

**UNIFORM GENERAL CONDITIONS
FOR BUILDING CONSTRUCTION CONTRACTS
FOR THE CITY OF SOUTH PADRE ISLAND**

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SAMPLE

**UNIFORM GENERAL CONDITIONS
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Article I - General Contract Definitions

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

Architect/Engineer means a person registered as an architect pursuant to Article 249a, Tex. Civ. Stat. Ann., as a landscape architect pursuant to Article 249c, Tex. Civ. Stat. Ann., and/or a person licensed as a professional engineer pursuant to Article 3271a, Tex. Civ. Stat. Ann., or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.

Change Authorization (CA) means a Change Order Proposal Evaluation (CPE) which has been marked "Accepted" by the ODR and, upon receipt of the CA by contractor, constitutes notice to proceed with the changed work described therein.

Change Order means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.

Change Order Proposal Evaluation (CPE) means a Contractor-generated document in response to a Change Order Request (COR) or Change Proposal Request (CPR) or Field Order (FO) which states the adjustment necessary to Contract Sum and Time, if any, in response to the changed work described in the Change Order Request (COR).

Change Order Request (COR) or Change Proposal Request (CPR) means an Owner-generated document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the change.

Close-out documents means the product brochures, product/equipment maintenance and operations instructions, manuals, warranties, as-built record documents, affidavit of payment, release of lien and claim, etc., and as may be further defined or identified and required by the Contract Documents.

Contract means all of the Contract Documents between the Owner and the Contractor.

Contract Date is the date of the Owner-Contractor Agreement is effective between the Owner and Contractor.

Contract Documents means the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary General and Special Conditions), the Drawings, the Specifications, the Bidding Documents, Advertisement, Invitation and Instruction to Bidders or Proposer, Contractor's Proposal, Contract Award and all Addenda issued prior to and any Change Orders issued after execution of the Contract.

Contractor means the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract with the Owner. The term Contractor also means a Construction Manager-at-Risk or a Design-Build Contractor.

Contract Sum means the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents as originally contracted for and as subsequently adjusted by Change Order.

Contract Time means the period between Notice to Proceed and the date scheduled for substantial completion in the Contract Documents, as may be amended by Change Order.

Date of Commencement means the date designated in the Notice to Proceed that Contractor shall commence the Work.

Day means a calendar day, unless otherwise specifically stipulated.

Drawings mean the work product of the Architect/Engineer which depicts the location and quantity of elements of the Work.

1.16 *Final Completion* means the date established by the Owner in writing –in a certificate when the Contract is fully performed according to the Contract Documents and is acceptable to Owner. Unless otherwise specified in writing contractor shall achieve final completion within thirty (30) days of substantial completion.

1.17 *Interim Change Authorization (ICA)* means an Owner generated document authorized and issued by the ODR which authorizes the Contractor to proceed with changed work before acceptance of a CPE, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule or to maintain safety, or otherwise when determined to be in the interest of the Owner.

1.18 *Owner* means the City of South Padre Island Texan acting through any duly authorized representative.

Owner's Designated Representative (ODR) means the individual appointed or assigned by the Owner to be its on-site representative during the Project, to exercise certain power on behalf of the Owner and to undertake certain contract administration activities as specifically outlined in the Contract.

Not Used.

Project means the Work as described by the Contract Documents.

Samples means the physical examples of materials, equipment or workmanship, that are representative of some portion of the Work and which establish standards by which the Work will be judged.

Schedule of Values means the detailed breakdown of the cost of the materials and labor necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.

Shop Drawings means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

Site means the geographical area at the location where the Work is to be performed.

Special Conditions means the documents containing terms and conditions, which relate to specific project and are peculiar to it. Special Conditions when used are a part of the Contract Documents and supercede the Uniform General Conditions to the extent of conflict.

Specifications means the Architect'/Engineer's work product which establishes the quality of the products and processes to be used to produce the Work and the Owner's Division 1 specifications.

Subcontractor means a person or organization who, as an independent contractor, contracts directly or indirectly with Contractor to perform part or all of the Contract between the Owner and the Contractor. The term does not include the Architect/Engineer.

Substantial Completion means the date jointly certified by the Contractor, Owner, and Architect/Engineer when the Work or a designated portion thereof, is so sufficiently complete, in accordance with the Contract Documents, as to be functionally operational in all its components and fit for the use for which it is intended.

Supplementary General Conditions means the standard procedures and contract administration requirements of an individual State contracting agency that alter or expand upon matters covered in the Uniform General Conditions. Supplementary General Conditions, when used, are a part of the Contract Documents and supercede the Uniform General Conditions to the extent of conflict.

Unit Price Work means Work to be paid for on the basis of unit prices.

Unilateral Change Order (ULCO) means a Change Order issued by the Owner without the agreement of the Contractor as more fully described in § 20.4.

1.32 *Work* means all labor, plant, materials, facilities, and all other things, including the construction and services necessary or incidental to fulfill Contractor's obligations for the Project in conformance with the Contract Documents.

1.33 *Substantial Completion Inspection* means an inspection conducted to determine that a project, or a portion thereof, is substantially complete as defined herein, and usable for its intended purposes. The Substantial Completion Inspection results in a Pre-Final Punch list.

Final Inspection means an inspection conducted to determine that all deficiencies listed on the pre-final punch list or subsequently have been corrected and that, depending on the outcome of the Final Inspection, it may be appropriate to release retainage and/or make final payment.

1.35 *The terms "bid", "bidder", or similar terms used in this document* also mean "proposal", "proposer", or "respondent" as appropriate for the type of project for which these General Conditions are used.

Article II - General Laws Governing Construction

2.1 Compliance with Laws. In the execution of the Contract Documents and the Work, the Contractor shall comply with all applicable local building codes, State and Federal laws, including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection and prevailing wage rates. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State and Local laws, ordinances and regulations 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 such law, ordinance or regulation by himself, his subcontractors and his employees. Except where expressly required otherwise by applicable laws and regulations, neither Owner nor the Architect/Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations. Competent evidence of compliance with applicable laws shall be furnished.

2.1.1 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 his 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.

Where the Underwriters' Laboratories have established standards and issued labels for a particular group, class, or type of equipment the Underwriters' label shall be required on all equipment in that category. The National Electric Code and the National Plumbing code shall be minimum requirements. Competent evidence of compliance with applicable codes shall be furnished.

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

2.3 Antitrust Claims. The Contractor hereby assigns to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.

2.4 Venue for Suits. The venue for any suit arising from this Project shall be in a court of competent jurisdiction in Cameron County, Texas.

2.5 Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to required licensing of skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.

2.5.1 In the event the Contractor or one of his Subcontractors loses his license for any reason during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.

- 2.6 Patents and Copyrights. The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work.
- 2.6.1 Whether or not Owner has specified the use of a particular design, device, material or process, the Contractor shall pay all royalties and license fees and shall provide, prior to commencement of the Work hereunder, and at all time during the performance of same, for the lawful use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with patentee, copyright holder or their duly authorized representative.
- 2.6.2 Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the Owner harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or performance of the Work or otherwise arising in connection therewith. Owner 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 the Owner from all costs and expenses, including reasonable attorney's fees and judgments, arising from such defense.
- 2.7 Environmental Regulations. At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection. Owner and Contractor are jointly responsible for obtaining and maintaining permits related to storm water run-off. Contractor covenants to conduct its operations consistent with storm water run-off permit conditions. Contractor shall be responsible for any hazardous materials brought to the site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible. No hazardous materials shall be incorporated into the Work.
- 2.8 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the ODR a Notice of Claim as described in § 21.1.2.2.
- 2.9 Franchise Tax Status: The Contractor agrees to execute and provide to the Owner a Certification of Franchise Tax Payment, on a form approved by the Owner.
- 2.10 Tax payer and Vendor Account Information: The Contractor agrees to execute and provide to the Owner a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts stating that the Contractor is in "Good Standing" and not on "Vendor Hold".

Article III- Compliance with and Enforcement of Prevailing Wage Laws

- 3.1 Duty to Pay Prevailing Wage Rates. The Contractor shall pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Schedule" provided by the Owner. The specified wage rates are minimum rates only. The Owner will not consider 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 quantities of qualified labor adequate to perform the Work may be found locally at the specified wage rates.
- 3.1.1 Each worker shall be classified in one of the classifications in the prevailing wage rate table. The Contractor shall notify each worker commencing work on the contract the worker's job classification and the established minimum wage rate required to be paid, as well as the actual amount being paid. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished.
- 3.1.2 A copy of each worker wage rate notification shall be submitted to the ODR with the application for progress payment for the period during which the worker began on-site activities.
- 3.2 Prevailing Wage Schedule. The "Prevailing Wage Schedule" shall be determined by the Owner in compliance with Chapter 2258, Texas Government Code. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner's Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a subcontractor, the Contractor shall promptly inform the ODR and the Owner shall specify a wage rate for that skill or trade, which shall bind the Contractor.
- 3.3 Penalty for Violation. The Contractor and any Subcontractor shall pay to the Owner a penalty of sixty dollars (\$60.00) for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule or any supplement thereto pursuant to §3.2. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all workers employed in connection with the Work, and showing the actual per diem wages paid to each worker, which records shall be open at all reasonable hours for the inspection by the Owner.
- 3.4 Complaints of Violations of Prevailing Wage Rates.
- 3.4.1 Owner's Determination of Good Cause. Within 31 days of receipt of information concerning a violation of Chapter 2258, Texas Government Code, the Owner shall make an initial determination as to whether good cause exists to believe a violation occurred. The Owner's decision on the initial determination shall be reduced to writing and sent to the Contractor or Subcontractor against whom the violation was alleged, and to the affected worker. When a good cause finding is made, the Owner shall 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.
- 3.4.2 Arbitration Required if Violation not Resolved. After the Owner makes its initial

determination, the affected Contractor or Subcontractor and worker have 14 days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Owner 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 the Owner in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the 15th day after the Owner'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 10 days after the expiration of the 15 days referred to above, to agree on an arbitrator; if by the 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.

3.4.3 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 § 3.4.1 thereof and the amount owed the worker. The Owner may use any amounts retained under § 3.2 hereof to pay the worker the amount as designated in the arbitration award. If the Owner 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 court costs. The Contractor shall promptly furnish a copy of the arbitration award to the Owner.

3.5 Prevailing Wage Retainage. Money retained pursuant to §3.4 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. The full statutory penalty of \$60.00 per day of violation per worker shall be retained by the Owner to offset its administrative costs, pursuant to Texas Government Code §2258.023. 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 the Owner 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 §§3.4.2 and 3.4.3.

3.6 No Extension of Time. If the Owner determines that good cause exists to believe a violation has occurred, the Contractor shall not be entitled to an extension of time for any delay arising directly or indirectly from of the procedures set forth in §3.4.

Article IV - Drawings and Specifications

4.1 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the Architect/Engineer are, and shall remain, his property. They are not to be used on any other project by the Contractor and, with the exception of one contract set are to be returned to the Architect/Engineer, upon request, following completion of the Work.

- 4.2 Copies Furnished. The Contractor will be furnished free of charge the number of complete sets of the Contract Drawings and Specifications before on-site work commences as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.
- 4.3 Interrelation of Documents. The Drawings depict the location and quantity of elements of the work. The specifications indicate quality. All documents are intended to be complimentary to produce the Work.
- 4.4 Resolution of Conflicts in Documents.
- 4.4.1 In the event of conflict between or among Drawings and Specifications, the better quality or greatest quantity shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere.
- 4.4.2. In the event of conflict among the drawings, the large scale drawings prevail over the small scale drawings.
- 4.5 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, the Contractor shall examine and compare: the Contract Documents; information furnished by the Owner pursuant to §§4.7; relevant field measurements made by the Contractor; and any visible conditions at the Site affecting the Work.
- 4.6 Discrepancies and Omissions in Drawings and Specifications.
- 4.6.1 If in the course of the performance of the obligations in § 4.5, the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner and the Architect/Engineer. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination 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.
- 4.6.2 The Contractor has no liability for errors, omissions, or inconsistencies described in §§ 4.5 and 4.6.1 unless the Contractor knowingly failed to report a recognized problem to the Owner. If, however, the Contractor fails to perform the examination and reporting obligations of these provisions, the Contractor shall be responsible for any avoidable costs or direct damages.
- 4.6.3 The Contractor shall propose the most practical solution to resolve the conflict or omission requiring the minimum schedule and budget impact and furthering the best interest of the project. The Owner and Architect/Engineer shall evaluate the proposed solution and provide a response to Contractor. If the solution prompts changes to the Contract Sum or Contract Time the contract shall be adjusted under Article XX.

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

4.7 Other Information Provided to Contractor.

4.7.1 The Owner may provide Contractor with information, reports, pictures or other items which are not contained within the Contract Documents , but which Contractor should review and use pursuant to § 4.5.

4.8 Requirements for Record Documents

4.8.1 The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, and all project correspondence. The Contractor shall maintain Drawings and Specifications in good order and marked to record all changes made during construction. The Contractor shall keep on the site of Work a copy of the current and updated Contract Drawings and Specifications and shall at all times give the Owner or its representatives and agents access thereto.

4.8.2 Further, the Contractor shall maintain this record set of drawings and specifications which reflect the "As-Constructed" conditions and representations of the Work performed, whether it be directed by Addendum, Change Order or otherwise. All records prescribed herein shall be made available for reference and examination by the Owner and its representatives and agents.

4.8.3 The Contractor shall update the "As-Constructed" drawings and specifications monthly prior to submission of periodic partial pay estimates. Failure to maintain such records shall constitute cause for denial of a progress payment otherwise due.

4.8.4 Prior to requesting Substantial Completion Inspection by the Owner and Architect/Engineer; the Contractor shall furnish a complete set of the "mark-up" blueline "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record blueline drawings, the Contractor shall also furnish a preliminary copy of each operating and maintenance manual (O&M) required by the contract documents, for review by the Architect/Engineer and the Owner.

4.8.5 Once determined acceptable, the Contractor shall provide photographic mylar prints of professionally drafted "As-Constructed" drawings, two sets of blueline copies of the mylar "As-Constructed" drawings, two sets of operating and maintenance manuals, two sets of approved submittals, and other record documents as required elsewhere in the contract documents.

V - Construction Bonds

- 5.1 Performance and Payment Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.
- 5.1.1 A Performance Bond is required if the Contract Price is in excess of \$100,000. The performance bond is solely for the protection of the Owner, in the full amount of the Contract and conditioned on the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by legal counsel for the Owner.
- 5.1.2 A Payment Bond is required if the Contract Price is in excess of \$25,000. A payment bond is payable to the state, in the full amount of the Contract and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. The form of bond shall be approved by the Attorney General of Texas.
- 5.1.3 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.
- 5.1.4 A Security Bond in the amount of 5% of the Construction Cost Limitation shall be provided to the Owner when the Agreement is executed. Payment and Performance Bonds, as required above, shall be furnished in the full amount of the Guaranteed Maximum Price (GMP) when the GMP is executed.
- 5.1.5 Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, and on the Owner's form. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trustee to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.
- 5.1.6 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.
- 5.2 The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.
- 5.3 Owner shall furnish certified copies of a payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.

- 5.4 Claims on Payment Bonds. Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with § 2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.5 Payment Claims when Payment Bond not Required. When the value of the Contract between the Owner and the Contractor is less than \$25,000.00, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.
- 5.6 All bonds shall be issued by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

Article VI - Insurance Requirements

6.1 Insurance Requirements.

6.1.1 The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Contractor prior to, during construction and during the warranty period. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Contract, as proof of continuing coverage. Acceptance of the insurance policy declaration pages by the Owner shall not relieve or decrease the liability of the Contractor. Contractor shall upon submission for monthly payment certify that all policies required are in place. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

6.1.2 Unless otherwise provided for in Supplementary General Conditions, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage's in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

Type of Coverage	Limits of Liability
a. Worker's Compensation	Statutory
b. Employer's Liability	
Bodily Injury by Accident	\$500,000 Ea. Accident
Bodily Injury by Disease	\$500,000 Ea. Employee
Bodily Injury by Disease	\$500,000 Policy Limit

c. Commercial General Liability, including coverage for the following:

- | | |
|--|---------------------|
| 1) Premises Operations | Combined Single |
| 2) Independent Contractors | Limit for Bodily |
| 3) Products/Completed Operations | Injury and Property |
| 4) Personal Injury | Damage of |
| | \$1,000,000 |
| | per occurrence or |
| | its equivalent. |
| 5) Contractual Liability | |
| 6) Explosion, Collapse, Underground | |
| 7) Broad form property damage, to include fire legal liability | |

d. Business Automobile Liability owned/leased, owned, hired
Combined single limit for Non-Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent

e. Owner's Protective Liability Insurance Policy, naming the State of Texas, its employees, and the Architect/Engineer as insured with the following limits:

Bodily Injury \$1,000,000 Each Occurrence
\$1,000,000 Aggregate

f. Builder's Risk Insurance

An all risk policy, including workmanship acceptable to the Owner, in the amount equal at all times to 100% of the Contract Sum. The policy shall be issued in the name of the Contractor and shall name his Subcontractors as additional insured's. The Owner shall be named as a loss payee on the policy. The builders risk policy shall have endorsements as follow:

1. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.
2. For renovation projects and or work, the Owner waives subrogation for damage by fire to existing building structure(s), if building structure(s) is in care, custody or control of Contractor, and Builder's Risk Policy shall be endorsed to include coverage for existing building structure(s), except that (i) Contractor shall not be required to obtain such an endorsement unless specifically required by the Special Conditions or the Specifications, and (ii) the aforementioned waiver of subrogation shall not be effective unless such endorsement is obtained.
3. Builder's Risk Policy shall be endorsed to include coverage for existing building structure(s).

- g. Flood insurance when specified in Supplementary General Conditions or Special Conditions.
- h. Umbrella coverage when specified in Supplementary General Conditions or Special Conditions.

6.1.2.1 The above insurance requirements are not intended to be compounded with the Contractor's standing insurance policies. If the Contractor already has in force insurance policies which provide the required coverage, there is no need to purchase duplicate coverage for this project

6.1.3 Policies must include the following clauses, as applicable.

- a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner."
- b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with the Owner."
- c. "The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner." This is not applicable to the workers' compensation policy.
- d. "The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner."

6.1.4 Workers' Compensation Insurance Coverage:

a. Definitions:

- (1) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's work on the project has been completed and accepted by Owner
- (3) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
- (4) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the

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

- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- d. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- e. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- h. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificate of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

- j. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

6.1.5 If insurance policies are not written for the amounts specified in 6.1.2, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.

6.2 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.

6.3 Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out in 6.1.2.

Article VII - General Responsibilities of Owner and Contractor

7.1 Owner's General Responsibilities.

7.1.1 The Owner is the entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

7.1.2 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be held attended by the Owner, Contractor, Architect/Engineer and Subcontractors, as appropriate, 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, including 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 on Site.

- 7.1.3 Owner's Designated Representative. Prior to the start of construction, Owner shall designate the Owner's Designated Representative (ODR), with specific express authority within certain dollar amounts to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract. Unless otherwise specifically provided for, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.
- 7.1.4 The Owner shall furnish to Contractor all surveys describing the physical characteristics, legal description and limitations, site utility locations and other information under the Owner's control. Necessary actions of the Owner, including processing of payments to the Contractor, shall be accomplished with reasonable promptness and subject to Article XIII hereof. The Owner shall pay for all routine testing of materials agreed by the Owner and the Architect/Engineer to be required by the Contract Documents, except when for retesting of materials failing the initial test is required, in which instance the cost of reinspection will be paid for by the Contractor; provided, however, any special testing which is specifically required in the scope of work and listed in a technical section of the specifications shall be paid by the Contractor.
- 7.1.5 Owner supplied materials and information. Information, equipment or services under the Owner's control shall be furnished by the Owner to the Contractor with reasonable promptness to avoid delay in orderly progress of the work.
- 7.1.6 Availability of Lands. Owner shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Contractor. Owner shall identify any encumbrances or restrictions specifically related to use of lands so furnished with which Contractor will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Owner fails to furnish these lands, rights of way or easements in a timely manner, Contractor may make a claim under Article XXI.
- 7.1.7 The foregoing listing is in addition to the specific duties and authority of Owner and the ODR found in other Articles of the Contract.
- 7.2 Limitation on Owner's and ODR's Duties. Owner and ODR 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 and ODR are not responsible for any failure of Contractor to comply with laws and regulations applicable to furnishing or performing the Work. Owner and ODR are not responsible for the failure of Contractor to perform or furnish the work in accordance with the Contract Documents. Owner and ODR are not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

7.3 Role of Architect/Engineer.

- 7.3.1** In General. Unless otherwise provided for in the Contract Documents, the Architect/Engineer will perform the duties of the Architect/Engineer as described in this Contract during construction and until final payment, including advising the ODR on matters where assistance is needed. The assignment of any authority, duties or responsibilities to the Architect/Engineer under the Contract Documents, or under any agreement between Owner and Architect/Engineer, or any performance thereof by Architect/Engineer is for the exclusive benefit of Owner and not for the benefit of Contractor, any Subcontractors, suppliers or their respective employees or sureties.
- 7.3.2 The Architect/Engineer has the authority to act on behalf of the Owner to the extent provided for in the Contract Documents, unless otherwise modified by written instrument which will be furnished to the Contractor. The Architect/Engineer will advise and consult with the Owner, and the Owner's instructions to the Contractor will generally be issued through the Architect/Engineer, except that the Owner reserves the right, on occasions, as deemed appropriate by the Owner, to issue instructions directly to the Contractor through the ODR.
- 7.3.3 All written communications between the Owner, Contractor, and the Architect/Engineer concerned with the construction of the Project shall be furnished to the Owner (central office), the Owner's Resident Construction Manager (ODR) and on-site Construction Inspector, the Architect/Engineer, and the Contractor by the party originating the communication.
- 7.3.4 All oral directives to the Contractor shall be given through the Owner's Construction Inspector or Resident Construction Manager (ODR) and promptly confirmed in writing.
- 7.3.5 All instructions affecting the Contract Sum, Contract Time or contract interpretation, shall be confirmed expeditiously in writing with copies furnished to the Architect/Engineer, the ODR and the Contractor by the party issuing the instruction. No instruction affecting the Architect/Engineer's design liability shall be issued without the Architect/Engineer's prior written consent.
- 7.3.6 The Owner and the Architect/Engineer with the Owner's consent shall interpret Contract requirements and have the authority to reject work performed by the Contractor which, in the opinion of the Owner or the Architect/Engineer, does not meet the requirements of the Contract Documents. Architect/Engineer shall communicate with the ODR upon discovery of non-compliant Work and shall provide a recommendation upon request for review by the ODR. The ODR shall order in writing such work removed and replaced in accordance with Article XII.

- 7.3.7 Visits of Site. Architect/Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Architect/Engineer deems necessary or as provided in Architect/Engineer's contract with Owner, in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Architect/Engineer will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise noted. The Architect/Engineer's efforts will be directed toward providing the Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, Architect/Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. Architect/Engineer visits and on-site observations are subject to all the limitations on Architect/Engineer's authority and responsibility set forth in § 7.4.
- 7.3.8 Clarifications and Interpretations. Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI). If Owner or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Owner and Contractor may make a claim therefore as provided in Articles XX and XXI.
- 7.3.9 The duties listed above are in addition to other duties, responsibilities and actions to be undertaken by Architect/Engineer as specified in other Articles of the Contract.
- 7.4 Limitations on Architect/Engineer Authority. Architect/Engineer will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. Architect/Engineer is not responsible for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work. Architect/Engineer is not responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. Architect/Engineer is not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.
- 7.5 Contractor's General Responsibilities.
- 7.5.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor shall supervise and direct the Work using the best skill and attention to assure that each element of the work conforms to the contract requirements. The Contractor shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 7.5.1.1 The Contractor shall provide project administration in accordance with provisions of Division 1 Specifications and as outlined in the Pre-Construction Conference.

- 7.5.2 Contractor's Superintendent. The Contractor shall employ a competent resident superintendent who shall be in attendance at the Project Site during the progress of the Work. The superintendent shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner unless he leaves the employment of the Contractor. The superintendent shall represent the Contractor at the Site and shall have full authority to act on behalf of the Contractor including, but not limited to, signature authority for progress payments and change orders. All communications given to the superintendent shall be binding on Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to Owner.
- 7.5.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- 7.5.4 Services, Materials, and Equipment. Unless otherwise specified in the Supplementary General Conditions, 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 and incidentals necessary for the performance, testing, start-up, and completion of the Work. The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified or indicated in the Contract.
- 7.5.5 No Substitutions Without Approval. The Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Architect/Engineer and in accordance with a Change Order. If the Contractor has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, it shall register its objections with the Architect/Engineer in writing, sending a copy to the Owner; otherwise, it shall proceed with the work with the understanding that a satisfactory job is required.
- 7.5.6 Documents and Samples at the Site. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work or Contractor's request for Substantial Completion Inspection.

- 7.5.7 Should Work be identified by either the Architect/Engineer and/or the ODR as not being in compliance with the Contract Documents, the ODR shall communicate the finding to Contractor and such Work shall be corrected by the Contractor at its expense. The approval of Work by either the Architect/Engineer 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.
- 7.5.8 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections in writing. If a rejection causes a change to the Contract Sum, Contractor may file a contractor-initiated Type I change claim under Article XX. Contractor shall not be required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor will not substitute Subcontractors without the approval of Owner.
- 7.5.8.1 Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents for the benefit of the Owner and the Architect/Engineer.
- 7.5.8.2 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. Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner through Contractor.
- 7.5.8.3 The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after it has been executed. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies shall in no way relieve the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.
- 7.5.9 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. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as Owner and Contractor may agree in writing.
- 7.5.10 Cleaning. The 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. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the Work in a neat and clean condition.

- 7.5.11 Acts and Omissions of Contractor, his Subcontractors and employees. The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the work any of its subcontractor's or its employees that the Owner's representative finds to be careless, incompetent or otherwise objectionable.
- 7.5.12 Indemnification of Owner. Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Owner, officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 7.5.12.1 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.
- 7.5.12.2 Contractor shall promptly advise the Owner in writing of any claim or demand against the Owner or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.
- 7.5.13 the duties listed above are in addition to the duties, responsibilities and activities to be undertaken by Contractor as specified throughout the Articles of the Contract.
- 7.5.14 The Contractor will operate and maintain operations areas and associated storage areas at the site of the Work in accordance with the following:
- 7.5.14.1 All Contractor operations, including storage of materials and employee parking upon the site of work, shall be confined to areas designated by the Owner.

- 7.5.14.2 The Contractor may erect temporary buildings at its expense, which shall remain its property. The Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.
- 7.5.14.3 The Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. The Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of the Contractor.
- 7.5.15 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.
- 7.5.16 The Contractor shall at all times keep construction areas, including storage areas used by it, free from the accumulation of water, waste materials or rubbish during performance of the work. During the period of construction, and not less frequently than once a week, the Contractor shall remove from the site any and all waste materials, rubbish and trash, and shall dispose of such waste materials, rubbish and trash off the property of the Owner. Prior to the Contractor's requested date for a pre-final inspection, the Contractor shall remove any and all remaining equipment from the site and shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Owner.
- 7.5.17 Royalties and Patents: The Contractor shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall save the Owner and its representatives harmless from loss on account thereof.

Article VIII - Additional Contractor Responsibilities when the Owner Awards Separate Contracts

- 8.1 Separate Contracts. The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions. The Owner reserves the right to perform operations related to the Project with Owner's own forces. Each separate contractor shall undertake to indemnify the Owner as set forth in §7.5.12.
- 8.1.1 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. This Contractor shall cooperate with the separate contractors and Owner'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, this 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.

- 8.1.2 Should this Contractor cause delay or 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, the Owner 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.
- 8.1.3 This Contractor shall afford the Owner, the Architect/Engineer, the separate contractors and Owner'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.
- 8.1.4 The Owner reserves the right to make essential installations which are pertinent to the early use of the building or project. Within this right the Owner may let other contracts or may do such work with its own labor forces and materials. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or supplier, or by Owner's employees. The Contractor shall cooperate to the end that the Owner may realize complete functioning of the building or project on the day of substantial completion.
- 8.2 The Owner shall provide for coordination of the activities of the Owner'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 the Owner in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to his construction schedule as necessary, after receiving Owner's instructions.
- 8.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction by the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction by a separate contractor. Contractor may make claim for such amounts as outlined in Articles XX.

Article IX - The Contractor's Responsibility for Jobsite Safety

- 9.1 Unless otherwise specified in the Specifications, Contract Documents, or Supplementary General Conditions, Contractor shall be responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Contractor and all of its Subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of the Act. Contractor 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 shall erect and maintain all necessary safeguards for such safety and protection.
- 9.1.1 Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them or their facilities, and shall cooperate with them in the protection, removal, relocation and replacement of their facilities and/or utilities.

9.2 In any emergency affecting the safety of persons or property, the Contractor shall act reasonably to prevent threatened damage, injury or loss. Contractor shall give the ODR and Architect/Engineer prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by its emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with Articles XX and XXI.

9.2.1 Authorized agents of Contractor shall respond immediately to call out at anytime of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage, restriction or limitation or to take such action pertaining to the Work as may be necessary to provide for the safety of the public. 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 the funds due the Contractor under the Contract.

9.3 In the event of an incident or accident involving outside medical care or a lost time injury to an individual on or near the Work, Contractor shall notify the ODR as soon as possible within 24 hours of the event. Contractor shall record the location of the event, the circumstances surrounding the event, by using photography or other means, and shall gather witness statements and other documentation which describes the event. Contractor shall supply the ODR and Architect/Engineer with a set of incident investigation documents no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), the scene of the incident shall be barricaded and left intact until all investigations are completed.

Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.

9.4 Environmental Safety and Control. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, the Contractor shall immediately stop work in and secure the affected area, and notify the ODR. All subcontracts shall expressly bind subcontractors to the same duty. On receiving such notice, the ODR shall 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. As soon as possible upon completion of this investigation, the ODR shall issue a written report to the Contractor identifying the material or materials found and indicating any necessary steps to be taken to treat, handle, transport or dispose of the material. The Owner may hire third-party contractors to perform any or all such steps. Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, an adjustment in the contract price or time may be claimed by the Contractor pursuant to the provisions of Articles XX, XXI, XXII and XXIII. The Contractor shall fully indemnify, save and hold harmless the Owner of and from any costs, losses, damages or liabilities resulting from its failure, of the failure of its subcontractors, to comply strictly with these provisions.

- 9.4.1 Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.
- 9.5 Trenching safety precautions, applicable only if the project requires excavation which exceeds a depth of five feet, shall comply with the following:
- 9.5.1 The Contractor will submit a trenching plan to the Owner within fifteen (15) days after bid opening. The plan will be approved and sealed by a professional engineer registered in the State of Texas and employed by the Contractor. Said engineer cannot be anyone who is employed on this project by the Owner or the Owner's Architect or Engineer. Receipt of the plan is prerequisite to award of a contract. Failure to submit a plan as required will result in forfeiture of the bid bond.
- 9.5.2 The Contractor shall indemnify and hold harmless the Owner and its employees and agents, including the Owner's Architect and Engineer, from any and all damages, costs (including, without limitation, legal fees, court costs, and the cost of investigation), judgments, and claims by anyone for injury or death of persons resulting from the collapse or failure of trenches constructed under this contract. THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY PROVISION APPLIES EVEN IF THE COLLAPSE OR FAILURE IS PARTLY CAUSED BY THE OWNER'S NEGLIGENCE INCLUDING WITHOUT LIMITATION THE OWNER'S NEGLIGENT ACTS OR OMISSIONS IN FAILING TO PROVIDE ADEQUATELY FOR TRENCH SAFETY. SUCH NEGLIGENT ACTS OR OMISSIONS MAY INCLUDE BUT ARE NOT LIMITED TO, INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

Article X - Materials and Workmanship; Licensing and Testing

- 10.1 Materials and Workmanship. The Contractor warrants and guarantees that all Work shall be executed in a good and workmanlike matter in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs. Unless otherwise specified, all materials and equipment incorporated into the Work under the Contract shall be new.
- 10.2 Contractor's Warranty of Workmanship.
- 10.2.1 Limits on Warranty. Contractor's Warranty and guarantee hereunder excludes defects or damage caused by:
- a. Abuse, modification or improper maintenance or operation by persons other than Contractor, Subcontractors, suppliers or any other individual or entity for whom Contractor is responsible, or
 - b. Normal wear and tear under normal usage.

10.2.2 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 shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- a. Observations by Owner and/or Architect/Engineer;
- b. Recommendation to pay any progress or final payment of Architect/Engineer;
- c. The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- d. Use or occupancy of the Work or any part thereof by Owner;
- e. Any acceptance by Owner or any failure to do so;
- f. Any review of a Shop Drawing or sample submittal; or
- g. Any inspection, test or approval by others.

10.3 Routine Testing. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the Owner and the Architect/Engineer timely notice of its readiness and of the date arranged so the Architect/Engineer may observe such inspection, testing or approval. Should the material or work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the testing, inspection or approval as well as the cost of replacement of unsatisfactory material or Work as provided by Article XII; otherwise, the Owner shall bear such costs and an appropriate change order shall be issued.

10.3.1 The costs of routine testing shall be borne by the Owner, but the Contractor shall be responsible for the cost of material tested. When directed by the Owner, demonstration of a material's compliance with the specifications shall be made by one of the following:

- a. Manufacturer's certificate of compliance.
- b. Mill certificate.
- c. Testing laboratory certification.
- d. Report of actual laboratory test from the Owner's laboratory or from a laboratory satisfactory to the Owner. Samples tested shall be selected by or in the presence of the Owner and the method of testing shall comply with the professional societies' standard specifications.

10.3.2 Materials incorporated into the Project may be subject to routine tests as specified or as deemed necessary by the ODR or the Architect/Engineer to insure their compliance with the specifications. Materials to be tested may include, but are not limited to, the following:

- a. Concrete - Primary mix design, slump tests and cylinder compression tests.
- b. Steel - Tensile tests.
- c. Welds - Field inspection and X-ray equipment.

- d. Soils - Subsoil investigation, physical analysis and compaction tests.
- e. Pavement - Physical analysis and compaction tests.
- f. Roofing - Samples cut from in-place roof.

Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing, as described, will be done at the discretion of the Owner who will bear all costs. The Contractor shall be held responsible for providing samples of sufficient size for test purposes and for cooperating with the Owner or his representative in obtaining and preparing samples for tests. All tests will be in accordance with standard test procedures and will be performed by a laboratory selected by the Owner. Results of all tests will be provided to the Owner, Architect/Engineer and the Contractor.

10.3.2.1 Not included in tests provided by the Owner are:

- a. 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 prove its compliance with the Specifications, which testing shall be paid for by Contractor.
- b. Tests on mechanical systems required to insure their proper installation and operation, which shall be paid for by Contractor.

10.3.3 Should any of the routine tests indicate that a material does not comply with the job requirements, the burden of proof of compliance shall be with the Contractor, subject to the following conditions:

- a. Contractor may select the laboratory for further testing, but selection must be approved by the Owner.
- b. Quality and nature of tests will be determined by the Owner.
- c. All tests shall be taken in the presence of the Owner or ODR.
- d. If tests prove that the material complies with specifications, the laboratory fees will be paid by the Owner. If noncompliance is proved, laboratory fees will be paid by the Contractor.
- e. Proof of noncompliance will make the Contractor liable for any corrective action which the Owner feels is prudent, including complete removal and replacement of defective material.

10.3.3.1. All subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the Contractor.

10.3.4 Special Testing. The Owner or the Architect/Engineer may require special inspection, testing or approval of material or Work in addition to that which may be specified for compliance with requirements of the Contract Documents. Upon direction by the Owner and the Architect/Engineer for additional special testing, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. The costs of special testing shall be at Owner's expense, except if the materials fail, Contractor shall pay the expense; provided, however, that the entire cost of any additional testing, whether routine or special, required because of failure of a prior test shall be borne by the Contractor.

10.4 If any Work (or the work of others) that is to be inspected, tested or approved is covered by Contractor without providing the Owner an opportunity to review based on written notification as set forth in 12.2.3 , or if any Work is covered contrary to the written request of Owner or Architect/Engineer or as specifically indicated elsewhere in the contract documents, the covered work must, if requested by Owner, be uncovered and recovered at Contractor's expense, except as set forth in § 12.2.3.

10.5 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 his own information and job control so long as the Owner 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 and all testing required in the technical specification sections shall be the responsibility of the Contractor to coordinate and pay for.

Article XI – Shop Drawings and Submittals

11.1 Contractor's Submittals. The 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 the Architect/Engineer as governed by Change Orders. The Contractor shall review each submittal for compliance with Contract Documents and shall certify that it has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without the Contractor certification will be returned without review or other comment, and any delay resulting therefrom will be the Contractor's responsibility.

11.1.1 The Contractor shall, within twenty (20) calendar days after receipt of the Notice to Proceed, submit to the Owner through the Architect/Engineer four (4) copies of a submittal schedule, listing all items that shall be furnished, for review and approval by the Owner and/or the Architect/ Engineer. The schedule shall also list all items that are to be reviewed and approved by the Contractor.

11.1.2 Such submittal schedules shall include, among other things, shop drawings, manufacturer's literature, certificates of compliance, materials samples, materials colors, guarantees, etc.

- 11.1.3 The submittal schedules shall indicate the type of item, contract requirements reference, the Contractor's scheduled dates for submitting the above and like items and the projected need dates for approval answers from the Owner or the Architect/Engineer and the projected or actual dates for procurement. This schedule shall show a minimum of thirty (30) calendar days after receipt for review and approval by the Owner and Architect/Engineer, and if resubmittal is required an additional fifteen (15) days will be allowed for approval after receipt. The Contractor will revise and/or update this schedule as appropriate, and submit same with each payment estimate.
- 11.1.4 The submittal schedule shall be coordinated with the Work Progress Schedule for all the Work. The Contractor shall revise and/or update both schedules monthly to insure consistency and current project data. Four (4) copies of such updated schedules shall be provided to the Owner concurrent with each application for progress payment.
- 11.1.5 Shop Drawings, Samples or other required information shall be properly identified, as specified or as the Owner and/or the Architect/Engineer may require. At the time of submission, the Contractor shall inform the Owner and the Architect/Engineer in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.
- 11.1.6 By submitting Shop Drawings, Samples or other required information, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents and he shall so certify as required by § 11.1.
- 11.2 Nature and Effect of Review. The Architect/Engineer and the Owner, if required by Supplementary General Conditions, will review and approve all submittals with reasonable promptness, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Such approval will be indicated in writing. The approval of a separate item shall not indicate approval of an assembly in which the item functions. The approval of the Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Architect/Engineer in writing of such deviation at the time of submission and the Owner or the Architect/Engineer has not objected to the specified deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.
- 11.3 Correction and Resubmission. The Contractor shall make any corrections required to a submittal and shall resubmit the required number of corrected copies of the submittals promptly so as to avoid delay, until approved. The Contractor shall address in writing the Architect/Engineer and the Owner, when required, any new revisions other than the corrections requested on previous submissions.

- 11.4 Limits on Shop Drawing Approvals. No Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such work shall be in accordance with approved Shop Drawings and Samples. Approvals of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless the procedures of Articles XX and XXI are followed. The Architect/Engineer's and Owner's approval, if necessary, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the approved Shop Drawing or Sample.
- 11.5 The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference.
- 11.6 Intent of Contract Documents. It is not the intent of the Specifications or Contract Documents to limit materials, equipment or fixtures to the product of any particular manufacturer. Where definite materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done to set a definite standard and a reference for comparison as to quality, application, physical conformity, and other characteristics. It is the Owner's or Architect/Engineer's intention to not discriminate against or prevent any dealer, jobber or manufacturer from furnishing materials, equipment, and/or fixtures which meet or exceed the characteristics of the specified items. Substitution of materials shall not be made without prior written approval from the Architect/Engineer and Owner.
- 11.6.1 The Owner shall be the final judge of whether a proposed substitution meets the required characteristics of a specified item and such decisions of the Owner shall be final and conclusive.
- 11.7 Unauthorized Substitutions at Contractor's Risk. All proposed substitution of materials, equipment or fixtures shall be presented through the submittal process. The Contractor shall be financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified, and shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

Article XII - Inspection of the Project During Construction

- 12.1 Contractor Quality Control. Contractor is responsible for controlling the quality of the work as set forth in the Contract Documents.
- 12.2 Owner Quality Assurance.
- 12.2.1 The Owner and the Architect/Engineer and/or other Owner agents and consultants will make periodic visits to the site to familiarize themselves with the progress and quality of the Work, conduct inspections 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 and/or inspection of the Work by the authorized representatives of the Owner.

12.2.2 The Contractor shall not cover up any work with finishing materials or other building components prior to an opportunity to perform an inspection of the work by the Owner or its authorized representatives for review of the installation. Should corrections of the work be required for approval, cover-up shall be delayed until another inspection can be made and approval is indicated.

12.2.3 The Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the Owner of the anticipated need for a cover-up inspection. Should the Owner fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the Contractor may proceed with the particular cover-up work identified in the notification. The five (5) working day notice requirement shall not be reduced or waived by the Owner's ability to respond in less time.

12.3. Condemnation and Removal of Defective Work.

12.3.1 The ODR and the Architect/Engineer have the authority to reject and condemn Work, which does not meet the requirements of the Contract and to order such work removed and replaced in accordance with paragraph 12.3.2 hereof. The approval of a work item by the ODR does not relieve the Contractor from compliance with 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, or where the particular work item is part of a system that has not been fully completed and reviewed for overall operation.

12.3.2 The Owner's Designated Representative (ODR) and the Architect/Engineer shall interpret the Contract requirements and shall be the final judge of the acceptability of the Work under the Contract Documents. If any materials or Work furnished under this Contract are condemned or rejected by the ODR or the Architect/Engineer, the Contractor shall, after notice from the ODR or the Architect/Engineer, 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.

- 12.3.2.1 The Contractor shall, without charge or assessment against any contract contingency or allowance, replace any material or correct any workmanship found by the Owner or Architect/ Engineer not to conform to the contract requirements, unless in the public interest the Owner consents in writing to accept such material or workmanship with an appropriate adjustment in the contract price. The Contractor shall promptly correct all Work rejected by the Owner or Architect/Engineer 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. The costs of such corrective work shall also include reimbursement by the Contractor to the Owner of the amount of the fee to be paid by the Owner to the Architect/Engineer for the extra services of the Architect/Engineer in performing its responsibilities to the Owner relative to such corrective work.
- 12.3.2.2 If the Contractor does not promptly complete the work, replace rejected material or correct rejected workmanship, the Owner may, 1) by separate contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or 2) terminate the Contractor's employment in accordance with Article XXV, Contract Termination.
- 12.3.2.3 If any portion of the Work is concealed by subsequent work without notification to the Owner as set forth in 12.2.3 contrary to the instructions of the Owner or Architect/Engineer or to the requirements specifically expressed in the Contract Documents, it must be uncovered for observation and recovered at the Contractor's expense.
- 12.3.2.4 If any other portion of the Work has been covered and the Owner or Architect/Engineer has not specifically requested to observe or it is not specifically indicated elsewhere in the Contract Documents to be observed prior to being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and recovering shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs including the amount of fee to be paid by the Owner to the Architect/Engineer for extra services related to such non-complying work.
- 12.3.3 Upon notice of condemnation, the Contractor may request to prove to Owner and the Architect/Engineer, at Contractor's sole cost, that the Work should be accepted because it meets performance and other relevant standards. The Contractor shall have ten (10) working days from receipt of the notice to present documentation to prove compliance. Owner shall respond to Contractor's showing of proof in writing within fifteen (15) working days of receipt of Contractor's documentation.

Article XIII – Contract Payments

13.1 Schedule of Values. Within twenty (20) days of Notice to Proceed under the Contract, the Contractor shall submit to the ODR and the Architect/Engineer for approval a Schedule of Values, accurately itemizing material and labor for the various classifications of the Work. The approved Schedule of Values will be used as the basis for the progress payments under the Contract.

13.1.1 No progress payments will be made prior to receipt and approval of the breakdown, which shall be in such detail as may be required by the Owner. The breakdown shall be submitted to the Architect and Owner not less than twenty (20) days prior to the first request for payment, and this shall be a condition precedent to the processing of the first payment. The breakdown shall follow the trade divisions of the specifications along with provision for general conditions costs, fees, contingencies, and allowances so that the sum of the items will equal the contract price. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the work in place when completed.

13.1.2 The Contractor shall retain in its files a copy of all worksheets used in preparation of its bid, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid. The worksheets shall be made available to the Owner for verification at the time that Contract Documents are being executed and thereafter the Contractor shall grant the Owner during normal business hours access to said notarized copy of worksheets from time to time and at any time during the period commencing upon execution of the Contract and ending one year after final payment.

13.2 Progress Payments. Periodic progress payments will be made to the Contractor for Work performed, and materials in place or suitably stored and protected on sites or as otherwise agreed to by the Owner and the Contractor. Payment shall not become due until receipt by the ODR or his designee of a correct and complete Pay Application, certified by the Architect Engineer pursuant to this article. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Progress payments for Change Order work will not be accepted for payment until Change Order is executed by Contractor.

13.2.1 Preliminary Pay Worksheet. Once each month, the Contractor may submit to the Architect Engineer and the ODR a complete, clean copy of a Preliminary Pay Worksheet, which shall attach the following:

- 1) The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the approved Schedule of Values; and
- 2) A schedule update as specified, HUB Subcontracting Plan Reports, an updated Submittal Schedule, invoices for stored materials and other supporting documentation, and such additional documentation as Owner may require and as specified in the Supplementary General Conditions of the Contract, Special conditions, or Planning and Scheduling Specification.

- 13.2.2 Contractor's Periodic Invoice. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the Architect/Engineer and ODR shall meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. On the basis of this review, the ODR and the AE may require modifications to the Preliminary Pay Worksheet prior to the submittal of a Periodic Invoice, and shall promptly notify the Contractor of revisions necessary for approval. As soon as practicable, but in no event later than seven days following the Preliminary Pay Worksheet review meeting, the Contractor shall submit a Periodic Invoice reflecting the required modifications to the AE, and attaching all additional documentation required by the ODR and AE, as well as his affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work or other indebtedness connected with the Contractor's Periodic Invoice (Application for Payment) have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Periodic Invoice shall be complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.
- 13.2.3 Certification by AE. As soon as practicable, but in no event later than five days following the AE's receipt of the Contractor's Periodic Invoice (Application for Payment), the Architect/Engineer shall review the same for completeness, and shall forward the Periodic Invoice (Application for Payment) to the ODR, with a copy to the Contractor, together with the AE's certification that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Periodic Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Periodic Invoice for processing in accordance with this §13.2.3. –Upon receipt of such a Periodic Invoice and affidavit certified by the Architect/Engineer, the Owner shall make final review and process the payment through established administrative procedures.
- 13.3 Owner's Duty to Pay. The Owner shall have no duty to pay the Contractor except on receipt by the ODR of (1) a complete Periodic Invoice certified by the AE.
- 13.3.1 Bulk materials must be approved by the Owner in accordance with the contract submission requirements before payment. Payment for stored materials shall be limited to 85% of the invoice price or 85% of the scheduled value for the materials, whichever is less. Bulk materials are eligible for full payment only after they have been incorporated into the Work.
- 13.4 Retainage. The Owner shall withhold from each progress payment, as retainage, five percent (5%) of the total earned amount. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.
- 13.4.1 Any request for reduction or release of retainage shall be accompanied by written consent of the Contractor's Surety. No such request shall be made until the Contractor has earned at least sixty-five percent (65%) of the total Contract Price.
- 13.5 Reduction to Cover Loss. The Owner may reduce any Periodic Invoice prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:
- a. Defective work not remedied;
 - b. Damage to work of a separate contractor;
 - c. Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;

- d. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or
- e. Persistent failure to carry out the work in accordance with the Contract Documents.
- f. Reasonable evidence that the work cannot be completed for the remainder of the contract sum.
- g. Assessment of fines for violations of Prevailing Wage Rate laws
- h. Failure to include the appropriate amount of retainage for that periodic payment.

13.6 Title to all material and Work covered by progress payments transfers to the Owner upon payment. Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

13.7 Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.

13.8 Upon the Owner's request, manifest proof of the status of Subcontractor's accounts shall be furnished in a form acceptable to the Owner.

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

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

13.11 For purposes of Texas Government Code 2251.021 (a)(2), the date the performance of service is completed is the date when the Owner's representative approves the application for payment.

13.12 Off-Site Storage: With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, he shall abide by the following conditions.

13.12.1 Materials shall be stored in a BONDED COMMERCIAL Warehouse.

13.12.2 The Contractor shall provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure the Owner.

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

13.12.4 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 stored in the area.

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

13.12.6 With each monthly payment estimate, the Contractor shall submit a report to the ODR, Architect/Engineer, and Inspector listing the quantities of materials already paid for still stored in the off-site location.

13.12.7 Warehouse records, receipts and invoices shall be made available to Owner's

representatives, upon request, to verify the quantities and their disposition.

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

Article XIV - Closing Inspections

- 14.1 Substantial Completion Inspection. When the Contractor considers the entire Work or part thereof Substantially Complete, the Contractor shall inspect the Work, or designated portion thereof, for compliance with the Contract Documents and notify the ODR and the Architect/Engineer in writing that the Work will be ready for Substantial Completion Inspection on a date certain. The Contractor shall include with this notice a copy of its updated inspection list marked to indicate corrected items plus a list of items to be completed or corrected prior to final inspection which the Contractor recognizes exist but believes do not prevent the Work or part thereof from being substantially complete, and shall request a substantial completion inspection for the Work or designated portion thereof. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Architect / Engineer and the Owner will review the Contractor's list of items and either will schedule the requested inspection or will inform the Contractor in writing that such an inspection would be premature because the Work is not sufficiently advanced or that conditions are not as represented on the Contractor's list.
 - 14.1.1 Prior to the substantial completion inspection, the Contractor shall furnish to the Owner a copy of the As-Built blue-line prints 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. If the Contractor does not furnish these requirements and the Owner must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments otherwise due the Contractor. The substantial completion inspection will be jointly conducted by the Architect/Engineer, the Owner, and the Contractor.
 - 14.1.2 On the date indicated by Contractor, or as soon thereafter as is practicable, the ODR, the Architect/Engineer, and the Contractor shall inspect the work and if the ODR and the Architect/Engineer determines that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued by the ODR for certification by the Owner, Architect/Engineer and Contractor, fixing the date of Substantial Completion. The Architect/Engineer will provide with this certificate a list of items to be completed prior to final inspection (the Pre-Final Punch list). This list may include additional items not included on the Contractor's list, which are deemed necessary by the Architect/Engineer or by the Owner to correct or complete prior to Final Inspection.

- 14.2 Final Inspection The Contractor shall fully complete the list of items listed on the Prefinal Punchlist prior to Final Inspection. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 30 days of the certified date of Substantial Completion. When the Contractor has completed the Prefinal Punch list, he shall give written notice to the ODR and Architect/Engineer that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of the contractor's updated Punch list indicating resolution of all items. On this date, or as soon thereafter as is practicable, the ODR, the Architect/Engineer and the Contractor shall inspect the Work and the Architect/Engineer shall submit to the Contractor a list of items which the Owner and the Architect/Engineer have determined to require correction or completion before the Work will be accepted by the Owner (the Final Punch list).
- 14.3 The Contractor shall correct or complete all items on the Final Punch list before Acceptance and Final Payment. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 7 days of receiving the Final Punch list. Upon completion of the Final Punch list, the Contractor shall notify the Architect/Engineer and ODR in writing stating the disposition of each punch list item, and the Architect/Engineer and Owner shall promptly inspect the completed items. When the Final Punch list has been completed, and the Contract is fully performed according to the Contract Documents, and is acceptable to the Owner, the ODR shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to the Contractor's right to receive Final Payment.
- 14.4 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.
- 14.5 Purpose of Inspection. Inspection by the Owner and Architect/Engineer is for the purpose of determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the Owner or Architect/Engineer to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with punch list items left incomplete, does not constitute a waiver of such a defect or of the Owner's rights under the Contract Documents or relieve the Contractor of its warranties contained at Article XVII.
- 14.6 Additional Inspections.
- 14.6.1 If on the basis of the Substantial Completion Inspection, the ODR or the Architect/Engineer determines that the Work is not Substantially Complete, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, informing the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents, or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

14.6.2 If on the basis of the Final Inspection, the ODR or the Architect/Engineer determines that the Work is not complete according to the Contract Documents, or that the Work required by the Retinal Punch list had not been performed, the ODR or the Architect/Engineer shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all Work so designated prior to requesting a second Final Inspection.

14.6.3 This Agreement contemplates three inspections only: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punch list Items. The cost to the Owner of any and all additional inspections deemed necessary by the ODR or Architect/Engineer because the Work was not ready for one or more of these inspections shall be borne by the Contractor, and the Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner shall furnish documentation of all costs so deducted. Work added to the Contract by Change Order after Final Inspection shall not be considered as corrective work for purposes of determining timely completion or assessing the cost of additional inspections.

14.7 Phased Completion. The Special Conditions may provide, or other project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work shall or may be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of Articles XIV (Closing Inspections) and Article XV (Early Occupancy) shall apply independently to each designated element or part of the project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

Article XV - Early Occupancy

15.1 Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that such occupancy or use is consented to by any and all insurers of the Work. Should the Owner wish to use or occupy the Work, or part thereof, prior to substantial completion, the ODR shall so notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article.

15.2 Occupancy of Substantially Completed Work. If the Owner wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Contractor and the Architect Engineer prior to the Substantial Completion Inspection, and the ODR shall annotate the Certificate of Substantial Completion to set out, pursuant to §§ 14.4, 14.6 or the parties' written agreement, the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the Architect/Engineer and Contractor for their written acceptance of the responsibilities assigned to each of them in such Certificate. The accepted Certificate shall not constitute a change in Contract Time which can only be modified by an agreed Change Order. See Article XX.

15.3

Occupancy of Work Prior to Substantial Completion.

- 15.3.1. Notice and Early Occupancy Proposal. If the Owner determines that substantial hardship will result if it is unable to occupy some portion of the Work prior to substantial completion, it shall so inform the Architect/Engineer and the Contractor no less than 30 days before the date the Owner 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. As soon as practicable, but not less than five working days after receiving this notice, the Contractor shall make the designated portions of the Work available to the Architect/Engineer and the Owner for observation. The Architect/Engineer and the Owner shall observe the Work jointly with the Contractor. As soon as practicable, but not later than the third day next following the date of the inspection, the ODR or the Architect/Engineer shall prepare and submit to 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 the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal shall also specify whether the area to be occupied must be Substantially Complete before occupation, and shall specify the date for Substantial Completion of the Work to be occupied if other than the date previously specified by the Contract Documents.
- 15.3.2. Administration as Change Order. The Early Occupancy Proposal shall be administered as an Interim Change Authorization pursuant to the provisions of § 21.5, except that the Contractor shall submit a CPE as soon as possible, but not later than the seventh day next following receipt of the Early Occupancy Proposal. All cost adjustment, including any increased costs of insurance, related to the Early Occupancy Proposal, shall be stated in the CPE; any such relief not so requested shall be deemed waived. If the Early Occupancy Proposal requires early Substantial Completion, the Contractor shall be entitled to an equitable cost adjustment for acceleration and impact costs, to be submitted pursuant to §22.2 (Type II Changes) If an early completion date is not required, the Contractor shall submit any claim for time extension as a Type I change in the Work and Interim Change Authorization. If by the date designated by the Owner as the proposed date of occupancy, the ODR and Contractor have not reached an agreement concerning adjustment of time or cost, or the division of responsibility for the occupied portions of the Work, the ODR may issue a ULCO.
- 15.3.3. Project Completion Administration with Early Occupancy. Where under the provisions of this Article the Contract Time is modified for any part of the Work due to early occupancy, then the provisions of §14.6 shall apply. All required documentation shall be furnished by the Contractor to the ODR on or before the date of occupation by the Owner.
- 15.3.4. No waiver of Timely Completion. Early occupancy of any portion of the Work does not waive the Contractor's duty to complete the remaining Work within the Contract Time as specified by the Contract Documents or as subsequently modified by Change Order.

Article. XVI - Contract Final Acceptance and Payment

- 16.1 Request for Final Payment. At any time following the completion of all work, including all substantial completion punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment; including all sums held as retain age, to the Architect/Engineer and the ODR for their review and approval.
- 16.2 Final Payment Documentation. The Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, including maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract Documents. The Contractor shall also submit Consent of Surety to Final Payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract. The Owner is entitled to rely upon this affidavit; the Contractor may not submit a claim on behalf of a subcontractor or vendor if that claim has not been noted as an exception in the affidavit.
- 16.3 Architect/Engineer Approval. The Architect /Engineer shall 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, Architect/Engineer shall either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; 2) accept it, note his approval and send to Owner.
- 16.4 Offsets and Deductions: The Owner may deduct from the Final Payment all sums due from the Contractor for any reason, all deductions authorized by §13.5, and as Liquidated Damages. If the Certificate of Final Completion notes any Work remaining incomplete or defects not remedied, the Owner may deduct the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, the Owner shall identify each deduction made and the reason therefore, and furnish the Contractor with an explanation of the deduction and the amount deducted on or by the 21st day after Owner's receipt of an approved or deemed approved Application for Final Payment.
- 16.5 Final Payment Due. Final Payment shall become due and payable by Owner, subject to all allowable offsets and deductions, on the 31st day next following Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth day next following receipt of Final Payment; failure to do so will bar any subsequent claim for payment of amounts deducted.
- 16.6 Effect of Final Payment: Final Payment shall constitute a waiver of all claims by the Owner, relating to the condition of the Work except those arising from (1) faulty or defective Work appearing after Substantial Completion (latent defects); (2) failure of the Work to comply with the requirements of the Contract Documents; (3) terms of any warranties required by the Contract Documents or implied by law, and (4) claims arising from personal injury or property damage to third parties. Final payment shall constitute a waiver of all claims by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment. Provided, however, that the Contract shall not be deemed fully performed by the Contractor and closed until the expiration of all warranty periods-

Article XVII - Contract Warranty and Guarantee

- 17.1 Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, 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, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §16.6, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.
- 17.2 Warranty Period. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Substantial Completion of the Work as a whole if such date establishes the beginning of the period of Owner occupancy and/or use of the Work, otherwise this warranty begins upon final completion and acceptance of the Work. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged there from and shall promptly provide written notice to the Owner indicating action taken to resolve the defect. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within 30 days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.
- 17.3 Separate Warranties. Where a particular piece of equipment or component of the work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the ODR and/or Architect/ Engineer and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in §§17.1 and 17.2, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or subcontractor. Where an assigned -warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract Documents, the Contractor shall remain liable to the Owner on all elements of the required warranty that are not provided by the assigned warranty.
- 17.4 Certification of No Asbestos Containing Materials or Work
- 17.4.1 The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.
- 17.4.2 The Contractor shall provide at Substantial completion, a notarized certification to the Owner and the Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.
- 17.4.3 The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their

assigns, comply with this requirement.

- 17.4.4 The Contractor shall insure compliance with the following act – Asbestos Hazard Emergency Response Act (AHERA – 40 CFR 763-99 (7)) from all of his subcontractors and assigns as listed in item 17.4.3 above. All materials used on this project shall be certified as non Asbestos Containing building Materials (ACBM).
- 17.4.4.1 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.
- 17.4.4.2 The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.
- 17.4.4.3 The Contractor shall provide a notarized certification that no ACBM's were used.

Article XVIII – Not Used

Article XIX - Concealed Site Conditions

- 19.1 The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Owner.
- 19.2 If, in the performance of the Contract, subsurface, latent or concealed conditions at the Site are found to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the Contractor shall notify the Architect/Engineer and the Owner in writing of such conditions before proceeding with the Work. If necessary, the Architect/Engineer and/or the Owner shall develop a solution and provide it to Contractor. If the solution prompts changes to the Contract Amount and/or Time, the Contract shall be adjusted under Article XX hereof.
- 19.3 For environmental matters, see § 9.4.
- 19.4 The Owner makes no representations as to the accuracy or completeness of the site information furnished to the Contractor by Owner and does not expressly or implicitly warrant same and is not responsible for any interpretations or conclusions reached by the Contractor with respect thereto. It is Contractor's sole responsibility to verify to its own satisfaction all site information, including but not restricted to topographical data, borings, subsurface information, utilities and easements and to account for all reasonably anticipated costs in their proposal for construction.

Article XX - Change Orders

- 20.1 Change Order Defined. A Change Order is a written modification of the Contract between the Owner and the Contractor, signed by the Owner, the Contractor and the Architect/Engineer.

- 20.2 Effect of Change Order. A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents.
- 20.2.1 Contingency Allowance: The Construction Contingency Allowance is controlled solely by the Owner and is in addition to any cost allowance provided for under the various sections. Expenditures from the Contingency Allowance must be made by Change Order issued by the ODR or the Architect/Engineer and approved by the Owner. Expenditures from the Construction Contingency Allowance do not alter the total Contract Price. Any unused portion of the Contingency Allowance will be deducted from the final payment.
- 20.3 Modifications for which a Change Order is required. All changes in the scope of the Work, the Contract Sum and/or the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time. Neither the Architect/Engineer, nor the ODR or any other party may change the scope of the Work, the Contract Sum or the Contract Time by any method, expressed or implied, other than a Change Order.
- 20.3.1 Any direction, instruction, interpretation, or determination from the Architect/Engineer or Owner shall not be considered for a Change Order under this clause unless the Contractor gives the Owner written notice within fifteen (15) days requesting a change order and stating the date, circumstances, and source of the directive.
- 20.4 Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.
- 20.4.1 Agreed Change Orders. An Agreed Change Order is a Change Order jointly executed by the Owner and the Contractor, in which each agrees to all of the terms of the amendment.
- 20.4.2 Effect of an Agreed Change Order. The execution of a Agreed Change Order by the ODR and the Contractor constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order, provided however, that an Agreed Change Order may be reformed by a written modification signed by the Contractor and the ODR, for the limited purpose of correcting an error in computation.
- 20.4.3 Unilateral Change Order (ULCO). A Unilateral Change Order is a Change Order issued by the Owner without the agreement of the Contractor.

- 20.4.4 Effect of a Unilateral Change Order; conversion to an Agreed Change Order. The issuance of a ULCO does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting to the Owner and the Architect/Engineer a written objection to the ULCO setting forth in detail the reasons for its objections and the contract provisions on which the objection is based within 30 days of receipt of the ULCO. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the ULCO and waived all claims related to the ULCO and the ULCO shall have the full force and effect of an Agreed Change Order.
- 20.5 Who May Request Change Orders. Change Order Requests may be initiated by the Owner or by the Contractor as provided in §§20.6 and 20.7.
- 20.6 Type I Change Orders. A Type I Change Order adjusts the Contract Sum and/or Contract Time because of an actual or constructive change in the scope or character of the Work, which originates from the Owner or Architect/Engineer. Type I Change Orders are initiated in one of two ways:
- 20.6.1 Owner-Initiated Changes. The Owner, without invalidating the Contract and without approval of the Surety, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions.
- 20.6.2 Contractor-Initiated Changes. If the Contractor claims that it will incur additional cost or time because of any writing containing a written interpretation of the Contract Documents, or instruction concerning the execution of the Work, issued by the Owner or the Architect/Engineer, and constituting a constructive change in the scope or character 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 XXIV.
- 20.6.3 Commencement of Work. The Contractor shall not commence work on a Type I change work prior to receipt of a Change Authorization, or a Interim Change Authorization, as set out in §§ 21.3.3 and 21.5, respectively.
- 20.7 Type II (Claim) Change Orders A Type II Change Order adjusts the Contract Sum or Contract Time because of a change in the conditions of performance of the Work that changes the cost or time required for performance without changing the scope of the Work to be performed under the Contract Documents and which are not otherwise resolved as a Type I change. The Contractor may request a Type II Change Order under the following circumstances only:
- a. The occurrence of excusable delays as designated in § 24.3.3;
 - b. Reasonably unanticipated and unknown physical conditions at the Site, pursuant to § 19.2, which the Architect/Engineer addresses by means of changes in the Drawings and Specifications, or unanticipated conditions at the Site as described in §§ 2.8 and 2.9;
 - c. The existence of material errors, omissions and imperfections in the design documents which the Architect/Engineer corrects by means of changes in the Drawings and Specifications;

- d. The failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents or to provide information required by the Contractor to proceed with the Work;
- e. The failure of the Owner to provide reasonable access to the Site;
- f. The failure of the Owner to timely provide materials which are to be furnished by the Owner under the Contract Documents; and

20.8 Contractor's Risk of Performance. Except as expressly provided in this Article XX, the Contractor shall not be entitled to an increase in the Contract Sum or the Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

20.9 Approval of Surety. Type II change orders shall require the surety's approval.

Article XXI - Administration of Change Order Requests

21.1 Requests for Changes.

21.1.1 Time Extension Requests. All relief related to excusable delays shall be governed by the provisions of Article XXIV, and any time extension granted shall be made pursuant to that Article. A single Change Order may be issued, adjusting both Contract Time and Contract Sum, where both arise from the same claim.

21.1.2 Requests for Cost Adjustment. All requests for adjustment in the Contract Sum shall be made as follows:

21.1.2.1. Type I Change Orders.

Owner-initiated Changes. When the Owner wishes to order changes in the Work, the ODR or the Architect/Engineer shall submit to the Contractor a Change Order Request (COR), 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 30 days of receipt of the Owner's COR, the Contractor shall submit a Change Order Proposal Evaluation (CPE) to the ODR and the Architect/Engineer, stating that the proposed change is a no-cost change, or proposing an adjustment in the Contract Sum, as provided under Article XXII. Following resolution of impact of cost and/or time for the change, the ODR or the Architect/Engineer shall issue and the Contractor shall execute a Change Order documenting the change in scope of the Work. The Owner may process formal Change Orders that accumulate several separate change actions.

Contractor-initiated Changes. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the Architect/Engineer constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the Owner and Architect/Engineer in writing as soon as possible, but not later than 15 days after receipt of the instruction or interpretation, and shall submit a CPE to the ODR and Architect/Engineer as soon as possible thereafter, but not later than 30 days after issuance of the notice. The Contractor's failure to meet either of these time requirements shall constitute waiver of any and all claims related to such instruction, interpretation, or notice. This CPE shall contain a proposal for an adjustment in the Contract Sum, as provided under Article XXII. The CPE shall be accompanied by a copy of the writing containing the instruction or interpretation, evidence of the date Contractor received the writing and an explanation of how the writing creates the need for a change under terms of the contract.

21.1.2.2 Type II Change Orders.

Notice of Claim. If the Contractor claims that additional cost or time is involved because of the occurrence of one or more of the circumstances set forth in §20.7, the Contractor shall give the ODR and the Architect/Engineer written notice of its intent to submit a claim and shall proceed immediately to document all increased costs or time delays actually incurred as a result. Such notice shall be given as soon as the Contractor becomes aware that such circumstances exist, but not later than 30 calendar days after the onset of the circumstance giving rise to the claim. This notice shall identify the circumstances giving rise to the additional cost or time delay, the elements of cost affected, and the claimed contractual basis for entitlement to relief. The Contractor shall certify that the claim is made in good faith and that the supporting data is current, accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. Failure to certify a claim will result in a determination that no claim has been filed. Such notices shall be accompanied by sufficient written evidence to document the occurrence of an estimated cost impact, but the full amount of the claim need not be stated at the time the initial claim notice is given to the ODR and the Architect/Engineer. This notice shall include the following additional elements: (1) an analysis of the relevant contract provisions; (2) with description of the facts; and (3) the statement of why the particular facts warrant compensation under the terms of the contract. The Contractor and Owner recognize and agree that it is beneficial to each other to identify factors affecting the Contractor's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the Contractor shall not be entitled to request a Type II cost adjustment unless the required notice is submitted timely. The Contractor waives all claims for which such notice is not given.

Submission of Claim. Claims for adjustment of the Contract Sum for Type II Change Orders shall be made in the form of a CPE submitted to the ODR and Architect/Engineer no later than thirty (30) calendar days after the cessation of the circumstances giving rise to

the claim. The CPE shall set forth the Contractor's proposed cost adjustment, computed pursuant to Article XXII, together with the Contractor's documentation of costs incurred. Within thirty (30) days after completion of the work in question, the Contractor shall submit in writing to the Owner and the Architect/engineer the additional following elements of the claim: (4) supporting cost or pricing data; (5) legal analysis, if appropriate; (6) an expert's opinion, if appropriate; (7) certification; and (8) a formal request for decision. No such claim shall be valid unless these additional elements are so submitted, and the Contractor hereby waives all such invalid claims.

21.1.2.3 Bar to Claims: No claim shall be allowed for an adjustment under this or any other provision of the Contract if asserted after the Owner makes or tenders final payment under this contract.

21.2 Processing Requests for Change.

21.2.1 Response to CPE. As soon as practical allowing for consultant review after receipt of any CPE submitted by the Contractor, the ODR or the Architect/Engineer shall respond either directly to the Contractor in writing or verbally at a project meeting the outcome of which is committed to the written record as to the Owner's response being by either (1) accepting the contractor's proposal, (2) rejecting the same, (3) initiating negotiations with the contractor concerning the proposed cost adjustment, or (4) requesting additional information.

21.2.2 Not Used

21.2.3 Change Authorization. When agreement has been reached concerning the adjustment of cost, the ODR shall accept the Contractor's CPE, or any subsequently revised CPE issued pursuant to negotiation, by endorsing the CPE "Accepted", with the date, and returning it to the Contractor. A CPE that has been accepted is a Change Authorization (CA). A CA is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, entitles the Contractor to prepare to submit the adjusted cost of the Work to be incorporated into the approved Schedule of Values on succeeding Pay Applications, as it is completed.

21.2.3.1 The Owner may, in writing, issue a notice to proceed for any portion of the Work in a Change Order for which final adjustment in Contract Sum and/or Contract Time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without prior written approval by the Owner.

21.2.4 *Not Used*

21.2.5 Execution and Processing of Change Order: The Owner will undertake to issue Owner-Contractor agreed Change Order for signatures within thirty (30) calendar days of agreement, unless otherwise agreed to, provided the Contingency Allowance is not exceeded. In those cases where Change Order work causes the Contingency Allowance to be exceeded, approval of higher authority may be necessary and, if such approvals are necessary, the Owner will have up to ninety (90) additional calendar days to issue such agreed Change Order.

- 21.2.5.1 The ODR will authorize the Architect/Engineer to prepare a Change Order to include specific change items for which time and cost impacts have been agreed, and will state whether the Change Order is to be funded by the Owner's Construction Contingency allowance or directly impacts the contract Price.
- 21.2.5.2 The Architect/Engineer shall affix seal and signatures and distribute directly to the Contractor. The Contractor shall execute the Change Order within ten (10) calendar days of receipt and return it directly to the ODR.
- 21.2.5.3 The ODR will obtain signature of component institution and Owner, normally within ten (10) calendar days of receipt of Contractor's executed copies and will make final distribution to all parties.

21.3 Unilateral Change Orders.

21.3.1 For any Type I or Type II change, the ODR may issue a Unilateral Change Order (ULCO), establishing such adjustment of cost or time, if any, as the Owner deems fair and reasonable, under the following circumstances:

1. If the Contractor fails to submit a CPE within the time required under §§ 21.1.2.1 or 21.1.2.2 above,
2. If negotiations fail to achieve an agreed price;
3. If, in the Owner's judgment based on the Progress Schedule, a failure to authorize the Contractor to proceed with a change in the Work may adversely affect the timely completion of the Work.
4. In addition to the above, the ODR shall issue a ULCO on any CPE that remains unresolved 90 days after Substantial Completion of the Project unless otherwise agreed to by the parties or barred by tender of final payment.

21.3.2 A ULCO is effective on receipt by the Contractor. The ULCO obligates the Contractor to perform the Work according to its terms, and authorizes the Contractor to submit the adjusted cost of the Work as allowed in the ULCO on succeeding Pay Applications.

21.3.3 When a Unilateral Change Order has been issued, it will have the full force and effect of a contract modification. It will be included in schedules, payment estimates, reports and all official records of the Contract. The issuance of a Unilateral Change Order will not prejudice any of the Contractor's rights to make claims or to appeal disputed matters under other provisions of this Contract.

21.4. Interim Change Authorization. When the Owner determines that an Owner-initiated Type I change in the Work, or a written instruction or interpretation of the Contract Documents for which the Contractor has given notice of its intent to initiate a Type I claim or any other change implementation, must be made promptly in order to prevent damage to the Work in place, to prevent significant delay in the Project Schedule or to maintain safety or for any other reason as determined by the ODR, the ODR may issue an Interim Change Authorization (ICA) directing the Contractor to proceed with changed work before submitting or during the review of a CPE. The ICA shall authorize the Contractor to proceed with the work on the basis of either (1) time and materials or (2) cost not to exceed a specified

amount. Upon receipt of an ICA, the Contractor shall proceed immediately to document all increased costs actually incurred as a result of the Work required under the ICA. At any time prior to the completion of the changed Work, the Contractor may submit a CPE containing a lump sum proposal for the cost of the changed Work, which, if accepted, shall be administered as a Type I change; provided, however, that if the Work is completed prior to acceptance by the ODR of the Contractor's CPE, the Contractor's adjustment of the cost shall be limited to the actual cost of the Work. If the ODR or the Architect/Engineer determines that a Contractor-initiated Type I change is without merit, the ODR or the Architect/Engineer shall notify the Contractor to proceed according to the subject written interpretation or instruction. Such a notice to proceed shall have the same effect as a Unilateral Change Order pursuant to §20.4.4, and the Contractor's rights shall be as set forth in § 20.4.4.

Article XXII - Pricing Change Order Work

22.1 Lump Sum Cost Proposals. All proposals for an adjustment in Contract Sum shall be made on a lump sum basis as outlined below, setting forth the Contractor's estimated or actual costs attributable to the changed Work only. The proposed lump sum cost adjustment shall consist of a Base Cost, reflecting the Contractor's actual or estimated cost of performing the changed Work, in the case of a Type I change, or the increased cost of performance in the case of a Type II change. The Base Cost of Type I changes may be marked up to cover the Contractor's profit, general conditions costs, scheduling costs, bonding and insurance costs, and all other costs directly attributable to performance of the change Work. The markup also covers all impact costs on unchanged Work. These lump sum cost provisions also apply to Work performed by or claims submitted by Subcontractors as part of the Contractor's CPE.

22.1.1 Base Cost Computation for Type I Changes. The Base Cost computation includes the following elements only, as relevant:

- a. The total cost of materials and supplies, reflecting all available discounts, itemized by cost and quantity;
- b. The total cost of all labor, including supervision up to the level of Project Superintendent, itemized to show man-hours by trade and classification, unburdened hourly rates, and total labor cost. Man-hour costs for labor shall be based on the latest version of the "Means Facility Cost Data" as published by R. S. Means Company;
- c. The cost of additional supervision at and above the level of Project Superintendent, itemized by job function, man-hours, and multiplied by the Contractor's as-bid burdened unit cost for supervision as set out at Contractor's Proposal;

- d. The reasonable equipment cost calculated for each type of equipment used in performing the changed Work, based on hours of use. Mobilization costs will not be allowed except when the Contractor demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work;
- e. All transportation costs for delivery and handling of materials, equipment and supplies, and the removal of waste or debris related solely and directly to the change work; and
- f. All storage costs in excess of 30 days for materials and supplies, if necessitated solely by the changed Work

22.1.2 Markup on Type I Changes.

The amounts that the Contractor or his Subcontractors may add to the base cost computation in a Change Order for profit and overhead are as follows:

- a. For Work performed by his forces, the Contractor may add up to 15% on the first \$10,000.00, 10% on the next \$10,000.00 and 7-1/2% on the balance over \$20,000.00, for any specific Change Order.
- b. For subcontracted Work, the Contractor may add up to 10% on the first \$10,000.00, 7-1/2% on the next \$10,000.00 and 5% on the balance over \$20,000.00.
- c. For work performed directly by his forces a subcontractor may add up to 15% to his base cost computation for any specific change order.
- d. Sub-subcontracted work (second tier) a subcontractor may add up to 5% administrative costs for any specific change order.
- e. On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.

22.1.3 Labor Burden. To the base cost computation plus the mark-up amount may be added the actual amount for labor burden for the following, if applicable: Social Security, Old Age Pension and/or other taxes of like nature imposed upon the Subcontractor, or Contractor (when it performs the work) by the State or Federal Government, or both, which are incident solely to such Change Order work and which the Contractor would be required to pay if or as it performs the work.

22.1.4 The amount of the allowed markup covers all overhead expenses and profit, including supervision, small tools, insurance and bond.

22.1.5 Unit Prices. Unit prices bid by the Contractor, or subsequently agreed upon, shall include only those cost elements as those set out in §22.1.1, and shall be subject to markup pursuant to §22.1.2.

22.1.5.1 Each unit price bid by the Contractor shall include all costs applicable to the work, including but not limited to mobilization, demobilization, labor, materials, equipment, supervision, delays, overhead at any level, and profit.

22.1.5.2 Either party may request an equitable adjustment. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred and fifteen percent (115%) or

below eighty-five percent (85%) of the originally specified amount. If the quantity variation causes an increase in the time necessary for completion, the Owner, upon receipt of a written request for an extension of time within thirty (30) days from the recognition of the variation or within such further period of time as may be granted by written agreement signed by the Owner, will ascertain the facts and make such adjustment for changing the completion date as in its judgment the findings justify.

22.2 Cost Computation for Type II Changes.

- 22.2.1 Costs and Documentation. For a Type II change, the CPE shall include all information required by Section 21.2.2.2 including but not limited to a reasonably detailed narrative setting forth (1) the nature of the cost impact and its cause, (2) the contractual basis of the Contractor's claim of entitlement to a cost adjustment, (3) description and documentation of steps taken by the Contractor to mitigate the claimed cost impact, and (4) such other information that is necessary to justify its claim. The Contractor hereby waives any such claim for which they cannot document steps taken to mitigate the claimed cost impact. The cost adjustment proposal for a Type II claim shall be based on itemized documented costs actually incurred. If and only if the actual cost claimed cannot be demonstrated with reasonable certainty, the Contractor may utilize mathematical formulas or models to compute the proposed cost adjustment, but no CPE will be valid unless accompanied by documentation showing that the increased costs claimed in fact resulted from the alleged cause and that the increased costs are compensable under terms of the contract.
- 22.2.2 No Markup Authorized. No mark up is authorized on the Base Cost of a Type II claim for costs alleged by either the Contractor or its Subcontractors.
- 22.2.3 Certification. On CPEs for Type II changes, the Contractor shall certify in writing that all information contained in the CPE is true and correct, and that the costs claimed were incurred as a result of the alleged cause, and were reasonably necessary for the performance of the Work. In the case of Subcontractor pass-through claims, the Contractor shall further certify that the claim stated by the Subcontractor constitutes a legitimate claim against the Contractor, that it is not barred by the terms of the subcontract, and whether and to what extent the claim has been paid. The Contractor may not subsequently modify a claim that has been so certified except for the correction of errors. No Type II CPE shall be considered valid that is not certified and submitted within the time limits set forth in 21.1.2.2.

- 22.2.4 Cost Computations Under Interim Change Authorizations. Where the Owner issues an ICA authorizing the Contractor to proceed on a time and materials, or a cost not to exceed basis, the Contractor may submit the cost of the Work for payment, as authorized by the ICA, in succeeding Pay Applications once the Contractor has executed the Change Order that includes the particular change action. At any time after receipt of an ICA, the Contractor may submit a CPE proposing a lump sum cost for the changed work, which shall be processed as a Type I change under §22.1 above. The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.

Article XXIII - Time Allotted for Performance; Construction Schedules

- 23.1 Contract Time. The Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for substantial completion by the Contract Documents, including any modification by Change Order. Failure to achieve Substantial Completion within the Contract Time or Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will subject the Contractor to Liquidated Damages as provided in § 24.3.1.
- 23.2 Work Progress Schedule. Within the period set forth in the Special Conditions and/or the Planning and Scheduling Specification Section of the Project Manual, the Contractor shall submit in duplicate to the Owner and the Architect/Engineer, for review and acceptance, a proposed Progress Schedule for the Work. The Progress Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored. Unless otherwise provided in the Special Conditions, the schedule should utilize the Critical Path Method. The Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and submittals. If the Submittal Schedule is not fully integrated into the CPM Schedule, or if specifically required by the Special Conditions or elsewhere in the Contract Documents, the Contractor shall also submit a separate Submittal Schedule, correlated with the Progress Schedule that shows the dates the Contractor intends to make the required submittals.
- 23.2.1 Schedule Requirements. The Progress Schedule should be accurate and a reliable representation of the progress of the Work to date, and of the Contractor's actual plans for its completion. The Progress Schedules shall be capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner and Architect/Engineer that the Contractor will follow the schedule as submitted in performing all Work as yet not completed, and that all progress to date shown on the schedule is accurately depicted.

23.2.2 Schedule Updates. The Progress Schedule and Submittal Schedule (if required) shall be updated periodically to reflect progress to date, and current plans for completing the Work. The form and contents of the updates, and the required update interval, shall be as specified in the Planning and Scheduling Specification Section and/or the Special Conditions. The updated Progress Schedule shall be submitted to the Owner, and the Architect/Engineer for acceptance, and the Owner shall have no duty to make progress payments until the updated Progress Schedule has been timely submitted. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. The Contractor shall submit any schedule revision to Owner and AE for acceptance before it is implemented.

23.2.3 Effect of Schedule Submittal. Submittal of the Progress Schedule, and successive updates or revisions, is for the information of the Owner and Architect/Engineer, and to permit the coordination of their activities with those of the Contractor. Owner and AE shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals. Acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate their own activities with the Contractor's activities as shown on the schedule. Acceptance of a Progress Schedule, update or revision does not indicate the approval of the Contractor's proposed sequences and duration. Acceptance of a Progress Schedule update or revision indicating late completion does not constitute the Owner's consent to a late finish, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so. The Contractor's scheduled dates for completion do not constitute a change in terms of the contract. The completion Date(s) can only be modified by Change Order.

23.2.4 Ownership of Float. Unless accepted otherwise by the Owner in writing, the Contractor shall develop its project execution plan to provide 10% total float at the project level, at submission of each Baseline Schedule, as specified. Float time contained in the Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but may be consumed by either as needed on a first-used basis.

23.2.5 Completion of Work: The Contractor will be held to account for the Work being completed in the time that is stated in the Contract, or any extension thereof.

23.2.5.1 If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress so as to insure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement. This increase shall be accomplished by any one or a combination of the following or other suitable measures:

- .1 An increase in working forces.
- .2 An increase in equipment or tools.
- .3 An increase in hours of work or number of shifts.
- .4 Expedite delivery of materials.

23.2.5.2 The Contractor shall, within ten (10) calendar days after being so informed, notify the Owner in writing of the specific measures taken and/or planned to increase the rate of progress together with an estimate as to when scheduled progress will be regained and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project. Should the plan of action be deemed inadequate by the Owner, the Contractor will take additional steps or make adjustments as necessary to its plan of action until it meets with the Owner's approval. The increased rate of work will continue until scheduled progress is regained. Scheduled progress will be established from the latest revised progress schedule for the job. Timely completion will be understood to be the contract completion date as revised by all time extensions granted at the time acceleration is undertaken. The Contractor shall not be entitled to additional compensation for the additional effort it applies to the work under the terms of this subparagraph.

Article XXIV - Modification of the Contract Time

24.1 Delays of and Extension of Time. When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor shall be entitled to an extension of time as set forth in § 24.3.3. The Contract Time shall be extended by the number of calendar days lost by reason of excusable delay, as measured by the Contractor's progress schedule (or current update). All extensions of time shall be given 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 consume only float without delaying the project completion date.

24.1.1 Time Extensions for Weather Days. A "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, on which inclement weather and related Site conditions prevented the Contractor from performing seven continuous hours of Work between the hours of 7:00 AM and 6:00 PM. Weather days are excusable noncompensable delays. When weather conditions at the site prevent work from proceeding, the Contractor shall immediately notify the ODR so conditions can be confirmed by the Owner. At the end of each calendar month, the Contractor shall submit to the Owner and Architect/Engineer a list of Weather Days occurring in that month. The Owner and Architect/Engineer shall meet with the Contractor to discuss and resolve any disagreements concerning the number of Weather Days that have directly impacted the Completion Date. Upon Owner and Contractor agreement, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the amount of time extension, the Owner may issue a ULCO for fair and reasonable time extension. The requirements of §24.4 concerning requests for time extension shall not apply to requests for extensions of time for Weather Days, which are governed by this section alone. The Contractor's sole relief for delay for Weather Days will be a time extension.

24.1.2 Non-Weather Excusable Noncompensable Delay. The Contractor shall be entitled only to an extension of time for unforeseeable delays not within the control of or arising from the fault of either the Contractor or the Owner caused by the following:

- a. Unusual delay in the delivery of materials, components or equipment to be incorporated into the work. Strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the Owner);
- b. Physical damage to the work caused by circumstances beyond the control of the Contractor;
- c. War, civil unrest or insurrection;
- d. Other unforeseeable causes beyond the control of either the Contractor or the Owner.

24.1.3 Excusable Delay. The Contractor shall be entitled to an equitable adjustment of a time extension, issued via change order, for delays caused by the following:

- a. Failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents, or to provide information required by the Contractor to proceed with the Work in a timely manner.
- b. Detrimental or obstructive actions of separate contractors employed by the Owner.
- c. Failure of the Owner to provide access to the Site of the Work.
- d. Failure of the Owner to provide materials which are to be furnished by the Owner under the Contract Documents, consistent with the Progress Schedule.
- e. Errors, omissions and imperfections in design which the Architect/Engineer corrects by means of changes in the drawings and specifications.
- f. Unanticipated physical conditions at the Site which the Architect/Engineer corrects by means of changes to the drawings and specifications.
- g. Changes in the work ordered by the Owner or the Architect/Engineer.

24.1.3.1 No Damages for Delay: The Contractor shall have no claim for monetary compensation or damages for delay or hindrances to the work from any cause including without limitation any act or omission of the Owner. The Contractor's only claim for any such delay or hindrance shall be for an extension of time as provided in this Article XXIV.

- 24.1.4 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if, in the Owner's sole discretion, it is considered reasonably 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. The Owner shall give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work to be suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner, with the assistance of the Architect/Engineer, shall initiate and complete an investigation of the circumstances giving rise to the suspension, and shall issue a written determination of their cause. The Contractor will not be entitled to an extension of time or compensation for delay resulting from a suspension if the Owner's investigation determines that the cause was within the control of the Contractor. If the cause is determined not to have been within the control of the Contractor, and the suspension prevents the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a Time Extension shall be granted through a Change Order. Suspensions of work under this provision shall be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension.
- 24.1.5 Suspension of Work for Owner's Convenience. Upon seven calendar days' prior written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty days for its own convenience. The Owner shall give the Contractor a written notice of suspension for convenience, which shall set forth the number of days for which the Work, or any portion of it, will be suspended, and the date on which the suspension of Work shall cease. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven calendar days' prior written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of Article XXV.
- 24.1.6 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 under the Contract Documents, the Contractor shall be entitled only to a time extension, and not to compensation, for the period of concurrent delay. When the completion of the Work is simultaneously delayed by an excusable delay and an excusable no compensable delay, the Contractor shall be entitled to a time extension only, as provided under § 24.3.31.
- 24.1.7 Except as expressly provided in this § 24.3, the Contractor shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

24.2 Time Extension Requests. If the Contractor believes that the completion of the Work has been delayed by a circumstance designated as excusable under § 24.3, other than inclement weather, he shall give the Owner written notice, stating the nature of the delay and the activities potentially affected, within 30 calendar days after the onset of the event or circumstance giving rise to the excusable delay. Such claims should be accompanied by sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. All requests for extensions of time not submitted in connection with proposed costs for changed or added work must be made in writing within 30 calendar days after the cessation of the delay. The Contractor and Owner recognize and agree that it is beneficial to each to identify delays and make necessary schedule adjustments promptly, and that a Progress Schedule prepared and updated by the Contractor provides an effective tool for measuring and tracking the impact of delays. Therefore, it is agreed that no extension of time will be granted unless the required notice is submitted timely, the required Work Progress Schedule has been regularly updated and submitted as specified, and the notice includes-sufficient documentation.

All Changes to the Contract Time made as a result of such claims shall be by Change Order, as provided under Article XX.

24.2.1 No extension of time shall release the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations shall remain in full force until the discharge of the Contract

24.2.2 Contents of Time Extension Requests. Each Time Extension Request shall be accompanied by a quantitative demonstration of the impact of the delay on the current Progress Schedule. Time Extension Requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the Contractor's claim of entitlement to a time extension, (3) documentation of the actual impacts of the claimed delay on the Progress Schedule, and any concurrent delays, (4) description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Progress Schedule, and (5) such other information that the Contractor and/or Owner and/or Architect/Engineer considers necessary to justify the claim for an extension of time. No time extensions shall be granted for delays that do not affect the Project Schedule.

24.2.3 Owner's Response. The Owner or the Architect/Engineer with the owner's concurrence shall respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by the Contractor. Such an Extension of Time is effective on the date the Architect/Engineer's or Owner's notice is received by the Contractor, but a Change Order reflecting the Extension of Time shall be executed by the parties in accordance with Article XX. The Owner will respond to each properly submitted Time Extension Request within 15 calendar days following its submittal; if the Owner and Architect/Engineer cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner or Architect/Engineer shall so notify the Contractor in writing. Upon written agreement with the Contractor, the Owner shall then have not more than 30 additional calendar days to prepare a final response.

24.3 Failure to Complete Work Within the Contract Time. Time is of the essence of this Contract. The Contractor's failure to substantially complete the Work within the Contract Time or to

achieve final completion as required will cause damage to the Owner. These damages shall be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.

24.3.1 Collection of Liquidated Damages. The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Special Conditions and the Contract.

Article XXV - Termination and Suspension of the Contract Prior to Completion

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

- a. Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract Documents, to supply enough properly skilled workmen or proper materials;
- b. Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
- c. Persistent failure to prosecute the work in accordance with the Contract Documents, and to insure its completion within the time, or any extension thereof, specified in this contract;
- d. Failure to remedy defective work condemned by the ODR pursuant to Article XII;
- e. Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Texas Government Code Chapter 2251;
- f. Persistent endangerment, by the Contractor or its Subcontractors or other vendors, of the safety of labor or of the Work itself;
- g. Failure to supply or maintain statutory bonds, pursuant to Article V, or the supply or maintain Required insurance, pursuant to Article VI ;or
- h. Any other material breach of the Contract,.
- i. The Contractor becomes insolvent, files for bankruptcy protection, makes a general assignment of its rights and obligations for the benefit of creditors or is, in the Owner's estimation, otherwise financially incapable of performing the Work.

The Owner reserves the right to terminate at any time for any of the above listed causes. Failure to exercise the right to terminate in any instance or for any proper reason shall not be construed as waiver of the right to do so in any other instance or for any other proper reason.

25.1.1 The ODR shall give the Contractor and its Surety thirty days' prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the Owner, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the Owner shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an

extension of time.

- 25.1.2. Should the Contractor or the surety fail to so demonstrate within thirty days following receipt of such notice, or fail to satisfy the Owner that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Architect/Engineer services and of Owner contract administrative costs made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. The Owner reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the Contractor and its Subcontractors, vendors and suppliers, and the ODR shall promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

25.2 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following procedures will be adhered to:

- a. The Owner will immediately notify the Architect/Engineer and the Contractor in writing, specifying the reason for and the effective date of contract termination. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- b. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract.
 1. Stop all work.
 2. Place no further subcontracts or orders for materials or services.
 3. Terminate all subcontracts.
 4. Cancel all materials and equipment orders as applicable.
 5. Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.
- c. When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed, including any additional work required pursuant to the notice of termination, and for any provable loss and reasonable expenses attributable to the Work resulting from such termination.

25.3 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed and for any provable loss and reasonable expenses attributable to the Work resulting from such termination. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period,

the Contractor may not terminate the Contract.

- 25.4. Settlement on Termination. When the Contract is terminated for any reason, the Contractor shall, at any time prior to 180 days of the effective date of termination, submit a final termination settlement proposal to the Owner based upon recoverable costs as provided under §§25.1, 25.2 or 25.3. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor. All settlements on termination shall be administered as Type II Change Orders as provided under Articles XX, XXI and XXII.

Article XXVI – Dispute Resolution. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time (“Chapter 2260”), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and Construction Manager to attempt to resolve any claim for breach of contract made by Construction Manager:

- a) Construction Manager’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Construction Manager shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Agreement. Construction Manager’s notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages Construction Manager seeks, and the method used to calculate the damages. Compliance by Construction Manager with subchapter B of Chapter 2260 is a required prerequisite to Construction Manager’s filing of a contested case proceeding under subchapter C of Chapter 2260. The Vice President for Administration and Partnership Affairs, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Construction Manager, shall examine Construction Manager’s claim and any counterclaim and negotiate with Construction Manager in an effort to resolve such claims.
- b) If the parties are unable to resolve their disputes under subparagraph (1) of this section, the contested case process provided in subchapter C of Chapter 2260 is Construction Manager’s sole and exclusive process for seeking a remedy for any and all of Construction Manager’s claims for breach of this Agreement by Owner.
- c) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner’s or the state’s sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

The submission, processing and resolution of Construction Manager’s claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended

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

It is agreed that such process is not invoked if Owner initiates the dispute by first bringing a claim against Construction Manager, except at Owner’s sole option. If Owner makes a claim against Construction Manager and Construction Manager then makes a counterclaim against Owner as a claim under Chapter 2260 and in compliance therewith, the Owner’s original claim against Construction Manager does not become a counterclaim and is not subject to the mandatory counterclaim provisions of

Chapter 2260 of the *Texas Government Code*, except at the sole option of the Owner.

Article XXVII – Miscellaneous

- 27.1 Written Notice. *Written notice shall be considered to have been duly given if the document is delivered in person to the designated representative of the Contractor or Owner for whom it is intended, if delivered at or sent by registered or certified mail to the last business address of the designated representative known to one who gives the notice, or transmitted by fax machine to the last known business fax number of the designated representative, with a receipt retained to prove delivery. Notice is deemed effective when given rather than when received, however notice by mail is not effective until three (3) days after the date of mailing and notice by fax is not effective until the next business day after faxing.*
- 27.2 Supplemental and Special Conditions When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions and Supplemental General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Special Conditions and other administrative requirements in Division 1 Specifications sections and as described below:
- 27.2.1 Supplemental General Conditions are incorporated herein and describe the standard procedures and requirements of contract administration followed by The University of Texas System, a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects. Owner's Standard Supplemental Conditions have been incorporated into this document as indicated by strikethroughs in the original text and insertion of additional terms in bold and italicized type.
- 27.2.2 Special Conditions and Division 1 Specification sections shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the Uniform General or Supplemental General Conditions.
- 27.3 Federally Funded Projects. If this project is federally funded, the Special Conditions will indicate that fact and will contain any modifications of these General Conditions required as a condition of obtaining federal funding.
- 27.4 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.
- 27.5 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.
- 27.6 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.

- 27.7 Governing Law. This Contract shall be governed by the law of the State of Texas.
- 27.8 Captions and catchlines. The captions and catchlines used throughout the Uniform General and Supplemental General Conditions are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.
- 27.9 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.
- 27.10 No third party beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.
- 27.11 Entire Agreement. These Contract Documents supercede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitutes the entire agreement.
- 27.12 Assignment. This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future Affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to so business with the State of Texas.
- 27.13 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as is the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.
- 27.14 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.
- 27.15 No waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of the state's sovereign immunity.