 1.53 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.54 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.55 ***State* means the state of Texas.**
- 1.56 *Subcontractor* means a business entity **or individual** that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.57 *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.
- 1.58 ***Submittal Schedule* means a schedule that correlates with the Baseline Schedule that shows the dates the Contractor intends to submit the required submittals to the A/E or ODR. This schedule should be part of the Baseline Schedule so that submittals that affect the critical path are clearly identified.**

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- 1.59 *Substantial Completion* means the date determined and **declared** 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. **The project must be fully commissioned with functional testing complete for the Building Automation Systems (BAS), Security, Lighting Control Systems, Audio/Visual Systems and must include ADA/TAS inspections. The IT and Network cabling and wireless systems must be complete and verified.**
- 1.60 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. **Texas Tech’s Supplementary General Conditions are set out in these Uniform General Conditions and are in bold font.**
- 1.61 *TTUS* means the Texas Tech University System.
- 1.62 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.63 *Work* means the provision of all construction services, labor, materials, supplies, and equipment that are required of Contractor to complete the Project in strict accordance with the requirements of this Agreement. **Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from this Agreement. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.**
- 1.64 *Work Progress Schedule* means the continually updated time schedule **based on Baseline 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.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with **Applicable Law, including** 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 comply with Applicable Law regarding prevailing wages on public works project (“Prevailing Wage Law”).** 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. **When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.**
- 2.2.1.1 **Pursuant to Tex. Gov’t Code § 2258.024, Contractor shall keep on Site, true and accurate records showing the name and occupation of each worker employed by the Contractor or Subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.**
- 2.2.1.2 **With each application for progress payment, Contractor shall 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.

- 2.2.1.3 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Ch. 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.

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.

- 2.2.1.4 **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), **or such greater amount if required by Applicable Law**, 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 Article 2, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.
- 2.2.3.5 **Arbitration Required if Violation not Resolved.** After Texas Tech makes its initial determination, the affected Contractor or Subcontractor and worker have fourteen (14) days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Texas Tech or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker's claim, the Contractor shall promptly notify Texas Tech in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the fifteenth (15th) day after Texas Tech's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rev. Code. The parties to the arbitration have ten (10) days after the expiration of the fifteen (15) days referred to above, to agree on an arbitrator; if by the eleventh (11th) day there is no agreement to an arbitrator,

a district court shall appoint an arbitrator on the petition of any of the parties to the arbitration.

2.2.3.6 **Arbitration Award.** If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided in Article 2 thereof and the amount owed the worker. Texas Tech may use any amounts retained under Article 2 to pay the worker the amount as designated in the arbitration award. If Texas Tech has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorney's fees and costs and court costs. The Contractor shall promptly furnish a copy of the arbitration award to Texas Tech.

2.2.3.7 **Prevailing Wage Retainage.** Money retained pursuant to Article 2 shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the agreement of the claimant and the Contractor or Subcontractor affected, or in the arbitrator's award. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that Texas Tech shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement, or the arbitration award as provided under Article 2.

2.3 **Choice of Law; Venue for Suits.** The Contract Documents shall be governed by and construed in accordance with Applicable Law and without regard to its conflict of laws principles. Provided the dispute resolution requirements of Article 15 of the Uniform General Conditions are met, venue and jurisdiction over any suit brought for breach of contract for this Project shall be in the court of competent jurisdiction in the county designated in the Agreement. If venue is not designated in the Agreement, venue shall be Lubbock, Lubbock County, Texas.

- 2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of **Applicable 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. **Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save Texas Tech harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or proposal or performance of the Work or otherwise arising in connection therewith. Texas Tech reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless Texas Tech from all costs and expenses, including reasonable attorney's fees, costs and judgments, arising from such defense.**
- 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.
- 2.7 Compliance with Laws. **In the execution of the Contract Documents and the Work, the Contractor shall comply with all Applicable Law, including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection, energy and water conservation and consumption, and prevailing wage rates. The Contractor shall make itself familiar with and at all times shall observe and comply with all Applicable Law which in any manner affect the conduct of the Work. The Contractor shall indemnify and save harmless the State and its official representatives against any claim arising**

from violation of any Applicable Law by itself, its Subcontractors, and its employees. Except where expressly required otherwise by Applicable Law, neither Texas Tech nor the A/E shall be responsible for monitoring Contractor's compliance with any laws or regulations.

2.7.1 The Contractor shall cooperate with city or other governmental officials at all times where their jurisdiction applies. The Contractor shall make application, pay all fees, and provide supporting documentation necessary to secure permits, which are required for the performance of the Contract Documents and the Work. Contractor has a continuing obligation throughout the term of the Contract to conduct its operations under duly issued permits and, in the event Contractor loses or has revoked a necessary permit, Contractor must take immediate steps to apply for and receive another permit.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by 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. ODR has the express authority to act and bind Owner to the extent and for the purposes described in the **Agreement and these Uniform General and Supplementary Conditions**, 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.
- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
- 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
- 3.1.3 Owner Supplied Materials and Information.
- 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.

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- 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
- 3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities.
- 3.1.5 Limitation on Owner's Duties.
- 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in **Article 2**, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
- 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.
- 3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written 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 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 **Article 3**, 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 **Construction** Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Construction 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 Laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, **security**, 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 Punchlist items are completed until Final Completion.**

- 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 and other provisions of the Contract, and as outlined in the Preconstruction 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 Supplementary General Conditions.
- 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.
- 3.3.3.1 **SEX OFFENDER REGISTRATION. Contractor agrees to provide the following notice to all of its employees and Subcontractors who may work on any campus of Texas Tech University System:**
- ALL SEX OFFENDERS ARE REQUIRED TO REGISTER WITH LOCAL LAW ENFORCEMENT AUTHORITIES UNDER CHAPTER 62 OF THE TEXAS CODE OF CRIMINAL PROCEDURE AND WHO INTEND TO WORK OR CARRY ON A VOCATION (FULL-TIME OR PART-TIME) ON ANY CAMPUS OF THE TEXAS TECH UNIVERSITY SYSTEM FOR A CONSECUTIVE PERIOD EXCEEDING FOURTEEN (14) DAYS OR FOR AN AGGREGATE PERIOD EXCEEDING THIRTY (30) DAYS IN A CALENDAR YEAR. SEX OFFENDERS ARE REQUIRED TO REGISTER (OR VERIFY REGISTRATION) WITH THE TEXAS TECH POLICE DEPARTMENT IN ACCORDANCE WITH ARTICLE 62.153 OF THE TEXAS CODE OF CRIMINAL PROCEDURE WITHIN SEVEN (7) DAYS OF BEGINNING WORK ON ANY CAMPUS OF THE

TEXAS TECH UNIVERSITY SYSTEM. IN ADDITION, SUCH SEX OFFENDERS ARE REQUIRED TO NOTIFY THE TEXAS TECH POLICE DEPARTMENT WITHIN SEVEN (7) DAYS OF TERMINATING WORK ON ANY CAMPUS OF TEXAS TECH UNIVERSITY SYSTEM. FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE TEXAS TECH POLICE DEPARTMENT, 2901 4TH ST., LUBBOCK, TX 79409, 806-742-3931.

- 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.
- 3.3.4.1 **The Contractor or Construction Manager-at-Risk may use, at no cost, the existing Texas Tech campus utility infrastructure to perform the Work, including construction, start-up testing, and commissioning. The Contractor or Construction Manager-at-Risk shall be responsible for all other utility costs including connection charges. In all cases, the Contractor or Construction Manager-at-Risk shall be responsible for utility costs related to all jobsite offices.**
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. **Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.**
- 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 by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.6.1 **The approval of Work by either the A/E or ODR does not relieve the Contractor from compliance with all requirements of the Contract Documents where such**

requirements are not judged at the time of observation of the Work due to Work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.

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. **Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the Owner accept a bid or proposal from a Subcontractor but the Owner requires another bid or proposal to be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of Owner's requirement to select another bid or proposal rather than the one recommended.**

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.

- 3.3.7.3 **Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the applicable terms and conditions of the Contract Documents for the benefit of Texas Tech. Texas Tech reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and suppliers as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between Contractor and Subcontractor or supplier.**
- 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 **their** 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 Indemnification of Owner. **To the fullest extent permitted by Applicable Law, including Chapter 151 of the Texas Insurance Code, Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Owner and the elected and appointed officials (including but not limited to the Board of Regents of the Texas Tech University System), employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the**

Owner directly or indirectly arising out of, resulting from or related to Contractor's negligent or wrongful (in violation of the terms of the Contract or of Applicable Law) activities under this Contract, including any negligent or wrongful acts or omissions of the Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor (of any tier) of the 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 DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, its officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 3.3.11.1 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.3.11.2 Contractor shall promptly advise Owner in writing of any claim or demand against Owner, **including but not limited to employees or other representatives of Owner**, or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.

3.3.12 **Infringements.**

- 3.3.12.1 **Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third-party claims involving infringement of United States patents, copyrights, trade, and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- 3.3.12.2 **Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (1) use of the product or service for a purpose or in a manner for which the product or service was not designed, (2) any modification made to the product without Contractor's written approval, (3) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (4) any intellectual property right owned by or licensed to Customer, or (5) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.**
- 3.3.12.3 **If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense, (1) procure for the Customer the right to continue to use the affected portion of the product or service, or (2) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.**

3.3.12.4 **Taxes/Workers' Compensation/Unemployment Insurance-
Including Indemnity.**

3.3.12.4.1 **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

3.3.12.4.2 **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS'**

COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

3.3.12.6 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.

3.3.13 Ancillary Areas. Operate and maintain operations and associated storage areas at the Site of the Work in accordance with the following:

3.3.13.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by Owner.

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

3.3.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by

appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.

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

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

3.3.14.1 **When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract. The Contractor shall cooperate with the separate contractors and Texas Tech's own forces. This Contractor shall properly connect and coordinate its Work with the Work of the separate contractors as defined in these Contract Documents. If any part of this Contractor's Work depends for proper execution or proper results on the Work of any of the separate contractors, the Contractor shall inspect and promptly report in writing to the ODR any visually apparent discrepancies or defects found in such other Work that render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report the visually apparent discrepancies or defects shall constitute an acceptance of the separate contractor's Work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the separate contractor's Work after the execution of this Contractor's Work.**

3.3.14.2 **Should this Contractor cause damage to the Work or property of any separate contractor on the Project, this Contractor shall, upon due written notice, endeavor to settle with the separate contractor by agreement. If such separate contractor does not settle with this Contractor, Texas Tech shall initiate a dispute resolution process and each party to the dispute shall be financially accountable**

for any damages or loss based on their proportionate fault determined by the dispute resolution process.

- 3.3.14.3 **Texas Tech shall provide for coordination of the activities of Texas Tech's own forces and of each separate contractor with the Work of this Contractor, who shall cooperate with them. This Contractor shall participate with other separate contractors and Texas Tech in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to its construction schedule as necessary, after receiving Texas Tech's instructions.**
- 3.3.15 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by Change Order.
- 3.3.16 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.
- 3.3.17 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.
- 3.3.18 **This Contractor shall afford Texas Tech, the A/E, the separate contractors and Texas Tech's own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work.**
- 3.3.19 **Protection of Existing Facilities. The Contractor shall take precautions to protect existing facilities and features within the designated construction limits and along the access to the construction Site. After materials, equipment and machinery are installed, the Contractor shall properly protect all Work until substantial completion is issued by Texas Tech and the A/E. Any damages incurred as a result of the Contractor's negligence shall be repaired by the Contractor without cost to Texas Tech, whether the repair is made with the Contractor's own materials and labor or by others under his directions.**

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).
- 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. § 20.13(b) 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. § 20.14(a)(2)(A) 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://www.tfc.texas.gov/divisions/facilities/prog/construct/formsindex/> (titled “HUB Subcontracting Plan Progress Assessment Report (HUB-PAR)” in the Forms Index Library on the Facilities Design & Construction page of the Texas Facilities Commission website.)
- 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. § 20.14(a)(1).
- 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 **Article 5** 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 warranty period.
- 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 and (1) fails to execute the GMP; or (2) fails to deliver the required payment and performance bonds within the time period stated below. **Contractor must submit a five (5) percent security bond with their RFP.**
- 5.1.3 When Bonds Are Due.

- 5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.
- 5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.
- 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 there under 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 his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his 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), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

5.1.9.1 **Each bond shall be executed by a corporate surety or corporate sureties that are on the approved list of the United States Department of Treasury, Fiscal Service (Dept. Circular 570 latest edition) “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies,” Sections 9304 through 9308 of Title 31 of the United States Code, as amended or modified. Surety Companies Acceptable on Federal Bonds and duly authorized to do business in the State of Texas, on forms approved by the Attorney General of Texas. All sureties must be acceptable to Texas Tech. Attorneys-in-fact who sign Proposal/Bid Bonds or Contract Bonds must file with each bond a certified and effectively dated copy of their power of attorney.**

- 5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. 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 shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14. **Once Substantial Completion is reached, insurance required under this provision will no longer be considered an approved general condition on the project; however, nothing herein shall alter the Contractor’s obligation to maintain insurance as provided herein.**

- 5.2.2 **Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.**
- 5.2.3 **Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.**
- 5.2.4 **The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.**
- 5.2.5 **The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.**
- 5.2.6 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated **A** or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.
- 5.2.6.1 Insurance Coverage Required.
- 5.2.6.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act (**Part A**), with the policy endorsed to provide a waiver of subrogation as to Owner, employer's liability insurance (**Part B**) of not less than:
- \$1,000,000 each accident;
- \$1,000,000 **by** disease each employee; and
- \$1,000,000 **by** disease policy limit.
- 5.2.6.1.2 Commercial General Liability Insurance (**CGLI**). Including premises, operations, independent contractor's liability, **pollution (contamination, cleanup, and disposal)**, 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 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 (**per Project**);

\$300,000 Damage to Premises Rented to You; and

Coverage shall be on an "occurrence" basis. **Claims-made forms are not acceptable.**

Unless covered by a separate policy, CGLI coverage shall include coverage extended to apply to **pollution (if approved by Owner)**, explosion, collapse, and underground hazards. The policy shall include endorsement CG25030509 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.

5.2.6.1.3

Contractors Pollution Liability Insurance, including coverage for bodily injury, property damage, business interruption, crisis management, transportation liability, as well as cleanup costs associated with toxic materials and/or hazardous pollutants.

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

Minimum limit requirement of coverage may increase based on scope and magnitude in the sole and complete discretion of the Owner.

5.2.6.1.4

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 **\$5,000,000** 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 Special Form Builder's Risk or Special Form installation floater (e) is not required.

Business Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No

aggregate shall be permitted for this type of coverage.

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

5.2.6.1.5 **All-Risk Builder's Risk Insurance (Special Form Builder's Risk Insurance)**, if applicable (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be all-risk, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm, **and include terrorism coverage per TRIA 2002**. Builder's Risk and installation floater limits shall be equal to **one hundred (100)** percent of the Contract Sum plus, if any, existing property, and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

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

5.2.6.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.6.1.5.3 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.

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- 5.2.6.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional Builder's Risk insurance requirements.
- 5.2.6.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- 5.2.6.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
- 5.2.6.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
- 5.2.6.1.5.8 Builder's **Risk** insurance policy shall remain in effect until Substantial Completion.
- 5.2.6.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for, and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage **is lacking, or** limits are insufficient or exhausted.

5.2.6.1.6.1 The Contractor shall provide, at a minimum, the following Coverage Limits:

- a. When Contract Amount is \$3,000,000 or less, an Umbrella Policy of \$3,000,000 each occurrence and \$3,000,000 annual aggregate.**
- b. When Contract Amount is greater than \$3,000,000, but less than \$5,000,000, an Umbrella Policy of \$5,000,000 each occurrence and \$5,000,000 annual aggregate.**
- c. When Contract Amount exceeds \$5,000,000, an Umbrella Policy of \$10,000,000 each occurrence and \$10,000,000 annual aggregate.**

5.2.7 Policies must include the following clauses, as applicable:

- 5.2.7.1 Policy must be endorsed by the carrier to provide thirty (30) days written notice in the event of cancelation, material change, or non-renewal.**
- 5.2.7.2 It is agreed that Contractor's insurance shall be endorsed to be to primary and non-contributory with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract with Owner.**
- 5.2.7.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. Policies must be endorsed to add Owner as additional insured for ongoing operations and completed operations. This is not applicable to workers' compensation policies.**

- 5.2.7.4 **Policies must be endorsed to provide a** waiver of subrogation in favor of Owner.
- 5.2.8 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. 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.
- 5.2.9 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.
- 5.2.10 **The furnishing of the above listed insurance coverage, as may be modified by Supplementary General Conditions or Special Conditions, must be tendered prior to execution of the Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond. The Contractor shall not commence the Work until it has obtained all required insurance and "certificates of insurance" and copies of all policies and endorsements have been filed with and reviewed by Texas Tech. Acceptance of this information by Texas Tech shall not relieve or decrease the Contractor's liability. All required insurance must list Texas Tech as Additional Insured.**

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, **electronic copies of the Construction Documents.**

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 (**or Owner's property if the rights to the instruments of service have been conveyed to the Owner**). 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 **unless otherwise specified in the A/E Contract.**

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

6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist 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) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials **and workmanship**); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control **and more specific requirements shall govern over general requirements.** 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 report to ODR and to A/E the discovery of any apparent error, omission, or inconsistency in the Contract Documents prior to execution of the Work.
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional unless it is performing as a Design-Build firm.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with Applicable Laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, 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 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.
- 6.1.6.5.1 **Clarification(s) of project scope shall be requested from the A/E in the form of Requests for Information (RFI). Failure to consult with the ODR and A/E does not release the Contractor from their contracted responsibilities to complete the Work to Texas Tech's satisfaction.**
- 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies 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. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

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 including** Drawings, Specifications **and other materials** which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available 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.
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide electronic media **copies** of all Record Documents, unless otherwise required by the Supplementary General Conditions or 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.

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 Laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury, or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2 Notices. Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets (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.

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- 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.

7.6.1 **All trench excavations shall be performed in full compliance with OSHA Regulations. It is the Contractor's responsibility to comply with any additional requirements resulting from any Preconstruction Conference relating to coordination of geotechnical investigation subjects.**

7.7 **Hazardous Contaminates.** Soil or other materials to be imported for use on any Texas Tech University System Project must meet the Requirements set forth by the U.S. Environmental Protection Agencies Resource Conservation and Recovery Act (EPA RCRA) Regulation as stated under 40 CFR 261.24 (which covers the Toxicity Characteristic for the listed chemicals). The testing of the soil or other materials will show these constituents through the TCLP testing method (metals and pesticides), BTEX testing method (volatile organic compounds), and TPH testing method (Total Petroleum Hydrocarbon). Other variables may come into consideration and depending on the source of the soil material we may require other tests as necessary.

The link to the maximum concentration of contaminants for the toxicity characteristic is

<http://www.gpo.gov/fdsys/granule/CFR-2011-title40-vol26/CFR-2011-title40-vol26-sec261-24>.

If upon discovery of these hazardous contaminates, the Contractor is responsible for notifying Texas Tech and providing their intent for removal of the contaminants.

7.8 **Some metal components may have inherently hazardous characteristics or contain hazardous characteristics. The metals of interest are the eight listed by the Resource Conservation and Recovery Act (RCRA): arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. The Contractor is responsible for following all Environmental Protection Agency Laws when disposing of these potentially hazardous metals to prevent leaching and contamination of underground water supplies.**

Upon discovery of these metals, the Contractor is responsible for disclosing to Texas Tech their intent for removal of the metal components. The Contractor may retain the metal for reuse, or otherwise accept the metal components as salvageable property. The items may also be sent to a metal's recycler. Whichever option is chosen, the Contractor must inform Texas Tech of their intentions, in writing, prior to the start of the project. The Contractor must indicate their proposed method for disposal or recycle. If the recycling option is elected, the types and quantities of materials recycled must be reported to Texas Tech by providing copies of the weight tickets from the recycler.

If the recycling method is chosen, the Contractor is permitted to retain all recycling fees collected from their abatement work associated with project demolition or scheduled project materials removal, however, Texas Tech will not award additional compensation to the Contractor for their efforts associated with the removal of hazardous metal components from Texas Tech facilities or properties.

7.9 **Disposal of Fluorescent Lamps.** Some lamp tubes in fluorescent light fixtures may have materials inside them that would be classed as a hazardous waste. The Contractor is responsible for following all Environmental Protection Agency Laws when disposing of these potentially hazardous materials to prevent further depletion of the ozone and atmosphere. Texas Tech requires the Contractor to inform them in writing of their intention for removal and disposal of the hazardous waste materials. The options detailed below are acceptable means acknowledged by Texas Tech for the removal and/or recycle of hazardous gases:

7.9.1 If the Contractor intends to retain light fixtures for reuse, or otherwise accept the fixtures as salvageable property, the Contractor must inform Texas Tech of their intention, in writing, prior to the start of the project. In this case, there is no hazardous waste issue.

7.9.2 If the Contractor does not wish to retain the light fixtures as salvageable property, the Contractor will be required to carefully remove the fluorescent lamps and ballasts from the light fixtures so as not to break any fluorescent lamps and place them in containers provided by the Texas Tech. The containers shall be stored in a location and manner to prevent spillage, tampering, damage, or exposure to weather or other potentially detrimental conditions. Upon notification of the completion of the collection process, Texas Tech will schedule for pickup of the containers and make proper disposition of them. The remainder of the light fixture shall be recycled by the Contractor as a painted metal surface.

- 7.10 **PCB Light Ballasts.** The Texas Department of Health will not authorize the disposal of light ballasts containing PCB's or small PCB capacitors in municipal landfills. If a light ballast is not labeled "No PCB's", then it must be considered as having PCB's and must be disposed of as follows:
- 7.10.1 **If, upon acknowledgement from Texas Tech the Contractor intends to retain the light fixture for reuse, or otherwise accept the fixtures as salvageable property, there are no hazardous waste requirements. Before removing the light ballasts from the campus, the Contractor shall provide a letter, addressed to Texas Tech stating their intention to reuse or recycle the light ballast.**
 - 7.10.2 **Light fixtures that are not accepted for salvage by the Contractor are to have the ballast removed by the Contractor and returned to Texas Tech for recycle/disposal/salvage or reuse. All such ballasts will be placed in Contractor-provided open-top 55-gallon metal drums (DOT / UN reference marking 1A2/Y1.2/100) by the Contractor and delivered to Texas Tech for disposal as directed by the Project Manager at the time of the Preconstruction Conference. The remainder of the light fixture shall be recycled by the Contractor as a painted metal surface.**
 - 7.10.3 **For the purpose of construction projects at Texas Tech all fluorescent lamps associated with renovations or maintenance construction projects of Texas Tech facilities shall be considered to contain hazardous materials.**
- 7.11 **Fire Protection Procedures.** Contractor shall maintain compliance with all Life/Safety Code requirements throughout the duration of the Construction Contract and take precautions to prevent potential fire hazards at the jobsite. Contractor shall adhere to the preventative fire protection procedures of the authorities having jurisdiction (e.g., Texas Tech Fire Marshal) and instruct all associated Subcontractors, skilled tradesmen, contractors, material men, suppliers and/or laborers of the procedures for preventative fire measures.
- 7.12 **All campuses of the Texas Tech System are designated 'Smoke Free' environments. Due to State health, sanitation and safety regulations, tobacco products are not permitted to be consumed by construction personnel in any Texas Tech facilities, occupied or unoccupied, including mechanical and other service spaces within the Texas Tech System. Care shall also be taken to avoid smoking near outside air intakes. The General Contractor shall be responsible for enforcing this policy on the construction Site.**

- 7.13 **The Contractor shall not operate Owner’s existing equipment without Owner’s prior written consent. When operation is necessary to accomplish the Work of the Contract, the Contractor shall notify the ODR who will arrange for Texas Tech personnel to operate the equipment.**

Article 8. Quality Control

- 8.1 **Materials & Workmanship.** Contractor shall execute Work in a good and workmanlike manner 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.
- 8.1.1 **Texas Tech reserves the right to observe, at their sources or on the Project Site or any off-site storage location, all materials, supplies or services not manufactured or performed within the Contractor's on-site facility. Such observation shall not constitute acceptance, nor shall it replace a Contractor's responsibility to furnish acceptable materials.**
- 8.1.2 **Materials Procurement.** The Contractor shall order and schedule delivery of materials expeditiously to avoid delays in construction and maintain the Baseline Schedule for project delivery. If an item is found to be unavailable, Contractor shall notify the A/E immediately to permit mutual selection of suitable substitute(s). If Contractor fails to order materials in ample time to avoid delays in construction, an approved material shall be substituted at no extra cost to Texas Tech. Or, at the A/E's discretion, approval of a substitute will be given only upon agreement by the Contractor to remove substituted material at a later date agreeable to Texas Tech and replace it at Contractor's expense with material originally specified. Such approval shall be subject to the same terms as for "Substitutions".
- 8.1.3 **Manufacturer's Instruction.** All manufacturer's articles, materials and equipment shall be applied, installed, connected, erected, secured, used, cleaned, and put in operation as recommended, instructed, directed or specified by the manufacturer, for the specified type of installation.
- 8.1.4 **Materials Storage.** The Contractor will be allowed space on the grounds for the storage of materials, but the Contractor shall provide all necessary enclosures, doors and locks, and shall be solely responsible for the safekeeping of all materials, tools, etc., stored therein. Such storage facilities shall be moved when so directed by the A/E or ODR at the Contractor's expense. After completion of the Work, storage facilities and all connected utilities shall be completely removed, and all materials taken from the premises.

- 8.1.5 **Building Codes and Standards. Design, materials, and construction shall conform with applicable requirements of the most current adopted editions by the local municipality (unless noted otherwise) and the State Energy Conservation Office (SECO).**
- 8.1.6 **In instances of conflict between the building codes and standards mentioned above, the Code or Standard having the more stringent requirement(s) shall govern over the other codes and/or standards. All standards derived from conformance with the building codes and standards documents listed in the REFERENCE STANDARDS attachment shall be considered as comprehensively included in the Contract Sum. Requests for additional compensation by the Contractor to resolve code discrepancies will not be permitted for changes to make the Work comply with the regulations of the documents mentioned previously. Nothing in the Construction Documents should be construed by the Contractor as a permit to perform Work not in conformance with the aforementioned building codes and standards.**
- 8.1.7 **Contractor Quality Control. Contractor is responsible for the quality of the Work as set forth in the Contract Documents.**
- 8.2 Testing.
- 8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:
- 8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

- 8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
- 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
- 8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
- 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
- 8.2.3.5 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.
- 8.2.3.6 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.
- 8.2.3.7 **Contractor's Testing**. **Nothing contained herein is intended to imply that the Contractor does not have the right to have tests performed on any material at any time for its own information and job control so long as Texas Tech is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence over these procedures.**
- 8.2.4 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.

- 8.2.5 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.
- 8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to **observe**, 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 will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
- 8.3.1.1 Contractor shall within twenty-one (21) 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, materials Samples, materials 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. 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. Submit the updated

Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the **Preconstruction Conference** and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

- 8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data **to the extent possible from existing conditions and design information provided by A/E prior to fabrication**; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 8.3.1.5 **Submittals defined include Conditions of Site reports, Contractor's Construction Schedule(s), Contractor's Submittal Schedule(s), Product Data, Shop Drawings, Samples and Options Selections, Integrated Drawings, Field Reports, Certificates of Compliance, Project Photographs, Electronic 'as built' drawings, Requests for Information (RFI) and Change Requests (CR). The method of submission for review will be determined in the Preconstruction meeting. Upon receipt of the submittals, shop drawings, samples manufacturer's information and other documentation, the A/E will review items for**

accuracy and conformance to the project Construction Documents, within the allocated time frame agreed to by the A/E and Texas Tech.

8.3.1.5.1 Distribution of copies to A/E, Texas Tech and Contractor's Subcontractors, suppliers, and manufacturers is to be provided by the Contractor.

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.

8.3.2.1 Contractor's Responsibilities. Contractor's responsibility for errors and omissions in submittals is not relieved by the A/E's and Texas Tech's reviews of submittals. Contractor's responsibility for deviations in submittals from requirements of Construction Documents is not relieved by the A/E's and Texas Tech's reviews of submittals, unless A/E and Texas Tech give written acceptance of specific deviations. The Contractor must provide notice to the A/E and ODR, in writing at time of submission, of deviations in submittals from requirements of Contract Documents, including, if applicable, notification of changes in the Work as required by Article 3 of the Uniform General Conditions and Supplementary General Conditions.

8.3.2.2 The A/E will note discrepancies, substitutions, and inaccuracy. Upon receipt of items related to interior finishes, the A/E will promptly forward those items to Texas Tech's ODR, prior to the A/E's review, so that interior finishes reviews are expedited by Texas Tech. Once the A/E has completed formal review, the A/E is responsible for uploading the final approved Submittal in e-Builder.

- 8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. 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 **Article 8**. Construct all such Work in accordance with reviewed submittals. Comments incorporated as part of the review in **Article 8** 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.
- 8.3.4.1 **Shop Drawings will be marked with Texas Tech's project name, project number, and pages numbered consecutively. Each detail and drawing will give reference to appropriate sheet and detail number from Contract Documents. Prior to the A/E's review, Shop Drawings shall be reviewed by Contractor and shall bear his stamp stating drawing has been checked for conformance with the Contract Documents, pending the A/E's review. Any drawings submitted without Contractor's stamp will not be considered. If shop drawings show variations from requirements of Contract because of standard shop practice or other reason, Contractor shall make mention of such variation in his letter of transmittal. The Contractor will not be relieved of responsibility for executing the Work in accordance with the Contract even though such Shop Drawings have been reviewed. Shop Drawings will not be considered approved unless the Contractor, A/E and Texas Tech's stamps appear on them.**
- 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 **paragraph**. 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.

8.3.7 **Product Data. Product Data will be marked with Texas Tech's project name, project number, and pages numbered consecutively. Clearly mark each copy to identify pertinent materials, products, or models. Show dimensions and clearances required. Show performance characteristics and capacities. Show wiring diagrams and controls. Product data includes standard information on materials, products, and systems; not specifically prepared for this project, other than the designation of selections from among available choices printed therein. Product Data shall be submitted at one time in sufficient copies to the A/E for approval and transmittal to Texas Tech for review.**

8.3.7.1 **The Contractor shall submit Material Safety Data Sheets (SDS) for all materials provided, installed, and/or utilized in this Project for review by the A/E and Texas Tech or its designated representative. The Contractor will not be permitted to bring any material(s) onto Texas Tech University System property until the A/E and Texas Tech have reviewed such SDS information and are satisfied the materials(s) are in compliance with Applicable Laws, ordinances, regulations, and policies. The A/E's and ODR's review of SDS information shall not constitute acceptance, nor shall it release the Contractor from its obligation to furnish acceptable materials.**

8.3.8 **Samples.** Samples will be marked with Texas Tech's project name and project number and include a label indicating generic name of item, manufacturer's name and model number, brand name, supplier's name and the Subcontractor's name for which material is intended. Contractor shall accompany each shipment of samples with a transmittal referencing project for which intended and listing sample data enumerated above for each sample transmitted and referencing samples to appropriate contract drawing sheet or to Specification Division. Approval of any sample will be only for characteristics or for uses named in such approval and for no other. Approval of a sample shall not be taken to change or modify any Contract requirements. When a material has been approved, no change in brand or make will be permitted. Materials and products on the job to be installed in the project shall be in original containers and bear the original labels of approved samples. The A/E and Texas Tech, at their sole discretion, may retain certain approved samples for reference and catalog. Contractor shall submit color samples in same manner as for material samples and in one package at one time.

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.

8.4.1.4 **Mock-up samples shall be submitted as required by the Specification Division. The approved mock-up samples shall be dated, initialed by persons present for approval, clearly identified, and remains protected on the jobsite until project completion and acceptance. Contractor's**

failure to protect and maintain the approved samples shall not relieve him from the responsibility of furnishing and installing finish brick, pavers, or mock-ups to the satisfaction of Texas Tech's ODR.

8.4.1.5 **All proposed substitution of materials, equipment or fixtures shall be presented through the submittal process.**

8.5 **Observation 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.

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 **observation** 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 **observation**. Should ODR fail to make the necessary **observation** 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.

8.5.3 **Owner Quality Assurance.**

8.5.3.1 **Texas Tech will make visits to the Site to confirm Project progress and quality of the Work, conduct observations and tests and to determine if the Work is proceeding in accordance with the Contract Documents. The Contractor shall provide sufficient, safe and proper facilities at all reasonable times for observation of the Work by the authorized representatives of Texas Tech.**

8.5.3.2 **Texas Tech, ODR, or the A/E may employ one or more special inspectors to provide inspections during construction on the types of Work listed under Section 1704 of the International Building Code.**

8.6 Condemnation and Removal of Defective Work.

- 8.6.1 **The Owner has the authority to reject and condemn Work which does not meet the requirements of the Contract Documents and to order such Work removed and replaced in accordance with Article 8. Failure of the Owner to reject the Work does not relieve the Contractor from the responsibility to correctly perform the Work in accordance with the Contract Documents.**
- 8.6.2 **If any materials or Work furnished under this Contract are condemned by Texas Tech, the Contractor shall, after notice from Texas Tech, proceed to remove materials, whether worked or unworked, and to take down all portions of the Work condemned. Contractor shall make good all Work damaged or destroyed by the removal and replacement process.**
- 8.6.3 **Upon notice of condemnation, the Contractor may request to prove to Texas Tech, at Contractor's sole cost, that the Work should be accepted because it meets performance, and other relevant standards. Texas Tech shall respond to Contractor's showing of proof in writing.**
- 8.6.4 **Should Work be identified by either the A/E and/or Owner as not being in compliance with the Contract Documents, such Work shall be corrected by the Contractor at its expense. The approval of Work by either the A/E and/or the Owner's , or their failure to reject Work, does not relieve the Contractor from compliance with all requirements of the Contract Documents.**
- 8.6.5 **The Contractor shall, without charge, replace any material or correct any workmanship found by Texas Tech not to conform to the Contract requirements, unless in the public interest Texas Tech consents in writing to accept such material or workmanship with an appropriate adjustment in the Contract Sum. The Contractor shall promptly correct all Work rejected by Texas Tech as defective or as failing to conform to the Contract Documents, whether observed before or after the Date of Substantial Completion or Final Inspection and acceptance and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work. Any back charge to a Subcontractor must be documented with a CCP (see Article 11).**
- 8.6.6 **If the Contractor does not promptly replace rejected material or correct rejected workmanship, Texas Tech may, (1) by contract or otherwise, replace such material or correct such workmanship and**

charge the cost thereof to the Contractor, (2) terminate the Contractor's Agreement, or (3) take any action Texas Tech deems appropriate.

Article 9. Construction Schedules

- 9.1 Contract Time. 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 **and Final Completion** within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion **within thirty (30) calendar days** after Substantial Completion **or a mutually agreed upon longer period of time between Contractor and Owner**, Contractor shall be responsible for Owner's 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 Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM), **longest duration**, with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including **submittals**, mobilization, procurement, installation, testing, inspection, **commissioning, installation of Owner installed IT/AV equipment, functional testing of all systems, TAB, Owner installed equipment and furnishings, training**, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.
- 9.3.1 Schedule Requirements. Contractor shall submit electronic **file of the software (i.e., XER, XML, XLR, PPM), and as a PDF** 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.

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- 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 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 Ownership of 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. 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 as needed on a first-used basis.
- 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 If, in the judgment of Owner, the Work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress to **ensure** timely completion of the entire Work or a separable portion thereof, Contractor, when so informed by Owner **in writing**, shall immediately take action to increase the rate of Work placement by:
- 9.5.1.1 An increase in working forces.
- 9.5.1.2 An increase in equipment or tools.
- 9.5.1.3 An increase in hours of work or number of shifts.
- 9.5.1.4 Expedite delivery of materials.
- 9.5.1.5 Other action proposed if acceptable to Owner.
- 9.5.2 Within ten (10) days after such notice from **Owner**, Contractor shall notify **Owner** in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should **Owner** deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with **Owner'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. 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 A "Weather Day" is a day on which Contractor's current schedule indicates critical path Work is to be done, and on which inclement weather and related Site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the Site prevent Work from proceeding, Contractor shall immediately notify **Owner** for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. **The "Weather Days" claimed shall be compared to the weather day allowances included in the specifications and any day in excess of the stated number of normal weather days shall be allowed as an additional day for the month in question.** Based on written confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a **Change Directive (as defined in Article 11)** for fair and reasonable time extension.

9.6.2.2 Excusable Delay. Contractor **may be** 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 Changes in the Work that effect 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.
- 9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called “acts of God”), civil unrest, strikes or other events which are not within the reasonable control of Contractor.
- 9.6.2.2.5 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 **Article 9** 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 No Damages for Delay. Contractor has no claim for monetary damages for delay or hindrances to the Work from any cause, including without limitation any act or omission of Owner.
- 9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, 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 inclement weather are covered by **Article 9** 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 **Owner** 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 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 is entitled to a time extension in the amount requested.

- 9.10 Failure to Complete Work Within the Contract Time. Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion **and Final Completion** as required will cause damage to Owner. These damages shall 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 Special Conditions.

Article 10. Payments

- 10.1 Schedule of Values. Contractor shall submit to **Owner** 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 **Owner**. 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 **Owner**, 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 **Owner** 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 Contract and ending one year after final payment.
- 10.1.3 **The Contractor shall not change the Schedule of Values or breakdown of the Contract Price once the Schedule of Values has been approved. Changes can only be made with written approval from the Owner.**
- 10.1.4 **All expended contingencies and allowances will be tracked on the Schedule of Values and in e-Builder.**

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 his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, 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. **Provide an updated HUB Subcontracting Plan with the fifty (50) percent and one hundred (100) percent Progress Payments.**

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 **Owner** 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 **Article 4**;

10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents;

10.2.1.5 Construction payment affidavit;

10.2.1.6 **An estimate of the amount of Contractor billing for the next three (3) months; and**

10.2.1.7 **State of Texas Construction Voucher.**

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 **Owner** will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, **Owner** 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 **Owner**. Attach all additional documentation required by **Owner** 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 **Owner**. 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 **Owner** of: (1) a complete Application for Payment **accepted by the Owner** and certified by A/E; (2) Contractor's updated Work Progress Schedule; and (3) confirmation that Contractor's record documentation at the Site is kept current.

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. Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is 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 **Article 12** or Work package delineated in the Contract Documents, must be completed before **ODR** can consider a retainage reduction or release.

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- 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 **ODR** under this subsection, unless otherwise acceptable to **ODR**.
- 10.3.2.4 **Upon Final Completion and Texas Tech's acceptance of all of the Work covered in the Contract Documents, delivery of a complete release of all liens arising out of the Contract, and any audit required by the Agreement has been completed and all issues resolved, ODR will release the retainage to the Contractor, minus any amounts that Texas Tech is otherwise entitled to withhold.**
- 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.
- 10.3.3.8 **Failure to furnish all Close Out documents as required by the Contract Documents.**
- 10.3.3.9 **For Contracts with a value of less than \$25,000 for which no payment bond is posted, receipt of written notice by Texas Tech of unpaid bills, filed in conformance with Chapter 53 of the Texas Property Code. Any funds so withheld shall be released to the Contractor if it furnishes a**

bond for release of lien as provided in §53.236, Texas Property Code.

- 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 **Substantial Completion, responsibility for the care and protection of materials and Work in areas where Punchlist items are completed until Final Completion** 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 **Owner** 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**.

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- 10.5.3 **Observation by Owner** is allowed at any time. Owner 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 **Owner** 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**, 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.
- 10.5.9 **Upon Owners request, Contractor shall submit photographs of the stored materials.**
- 10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.
- 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 the vendor receives the payment.
- 10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 11. Changes

- 11.1 **Change Orders.** A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, **with A/E review**, authorizing a change in the Work for an adjustment **to** the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order **via Agreement Amendment process**. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. **The** 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 **Article 11**.
- 11.1.1 Owner, without invalidating the Contract, 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 Contract Time **may** be adjusted accordingly. All such changes in the Work shall be authorized by **CCP, Change Directive, or** Change Order 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 **consistent with requirements of the Agreement and any Special Conditions with regard to adjustments in the Contract Sum or Contract Time** shall be made and confirmed in writing **via a CCP, Change Order, or Change Directive**.
- 11.1.2 It is recognized by the parties hereto and agreed by each that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by **all** parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, 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 Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.

11.1.3.1 **Effect of a Proposed Change Order conversion to a Change Order.** Except as to scope and adjustments proposed by the Contractor in a CCR that were accepted by the Owner in the CCP, the issuance of a CCR does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. However, if the CCR directs a change in the Work for a stated adjustment, if any, in the Contract Sum and/or Contract Time to which the Contractor objects, the Contractor must preserve such rights by submitting a written objection to the CCR, identifying with specificity the scope and adjustments to the Contract Sum and Contract Time to which Contractor objects, within fifteen (15) days of receipt of the CCP approval. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the CCR and the approved CCP as to the terms stated therein shall have the full force and effect of a Change Order.

11.1.3.2 **Submission of a Change Order.** Any directed change in scope effecting a Contingency or the Agreement Contract Sum or Contract Time must start in e-Builder as a Construction Change Proposal (CCP). A Change Order affecting Contract Sum or Contract Time must be executed as an Agreement Amendment to the Contract Documents. The ODR may issue a Change Directive to the Contractor while the formal Amendment to the Agreement is routing through the approval process. The Contractor shall be formally authorized to commence with begin the Work upon receipt of the executed Amendment or a Change Directive. Either the Contractor or the Owner may start this process which will adjust one of the Contingencies or the Contract Sum or the Contract Time. The CCP must include:

- CCR Scoping Documents;
- A description of the required change;

- **The proposal is to include detailed line-item values for material and labor costs, including labor burden;**
- **Itemized documentation of any Subcontractor costs;**
- **Markups to adhere to Article 11; and**
- **Schedule impact.**

11.1.3.3 **Execution of a Change Order.** Not more than thirty (30) days following the issuance by the Owner of the CCR and the approval of CCP, or the deemed effective date pursuant to Article 11, the Owner shall issue a Change Order, executed by the ODR attaching a copy of the accepted CCP and incorporating it fully by reference. The Contractor shall execute the Change Order within ten (10) days of receipt. The execution of a Change Order by the Owner, Contractor, with A/E review constitutes the full, final, and complete settlement of all claims with regard to the modifications contained in the Change Order for foreseeable impacts on the Contract Sum or the Contract Time; provided, however, that a Change Order may be reformed by a written modification signed by the ODR and Contractor, for the limited purpose of correcting an error in computation.

11.1.4 **GMP Buyout Process.** As the Contractor executes the Buyout process for the project, the Contractor shall enter each Subcontractor recommendation for every specification division into e-Builder as a CCP process committing the GMP budget to the actual cost of the Work recommended by the Contractor. The differences will be tracked in the Buyout Contingency throughout the Buyout process. Once the Buyout process is complete, any net savings to the project will be transferred to the Owner using a CCP process where the Buyout Contingency is reduced by the amount of savings and the Owner's Contingency account is increased by the same amount. If there are no savings and there is actually a loss, the loss will be transferred to the Contractor's Contingency (CM) account, so the final Buyout Contingency account is net zero. The GMP Buyout Process does not apply to CSP delivery method.

11.1.5 **Use of Contingencies and Allowances.**

- 11.1.5.1 **Effect of a Contractor's Contingency (CM) adjustment.** The Contractor shall start any request to spend Contractor's Contingency (CM) in e-Builder as a CCP process. This request shall route through e-Builder and once approved by Owner in writing, the Contractor will be authorized to use the CM Contingency.
- 11.1.5.2 **Owner-Initiated Changes.** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. When the Owner wishes to order changes in the Work, the Owner shall submit to the Contractor, via the Design Professional, a Construction Change Request (CCR), consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. Within twenty-one (21) days of receipt of the Owner's CCR, the Contractor shall submit a Construction Change Proposal (CCP) to the Owner in e-Builder, stating that the proposed change is a no-cost change, or propose an adjustment in the Owner's Contingency or Contract Sum, and that the result of the proposed scope change will not require an adjustment in the Contract Time, or propose an adjustment in the Contract Time, as provided under Article 11. All CCP documentation uploaded into e-Builder shall include the issued CCR scoping documents as part of the CCP process.
- 11.1.5.3 **Contractor-Initiated Changes.** If the Contractor claims it will incur additional cost or time because of any written instruction or interpretation of the Contract Documents, or instruction concerning the execution of the Work, issued by the Owner or the A/E, and constituting a change in the scope of the Work, the Contractor may request a Change Order pursuant to this Article and, if appropriate, a time extension request as provided by Article 9. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the Design Professional constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the Owner as soon as possible, but not later than fifteen (15) days after receipt of the instruction or interpretation and shall submit a CCP to the Owner as

soon as possible thereafter, but not later than twenty-one (21) days after issuance of the notice. This CCP shall contain a proposal for an adjustment in the Contract Sum, as provided under Article 11. The CCP shall be accompanied by a copy of the writing containing the instruction or interpretation, evidence of the date the Contractor received the writing and an explanation of how the writing creates the need for a change, including all the changes as attributable to the schedule of values.

- 11.1.5.4 **Effect of an Owner's Contingency adjustment.** The Contractor or the Owner may start a CCP process for additional Work that will not change Contract Sum or Contract Time that will be funded by the Owner's Contingency.
- 11.1.5.5 **Use of Allowances.** Allowances are defined within the GMP by the Contractor and as agreed to by the Owner and A/E and scheduled within the original scope of the Work. Allowances can only be used to fund the Work in which they are allocated and must be utilized within the time frame apportioned for the GMP Buyout process. Requisition of Allowance funds must be performed in eBuilder via the CCP process, indicating the amount to be charged to the specific Allowance with comprehensive associated costs and detailing provided to validate the expenditure. Authorized use of funds from Allowances will include Contractor's related costs and authorized markup if applicable. Once the specific scope of Work for which the Allowance was designated is funded, but no later than by the end of the Buyout process, any unused amounts remaining in the Allowance shall be credited to Owner's Contingency via CCP. In the event there is a deficit of funding within an Allowance, the CM Contingency must fund the remaining balance to complete buyout of the Work in which the Allowance was allocated.
- 11.1.6 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
- 11.1.7 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 Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.

- 11.1.8 **Construction Change Proposals (CCP).** As soon as feasible (Owner will endeavor to respond no later than twenty-one (21) days after receipt of any CCP submitted by the Contractor), the Owner shall respond in e-Builder by either (1) accepting the Contractor's proposal in whole or in part, (2) rejecting the same, (3) initiating negotiations with the Contractor concerning the proposed cost adjustment, or (4) requesting additional information. The Owner may also respond in writing by specifying that the change will cause the Owner's Contingency to be exceeded and specifying that additional time is needed to process the change and receive necessary approvals. CCPs must include pricing for the complete scope of the Work as defined by the CCR. Once the Owner has approved the proposed submitted CCP in e-Builder, the Contractor has ten (10) days from the receipt of approval to execute the approved change. All costs and request for Contract Time are considered final after the ten (10) days have expired.
- 11.1.9 **Issuance of Change Directive.** In response to a CCP or otherwise, the Owner may order a change in the Work by issuing a written Change Directive. A Change Directive is effective upon receipt and constitutes the Contractor's notice to proceed with the changed Work and entitles the Contractor to submit the adjusted cost of the Work as stated in the Change Directive on succeeding Pay Applications, as it is completed.
- 11.1.9.1 **Change Directive Accepting CCP in Whole.** When agreement has been reached concerning the adjustment of the Contract Sum and Contract Time, if any, arising from the change in the Work, the Owner shall accept the Contractor's CCP, or any subsequently revised CCP issued pursuant to negotiation, by issuing a Change Directive or CCP to the Contractor setting forth the agreed

adjustments. The Contractor shall promptly execute a CCP reflecting its agreement to the terms set forth therein.

11.1.9.2 **Change Directive Accepting CCP in Part.** When the Owner does not agree to the proposed adjustment in the Contract Sum and/or the Contract Time in the CCP, the Owner may issue a Change Directive setting out the adjustments from the CCP, if any, in the Contract Sum and/or Contract Time accepted by the Owner and identifying any adjustments not accepted by the Owner. The Contractor shall promptly execute the Change Directive reflecting its agreement to the adjustments accepted by the Owner. In order to preserve its objections to any adjustments set out in the Change Directive, the Contractor must separately comply with Article 11.

11.1.10 **Commencement of Work.** The Contractor shall not commence Work on a change prior to receipt of a fully executed Change Order, approved CCP or authorized Change Directive as set out in this Article 11.

11.2 **Unit Prices.** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a **Construction Change Request** 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 Supplementary General Conditions or 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, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with **Article 7**. No such claim shall be valid unless so made. 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.

- 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 **Article 11**, Contractor shall make such claim as provided in **Article 11**.
- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents 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 **Change Directive** 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 Owner, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be affected by written order which Contractor shall carry out promptly and record on as-built 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, **Owner** 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 **Owner**, 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 **Owner**.
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under **Article 9**, and as documented by Change Order as provided under **Article 11**.
- 11.7 Administration of Change Order Requests **and CCPs**. 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 **funded within the GMP Contract amount**, shall be formally initiated by A/E by means of a **Construction Change Request (CCR)** detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E, and **Owner** 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 **Owner** will be required for authorization (**CCP**) to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior **written approval via the e-Builder CCP** process and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for changes **in the Work** must be supported by itemized accounting of material, equipment, **labor, burden**, 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 **Owner** using current estimating guides and/or practices. **Digital PDF copies** of Subcontractor and vendor proposals shall be furnished unless specifically waived by **Owner**. Contractor shall provide written response to a change request (**CCR**) 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 **from the Contractor** 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, **Owner** 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 **CCR or Change Order**.
- 11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see **Article 7**) 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 **or CCPs** into the parameters of the accepted Schedule of Values must be coordinated and

administered in a manner acceptable to **Owner**. **Sufficient detailing of costs within the Schedule of Values for each approved Change Order or CCP, as requested by the Owner, must be provided to effectively track and audit expenditures for the specific scope of Work changes.**

11.7.5.1 **Owner will incorporate Change Orders into the Contract by formal amendment, approved by both parties.**

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. **To the extent that the Agreement or any Special Conditions set forth the terms for pricing any adjustments to the Contract Sum, the following terms are superseded by the terms and conditions in the Agreement or any Special Conditions.**

11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond, and **Builder's 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. **The mark-up schedules below apply for all subcontracted Work. The grand total of the Change Order is the sum of all subcontracted proposals.**

11.8.1.1 **For subcontracted Work being self-performed, the allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed Work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed Work or portion thereof and seven and a half (7.5) percent for any value of the self-performed Work that exceeds \$20,000.**

11.8.2 For subcontracted Work, each **managing** 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 (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$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.
- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder 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 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a **Change Directive**.
- 11.10 Final Resolution of Changes. Upon execution of a Change Order by Owner and Contractor, all costs and time issues regarding that change are final and not subject to adjustment.

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 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 determines that the Work is Substantially Complete, a Certificate of Substantial Completion **will** be signed by A/E, **ODR**, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security 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. 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 **Owner** 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, **Owner**, 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 **Owner** in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. 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, **Owner** 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 **Owner**. 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, **Owner** 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 **Owner**. 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 **CCP** 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 **Owner**, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

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

12.2.1 **Notice and Early Occupancy Proposal.** If Texas Tech determines that operational disruption will result if it is unable to occupy some portion of the Work prior to Substantial Completion, it shall so inform the A/E and the Contractor no less than thirty (30) days before the date Texas Tech wishes to occupy the Work and designate those portions of the Work to be occupied and the uses to be made of the occupied premises (hereinafter "Early Occupancy"). Early Occupancy by Texas Tech does not imply or constitute Substantial Completion. As soon as practicable, but not less than five (5) working days after receiving this notice, the Contractor shall make the designated portions of the Work available to the A/E and Texas Tech for observation. The A/E and Texas Tech shall observe the Work jointly with the Contractor. As soon as practicable, the A/E shall prepare and submit to the ODR and the Contractor an Early Occupancy Proposal, specifying any Work that must be completed or corrected as well as any operation and maintenance manuals or other documentation necessary for the Work to be occupied by Texas Tech and used for the purposes designated by Texas Tech in its notice, and setting out the division of responsibility between Texas Tech and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work.

12.2.2 **Administration as Change Order.** If the Owner requests Early Occupancy and the Contractor requests an equitable adjustment (cost and/or time) that is agreed upon by Owner due to the requested Early Occupancy and the Contractor fails to meet the mutually agreed upon Substantial Completion date, the Owner reserves the right to reject any equitable adjustments requested in the CCP by the Contractor. All cost and/or time adjustments requested by Contractor related to an Early Occupancy Proposal, shall be stated in the CCP and are subject to review and approval by the Owner. If Early Occupancy is requested by Owner due to Contractor's failure to meet Substantial

Completion as previously agreed upon, no time or equitable adjustments will be permitted related to the request for Early Occupancy.

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 the Application for Final Payment, final copies of all Close Out documents, maintenance, and operating instructions, guarantees and warranties, certificates, **As-Built 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. **Final Payment is subject to the requirement that any audit required by the Agreement is complete and all issues are resolved.**

12.3.2.1 **FINAL PAYMENT SUBMISSION.** After FP&C's audit approval, submit certified copy to A/E who will forward to Texas Tech:

12.3.2.1.1 **Certificate of Substantial Completion (AIA Form G704);**

12.3.2.1.1.1 Certificate of Punchlist Completion on Architect's letterhead with a copy of the punch list attached.

- 12.3.2.1.1.2 All required documents and forms as outlined in Article 1 Application for Payment.**
- 12.3.2.1.2 **Change Orders;**
- 12.3.2.1.2.1 Incorporates Change Orders and deducts remainder of the Allowance from Contract amount.**
- 12.3.2.1.2.2 All Change Orders, back-up material, and authorizations**
- 12.3.2.1.3 **Consent of Surety Company for Final Payment, and**
- 12.3.2.1.4 **Submit State of Texas Construction Voucher marked ESTIMATE NO. _____, FINAL. Include HUB Vendors Subcontractor Payment Sheet indicating Final Submission.**
- 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, note 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 **or Change Directive** 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 **subject to the requirement that any audit required by the Agreement is complete and all issues are resolved.** 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 warranty period.**

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. **The Contractor's General Warranty and Guarantee set out in this paragraph is in addition to and not exclusive of any other warranties or guarantees set out in the Contract Documents or implied under Applicable Law or the Contractor's obligations during the Warranty Repair Period as provided in Article 13 below.**
- 13.1.1 **In the case of Work performed by Subcontractors and where guarantees are required, the Contractor shall secure warranties from said Subcontractors addressed to and in favor of Texas Tech; deliver copies of same to Texas Tech upon completion of the Work; and guarantee and assume full responsibility for the full period of said warranties. Delivery of said guarantees shall not relieve the Contractor from any obligations assumed under any other provisions of the Contract. This warranty and guarantee are not the exclusive remedy of Texas Tech but is in addition to the general obligation of the Contractor to faithfully perform the Contract, and it in no way limits the responsibility of the Contractor for faulty materials or workmanship.**
- 13.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 13.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

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- 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 defective Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E;
- 13.4.2 Recommendation to pay any progress or final payment by A/E;
- 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- 13.4.4 Use or occupancy of the Work or any part thereof by Owner;
- 13.4.5 Any acceptance by Owner or any failure to do so;
- 13.4.6 Any review of a Shop Drawing or sample submittal; or
- 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. **Owner** 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.

- 13.5.3 **FORMS FOR WARRANTIES AND GUARANTEES.** Prior to Final Payment, Contractor shall provide to the A/E searchable electronic copies (unscanned) of all warranties, guarantees, and bonds required in various sections of the Contract Documents. For equipment and component parts of equipment put into service during progress of construction, warranty will begin at the date of Substantial Completion, or at a time as negotiated in writing by Owner and Contractor. For items of Work where acceptance is delayed materially beyond the date of Substantial Completion, provide updated submittal within ten (10) days after acceptance listing the date of acceptance as the start of the warranty period. Where guarantees for periods beyond one (1) year from date of final acceptance of Work are required, such guarantees shall be written, and searchable electronic copies (unscanned) furnished to the A/E, on Contractor's letterhead using following format:

"GUARANTEE FOR _____

We hereby guarantee that the _____ which we have installed on the campus of _____, (insert the name of the respective Texas Tech constituent university or institution), has been done in accordance with the Contract Documents, and that the Work as installed will fulfill the requirements of the Guarantee included in the Contract Documents. We agree to repair or replace any or all of our Work, together with any other adjacent Work which may be displaced by so doing that may prove to be defective in its workmanship or materials within a period of (insert guarantee period) year(s) from date of acceptance of the above-mentioned structure by the Board of Regents of Texas Tech University System, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within a reasonable time, which in no case shall be longer than thirty (30) days after being notified in writing by the Owner, we collectively or separately do hereby authorize the Owner to proceed to have said defects repaired and made good at our expense, and we will honor and pay the costs and charges therefore upon demand."

Signed _____
Subcontractor and/or Supplier

Countersigned**Prime Contractor**

- 13.5.3.1 **Warranty and Guarantee periods shall commence on the date of the Certificate of Substantial Completion unless otherwise specified.**
- 13.5.3.2 **Form of Submittal. Provide searchable electronic copies (unscanned). Label tabs for each section with title "WARRANTIES, GUARANTEES AND BONDS", with title of Project; name, address, and telephone number of Contractor; and name of responsible principal. List Table of Contents, neatly typed, in the sequence of the Table of Contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of Product or Work item. Separate each warranty or bond with index tab sheets keyed to the Table of Contents listing. Provide full information, using separate typed sheets as necessary. List Subcontractor, supplier, and manufacturer, with name, address, and telephone number of responsible principal.**
- 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, **but no later than thirty (30) days**, remedy the defect(s) **or advise Owner in writing as to the corrective action(s) to be taken**, 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.**
- 13.7 **Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor’s application for Final Payment.**

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 or any compensation 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 thirty (30) 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.

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- 14.3.1 Upon written notice to Contractor and its surety, **ODR** 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 Owner;
 - 14.3.1.3 Persistent failure to **execute** 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 **ODR** to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should **ODR** decide to terminate the Contract under the provisions of **Article 14**, it will provide to Contractor and its surety thirty (30) days prior written notice.
- 14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of **ODR** that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of

termination may be rescinded in writing by **ODR**. If so rescinded, the Work may continue without an extension of time.

- 14.3.5 If Contractor or its surety fails, after written notice from **ODR** to commence and continue correction of such default with diligence and promptness to the satisfaction of **ODR** within thirty (30) days following receipt of notice, **ODR** may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.
- 14.3.5.2 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.
- 14.3.5.3 This obligation for payment survives the termination of the Contract.
- 14.3.5.4 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 affect such assignment.
- 14.3.5.5 **When the Contract is terminated by Owner for cause, the Contractor will not be entitled to recover loss of anticipated profits or incidental damages.**
- 14.3.5.6 **If Owner sues the Contractor or Surety on account of failure to pay such difference in cost upon demand, the Contractor and Surety will pay all costs in connection therewith, including reasonable attorney's fees and expenses. These obligations for payment shall survive the termination of the Contract.**

- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under **Article 14** is later determined to have been improper, the termination shall automatically convert to a termination for convenience under

Article 14 and Contractor's recovery for termination shall be strictly limited to the payments allowable under **Article 14**.

- 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 **ODR** will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete Work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all Work.
 - 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 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 on other work or lost business opportunities.
- 14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of 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 on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, 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 determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

14.7.1 **All settlements on termination shall be administered as Change Orders as provided under Article 11. If the Contractor and Owner fail to agree on the settlement amount, the matter will be handled as a dispute through administrative procedures set for the in Article 15.**

Article 15. Dispute Resolution

- 15.1 **Except to the extent Texas Civil Practices and Remedies Code (TCP) Chapter 114 applies to this Contract, NEITHER THE EXECUTION OF THE CONTRACT, ANYTHING IN THESE UNIFORM GENERAL CONDITIONS AND SUPPLEMENTARY GENERAL CONDITIONS, NOR ANY CONDUCT OF ANY REPRESENTATIVE OF TEXAS TECH UNIVERSITY SYSTEM OR ITS COMPONENT INSTITUTIONS SHALL WAIVE OR BE CONSIDERED A WAIVER OF SOVEREIGN IMMUNITY TO SUIT.**
- 15.2 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260 or **Tex. Civ. Prac. & Rem. Code, Ch. 114**, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2.1 **A Contractor's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to the Vice Chancellor for Facilities Planning and Construction with an additional copy to the Vice Chancellor and General Counsel. Said notice shall also be given to all other representatives of Texas Tech and the Contractor who are otherwise entitled to notice under the Agreement. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.**
- 15.2.2 **The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by Texas Tech if the Parties are unable to resolve their disputes in the ordinary course of business or under Article 15 of this provision, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the Civil Practices and Remedies Code.**
- 15.3 Suits Under TCP Chapter 114. Interest on an award for breach of contract subject to TCP Chapter 114 shall not exceed the lesser of the amount due on overdue payments under Tex. Gov't Code Ch. 2251.025, or the post-judgment rate set forth in Tex. Fin. Code §304.003(c), or ten (10) percent. Service of

citation and other required process must be made on the Texas Attorney General and the Texas Tech University System Vice Chancellor and General Counsel. The conditions of TCPRC §107.002 (4), (5), (6), (7), (9), (10), (11), and (12) apply to any suits against Owner under TCPRC Chapter 114.

- 15.4 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 **or prior to filing a suit under TCPRC Chapter 114.**
- 15.5 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.
- 15.6 **Neither the occurrence of an event nor the pendency of a claim under this provision constitutes grounds for the suspension of performance by the Contractor, in whole or in part.**

Article 16. Miscellaneous

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions **and Supplementary General Conditions** of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the **UGSC**, where necessary, provided the expansion does not weaken the character or intent of the **UGSC**. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the **UGSC**.
- 16.2 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.
- 16.3 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.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 Training. When used, Owner shall provide training to the Project team members.

- 16.4 **Administrative Inspections and Audits.** Contractor agrees that all relevant records related to this Contract or any Work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code § 2262.003 the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

End of Uniform General Conditions and Supplementary General Conditions.