PLANS AND SPECIFICATIONS

FOR

BLEDSOE HALL
SHOWER/TOILET RENOVATIONS
PROJECT #18-18455
RFP #2018-836

FOR

TEXAS TECH UNIVERSITY
LUBBOCK, TEXAS

OPERATIONS DIVISION ENGINEERING SERVICES
TEXAS TECH UNIVERSITY
LUBBOCK, TEXAS
FEBRUARY 2018

SET NUMBER   __________
**PROJECT CONTRACT DOCUMENTS and SPECIFICATIONS for:**

**BLEDSOE HALL**  
Shower/Toilet Renovations  
Project #18-18455  
Texas Tech University

**Design Professional:**  
Texas Tech University - Operations Division Engineering Services  
M.L. Smith, AIA  
David Small, P.E.  
P.O. Box 43142, Suite 03 Physical Plant  
3122 Main St  
Lubbock, Texas  79409-3142  
806-834-2071/Fax 806-742-0147

**Project Manager:**  
Texas Tech University - Operations Division Engineering Services  
M.L. Smith, AIA  
P.O. Box 43142, Suite 03 Physical Plant  
3122 Main St  
Lubbock, Texas  79409-3142  
806-834-2071/Fax 806-742-0147

**Procurement Office:**  
Texas Tech University – Procurement Services  
Kellee Smith  
Section Coordinator  
P.O. Box 41094, 363 Drane Hall  
2515 15th Street  
Lubbock, Texas  79409-1094  
kellee.smith@ttu.edu  
Fax 806-742-3820

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**2012 EDITION**

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PART 1 -

1.1 DESIGN PROFESSIONALS OF RECORD

ARCHITECT  Michael L. Smith
Texas Registered Architect 16349
Divisions 01 - 12 Sections except where indicated as prepared by other design professionals of record

1.2 DESIGN PROFESSIONALS OF RECORD

ENGINEER  David Small, PE
Divisions 22, 23 & 26 Sections except where indicated as prepared by other design professionals of record
1.1 OWNER: Texas Tech University
Lubbock, Texas

1.2 PROJECT: BLEDSOE HALL
Shower/Toilet Renovations
Operations Division Engineering Services
Project Number 18-18455
Texas Tech University, Lubbock, Texas

1.3 DATE: Proposals will be received until 3:30 P.M. local time, THURSDAY, MARCH 1, 2018 by the Section Coordinator of Procurement Services in Room 363 of Drane Hall. Electronic submittals will be due by 3:30 P.M. local time, THURSDAY, MARCH 1, 2018 at https://bids.sciequest.com/apps/Router/PublicEvent?CustomrOrg=TexasTech/. All Proposals submitted after 3:30 p.m. and until 4:00 P.M. local time (“Closing Time”), THURSDAY, MARCH 1, 2018 will be received by the Section Coordinator of Procurement Services in Room 09 of the Physical Plant, Flint Avenue and Main Street, on the Texas Tech University campus http://www.ttu.edu/map/.

1.4 LOCATION: Proposals will be received by:
Kellee Smith
Procurement Services
Texas Tech University
P.O. Box 41094, 363 Drane Hall
2515 15TH Street
Lubbock, Texas  79409-1094
E-mail:  kellee.smith@ttu.edu / Fax (806) 742-3820

1.5 SCOPE OF WORK:
A. The work in this project consists of 1) Interior renovation of the shower/toilet/custodial/trash areas on levels 1 – 3 of the North wing and the shower/toilet/custodial/trash areas on levels 1 of the South wing. 2) Interior renovation of the trash areas on levels 2- 3 of the South wing 3) Renovation of a 120 sf Women’s restroom on the ground floor and 4) Renovation of a 40 sf restroom on the second floor at BLEDSOE Hall dormitory on the campus of Texas Tech University as described in the Proposal Documents.
B. The Proposer will be responsible for the accomplishment and coordination of all construction activities indicated in the Proposal Documents.

1.6 CONDITIONS:
A. Proposers shall submit their Proposals and all documentation required by this Request for Proposals in one (1) complete package. Failure to include any part of requested information or documentation may result in the disqualification of the Proposal.
B. Three (3) bound copies of the Proposal and one (1) electronic copy, each containing the documents listed below shall be submitted on the date and time that the Proposals are due:
1. The Proposal Form and the ADDITIONAL REQUIRED INFORMATION as outlined in Section 001000.
2. A Proposal/Bid Bond and Power of Attorney or a Certified Check or a Cashiers’ Check payable to Texas Tech in the amount of not less than five percent (5%) of the maximum possible sum of the Base Proposal and the Alternates (Proposer-furnished form).
3. The HUB SUBCONTRACTING PLAN as outlined in Section 001020.
C. After receiving and qualifying submitted Proposals, Texas Tech shall evaluate and rank each qualified Proposal in relation to the published selection criteria. Texas Tech shall select the Proposal that offers the best value for Texas Tech based upon the published selection criteria and...
D. Following successful negotiations with Texas Tech, the Proposer will be expected to sign a Construction Services Agreement with the contract value being the final amount agreed upon in the negotiations with Texas Tech.

E. A five percent (5%) Proposal/Bid Bond, Certified Check or Cashier’s Check must accompany each Proposal that exceeds $25,000.

F. Contracts over $25,000 require Payment Bonds. The Proposer shall provide for a Payment Bond and the associated cost of the bond shall be identified in the Proposal document.

G. Contracts over $100,000 require Performance Bonds. The Proposer shall provide for a Performance Bond and the associated cost of the bond shall be identified in the Proposal document.

H. Proposals received after the “Closing Time” for whatever reason, will be rejected as a material failure to comply with specifications.

I. Proposals will be publicly opened and the Proposers names and monetary amounts will be read aloud.

J. No Proposer may withdraw its Proposal within sixty (60) calendar days after the actual date of opening.

K. State law requires Texas Tech to make a good faith effort to assist Historically Underutilized Businesses. Proposals on all Contracts over $100,000 require the submission of a HUB SUBCONTRACTING PLAN. Any Proposal received without a properly prepared HUB SUBCONTRACTING PLAN will be rejected as a material failure to comply with the requirements of the RFP. NOTE: PROPOSERS SHALL USE THE OCTOBER 2017 FORMAT OF THE HUB SUBCONTRACTING PLAN FORMS.

L. Texas Tech reserves the right to accept or reject any or all Proposals, and to waive any and all formalities.

M. Texas Tech is an Equal Opportunity Employer.

N. All inquiries regarding this Request for Competitive Sealed Proposals must be in writing and directed to the Senior Purchaser below. Questions directed to other agencies or Texas Tech Officials will not receive consideration or a response.

Kellee Smith
Procurement Services
Texas Tech University
P.O. Box 41094, 363 Drane Hall
2515 15TH Street
Lubbock, Texas 79409-1094
E-mail: kellee.smith@ttu.edu / Fax (806) 742-3820

1.7 CONTRACT DOCUMENT ACQUISITION:

A. Drawings and specifications can be examined at:

OPERATIONS DIVISION ENGINEERING SERVICES
PHYSICAL PLANT BUILDING
MAIN STREET AND FLINT AVENUE
LUBBOCK, TEXAS 79409-3142
Telephone: (806) 742-2761 / Fax: (806) 742-0147
E-mail: m.l.smith@ttu.edu

B. Drawings and specifications will be e-mailed in digital PDF format upon request.

1.8 PRE-PROPOSAL CONFERENCE:

A. A Pre-Proposal Conference will be conducted TUESDAY, FEBRUARY 06, 2018 at 3:00 PM, Physical Plant Auditorium (Room 09) in the basement of the Physical Plant Building, Flint Avenue & Main Street on the campus of Texas Tech, Lubbock, Texas http://www.ttu.edu/map/.
ARTICLE 1. RECEIPT AND OPENING OF PROPOSALS

1.1. Competitive Sealed Proposals for:

BLEDSOE HALL
Shower/Toilet Renovations
Operations Division Engineering Services
Project Number 18-18455
Texas Tech University

will be received by the Section Coordinator of Procurement Services, in room 363 of Drane Hall, Texas Tech University, until 3:30 p.m. local time on THURSDAY, MARCH 1, 2018. After that time, the Section Coordinator of Procurement Services will accept Proposals in Room 09 of the Physical Plant until 4:00 p.m., local time. Subsequently, the Proposals will be publicly opened, the Proposer’s names will be revealed and their monetary Proposals and Alternate(s) will be read aloud.

The HUB Subcontracting Plan and the electronic copy of the proposal may be submitted up to 24 hours following the date/time that Proposals are due.

The HUB Subcontracting Plan and the electronic copy of the proposal will be received by the Section Coordinator of Procurement Services, in room 363 of Drane Hall, Texas Tech University, until Friday, March 2, 2018, 4:00 p.m., local time. If the HUB Subcontracting Plan is not received by the deadline, the entire Proposal will be rejected and returned.

1.2. All Proposals must be prepared and submitted in accordance with the provisions herein. Texas Tech University Procurement Services Office may waive any or all formalities and accept or reject any or all Proposals. **Texas Tech reserves the right to accept or reject all Proposals for which there are less than three (3) companies submitting proposals.**

1.3. Any Proposal may be withdrawn prior to the above scheduled time for the opening of Proposals or authorized postponement thereof. No Proposer may withdraw a Proposal within 60 calendar days after the actual date of the opening thereof.

1.4. Mailed Proposals may be sent to:

Kellee Smith
Procurement Services
Texas Tech University
P.O. Box 41094, 363 Drane Hall
Lubbock, Texas 79409-1094
kellee.smith@ttu.edu / Fax (806) 742-3820

1.5. Texas Tech will evaluate and rank each Proposal in relation to the published selection criteria within 60 days after the opening of the Proposals.

ARTICLE 2. COMPETITIVE SEALED PROPOSALS PREPARATION

2.1. The Proposal must be based on conditions at the project site, the project Drawings and Specifications and any addenda issued.

2.2. The Proposal shall be authoritatively executed in permanent ink on the Proposal form furnished in the Proposal request documents, or an exact duplication thereof, on white 8½” x 11” paper.

2.3. If the Proposal Form does not provide sufficient space to adequately respond to a question, the Proposer should attach additional 8½” X 11” white paper sheets as required, referencing the page and question numbers to which the response pertains.

2.4. A Proposal showing omissions, alterations, conditions, or carrying riders or other qualifiers, which modify the Proposal form, may be disqualified at Texas Tech’s discretion.
2.5. Each copy of the Proposal must be bound separately. Tabbed dividers should separate the various sections of the Proposal data. The tabs must identify the sections by name rather than simply a number or letter of the alphabet.

ARTICLE 3. SUBMISSION OF PROPOSAL

3.1. Each Proposal must be submitted on the prescribed form. All blank spaces for Proposal prices must be completed, in ink or typewritten, in both words and figures and all EXHIBITS, ATTACHMENTS, or APPENDICIES must be completed and attached. In case of conflicts between words and figures, the amount in words takes precedence.

3.2. Each Proposal must be submitted in a sealed envelope bearing on the outside the name of the Proposer, the Proposer’s address and the name of the project for which the Proposal is submitted. If forwarded by mail, the envelope containing the Proposal must be enclosed in another envelope addressed to the Section Coordinator of Procurement Services.

3.3. Each Proposal form must be signed by a member of the organization duly authorized to submit a Proposal on behalf of the submitting firm. FAILURE TO DO SO WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL.

3.4. Each Proposal that exceeds $25,000 shall be accompanied by a five percent (5%) Proposal Security; a Certified Check, a Cashier's Check, or a Proposal / Bid Bond and a Power of Attorney with a notarized letter of acceptance from a Certified Bonding Agent for Payment and Performance Bonds as described in ARTICLE 11 - PROPOSAL SECURITY and ARTICLE 12 – SECURITY FOR FAITHFUL PAYMENT.

3.5. If the Proposer chooses to answer "No Response" (N/R) to a question on the Proposal, an explanation of this action is required. Failure to do so may be viewed by Texas Tech as non-responsive and may subject the entire Proposal to disqualification.

3.6. Each Proposer may submit only one (1) Proposal. If two (2) or more Proposals are submitted, either in one envelope or in separate envelopes, such multiple Proposals may be subject to disqualification.

3.7. The Proposer may modify a Proposal by means of electronic mail using company letterhead and executed by a company officer provided such communication is received by the presiding official at the location of the Proposal opening prior to the advertised time set for the receipt of Proposals in the published Proposal request documents. The communication must not reveal the Proposal price but should identify the addition or subtraction or other modification(s) so that the final prices will not be known until the sealed Proposal is opened. If original written confirmation is not received within two (2) working days after the date of the Proposal opening, the Proposal modification will be ignored and the total Proposal may be disqualified.

3.8. A Proposer will not receive compensation for or reimbursement of expenses incurred due to preparations of a Competitive Sealed Proposal submission.

ARTICLE 4. OWNERSHIP OF PROPOSAL AND PUBLIC INFORMATION

4.1. Submitted Proposals, documentation and supporting materials shall become the property of Texas Tech.

4.2. Texas Tech considers all Proposal information, documentation and supporting materials submitted in response to this Proposal request to be non-confidential and/or non-proprietary in nature, and therefore, shall be subject to the public disclosure under the Texas Public Information Act (Texas Government Code, Sec. 552.001, et seq.) after the award of the Contract.

4.3. The Proposer must identify and designate those portions of their technical Proposal that contain trade secrets or other proprietary data. If the Proposal includes such data, the Proposer shall:
4.3.1. Include the following phrase on the cover sheet of the Technical Proposal:

"This Proposal includes data that shall not be disclosed outside Texas Tech University and the Design Professional’s design team and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this Proposal."

4.3.2. Include the following phrase on the specific data sheet that the Proposer wishes to restrict with the following phrase:

"Use or disclosure of this specifically marked data is subject to the restrictions regarding confidentiality cited on the cover sheet of this Proposal."

ARTICLE 5. SITE INVESTIGATION

5.1. It is the responsibility of each Proposer to examine the project site, existing improvements and adjacent property and be familiar with existing conditions before submission of a Proposal.

5.2. After investigating the project site and comparing the Proposal Documents with the existing conditions, the Proposer should immediately notify the Section Coordinator of any conditions for which requirements are not clear or about which there is any question regarding the extent of the work involved.

5.3. Should the successful Proposer fail to make the required investigations and should a question arise after award of the Contract as to the extent of the work involved in any particular case, Texas Tech after receiving recommendations from the Design Professional, will make the interpretation of the Contract Documents.

ARTICLE 6. METHOD OF PROPOSAL

6.1. All work called for in the Proposal Documents shall be proposed under a fixed fee Contract. The successful Proposer shall contract directly with Texas Tech.

ARTICLE 7. SEPARATION OF CHARGES FOR MATERIALS AND LABOR

7.1. With regard to the status of the Proposer under the Texas Tax Code as a reseller to Texas Tech of materials to be incorporated into the Work, the Contract price shall include the allocation for materials and labor.

ARTICLE 8. QUALIFICATIONS OF PROPOSERS

8.1. Texas Tech may make such investigations, as it deems necessary to determine the ability of the Proposers to perform all the work. The Proposers shall furnish to Texas Tech all such information and data for this purpose as Texas Tech may request. Texas Tech reserves the right to reject any Proposal if the evidence submitted by, or the investigation of, the Proposer fails to satisfy Texas Tech that the Proposer is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

ARTICLE 9. ELIGIBILITY OF PROPOSERS

9.1. Under Section 231.006 Family Code, Vernon’s Texas Civil Statues, relating to child support, the Proposer certifies that the individual or business entity named in this Proposal is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this affirmation is inaccurate. Any Proposer submitting a Proposal must include in the Proposal the name and Social Security Number of each person with at least 25% of the business entity.

9.2. Governmental entities and any corporation, including a nonprofit corporation, that do not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to the Texas Family Code.
ARTICLE 10. HISTORICALLY UNDERUTILIZED BUSINESS (HUB)

10.1. Texas Government Code 2161 requires state agencies to make a good faith effort to assist Historically Underutilized Businesses. All Proposers shall meet the requirements of The Texas Tech HUB SUBCONTRACTING PLAN in Section 001020 of these documents.

10.2. All Proposers must submit a HUB SUBCONTRACTING PLAN as shown in Section 001020 with their Proposal. Any Proposal greater than $100,000, which is received without a properly prepared HUB SUBCONTRACTING PLAN will be rejected as a material failure to comply with the requirements of the RFP. HUB Subcontracting Plans are encouraged for proposals less than $100,000.

ARTICLE 11. PROPOSAL SECURITY (Proposal exceeding $25,000)

11.1. Each Proposal must be accompanied by cash, certified check of the Proposer, or a Proposal / Bid Bond in the amount of 5% of the Proposal. Bonds must be duly executed by the Proposer as principal and having as surety thereon a corporate surety or corporate sureties which are on the approved list of the United States Department of Treasury (Federal register Circular 570 - "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies", Sections 9304 through 9308 of Title 31 of the United States Code. Surety Companies Acceptable on Federal Bonds. The Surety must also be duly authorized to do business in the State of Texas, acceptable to Texas Tech, and submitted on forms approved by the Attorney General of Texas. Such cash, checks or Proposal Bonds will be returned to all except the three lowest Proposers within ten (10) days after the opening of Proposals. The remaining cash, checks or Proposal Bonds will be returned promptly after Texas Tech and the accepted Proposer have executed the contract, or, if no award has been made sixty (60) calendar days after the date of the opening of Proposals, upon demand of the Proposer at any time thereafter, so long as the Proposer has been notified of the acceptance of the Proposal.

11.2. Certified Check, Cashier's Check or Proposal Bond shall be made payable, without condition, to Texas Tech. Proposal Bonds require a Power of Attorney as outlined in ARTICLE 13.

ARTICLE 12. SECURITY FOR FAITHFUL PAYMENT (Proposals exceeding $25,000)

12.1. Payment or Performance Bonds are not required on contracts of $25,000.00 or less unless otherwise stipulated in the Special Conditions.

12.2. Simultaneously with the delivery of the executed Contract, the Proposer shall furnish surety bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the General Conditions included herein. Each bond shall be executed by a corporate surety or corporate sureties which are on the approved list of the United States Department of Treasury (Federal Register Circular 570 - "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies", sections 9304 through 9308 of Title 31 of the United States Code, Surety Companies Acceptable on Federal Bonds) and duly authorized to do business in the State of Texas, and those acceptable to Texas Tech, and submitted on forms approved by the Attorney General of Texas.

12.3. In accordance with Article 5160, Vernon's Texas Civil Statutes, the Proposer shall execute the following bonds to Texas Tech: (1) Contracts over $25,000 shall require Payment Bonds in the amount of the total Contract Price, (2) Contracts over $100,000 shall require Performance Bond in the amount of the total Contract Price.

ARTICLE 13. POWER OF ATTORNEY (Proposals exceeding $25,000)

13.1. Attorneys-in-fact who sign Proposal / Bid Bonds or Contract Bonds must file with each bond a certified and effectively dated copy of their power of attorney.
ARTICLE 14. INSURANCE REQUIREMENTS

14.1. The Proposer shall provide for the insurance coverages required by the Proposal Documents and the associated cost of the insurance shall be identified in the Proposal Document.

14.2. Except for asbestos abatement projects, all coverage must be provided on an occurrence basis, rather than claims made, and be provided through companies who have a minimal "Best's" rating of "A" with a financial size category of "X". The company must also be authorized to do business in the State of Texas and be acceptable to Texas Tech Procurement Services and the Office of Risk Management.

14.3. The Successful Proposer shall not commence work under the Contract until it has obtained all the insurance required hereunder, with The Texas Tech University System as a named insured and certificates of such insurance have been filed with and approved by Texas Tech and a Notice to Proceed has been issued. Approval of the insurance by Texas Tech shall not relieve or decrease the liability of the Proposer.

14.4. The Proposer shall provide certificates of coverage for Workers' Compensation Insurance as set forth in SECTION 005500 - WORKERS' COMPENSATION INSURANCE and SECTION 010100 - SPECIAL CONDITIONS of these specifications.

14.5. The Proposer shall be responsible for the deductible associated with all Builder's Risk claims.

ARTICLE 15. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

15.1. The successful Proposer, upon the Proposer’s failure or refusal to execute and deliver the Contract and bonds required within ten (10) days after the Proposer has received notice of acceptance of this Proposal shall forfeit to Texas Tech, as liquidated damages for such failure or refusal, the Proposal Security, as described in paragraph 3.4 of this section, deposited with the Proposal.

ARTICLE 16. TIME OF COMPLETION AND LIQUIDATED DAMAGES

16.1. The time in the Contract for the completion of the work is an essential element of the Contract. It is mutually agreed that Texas Tech will suffer financial damages in an amount not now possible to ascertain if this work is not completed on schedule, and in view of these facts, it is agreed that Texas Tech will withhold from the successful Proposer, as liquidated damages and not as a penalty, the sum as designated in the Proposal for each calendar day that the work remains incomplete beyond the date specified for the completion of the work.

ARTICLE 17. ADDENDA AND INTERPRETATIONS

17.1. No oral interpretations of the meaning of the Proposal Documents will be made to any Proposer.

17.2. Every request for such interpretation should be in writing addressed to the Section Coordinator as identified in the Request for Proposals and, to be given consideration, must be received at least five (5) business days prior to the time fixed for the opening of Proposals. Any and all such interpretations and any supplemental instructions, which if issued, will be mailed or delivered to all prospective Proposers (at the respective addresses furnished for such purposes) in the form of written Addenda. Copies of Addenda will be made available for inspection wherever Proposal Documents are on file for that purpose. All Addenda so issued shall become part of the Proposal Documents.

17.3. Each Proposer shall ascertain prior to submitting a Proposal that the Proposer has received all Addenda issued, and the Proposer shall acknowledge their receipt in the Proposal. Failure to acknowledge receipt of any or all Addenda may result in the disqualification of the Proposal.

ARTICLE 18. ACCEPTANCE OF ALTERNATES

18.1. Texas Tech will have the right to accept Alternates in any order and/or combination, unless otherwise specifically provided in the Proposal Documents, and to determine the Proposal amount...
on the basis of the sum of the Base Proposal and Alternates accepted.

ARTICLE 19. OBLIGATION OF PROPOSERS

19.1. At the time of the opening of Proposals, each Proposer will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Proposal Documents related to this portion of the work. The failure or omission of any Proposer to examine the site, any form, instrument or document shall in no way relieve the Proposer from any obligation in respect to its Proposal.

ARTICLE 20. NOTICE OF SPECIAL CONDITIONS

20.1. Attention is particularly called to those parts of the Proposal Documents and specifications that deal with General Requirements, Special Conditions, Historically Underutilized Business (HUB) Participation, Insurance Requirements, and Conditions of Employment to be observed and minimum wage rates to be paid under the Contract.

ARTICLE 21. PROPOSERS AFFIRMATION

Notice: Signing the Proposal with a false statement shall constitute a material breach of Contract and shall void the submitted Proposal or any resulting contracts, and the Proposer shall be removed from all Proposal lists.

END OF SECTION 000500
ARTICLE 1. COMPETITIVE SEALED PROPOSALS EVALUATION AND RANKING PROCEDURES

1.1. Texas Tech will use the following procedures as authorized in Subchapter T, Section 51.783 of the Texas Education Code to evaluate Competitive Sealed Proposals.

1.2. The Section Coordinator shall convene a Proposal Evaluation Committee (the Committee) for each construction project utilizing the Competitive Sealed Proposal method of procurement. The Committee shall evaluate all submitted Proposals and shall rank order the Proposals in priority for negotiations.

1.3. Proposal Evaluation Process

1.3.1. As soon as possible following the public opening of Proposals, the Committee will meet to conduct a preliminary examination of each Proposal for compliance with the published requirements.

1.3.2. The Committee will conduct thorough discussions and evaluations of all Proposals and may select Proposers for formal interviews by the Committee. Proposers will be notified of the date, time and location of any interviews.

1.3.3. Within sixty (60) days after publicly opening the Proposals, the Committee will produce a ranking of Proposers in the order of the best value to Texas Tech.

1.3.4. The Committee will formulate Proposer rankings based on information provided in the Proposals, reference checks conducted, formal and informal interviews, if conducted, and from personal knowledge. Unless modified by Addendum prior to opening of the Proposals, the Committee will utilize the following criteria to evaluate and rank Proposals:

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Proposed Construction Contract Amount</td>
<td>40%</td>
</tr>
<tr>
<td>Proposed Construction Contract Time</td>
<td>15%</td>
</tr>
<tr>
<td>(All Proposer’s will receive the same score in this category if the construction Contract time is pre-determined by the Design Professional)</td>
<td></td>
</tr>
<tr>
<td>Qualifications of Key Project Personnel</td>
<td>10%</td>
</tr>
<tr>
<td>Similar Project Experience</td>
<td>10%</td>
</tr>
<tr>
<td>HUB Participation</td>
<td>10%</td>
</tr>
<tr>
<td>Financial Sufficiency</td>
<td>5%</td>
</tr>
<tr>
<td>Record of Claims and Litigation</td>
<td>5%</td>
</tr>
<tr>
<td>Current Workload</td>
<td>5%</td>
</tr>
</tbody>
</table>

ARTICLE 2. EVALUATION AND CONTRACT AWARD PROCESS:

2.1. Proposals will be opened publicly to identify the names of the Proposers and their respective proposed Contract amounts. Other contents of the Proposals will be afforded security sufficient to preclude disclosure of the contents prior to award or rejection action.

2.2. Proposals will be evaluated by Texas Tech, with advice from Texas Tech’s Owner’s Representative and the Design Professional. The criteria for evaluation and selection of the successful Proposer for this award will include the factors listed in this section.

2.3. Within sixty (60) calendar days after opening the Proposals, Texas Tech will evaluate and rank each Proposal with respect to the published selection criteria described under Article 1.3.4.
2.4. Texas Tech may make an award on the basis of the initially submitted Proposal, without discussion, clarification or modification. At its sole option Texas Tech may interview any or all Proposers and discuss cost, schedule, and/or all other elements of the Proposal. Other than the data read at the Proposal opening, Texas Tech will endeavor not to disclose any information derived from the Proposals submitted by competing firms in conducting such discussions.

2.5. If Texas Tech determines that it is unable to reach a satisfactory agreement with the first ranked Proposer, Texas Tech will terminate negotiations with that Proposer. Texas Tech will then proceed with negotiations with each successive Proposer as they appear in the order of ranking until an agreement is reached, or until Texas Tech has rejected all Proposals. After termination of discussions with any Proposer, Texas Tech will not resume discussions with that Proposer.

2.6. Immediately following Texas Tech's award of a Contract or rejection of all Proposals, the Proposers will be notified via U.S. mail or electronic mail.

2.7. Texas Tech reserves the right to accept or reject any or all alternates or to accept any combination of alternates considered advantageous to Texas Tech.

2.8. The award or rejection action regarding this Proposal is at the sole discretion of Texas Tech and Texas Tech makes no warranty regarding this Proposal that a Contract will be awarded to any Proposer.

2.9. Texas Tech agrees that if the Contract is awarded, it will be awarded to the Proposer offering the best value to Texas Tech, based upon the published selection criteria and upon its ranking evaluation. Texas Tech is not bound to accept the lowest priced Proposal if that Proposal is judged not to be the best value for Texas Tech, as determined by Texas Tech.

END OF SECTION 000650
PROJECT: BLEDSOE HALL
Shower/Toilet Renovations
Operations Division Engineering Services
Project Number 18-18455
Texas Tech University

DATE: MM/DD/YY: ________________________________

PROPOSER:
Firm Name: ___________________________________

Business Address: ________________________________

Mailing Address: ________________________________

Telephone: _____________________________________

Facsimile: ______________________________________

E-Mail: _________________________________________

TO: Kellee Smith
Procurement Services
Texas Tech University
P.O. Box 41094, 363 Drane Hall
2515 15TH Street
Lubbock, Texas  79409-1094

Having carefully examined the UNIFORM GENERAL CONDITIONS and SUPPLEMENTARY GENERAL CONDITIONS of the CONTRACT, the SPECIFICATIONS, DRAWINGS and ANY ADDENDA to the drawings and specifications prepared by the Design Professional on this Project, as well as the site and all conditions affecting the work, the undersigned proposes to furnish and install all labor, materials, and equipment necessary to complete the entire work in accordance with the above documents for the following sums:

ADDENDUM/ADDENDA

The Proposer acknowledges the receipt of _____ Addendum / Addenda issued for this project.

BASE PROPOSAL

_________________________________________________ Dollars

($_________________________)

(Amount in Numbers)

The above Base Proposal price is divided into:

$_________________________ Dollars for Materials incorporated into the Work and

$_________________________ Dollars for Labor and any Materials not incorporated into the Work.

This separation of the Contract price into Materials and Labor is required in order for the successful Proposer to be able to purchase free of state sales tax the materials to be incorporated into the work. The successful Proposer will be required to submit similar information for any Alternates accepted by Texas Tech.
AMOUNTS INCLUDED IN BASE PROPOSAL
The Proposer provides the following additional information that will be made a part of the Contract with Texas Tech:

1) Overhead and Profit included in the Base Proposal: $______________
2) General Conditions included in the Base Proposal: $______________
3) Owner Contingency Allowance included in the Base Proposal $ 70,000.00

UNIT PRICES NOT INCLUDED IN THE BASE PROPOSAL
The Proposer provides the following amount be added to or deducted from the Contract Sum on performance and measurement of the individual items of work:

1) Unit Price No. 1: Coring of concrete floor slabs with known Asbestos Containing Material.
   a. Per Unit: $______________
2) Unit Price No. 2: Coring of concrete floor slabs without known Asbestos Containing Material.
   a. Per Unit: $______________
3) Unit Price No. 3: Non-structural, minor slab repair at unforeseen areas of deteriorated/spalling concrete.
   a. Per Unit: $______________

LIQUIDATED DAMAGES
The Proposer agrees and understands that liquidated damages for this project will be assessed at $2,500.00 per day for each calendar day that the work remains incomplete beyond the date specified for the completion of work.

CONSTRUCTION DURATION
The Proposer will mobilize at 10:00 a.m. on May 16, 2018 and start work at 8:00 a.m. on May 21, 2018 and agrees to complete all work shown in the Contract Documents for the base Proposal no later than 8:00 a.m. on August 1, 2018.

CONSTRUCTION COMPLETION INCENTIVE
Texas Tech offers the following incentive to the successful Proposer for expedient completion of contracted work:

A. For each day between July 17, 2018 and July 31, 2018 the successful Proposer completes all required work in an acceptable manner (as determined by Texas Tech), Texas Tech will pay the successful Proposer an additional $2,500.00 per day above the original Contracted price in the Base Proposal.

B. As an example, if the successful Proposer completes all work in an acceptable manner at 8:00 a.m. on July 22, 2018 Texas Tech will pay an additional $25,000.00 (10 days X $2,500.00) above the original agreed Contract price. The maximum incentive that can be earned by the successful Proposer by completing contracted work in an acceptable manner on or before July 17, 2018 is $37,500.00 (15 days X $2,500.00).

C. For each day beyond August 1, 2018, Texas Tech will charge the successful Proposer the above stated Liquidated Damages in accordance with Section 004000 Uniform General Conditions/Supplementary General Conditions.

D. There will be no extensions of time given for any excusable or non-excusable delays in determining the amount of incentive earned by the successful Proposer.
DETERMINATION OF PROPOSER'S STATE OF RESIDENCE [Not required for a contract involving Federal Funds]

(Note: For the purpose of this Proposal, ‘Bidder’ shall have the same meaning as ‘Proposer’.)

A. Each Proposer is required to complete this part of the Proposal. Failure to complete this part will constitute an irregular Proposal, which may be rejected.

B. A "nonresident Proposer" as defined hereafter will be awarded a Contract only in compliance with V.C.T.A. GOVERNMENT CODE TITLE 10, Section 2252.002 as quoted below:

"A governmental entity may not award a governmental contract to a nonresident Proposer unless the nonresident underbids the lowest Proposal submitted by a responsible resident Proposer by an amount that is not less than the amount by which a resident Proposer would be required to underbids the nonresident Proposer to obtain a comparable contract in the state in which the nonresident's principal place of business is located."

C. A "Nonresident Proposer" refers to a person or entity that is not a resident of the State of Texas.

D. A "Resident Proposer" refers to a person whose principal place of business is in the State of Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

E. Each Proposer shall write on this part of this Proposal the Proposer's address of principal place of business and the name and address of the Proposer's ultimate parent company or majority owner, if applicable, and shall include with this Proposal a copy of the current statutes, providing such statutes exist, of the Proposer's State of residence, if other than Texas, with all data necessary for this OWNER to determine the Proposer's state of residence and to calculate the Proposer's "nonresident Proposal differential".

Proposer's name and address:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Ultimate parent company or majority owner's name and address:

________________________________________________________________________

________________________________________________________________________

Copies of nonresident State Statutes and other material attached:

Yes ____________  No ____________

**ADDITIONAL REQUIRED INFORMATION**

Provide the following information on separate 8 1/2” by 11” sheets of paper attached to this Proposal, clearly marked with the firm’s name, project title, ODES Project Number, page number, and tabbed as indicated. Submit this information at the time and place indicated in Section 000100, NOTICE TO PROPOSERS FOR COMPETITIVE SEALED PROPOSALS, as modified by any addenda issued.
KEY PERSONNEL
Provide the names, qualifications, and relevant experience of key project personnel, including the project executive, project manager, project superintendent(s), and other on-site personnel. Identify their role in any on-going projects. Provide client references for each individual, including a current phone number and/or e-mail address.

FIRM EXPERIENCE
Provide a listing of similar projects, particularly projects at other colleges and universities. Provide information on the scope of work, type of contract (hard bid competitive, sealed proposals, construction management, design/build, etc.) original contract amount, current/final contract amount, original contract completion date, and current/final completion date. Provide a client reference for each project with a current phone number and/or e-mail address.

FINANCIAL SUFFICIENCY
Provide Proposer’s current bonding limit and amount of that limit currently encumbered. Provide other evidence of financial sufficiency as appropriate.

CLAIMS AND LITIGATION
Provide Proposer’s record of claims and litigation over the past five years.

CURRENT WORKLOAD
Provide a complete listing of Proposer’s current construction projects, indicating project scope, cost, duration and the participation, if any, of the key personnel proposed for this project. Provide a current client reference for each project.

PAYMENT AND PERFORMANCE BOND COMMITMENT
Provide a notarized letter of commitment from a certified Bonding Agent in accordance with the contract amounts identified in SECTION 000500, ARTICLE 12, SECURITY FOR FAITHFUL PAYMENT.

CONSTRUCTION SCHEDULE
Submit a Summary Construction Schedule (15-20 Activities) showing how the construction duration was determined. (Demonstrate the accuracy of the construction duration)

SUBCONTRACTOR/SUPPLIER INFORMATION
Provide a list of all subcontractors and all major material and equipment suppliers for this project by the Proposer.

DETAILED COST INFORMATION
Provide a complete breakdown of the cost of the work, either by major subcontractor or supplier or by CSI Section.

HUB SUBCONTRACTING PLAN
Submit a HUB SUBCONTRACTING PLAN as shown in Section 001020. Any Proposal, $100,000 in value or greater, received without a properly prepared HUB SUBCONTRACTING PLAN will be rejected as a material failure to comply with the requirements of the RFP.

CERTIFICATE OF INSURANCE
Provide a certificate of insurance that meets the minimum requirements as described in Section 004000.

THE UNDERSIGNED AGREES:
A. To enter into a contract with Texas Tech utilizing the Construction Services Agreement attached in Section 002000 – SAMPLE AGREEMENT of the Proposal documents within ten (10) days of notification of award.
B. To make a good faith effort to assist Historically Underutilized Businesses to participate in this
construction contract as subcontractors or suppliers as outlined in Section 001020 – HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION.

C. And understands that the time in the Agreement between Texas Tech and the Proposer for the completion of the work is an essential element of the Agreement. It is mutually agreed that Texas Tech will suffer financial damages in an amount not now possible to ascertain if the work is not completed on schedule, and in view of these facts, it is agreed that Texas Tech will withhold from the successful Proposer, as liquidated damages and not as a penalty the sum of money indicated in this Section per day for each calendar day that the work remains incomplete beyond the date specified as the completion date of the work.

D. That for Proposals exceeding $25,000.00, a five percent (5%) Proposal / Bid Bond, Certified Check or Cashier’s Check payable to Texas Tech University, accompanying this Proposal is left in escrow with the Director of Procurement Services, Texas Tech University, and that its amount is the measure of liquidated damages which Texas Tech will sustain by the failure of the undersigned to execute and deliver the above named Agreement and Bonds, and that if the undersigned defaults in executing the Agreement and/or in furnishing the Performance and Payment Bonds within ten (10) days of written notification of award of the contract, then the check shall become the property of Texas Tech, or the Proposal Bond shall become subject to forfeiture to Texas Tech.

E. That Texas Tech shall have the right to accept or reject any or all Proposals, to reject a Proposal not accompanied by a required Proposal security or by other data required by the Proposal Documents, reject a Proposal that is in any way incomplete or irregular, and to waive any and all formalities.

F. That this Proposal shall be valid and not withdrawn for a period of sixty (60) days from the opening date.

G. That amounts shall be shown in both writing and figures. In case of discrepancy between the written amount and the figure, the written amount shall govern.

H. And certifies that, under Section 231.006 Family Code, Vernon’s Texas Civil Statues, relating to child support, the individual or business entity named in this Proposal is not ineligible to receive the specified payment and acknowledges that the proposed contract may be terminated and payment may be withheld if this affirmation is inaccurate. The Proposer must list below the name and Social Security Number of each person with at least 25% of the business entity:

<table>
<thead>
<tr>
<th>Name</th>
<th>SSN</th>
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If the Proposer is a corporation that does not have a majority shareholder who is a natural person capable of being a child support obligor, please check below.

Corporation without Natural Person Majority Shareholder

I. That signing this Proposal with a false statement shall constitute a material breach of Contract and shall void the submitted Proposal or any resulting Contracts, and the Proposer shall be removed from all Proposal lists. By signature hereon affixed, the Proposer hereby certifies that:

1. The Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Proposal.
2. The Proposer is not currently delinquent in the payment of any franchise tax owed the State of Texas under Chapter 171 Tax Code.

3. Neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.

4. The Proposer has not received compensation for participation in the preparation of the specifications for this invitation for Proposal.

5. The Proposer/Contractor agrees to comply with Government Code, Title 8 Subchapter A, Section 824.601, relating to the payment of retirement benefits of retirees of Texas public educational institutions. A retiree who is an employee of a third-party entity is considered to be employed by a Texas public educational institutional for purposes of this subchapter unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution.

6. All sex offenders required to register with local law enforcement authorities under chapter 62 of the Texas Code Of Criminal Procedure and who intend to work or carry on a vocation (full-time or part-time) on any campus of Texas Tech University System for a consecutive period exceeding fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year are required to register (or verify registration) with the law enforcement authority for campus security in accordance with article 62.064 of the Texas Code Of Criminal Procedure within 7 days of beginning work on any campus of Texas Tech University System. In addition, such sex offenders are required to notify the law enforcement authority for campus security within seven (7) days of terminating work on any campus of Texas Tech University System. For additional information, please contact the Texas Tech University Police Department, 2901 4th St., Lubbock, TX 79409, 806-742-3931.

7. To the extent this RFP relates to a project as defined Tex. Gov’t Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov’t Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this RFP must be produced in the United States as defined in Tex. Gov’t Code §2252.201(4).

8. Pursuant to Texas Gov’t Code Section 2270.001, Proposer affirmatively states that it does not boycott Israel. Additionally, Proposer shall not engage in a boycott of Israel during the term of any award or Contract.

9. The Proposer, or sole proprietor, partner, majority shareholder, or substantial owner in the business entity, if a child support obligor, is not more than thirty (30) days behind in paying child support and therefore ineligible to submit a Proposal or enter into a Contract with the State of Texas.
SUBMITTED: ____________________________

Firm: __________________________________

Signature: ______________________________

Printed Name: __________________________

Title: __________________________________

Date: __________________________________
HUB Subcontracting Plan (HSP)  
QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by Texas Tech.

► If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

☐ Section 1 - Respondent and Requisition Information
☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
☐ Section 2 b. - List each portion of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
☐ Section 2 c. - Yes
☐ Section 4 - Affirmation
☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

► If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the Texas Tech HUB Goal identified in the "Agency Special Instructions/Additional Requirements", complete:

☐ Section 1 - Respondent and Requisition Information
☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
☐ Section 2 c. - No
☐ Section 2 d. - Yes
☐ Section 4 - Affirmation
☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the Texas Tech HUB Goal identified in the “Agency Special Instructions/Additional Requirements”, complete:

☐ Section 1 - Respondent and Requisition Information
☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
☐ Section 2 c. - No
☐ Section 2 d. - No
☐ Section 4 - Affirmation
☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, to include transportation and delivery), complete:

☐ Section 1 - Respondent and Requisition Information
☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
☐ Section 3 - Self Performing Justification
☐ Section 4 - Affirmation

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into “new” contracts.
HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, Texas Tech University has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the procurement solicitation.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The state HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent’s subcontracts with Texas certified HUBs meets or exceeds the TTU specific HUB goal. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contract expected to be subcontracted to HUBs with which the respondent does not have a continuous contract* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

The Texas Tech goals for September 1, 2017-August 31, 2018 are:

1. 9.96 % for heavy construction other than building contracts;
2. 11.68 % for all building construction, including general contractors and operative builders' contracts;
3. 21.63 % for all special trade construction contracts;
4. 17.00 % for professional services contracts;
5. 13.86 % for all other services contracts; and
6. 30.31% for commodities contracts

For assistance with the HUB Subcontracting form, please email techbuy.purchasing@ttu.edu.

SECTION-1: RESPONDENT AND SOLICITATION INFORMATION

| a. Respondent (Company) Name: | ______________________________________________________________________ |
| State of Texas VID #: | ______________________ |
| Phone #: | ______________________ |
| Fax #: | ______________________ |
| b. Is your company a State of Texas certified HUB? | ☐ - Yes ☐ - No |
| Solicitation Open Date: | (mm/dd/yyyy) |
**SECTION - RESPONDENT’S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including staffing, goods, services, transportation, and delivery will be subcontracted. Note: In accordance with 34 TAC §20.11, a “Subcontractor” means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

**a.** Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes,** I will be subcontracting portions of the contract. (If **Yes,** complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No,** I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If **No,** continue to SECTION 3 and SECTION 4.)

**b.** List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

<table>
<thead>
<tr>
<th>Item #</th>
<th>Subcontracting Opportunity Description</th>
<th>HUBs</th>
<th>Non-HUBs</th>
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<tbody>
<tr>
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<td>Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract in place for more than five (5) years.</td>
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Aggregate percentages of the contract expected to be subcontracted: %

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at [http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan](http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan)).

**c.** Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes,** continue to SECTION 4 and complete an “HSP Good Faith Effort - Method A (Attachment A)” for each of the subcontracting opportunities you listed)
- **No** (If **No,** continue to Item d, of this SECTION.)

**d.** Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract in place with for more than five (5) years, meets or exceeds the HUB goal Texas Tech identified on page 1 in the Agency Special Instructions/Additional Requirements.

- **Yes** (If **Yes,** continue to SECTION 4 and complete an “HSP Good Faith Effort - Method A (Attachment A)” for each of the subcontracting opportunities you listed.)
- **No** (If **No,** continue to SECTION 4 and complete an “HSP Good Faith Effort - Method B (Attachment B)” for each of the subcontracting opportunities you listed.)

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB subcontractor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by the University to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into “new” contracts.*
**SECTION - RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

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<th>Item #</th>
<th>Subcontracting Opportunity Description</th>
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<th>Non-HUBs</th>
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<td>Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.</td>
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Aggregate percentages of the contract expected to be subcontracted: % % %

*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by the University to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.
SECTION - SELF PERFORMING JUSTIFICATION (If you responded “No” to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

If you responded “No” to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials, and/or equipment, to include transportation and delivery.

SECTION - AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum Texas Tech’s name and list the TTU Procurement Office as the contact, the contract award number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontracting opportunity, and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the University’s Procurement Services office no later than ten (10) working days after the contract is awarded.
- The respondent must submit regular compliance reports (Prime Contractor Progress Assessment Report – PAR) to TTU, verifying its compliance with the HSP and documenting the expenditures made to its subcontractors (HUBs and Non-HUBs).
- The respondent must seek approval from TTU prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without TTU’s prior written approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state of Texas contracting.
- The respondent must, upon request, allow TTU staff to perform on-site reviews of the company’s headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature ___________________________ Printed Name ___________________________ Title ___________________________ Date ___________________________

Reminder:

➤ If you responded “Yes” to SECTION 2, Items c or d, you must complete an “HSP Good Faith Effort - Method A (Attachment A)” for each of the subcontracting opportunities you listed in SECTION 2, Item b.

➤ If you responded “No” SECTION 2, Items c and d, you must complete an “HSP Good Faith Effort - Method B (Attachment B)” for each of the subcontracting opportunities you listed in SECTION 2, Item b.
HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. TTU has determined that subcontracting opportunities are probable under the solicitation to which my company will be responding.

We respectfully request that vendors interested in submitting a response to the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

<table>
<thead>
<tr>
<th>SECTION A: PRIME CONTRACTOR'S INFORMATION</th>
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<tbody>
<tr>
<td>Company Name: ___________________________</td>
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<tr>
<td>Point-of-Contact: _______________________</td>
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<tr>
<td>E-mail Address: _________________________</td>
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<tr>
<th>SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Name: Texas Tech University (733)</td>
</tr>
<tr>
<td>Point-of-Contact: Procurement Services Office <a href="mailto:techbuy.purchasing@ttu.edu">techbuy.purchasing@ttu.edu</a></td>
</tr>
<tr>
<td>Solicitation #: ___________________________</td>
</tr>
<tr>
<td>Phone #: 806-742-3844</td>
</tr>
<tr>
<td>Open Date: (mm/dd/yyyy) ___________________________</td>
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<tr>
<th>SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS, AND RELATED INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Potential Subcontractor's Response Due Date:</td>
</tr>
<tr>
<td>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your response no later than Central Time on Date (mm/dd/yyyy)</td>
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<tr>
<td>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our solicitation response to the University. In addition, at least seven (7) working days prior to us submitting our response to the University, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C). (A working day is considered a normal business day of the University, not including weekends, federal or state holidays, or days the University is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent provided to the HUBs and to the trade organizations or development centers is considered to be &quot;day zero&quot; and does not count as one of the seven (7) working days.)</td>
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| 2. Subcontracting Opportunity Scope of Work: |

| 3. Required Qualifications: |
| - Not Applicable |

| 4. Bonding/Insurance Requirements: |
| - Not Applicable |

| 5. Location to review plans/specifications: |
| - Not Applicable |
**HSP Good Faith Effort - Method A (Attachment A)**

Enter your company’s name here: ____________________________  Solicitation#: ____________________________

**IMPORTANT**: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page.

**SECTION A-1: SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

<table>
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<tr>
<th>Item Number</th>
<th>Description</th>
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**SECTION A-2: SUBCONTRACTOR SELECTION**

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in **SECTION A-1**. Also, indicate whether the company is a Texas certified HUB identify their VID number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Texas certified HUB</th>
<th>VID Number</th>
<th>Approximate Dollar Amount</th>
<th>Expected Percentage of Contract</th>
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**REMEMBRER**: As specified in **SECTION 4** of the completed HSP form, if you are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the Texas Tech’s name and the Procurement Services office as the point of contact, the contract award number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontracting opportunity, and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section may be requested by TTU’s Procurement Services office no later than ten (10) working days after the contract is awarded.
**HSP Good Faith Effort - Method B (Attachment B)**

**Enter your company’s name here:**

<table>
<thead>
<tr>
<th>Solicitation#</th>
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</table>

**IMPORTANT:** If you responded “No” to SECTION 2, Items c & d of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for each subcontracting opportunity you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page.

**SECTION B-1: SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
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</table>

**SECTION B-2: MENTOR PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

**SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person.

When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form.

If you responded “No” to SECTION 2, Items c & d of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for each subcontracting opportunity you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page.

### Table 1: Notice of Subcontracting Opportunity

<table>
<thead>
<tr>
<th>Company Name</th>
<th>VID Number</th>
<th>Date Notice Sent (mm/dd/yyyy)</th>
<th>Did the HUB Respond?</th>
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<tbody>
<tr>
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</tbody>
</table>

### Table 2: Notice of Subcontracting Opportunity

<table>
<thead>
<tr>
<th>Trade Organizations or Development Centers</th>
<th>Date Notice Sent (mm/dd/yyyy)</th>
<th>Was the Notice Accepted?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>- Yes</td>
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</table>

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless TTU specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your response to TTU. When searching for Texas certified HUBs, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at [http://mycpa.cpa.state.tx.us/lpасскмблsearch/index.jsp](http://mycpa.cpa.state.tx.us/lpасскмблsearch/index.jsp). HUB Status code “A” signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2) or more trade organizations or development centers in Texas** to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members. Unless TTU specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your solicitation response. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Texas Comptroller’s webpage at [http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/](http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/).

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.
HSP Good Faith Effort - Method B (Attachment B) Cont.

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: __________________________ Description: __________________________

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Texas certified HUB</th>
<th>VID Number</th>
<th>Approximate Dollar Amount</th>
<th>Expected Percentage of Contract</th>
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C. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the TTU's name and list the Procurement Services Office at the contact, the contract award number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontracting opportunity, and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section may be requested by TTU's Procurement Services office no later than ten (10) working days after the contract is awarded.
Texas Tech University

CONSTRUCTION SERVICES CONTRACT

Executed and entered into the ___ day of ___ in the year Two Thousand and Seventeen

BETWEEN

Texas Tech University
City of Lubbock, Lubbock County, Texas, 79409

(“Texas Tech”)

And

Company/Firm
Address
Address

(The “Contractor”)

Regarding

Project Name

(ODES # ___-___)

(The “Project”)

Texas Tech and the Contractor, in consideration of the mutual covenants and conditions contained herein, agree as follows:
ARTICLE 1
DEFINITIONS

Capitalized terms are as defined in the Uniform General Conditions and Supplemental General Conditions, (references in this Contract to the Uniform General Conditions and Supplemental General Conditions are to the 2010 Edition: https://www.texastech.edu/fpc/UGC_SUGCs_2010_revised_7_15_14.pdf)

ARTICLE 2
SCOPE OF WORK

The Contractor will perform the work in the Contractor’s Proposal (attached as Exhibit A) in accordance with the “Contract Documents” as defined Article 9. In the case of conflicts between this Contract and the Contractor’s Proposal, the language of this Contract will prevail. Any ambiguities in the Contractor’s Proposal not otherwise resolved by mutual written agreement of the Parties will be resolved in favor of Texas Tech.

In addition, as part of the scope of work of the Project, the Contractor will provide the labor, materials, equipment, services, and supervision to perform all of the work, including any addenda, Project Manager’s Supplemental Instructions, and approved Change Orders.

Specifications for this Project are particularly defined in the Contract Documents and include but are not limited to:

ARTICLE 3
CONTRACT SUM

Texas Tech will pay the Contractor for the performance of all work set forth in the Contract Documents, the total Contract Sum of:

__________________________
(Written Amount)

$ __________________
(Figures)

This separation of the total Contract Sum into materials and labor is required in order for the Contractor to be able to purchase free of State sales tax the materials to be incorporated into the work.

Contingency allowance. The total Contract Sum includes a contingency allowance for any additional work deemed necessary by Texas Tech. The contingency allowance amount for the Project is $0.00. The parties will process a Change Order for any additional scope of work and the funding for all Change Orders will be deducted from this contingency allowance. Texas Tech is only obligated to pay for work completed.

The above total Contract Sum is divided into the following amounts:

a) Dollar value of materials to be incorporated into the work: __________________

b) Dollar value of labor and materials not included in the work: __________________

Contract #:
ARTICLE 4
TIME OF COMMENCEMENT AND COMPLETION

The work to be performed under this Contract will commence on or after a date to be specified in a written Notice to Proceed from Texas Tech and be substantially completed on or before ___ calendar days from the specified date in the Notice to Proceed. The Contractor will complete all remaining work required by the Contract Documents, including correction of deficiencies, within 10 days after the date of Substantial Completion.

ARTICLE 5
TERMINATION

TERMINATION. Texas Tech, without breaching the Contract, may terminate the Contract for any reason prior to or during the performance of the work.

PAYMENT AFTER TERMINATION. Contractor will be paid for allowable material and labor costs incurred up to the date of termination. Texas Tech will not be liable for payment to Contractor related to the terminated portion of the work or any work performed or costs incurred after the date of termination. Contractor may not claim lost profits or business opportunities.

END OF WORK. Upon termination, Contractor will stop all work, place no further subcontracts or orders for materials or services, terminate all subcontracts, and cancel all materials and equipment orders.

SUPPLIES PREVIOUSLY PURCHASED. Contractor will protect and preserve all supplies and materials purchased before date of termination that cannot be returned. These must be delivered to Texas Tech at a place to be determined by the project manager.

ARTICLE 6
LIQUIDATED DAMAGES

It is understood and agreed that, if the Project is not completed within the time specified in the Contract plus any extension(s) of time allowed by TTU in writing pursuant thereto, the actual damages sustained by Texas Tech because of any such delay will be uncertain and difficult to ascertain, and it is agreed that the reasonable foreseeable value of the use of said Project by Texas Tech will be the sum of $___,00 per calendar day. Therefore, the Contractor must pay this amount, as liquidated damages and not as a penalty, for each calendar day’s delay in substantially completing the Project beyond the time specified in this Contract plus any extension(s) of time allowed by Texas Tech.

ARTICLE 7
PROGRESS PAYMENTS

Based upon Applications for Payment submitted by the Contractor, the Texas Tech will make progress payments as follows:

Once each calendar month, the Texas Tech will make a progress payment to the Contractor on the basis of a certified and approved Application for Payment for the Work performed during the preceding calendar month under this Contract. To insure the proper performance of this Contract, the Texas Tech will retain five percent (5%) of each Application for Payment until final completion and acceptance of all Work covered by this Contract. In addition, and in connection with any progress payment, Contractor must furnish manifest proof of any Subcontractors' accounting of labor and materials as related to the actual Subcontract value; and such accounting must be in a form Texas Tech requests.

Final payment, constituting the entire unpaid balance of the Contract Sum, including retainage, will be paid by the Texas Tech to the Contractor thirty (30) days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed and a final certificate for payment has been issued by the Contractor and approved by project manager.
ARTICLE 8
HISTORICALLY UNDERUTILIZED BUSINESS

The Contractor will be required to submit a binding Historically Underutilized Business or “HUB” Subcontracting Plan on all Projects that are $100,000 or greater in value. The plan will comply with Texas Government Code 2161. Any modifications to the HUB Plan after acceptance by Texas Tech must be approved in writing by Texas Tech. During the term of this Contract, the Contractor will maintain business records documenting compliance with its HUB Subcontracting Plan and supply them as supporting documentation as needed to comply with Article 7.

If there are any changes to the utilization percentage during the term of the Contract, a revised HUB Subcontracting plan must be submitted for approval by the Contract Administrator, as defined below. If a determination is made that the Contractor has failed to implement the HUB subcontracting plan in good faith, Texas Tech, in addition to any other remedies it may have, may report nonperformance to the comptroller in accordance with 34 TAC §20.105 (relating to Debarment) and 34 TAC §20.106 (relating to Procedures for Investigations and Debarment). In addition, if the Contractor fails to implement its HUB subcontracting plan in good faith, Texas Tech may revoke this Contract for breach of contract and make a claim against the Contractor.

ARTICLE 9
THE CONTRACT DOCUMENTS

Contract Documents mean this Construction Services Contract, Contract Documents (including, but not limited to Uniform General Conditions, and Supplementary Conditions (2010 Edition), Drawings, Specifications, all pre-bid and pre-proposal addenda, and any notice to proposed bidders or other procurement documents), the Contractor’s Proposal (Exhibit A), and all modifications and amendments issued after execution. All Contract Documents are fully incorporated into this Contract.

Right Reserved. The Texas Tech reserves the right to do work and to award other contracts in connection with the Project.

ARTICLE 10
PERFORMANCE AND PAYMENT BONDS

Contractor must tender to TTU, at Contractor’s expense and prior to commencing the Project (check all applicable):

- Payment Bonds for 100% of the total Contract Sum that comply with the requirements of Texas Government Code Chapter 2253.

- Performance Bonds for 100% of the total Contract Sum that comply with the requirements of Texas Government Code Chapter 2253.

ARTICLE 11
GOVERNING LAW

Lubbock County, Texas, will be the proper place of venue for any legal action or proceedings arising out of this Contract or enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties and all of the terms and conditions of this Contract will be construed, interpreted and applied in accordance with and governed by, and enforced under the laws of the State of Texas.

Contract #:
ARTICLE 12
DISPUTE RESOLUTION

The dispute resolution process provided for in the Texas Government Code, Chapter 2260 shall be used, as further described herein, by the Texas Tech and the Contractor in an attempt to resolve any unresolved claim for breach of contract arising under this Contract and made by the Contractor:

(a) A Contractor’s claim for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to the Managing Director of Procurement Services. Said notice specifically states that the provision of Chapter 2260, Subchapter B, is being invoked. A copy of the notice shall also be given to all other representatives of the University and the Contractors that are otherwise entitled to notice under this Contract. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.

(b) The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Contractor’s sole and exclusive process for seeking a remedy for an alleged breach of contract by the Texas Tech if the Parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the Civil Practices and Remedies Code.

(c) NEITHER THE EXECUTION OF THIS CONTRACT BY TEXAS TECH NOR ANY OTHER CONDUCT OF ANY REPRESENTATIVE OF TEXAS TECH RELATING TO THE CONTRACT SHALL BE CONSIDERED A WAIVER OF TEXAS TECH’S SOVEREIGN IMMUNITY TO SUIT.

(d) The dispute resolution process provided for in Government Code Chapter 2260 will not, at any time, affect the Texas Tech’s right or ability to bring suit against the Contractor for disputes arising under this Contract, nor will it affect the Texas Tech’s ability to assert all claims and defenses in a lawsuit.

(e) Pursuant to Chapter 2260, the submission, processing and resolution of the Contractor’s claim is governed by the published rules adopted by the Texas Attorney General’s Office, as currently effective, hereafter enacted or subsequently amended.

(f) Except as allowed under Texas law, neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor, in whole or in part.

ARTICLE 13
SEX OFFENDER PROVISION

All sex offenders required to register with local law enforcement authorities under chapter 62 of the Texas Code Of Criminal Procedure and who intend to work or carry on a vocation (full-time or part-time) on any campus of Texas Tech University System for a consecutive period exceeding fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year are required to register (or verify registration) with the law enforcement authority for campus security in accordance with article 62.153 of the Texas Code Of Criminal Procedure within 7 days of beginning work on any campus of Texas Tech University System. In addition, such sex offenders are required to notify the law enforcement authority for campus security within seven (7) days of terminating work on any campus of Texas Tech University System. For additional information, please contact the Texas Tech University Police Department, 2901 4th
ARTICLE 14
TEXAS TECH’S REPRESENTATIVES

Texas Tech hereby designates the Chief Financial Officer and Vice President for Administration and Finance of Texas Tech University or his designated representative as the person duly authorized to execute any amendments or changes to this Contract.

Texas Tech has appointed a Project Manager who will be Texas Tech’s point of contact for all Project matters including, but not limited to, interpretation of documents, defining the scope of work, approving work schedules, and approving contract payments. This designation will remain in full force and effect until and unless Contractor is otherwise notified in writing by Texas Tech and directed to Contractor at its address.

The Texas Tech Project Manager is:

Texas Tech University
Operations Division – Engineering Services
Box 43142
Lubbock, Texas 79409
806-834-2123
Email: ________________________

Texas Tech has appointed a Contract Administrator as Texas Tech’s point of contact for all matters of contract administration including, but not limited to issuing notices and processing any change orders and amendments. This designation will remain in full force and effect until and unless Contractor is otherwise notified in writing.

The Contract Administrator is:

Kellee Smith
Texas Tech University
Procurement Services
Box 41094
Lubbock, Texas 79409
806-742-6748
kellee.smith@ttu.edu

ARTICLE 15
NON-SOLICITATION

The Contractor acknowledges that during the course of the Contract, the Contractor will necessarily be introduced to and become familiar with Texas Tech employees and with their skills and capabilities. The Contractor hereby agrees that for the duration of the Contract, the Contractor will not solicit any person who is known by the Contractor to be an employee of Texas Tech Operations Division to be an employee of the Contractor to work in an enterprise or business with whom the Contractor is employed or in which the Contractor has an ownership or investment interest. Additionally, the Contractor hereby agrees not to hire or promise to hire any of Texas Tech University’s Operations Division current employees for the duration of the Contract.

ARTICLE 16
INDEPENDENT CONTRACTOR

Contractor’s relationship with Texas Tech will be that of an independent contractor and nothing in this Contract is intended nor should be construed to create a partnership, joint venture, or an employer/
employee relationship between the parties. Contractor will not be entitled to any of the benefits that Texas Tech makes available to our employees, such as group insurance, profit sharing or retirement benefits. Contractor will be solely responsible for all tax returns and payments required to be filed or made to any federal, state, or local tax authority with respect to Contractor’s performance of services and receipt of fees under this Contract. All persons engaged in performance of Contractor’s services under this Contract will be subject to Contractor’s discretion, supervision and control.

ARTICLE 17
MODIFICATIONS AND AMENDMENTS

No modification or amendment ("Change Orders") to this Contract will become valid unless agreed to by TTU in writing and signed by both parties. All correspondence regarding Change Orders must be forwarded to the Office of Procurement Services for prior review and approval. Only the **Chief Financial Officer and Vice President for Administration and Finance** or his/her designee will be authorized to process Change Orders. All Change Orders must be signed by the same person who signed this original Contract or their designee or successor.

ARTICLE 18
CERTIFICATIONS

Contractor certifies this Contract is not prohibited under Tex. Gov’t Code §2261.252(b) and agrees that if Contractor’s certification is or becomes untrue, this Contract is void, and Contractor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

To the extent this Contract relates to a project as defined Tex. Gov’t Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov’t Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this Contract must be produced in the United States (as defined in Tex. Gov’t Code §2252.201(4).

Pursuant to Texas Gov’t Code Section 2270.001, Contractor affirmatively states that it does not boycott Israel. Additionally, Contractor shall not engage in a boycott of Israel during the term of this Contract.

**IN WITNESS WHEREOF**, the undersigned affirm that they have the authority to execute this Contract on behalf of the named Party.

“TEXAS TECH”
TEXAS TECH UNIVERSITY

By: ________________________________
    Noel Sloan
    Chief Financial Officer and Vice President for Administration and Finance

“CONTRACTOR”

By: ________________________________
    Name: ____________________________
    Title: _____________________________

Date: ________________________________

Contract #: 
Page 7 of 7
Version 09.20.17
TAX EXEMPTION CERTIFICATE

The Undersigned hereby claims an exemption from payment of taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for the purchase of the tangible personal property which will be incorporated into the project described below or on attached order or invoice, which is made a part hereof, and will be purchased from CONTRACTOR. The reason that said purchaser is claiming this exemption is that Texas Tech University is a fully State-supported institution of higher education.

The purchaser will be liable for payment of the Limited Sales and Use Tax if the purchaser uses the tangible personal property in some other manner or for some other use other than reason listed above, and shall pay the tax based on the price paid for the tangible personal property.

Description of tangible personal property to be purchased: Materials in the amount of $XXXX.XX covering PROJECT, Texas Tech University, Lubbock, Texas (Contract No.1x-xxxx).

Executed this the xx day of *month*, 2xxx.

TEXAS TECH UNIVERSITY

Cathy Clifford
Section Manager-Purchasing
EQUAL OPPORTUNITY CLAUSE
TEXAS TECH UNIVERSITY
LUBBOCK, TEXAS
PURCHASE ORDERS AND CONTRACTS
OF $10,000 OR MORE

A. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

B. Texas Tech hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

C. During the performance of this contract, the Proposer agrees as follows:

1. The Proposer will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

3. The Proposer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Proposer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Proposer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Proposer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Proposer will include the portion of the sentence immediately preceding paragraph 1. and the provisions of paragraphs 1. through 7. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965.
Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Proposer will take such action with respect to any subcontract or purchase order as the including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Proposer may request the United States to enter into such litigation to protect the interests of the United States.

D. Texas Tech further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the contract.

E. Texas Tech agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the responsibility for securing compliance.

F. Texas Tech further agrees that it will refrain from entering into a contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

END OF SECTION 003000
Uniform General Conditions and Supplementary General Conditions for Construction Contracts

Bold provisions are Supplementary General Conditions (SGC’s)
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Article 1. Definitions

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

1.1 *Alternates* means all project scopes identified by Texas Tech to be separated (materials and labor costs) from base services in an attempt to evaluate costs relative to project scope.

1.2 *Application for Payment* means Contractor’s monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.

1.3 *Application for Final Payment* means Contractor’s final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor’s retainage.

1.4 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural and/or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.

1.5 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner’s information and acceptance that conveys Contractor’s and Subcontractors’ activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.

1.6 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E’s knowledge and understanding, Contractor’s completion of all Contractor’s Punchlist items and pre-final Punchlist items, final cleanup and Contractor’s provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.

1.7 *Change Directive (CD)* means a Change Proposal (CP) which has been marked “Accepted” by the ODR and, upon receipt of the CD by the Contractor, constitutes notice to proceed with the changed work described therein.

1.8 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.

1.9 *Change Proposal (CP)* means a Contractor generated document in response to a Change Request (CR) which states the adjustment necessary to the Contract Sum and Time, if any, in response to the changed work described in the Change Request (CR).

1.10 *Change Request (CR)* means a document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor, Owner, and...
Design Professional of the nature of the change.

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

1.12 Contract means the entire agreement between Owner and Contractor, including all of the Contract Documents.

1.13 Contract Date is the date when the agreement between Owner and Contractor becomes effective.

1.14 Contract Documents mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.

1.15 Contract Sum means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.

1.16 Contract Time means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.

1.17 Contractor means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.

1.18 Construction Documents mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

1.19 Construction Manager-at-Risk, in accordance with Tex. Gov’t Code, Chapter 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.

1.20 Critical Path Schedule means the Baseline Schedule. Reference 1.5.

1.21 Date of Commencement means the date designated in the Notice to Proceed for Contractor to commence the Work.

1.22 Day means a calendar day unless otherwise specifically stipulated.

1.23 Design-Build means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov’t Code § 2166.2531.


1.25 Drawings mean that product of A/E which graphically depicts the Work, or the work product of the
A/E which depicts the location and quantity of elements of the Work.

1.26 **Final Completion** means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract. The Contractor shall obtain Final Completion by correcting or fixing all deficiencies listed on the pre-final Punch-list within a fixed amount of time as stated in 12.1.2.

1.27 **Final Payment** means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor’s retainage.

1.28 **Historically Underutilized Business (HUB)** pursuant to Tex. Gov’t Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity’s affairs.

1.29 **Interior Designers and Certified Asbestos Abatement Technicians** means an Interior Designer that meets the requirements of TX Occ. Code Chapter 1053 (as amended or modified), and a Certified Asbestos Abatement Technician that is certified in the State of Texas as an asbestos abatement services manager or industrial hygienist.

1.30 **Notice to Proceed** means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.

1.31 **Open Item List** means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.

1.32 **Owner** means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner. The term “Owner” or “Texas Tech” herein refers to the Board of Regents of the Texas Tech University System.

1.33 **Owner’s Contingency** means an amount that is included in the Base Proposal for authorizing additional work in connection with the Project. The use of the allowance requires the written approval of the ODR authorizing that the cost of a Change Directive be charged to the allowance. Unless otherwise provided in the Agreement, the Owner will not pay a mark-up for profit and overhead on any Change paid out of the contingency allowance. Any unused amount from the Owner’s Contingency will be returned to the Owner.

1.34 **Owner’s Designated Representative (ODR)** means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract. The Owner’s Representative and/or the Project Manager, as defined herein, may serve as ODR.

1.35 **Owner’s Representative (OR)** means a sole proprietorship, partnership, corporation or other legal entity that acts as a fiduciary and provides consultation to Texas Tech regarding construction, rehabilitation, alteration or repair of a facility. The term “Owner’s Representative” is synonymous with “Construction Manager-Agent,” as defined in section 51.781 Tex Educ. Code (as amended or modified).

1.36 **Pre-Final Inspection** means an inspection conducted to determine that the Project, or a portion
thereof, is Substantially Complete and to identify deficiencies or incomplete work.

1.37 Project means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.

1.38 Project Manager means the individual who acts as the Owner’s point of contact for all matters involving contract administration, including without limitation Contract Document interpretation, defining the scope of the work, approving work schedules, and approving Contract payments.

1.39 Progress Assessment Report (PAR) means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).

1.40 Project Schedule means the Baseline Schedule. Reference 1.5.

1.41 Proposed Change Order (PCO) means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor’s response of pricing for the proposed change.

1.42 Punchlist means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

1.43 Record Documents mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect’s Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.

1.44 Request for Information (RFI) means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.

1.45 Samples mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.

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

1.47 Shop Drawings mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.

1.48 Site means the geographical area of the location of the Work.

1.49 Special Conditions mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.

1.50 Specifications mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

1.51 State means Texas. Reference 1.32.

1.52 Subcontractor means a business entity that enters into an agreement with Contractor to perform part of
the Work or to provide services, materials, or equipment for use in the Work.

1.53 Submittal Register means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.

1.54 Submittal Schedule means a schedule that correlates with the Critical Path Schedule that shows the dates the Contractor intends to submit the required submittals to the Design Professional or ODR. This schedule should be part of the Critical Path Schedule so that submittals that affect the critical path are clearly identified.

1.55 Substantial Completion means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.

1.56 Supplementary General Conditions mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. Texas Tech’s Supplementary General Conditions are in bold font.

1.57 Texas Tech means owner. Reference 1.32.

1.58 Unit Price Work means the Work, or a portion of the Work, paid for based on incremental units of measurement.

1.59 Unilateral Change Order (ULCO) means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.

1.60 Work means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor’s obligations under the Contract.

1.61 Work Progress Schedule means the continually updated time schedule based on Critical Path Schedule, prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.
Article 2. Wage Rates and Other Laws Governing Construction

2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates or in accordance with Government Code §2258.022 for projects located in counties bordering United Mexican States or in a county adjacent to a county bordering the United Mexican States. The Contractor is responsible for compliance with the prevailing wage law.

2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker’s job classification, the established minimum wage rate requirement for that classification, as well as the worker’s actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

2.2.1.1 Contractor shall submit a copy of each worker’s wage-rate notification to ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.

2.2.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov’t Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner’s prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification. Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars ($60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

2.2.3 Complaints of Violations.

2.2.3.1 Owner’s Determination of Good Cause. Upon receipt of information concerning a
violation, Owner will conduct an investigation in accordance with Tex. Gov’t Code, Chapter 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

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

2.2.3.3 **Arbitration Required if Violation not Resolved.** After Texas Tech 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 Texas Tech or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker’s claim, the Contractor shall promptly notify Texas Tech in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the 15th day after Texas Tech’s determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rev. Code. The parties to the arbitration have 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.

2.2.3.4 **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 paragraph 2.2.2 thereof and the amount owed the worker. Texas Tech may use any amounts retained under paragraph 2.2.3.1 to pay the worker the amount as designated in the arbitration award. If Texas Tech has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorney’s fees and costs and court costs. The Contractor shall promptly furnish a copy of the arbitration award to Texas Tech.

2.2.3.5 **Prevailing Wage Retainage.** Money retained pursuant to paragraph 2.2 shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the agreement of the claimant and the Contractor or Subcontractor affected, or in the arbitrator’s award. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that Texas Tech shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award as provided under paragraphs 2.2.3.3 and 2.2.3.4.

2.3 **Choice of Law; Venue for Suits.** The Contract Documents shall be governed by and construed in accordance with Texas law and without regard to its conflict of laws principles. Provided the dispute
resolution requirements of Article 15 of the Uniform General Conditions are met, venue and jurisdiction over any suit brought for breach of contract for this Project shall be in any court of competent jurisdiction in Lubbock, Lubbock County, Texas.

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

2.5 **Royalties, Patents, and Copyrights.** Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E. **Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save Texas Tech harmless from loss or liability, direct or indirect, arising with respect to the Contractor’s process in the formulation of its bid or proposal or performance of the Work or otherwise arising in connection therewith. Texas Tech reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless Texas Tech from all costs and expenses, including reasonable attorney's fees, costs and judgments, arising from such defense.**

2.6 **State Sales and Use Taxes.** Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

2.7 **Compliance with Laws.** In the execution of the Contract Documents and the Work, the Contractor shall comply with all applicable State and Federal laws, including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection, energy and water conservation and consumption, and prevailing wage rates. The Contractor shall make itself familiar with and at all times shall observe and comply with all 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 itself, its subcontractors and its employees. Except where expressly required otherwise by applicable laws and regulations, neither Texas Tech nor the Design Professional shall be responsible for monitoring Contractor’s compliance with any laws or regulations.

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

2.9 **Antiquities.** Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological, educational, scientific, or historical significance. No objects of this nature shall be disturbed without written permission of Texas Tech and the Texas Historical Commission. When such objects are discovered, 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 records and antiquities, as described in Chapter 191, Texas Natural Resources Code, discovered on Texas Tech’s property shall remain property of the State of Texas, the Texas Historical Commission. If it is determined by Texas Tech, 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 §11.3.

2.10 **State Property and Building Permits and Laws.** Construction projects performed on state property are exempt from City Permit Fees, etc., as they are owned by the State of Texas. The Contractor, performing work on leased facilities for Texas Tech shall comply with all Federal, State and Municipal Laws, Codes and Ordinances. The Contractor shall obtain and pay for all permits required in connection with the execution of all Work. The Design Professional shall be furnished with certified copies of these permits if the Design Professional so requests. If the above Laws, Codes or Ordinances conflict with the Contract Documents, then the A/E will determine and design to the more stringent between the two.

2.11 **Storm Water Pollution Prevention Program.** The Texas Tech Storm Water Pollution Prevention Program requires preparation of a Storm Water Pollution Prevention Plan (SW3P) for projects that causes a disturbance of soil on any campus of the Texas Tech University System. The plan will incorporate measures in response to and ensure compliance with the terms of the Texas Pollution Discharge Elimination System (TPDES) General Permit for Storm Discharges from Construction Activities. Texas Tech recognizes the construction Contractor as the permit Operator having day-to-day operational control of those activities at the project site which are necessary to ensure compliance with a SW3P. Texas Tech will provide the Contractor with a complete and comprehensive SW3P.

2.11.1 The Contractor shall implement, maintain, and keep current the SW3P. The Contractor shall comply with the Texas Commission for Environmental Quality (TCEQ) General Permit and submit to TCEQ 48 hours prior to commencement of soil disturbing work a TCEQ Notice of Intent (NOI) to obtain permit coverage. Display the NOI and the Construction Site Notice with appropriate information at the prime site entrance to the construction site and provide a copy of the NOI to the appropriate Municipal Separate Storm Sewer System (MS4) operator. Replace the NOI with the approved TCEQ permit when received. Prior to commencement of construction activities provide Texas Tech copies of the NOI and Construction Site Notice and provide a copy of the permit, when received.

2.11.2 The Contractor shall, at all times, keep a copy of the SW3P, the Construction Site Notice, the NOI, and/or the Permit at the job site. The contractor shall update the SW3P as necessary to reflect current and changing site conditions and keep maintenance logs, inspection reports, and records related to compliance with the SW3P. The Contractor shall conduct inspections as required by TCEQ General Permit and the SW3P, and maintain inspection records at the job site.
2.11.3 The Contractor shall submit a Notice of Change (NOC) to TCEQ when required.

2.11.4 Upon completion of all soil disturbing activities at the site and a uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on the unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures the Contractor shall notify Texas Tech that it intends to file with TCEQ a Notice of Termination (NOT) and provide to Texas Tech a copy of the proposed NOT. When approved by Texas Tech, the Contractor shall submit the NOT to TCEQ and provide a copy to Texas Tech.

2.11.5 The Contractor shall provide copies or originals of all records including the SW3P, NOI, Permit, NOT, Construction Site Notice, inspection reports, maintenance logs and records to Texas Tech.
Article 3. General Responsibilities of Owner and Contractor

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

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

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

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

3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing. Contractor shall only accept directions to modify or change the work set forth in the drawings and specifications from the ODR.

3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.

3.1.2.4 Instructions affecting the Contract Sum, Contract Time or contract interpretation, shall be confirmed expeditiously in writing with copies furnished to the Design Professional, the ODR and the Contractor by the party issuing the instruction.

3.1.3 Owner Supplied Materials and Information.

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

3.1.3.2 Owner will provide information, equipment, or services under Owner’s control to Contractor with reasonable promptness.

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

3.1.4.1 If Texas Tech fails to furnish these lands, rights of way or easements in a timely
manner, Contractor may make a claim under Article 9.9.

3.1.5 Limitation on Owner’s Duties.

3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor’s means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

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

3.1.6 The foregoing listing is in addition to the specific duties and authority of Texas Tech and the ODR found in the Contract.

3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.

3.2.1 Site Visits.

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

3.2.1.1 Based on information obtained during such visits and observations, Design Professional shall determine, in general, if the Work is proceeding in accordance with the Contract Documents. Design Professional shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise noted. The Design Professional’s efforts will be directed toward providing Texas Tech a greater degree of confidence that the completed Work shall conform generally to the Contract Documents. On the basis of such visits and on-site observations, Design Professional shall keep Texas Tech informed of the progress of the Work and shall endeavor to guard Texas Tech against defective Work. Design Professional visits and on-site observations are subject to all the limitations on Design Professional’s authority and responsibility set forth in §3.2.3.

3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E’s supplemental instruction (“ASI”) or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.

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

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

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

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

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

3.2.4 No instruction affecting the Design Professional’s design liability shall be issued without the Design Professional’s prior written consent.

3.2.5 The duties listed above are in addition to other duties, responsibilities and actions to be undertaken by Design Professional as specified in other Articles of the Contract.

3.3 Contractor’s General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the pre-construction conference.

3.3.2 Contractor’s Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.

3.3.3.1 SEX OFFENDER REGISTRATION. Contractor agrees to provide the following
notice to all of its employees and subcontractors who may work on any campus of Texas Tech University System:

ALL SEX OFFENDERS ARE REQUIRED TO REGISTER WITH LOCAL LAW ENFORCEMENT AUTHORITIES UNDER CHAPTER 62 OF THE TEXAS CODE OF CRIMINAL PROCEDURE AND WHO INTEND TO WORK OR CARRY ON A VOCATION (FULL-TIME OR PART-TIME) ON ANY CAMPUS OF THE TEXAS TECH UNIVERSITY SYSTEM FOR A CONSECUTIVE PERIOD EXCEEDING FOURTEEN (14) DAYS OR FOR AN AGGREGATE PERIOD EXCEEDING THIRTY (30) DAYS IN A CALENDAR YEAR. SEX OFFENDERS ARE REQUIRED TO REGISTER (OR VERIFY REGISTRATION) WITH THE TEXAS TECH POLICE DEPARTMENT IN ACCORDANCE WITH ARTICLE 62.153 OF THE TEXAS CODE OF CRIMINAL PROCEDURE WITHIN 7 DAYS OF BEGINNING WORK ON ANY CAMPUS OF THE TEXAS TECH UNIVERSITY SYSTEM. IN ADDITION, SUCH SEX OFFENDERS ARE REQUIRED TO NOTIFY THE TEXAS TECH POLICE DEPARTMENT WITHIN SEVEN (7) DAYS OF TERMINATING WORK ON ANY CAMPUS OF TEXAS TECH UNIVERSITY SYSTEM. FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE TEXAS TECH POLICE DEPARTMENT, 2901 4TH ST., LUBBOCK, TX 79409, 806-742-3931.

3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.

3.3.4.1 The Contractor or Construction Manager at Risk may use, at no cost, the existing Texas Tech campus utility infrastructure to perform the work, including construction, startup testing, and commissioning. The Contractor or Construction Manager at Risk shall be responsible for all other utility costs including connection charges. In all cases, the Contractor or Construction Manager at Risk shall be responsible for utility costs related to all job-site offices.

3.3.4.2 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. If the Contractor has good reason for objection to the use of a material, appliance, or method of construction as shown or specified, the Contractor shall register its objections with Texas Tech in writing in sufficient time to resolve the issue without delaying the Work; otherwise, it shall proceed with the Work with the understanding that a satisfactory job is required.

3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.

3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.6.1 The approval of Work by either the Design Professional or ODR does not relieve the
Contractor from compliance with all requirements of the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.

3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor’s intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.

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

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

3.3.7.3 Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the applicable terms and conditions of the Contract Documents for the benefit of Texas Tech and the Design Professional. Texas Tech reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and suppliers as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between Contractor and Subcontractor or supplier.

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

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

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

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

3.3.11.2 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor’s activities under this Contract.

3.3.11.3 **The Contractor’s duty to promptly advise of claims or demands also applies to claims or demands against the ODR, Texas Tech’s Representative, Project Manager and Design Professional.**

3.3.12 **Ancillary Areas.** Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:

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

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

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

3.3.12.4 Owner may restrict Contractor’s entry to the Site to specifically assigned entrances and
routes.

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

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

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

3.3.13.3 Texas Tech shall provide for coordination of the activities of Texas Tech’s own forces and of each separate contractor with the Work of this Contractor, who shall cooperate with them. This Contractor shall participate with other separate contractors and Texas Tech in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to its construction schedule as necessary, after receiving Texas Tech’s instructions.

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

3.3.15 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.

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

3.3.17 This Contractor shall afford Texas Tech, the Design Professional, the separate contractors and Texas Tech’s own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.
3.3.18 The Contractor shall comply with applicable Texas Law, including the Texas Occupations Code, relating to the required licensing of heating, ventilating and air conditioning contractors, fire sprinkler systems contractors, materials, suppliers, and/or laborers respectively.

3.3.19 Construction of Temporary Project Signage. The Contractor is responsible for fabricating, locating and installing temporary construction project signage on the site. The standards for the exterior project signage are detailed in the Project Specifications.

3.3.20 Protection of Existing Facilities. The Contractor shall take precautions to protect existing facilities and features within the designated construction limits and along the access to the construction site. After materials, equipment and machinery are installed, the Contractor shall properly protect all work until substantial completion is issued by Texas Tech and the Design Professional. Any damages incurred as a result of the Contractor’s negligence shall be repaired by the Contractor without cost to Texas Tech, whether the repair is made with the Contractor’s own materials and labor or by others under his directions.
Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

4.1. General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov’t Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).

4.1.1. State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State’s policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.

4.1.2. A Contractor who contracts with the State in an amount of $100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.

4.2. Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:

4.2.1. Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.

4.2.2. Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.

4.2.3. Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.

4.2.4. Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.

4.2.5. Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor’s performance of the HUB subcontracting plan.

4.2.6. Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. The PAR is available at: http://www.depts.ttu.edu/afism/AFISMFormRepository/ProcurementDept/forms/HUB-Merged-Forms.pdf

4.2.7. Promptly and accurately explain and provide supplemental information to Owner to assist in Owner’s investigation of Contractor’s good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).

4.3. Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the
Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.
Article 5. Bonds and Insurance

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

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

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

5.1.1.2 A Payment bond is required if the Contract price is in excess of $25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.

5.1.1.3 The Bonding Company is required to provide, clearly and prominently displayed on the face of all payment and performance bonds, the Company name, physical address, mailing address, area code and telephone number and the toll-free telephone number maintained by the Texas Department of Insurance under Texas Insurance Code §521.052. The Bonding Company is required to provide a statement indicating that the surety’s address can be obtained by calling the toll-free number.

5.1.1.4 Bond submitted that do not comply with these requirements must be promptly resubmitted with the correct information provided. Texas Tech reserves the right to disqualify bid proposals based on noncompliant bonds submission.

5.1.2 Security Bond. The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price (“GMP”) to Owner and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.

5.1.3 When Bonds Are Due

5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.

5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor’s receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor’s receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.
5.1.4 **Power of Attorney.** Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

5.1.5 **Bond Indemnification.** The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov’t Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

5.1.6 **Furnishing Bond Information.** Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov’t Code § 2253.026.

5.1.7 **Claims on Payment Bonds.** Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov’t Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

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

5.1.9 **Sureties.** A surety shall be listed on the US Department of the Treasury’s Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

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

5.2 **Insurance Requirements.** Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.

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

5.2.2.1 Insurance Coverage Required by Texas Tech

5.2.2.1.1 Workers’ Compensation. Insurance with limits as required by the Texas Workers’ Compensation Act, with the policy endorsed to provide a waiver of subrogation as to Owner, employer’s liability insurance of not less than:

$1,000,000 each accident;

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

$1,000,000 By disease policy limit.

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

$1,000,000 per occurrence;

$2,000,000 general aggregate;

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

Coverage shall be on an “occurrence” basis. Claims made forms are not acceptable.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG25031185 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

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

5.2.2.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

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

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer’s liability limits for asbestos abatement will be:

$500,000 each accident;

$500,000 disease each employee; and

$1,000,000 disease policy limit.

If this Contract is for asbestos abatement only, the all-risk builder’s risk or all-risk installation floater is not required.

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

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

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

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

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

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

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder’s
risk insurance requirements.

5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

5.2.2.1.5.8 Builder’s risk insurance policy shall remain in effect until Substantial Completion.

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

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

a. When Contract Amount equals less than $5,000,000, an Umbrella Policy of $1,000,000.

b. When Contract Amount equals or exceeds $5,000,000, an Umbrella Policy of $5,000,000.

5.2.3 Policies must include the following clauses, as applicable:

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

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

5.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.

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

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

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

5.2.6 The furnishing of the above listed insurance coverage, as may be modified by Supplementary General Conditions or Special Conditions, must be tendered prior to execution of the Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor’s bid bond. The Contractor shall not commence the Work until it has obtained all required insurance and “certificates of insurance” and copies of all policies and endorsements have been filed with and reviewed by Texas Tech. Acceptance of this information by Texas Tech shall not relieve or decrease the Contractor’s liability.
Article 6. Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications

6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the 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. Electronic copies of such documents will be provided to Contractor without charge.

6.1.1.1 Contractor will be furnished free of charge five (5) paper sets of the Contract Drawings and Specifications and two (2) electronic sets before on-site work commences.

6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E’s property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E upon request, following completion of the Work unless otherwise specified in the Design Professional Contract.

6.1.2.1 The A/E grants Texas Tech a royalty-free, non-exclusive license in the Drawings, Specifications and other documents prepared for the Project by the A/E and its subcontractor(s). Texas Tech shall retain copies, including reproducible copies, of the Project documentation and Texas Tech, its employees, agents and subcontractor(s) are free to use the documents, however, they may not be sold or otherwise transferred to other parties without the A/E’s consent.

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

6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.

6.1.4.1 All discrepancies or conflicts either in the figures, in the Drawings, or in the Specifications, the matter shall be promptly submitted to the A/E and Texas Tech. The A/E shall promptly make a recommendation in writing within ten (10) days. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. If the discrepancy or conflict is not brought to Texas Tech’s attention in a timely manner, the Contractor shall perform the Work based on the higher quality or quantity provided for in the above-referenced documents.

6.1.4.2 In the event of conflict among the Drawings, the large scale Drawings prevail over the small scale drawings.

6.1.4.3 In the event of conflict between Drawings and Specifications, the Specifications 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.

6.1.5 Contractor’s Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.

6.1.6.3 It is further recognized that Contractor’s examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.

6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.

6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor’s responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.

6.1.6.5.1 Clarification(s) of project scope shall be requested from the A/E in the form of Requests for Information (RFI). Failure to consult with Texas Tech or A/E does not release the Contractor from their contracted responsibilities to complete the work to Texas Tech’s satisfaction.

6.1.6.5.1.1 Texas Tech shall provide the requested information to the Contractor. If the solution prompts changes to the Contract Sum or Contract Time, the Contract shall be adjusted under Article 11.

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

6.2 Requirements for Record Documents. Contractor shall:

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

6.2.2 Maintain this record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.

6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.

6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents.

6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.

6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.

6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

6.3 Other Information Provided to Contractor.

6.3.1 Texas Tech may provide Contractor with information, reports, pictures or other items which are not contained within the Contract Documents, but which Contractor shall review and use pursuant to 6.1.5.
Article 7. Construction Safety

7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.

7.2 Notices. Contractor shall provide notices as follows:

7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.

7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.

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

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

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

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

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

7.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

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

7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed
by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.

7.5 **Environmental Safety.** Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.

7.5.1 Bind all Subcontractors to the same duty.

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

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

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

7.5.5 **The Contractor shall comply with, and require all Subcontractors to comply with the Texas Health and Safety Code’s provisions relating to the installation of hazardous materials in public buildings, as well as the Texas Asbestos Health Protection Act: Tex. Occ. Code, Chapter 1954. The Contractor shall be responsible for ensuring that all Material Safety Data Sheets (MSDS) are on site and readily accessible before initiating installation of new construction materials.**

7.5.6 **The Contractor shall be responsible for preventing the accumulation of wastes which create hazardous conditions. The protocols and responsibilities of the Contractor to ensure environmental protection and safety at Texas Tech differ from the protocols and responsibilities defined for construction projects associated with Texas Tech University Health Sciences Center (TTUHSC). For clarification, the procedures indicated below are inclusive of the standard protocol(s) defined for implementation on all Texas Tech construction projects. Protocols associated with environmental protection and safety of TTUHSC construction projects are indicated in TTUHSC Standards and associated with the protocols in 7.8-7.11.**

7.6 **Trenching Plan.** When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker’s upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

7.6.1 All trench excavations shall be performed in full compliance with OSHA Regulations. It is the Contractor’s responsibility to comply with any additional requirements resulting from any pre-construction conference relating to coordination of geotechnical investigation subjects.

7.6.2 Texas State Law (Underground Facility Damage Prevention and Safety Act: Tex. Util. Code, Chapter 251) requires Contractors submit all required notifications to the authorities having
jurisdiction two working days prior to commencement of all excavation site work. It is the Contractor’s responsibility to inform Texas Excavation Safety System (1-800-DIG-TESS or 811) about all planned excavations and provide adequate notice. The Contractor is required to coordinate identification of underground facilities with the Design Professional, and a designated representative of Texas Tech, and site mark approximate locations prior to planned excavation.

7.6.3 When required, the Contractor shall submit a trenching plan that is 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 Texas Tech. Receipt of the plan is a prerequisite to the start of trenching.

The regulation identified as 29 CFR (Code of Federal Regulations) Subpart P – Excavations, consisting of sections 1926.650 through 1926.652 with Appendices A through F, of the OSHA Health and Safety Regulations, as amended or modified, are by this reference made a part of the Specifications. The Contractor shall meet and comply with this regulation and all other applicable safety standards that have been adopted by government agencies that have jurisdiction over this Project.

It is the sole duty and responsibility of the Contractor, not Texas Tech, to determine the specific applicability of the designed trench safety systems to each field condition and to make inspections of the trench safety systems. The Contractor shall maintain a permanent record of inspections.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS TEXAS TECH, ITS EMPLOYEES AND AGENTS, THE ODR, DESIGN PROFESSIONAL, THE PROJECT MANAGER AND TEXAS TECH’S REPRESENTATIVE FROM ANY AND ALL DAMAGES, COSTS (INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND EXPENSES, 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 AND CAUSED BY NEGLIGENCE OF THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS.

7.7 Volatile Waste By-Products. The Contractor shall store volatile wastes in covered metal containers which will be required to be removed from the project site daily. The Contractor shall conduct cleaning and disposal operations in compliance with local ordinances and environmental protection regulations and ensure adequate exhausting of volatile or noxious substances while working in occupied areas. The Contractor shall ensure that all contractors, subcontractors, tradesmen, suppliers and laborers do not burn or bury rubbish and waste materials on the project site or dispose of volatile wastes through the storm or sanitary drainage system.

7.8 Hazardous Metal Components. Some metal components may have inherently hazardous characteristics or contain hazardous characteristics. The metals of interest are the eight listed by the Resource Conservation and Recovery Act (RCRA): arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. The Contractor is responsible for following all Environmental Protection Agency Laws when disposing of these potentially hazardous metals to prevent leaching and contamination of underground water supplies.
Upon discovery of these metals, the Contractor is responsible for disclosing to Texas Tech their intent for removal of the metal components. The Contractor may retain the metal for reuse, or otherwise accept the metal components as salvageable property. The items may also be sent to a metal’s recycler. Whichever option is chosen, the Contractor must inform Texas Tech of their intentions, in writing, prior to the start of the project. The Contractor must indicate their proposed method for disposal or recycle. If the recycling option is elected, the types and quantities of materials recycled must be reported to Texas Tech by providing copies of the weight tickets from the recycler.

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

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

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

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

7.10 PCB Light Ballasts. The Texas Department of Health will not authorize the disposal of light ballasts containing PCB's or small PCB capacitors in municipal landfills. If a light ballast is not labeled "No PCB's", then it must be considered as having PCB's and must be disposed of as follows:

7.10.1 If, upon acknowledgement from Texas Tech the Contractor intends to retain the light fixture for reuse, or otherwise accept the fixtures as salvageable property, there are no hazardous waste requirements. Before removing the light ballasts from the campus, the Contractor shall provide a letter, addressed to Texas Tech stating their intention to reuse or recycle the light ballast.

7.10.2 Light fixtures that are not accepted for salvage by the Contractor are to have the ballast removed by the Contractor and returned to Texas Tech for recycle/disposal/salvage or reuse. All such ballasts will be placed in Contractor-provided open-top 55-gallon metal drums (DOT/UN reference marking 1A2/Y1.2/100) by the Contractor and delivered to Texas Tech for disposal as directed by the Project Manager at the time of the Pre-construction Conference.
The remainder of the light fixture shall be recycled by the Contractor as a painted metal surface.

7.10.3 For the purpose of construction projects at Texas Tech all fluorescent lamps associated with renovations or maintenance construction projects of Texas Tech facilities shall be considered to contain hazardous materials.

7.11 Fire Protection Procedures. Contractor shall maintain compliance with all Life/Safety Code requirements throughout the duration of the Construction Contract and take precautions to prevent potential fire hazards at the jobsite. Contractor shall adhere to the preventative fire protection procedures of the authorities having jurisdiction (Texas Tech Fire Marshals) and instruct all associated subcontractors, skilled tradesmen, contractors, material men, suppliers and/or laborers of the procedures for preventative fire measures.

7.12 All campuses of the Texas Tech System are designated ‘Smoke Free’ environments. Due to State health, sanitation and safety regulations, tobacco products are not permitted to be consumed by construction personnel in any Texas Tech facilities, occupied or unoccupied, including mechanical and other service spaces within the Texas Tech System. Care shall also be taken to avoid smoking near outside air intakes. The General Contractor shall be responsible for enforcing this policy on the construction site.

7.13 The Contractor shall not operate Owner’s existing equipment. When operation is necessary to accomplish the work of the Contract, the Contractor shall notify the Project Manager who will arrange for Texas Tech personnel to operate the equipment.
Article 8. Quality Control

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

8.1.1 **Texas Tech reserves the right to inspect, at their sources or on the Project site or any off-site storage location, all materials, supplies or services not manufactured or performed within the Contractor's on-site facility. Such inspection shall not constitute acceptance, nor shall it replace a Contractor's responsibility to furnish acceptable materials.**

8.1.2 **Materials Procurement.** The Contractor shall order and schedule delivery of materials expeditiously to avoid delays in construction and maintain the Critical Path Schedule for project delivery. If an item is found to be unavailable, Contractor shall notify the Design Professional immediately to permit mutual selection of suitable substitute(s). If Contractor fails to order materials in ample time to avoid delays in construction, an approved material shall be substituted at no extra cost to Texas Tech. Or, at the Design Professional's discretion, approval of a substitute will be given only upon agreement by the Contractor to remove substituted material at a later date agreeable to Texas Tech, and replace it at Contractor's expense with material originally specified. Such approval shall be subject to the same terms as for "Substitutions".

8.1.3 **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 Texas Tech's or Design Professional'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 Design Professional and Texas Tech. The Contractor shall clearly mark submittals of materials that are different than those indicated in the Drawings and/or Specifications.

8.1.4 **Materials required to match existing work and not otherwise specified, shall be equal to the existing work in quality, color and finish. Workmanship and installation shall be comparable to adjacent existing work. Texas Tech shall be the sole authority in the determination of an acceptable match.**

8.1.5 **Manufacturer's Instruction.** All manufacturer's articles, materials and equipment shall be applied, installed, connected, erected, secured, used, cleaned, and put in operation as recommended, instructed, directed or specified by the manufacturer, for the specified type of installation.

8.1.6 **Trade Name Specifications.** Reference to items specified by trade name are made as a basis of quality and function. Equivalent items may be used instead; however, the right of determining such quality shall remain with Texas Tech's ODR. The terms "similar to", "approved", "or equal" or similar phrases shall be interpreted similarly.
8.1.7 **Labels.** Manufacturer's or designations, grade marking, fire ratings, etc., will be permitted and are required on certain components of the Work. These items shall be placed in concealed, but accessible locations. Absolutely no labels advertising any manufacturer or trade name will be permitted on exposed portions of components without written authorization from the Design Professional.

8.1.8 **Materials Storage.** The Contractor will be allowed space on the grounds for the storage of materials, but the Contractor shall provide all necessary enclosures, doors and locks, and shall be solely responsible for the safekeeping of all materials, tools, etc., stored therein. Such storage facilities shall be moved when so directed by the Design Professional at the Contractor's expense. After completion of the work, storage facilities and all connected utilities shall be completely removed and all materials taken from the premises.

8.1.9 **Reference Standards.** For products specified by association or trade standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes. The date of the standard is that in effect as of the bid date, except when a specific date is specified. Obtain copies of standards when required by Contract Documents. Maintain a copy at job site during progress of the specific work.

8.1.9.1 Reference to standards, codes, Specifications, recommendations and regulations refer to the latest edition or printing prior to date of issue of the Contract Documents.

8.1.9.2 Applicable portions of standards listed that are not in conflict with Contract Documents are hereby made a part of the Specifications.

8.1.9.3 Modifications or exceptions to standards shall be considered as amendments and unmodified portions shall remain in full effect. In cases of discrepancies between standards, the more stringent requirements shall govern.

8.1.9.4 Copies of Standards: Each entity engaged in construction on the Project is required to be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents.

8.1.9.5 Where copies of standards are needed to perform a required construction activity, the Contractor shall obtain copies directly from the publication source.

8.1.10 **Building Codes and Standards.** Design, materials and construction shall conform with applicable requirements of the most current adopted editions by the local municipality (unless noted otherwise) but are not limited to the following published documents:

- International Building Code (IBC);
- International Energy Conservation Code (IECC);
- International Fire Code (IFC) (edition adopted by the State Fire Marshall);
- International Plumbing Code (IPC);
- International Electrical Code Administration Provisions (IECAP);
- National Fire Protection Association (NFPA) Codes and Standards (edition adopted by the State Fire Marshall);
- National Electric Code (NEC);
- ANSI/ASME A17.1 Safety Code for Elevators and Escalators (edition adopted by TDLR);
- ANSI A136.1 Standards for Safe Use of Lasers;
United States Environmental Protection Agency regulations; 
ASHRAE Standard 90A, B, & C-Energy Conservation in New Building Design; 
United States Department of Health, Public Health Service regulations and guidelines; 
Sheet Metal and Air Conditioning Contractor’s National Association (SMACNA); 
State Energy Conservation Office (SECO); 
Biosafety in Microbiological and Biomedical Laboratories (BMBL), HHS Publication No. (CDC) 21-112; 
State statues regulating, but not limited to the following: 
Asbestos 
Boilers 
Control of Radiation 
Energy Consumption 
Fire Escapes 
Fire Alarms 
Plumbing Fixtures 
Texas Accessibility Standards of the Architectural Barriers Act; 
Americans with Disabilities Act (ADA);— 
Accessibility Guidelines for Buildings and Facilities; 
United States Department of Labor Occupational Safety and Health Administration (OSHA) regulations; 
Texas Commission on Environmental Quality (TCEQ); 
FM Global recommendations and approvals for roof systems and fire protection systems; and 
TTUS Operating Policies and Procedures.

8.1.11 Materials and workmanship specified by reference to number, symbol, or title of a specific standard such as commercial standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with requirements in latest revision thereof and with any amendment or supplement thereto in effect on the date of origin of the Project's Contract Documents. Such standard, except as modified herein, shall have full force and effect as though printed in the specifications. Referenced standards from the publications of those organizations and governmental entities listed in Section 01095 REFERENCE STANDARDS attachment of this document apply to this construction contract.

8.1.12 In instances of conflict between the building codes and standards mentioned above, the Code or Standard having the more stringent requirement(s) shall govern over the other codes and/or standards. All standards derived from conformance with the building codes and standards documents listed in the REFERENCE STANDARDS attachment shall be considered as comprehensively included in the Contract Sum. Requests for additional compensation by the Contractor to resolve code discrepancies will not be permitted for changes to make the work comply with the regulations of the documents mentioned previously. Nothing in the Construction Documents should be construed by the Contractor as a permit to perform work not in conformance with the aforementioned building codes and standards.

8.1.13 Contractor Quality Control. Contractor is responsible for controlling the quality of the Work as set forth in the Contract Documents.

8.2 Testing.

8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise
required by the Contract Documents. Contractor shall provide the following testing:

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

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

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

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

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

8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.3.2 Acceptance by Owner of the quality and nature of tests.

8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.

8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.

8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.

8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.2.3.7 The A/E and Texas Tech may refuse consideration of further samples of the same brand or make for testing. Previous approval may be withdrawn and such material or equipment may be subject to removal and replacement by Contractor at his expense with material or equipment meeting specification requirements.

8.2.3.8 Contractor's Testing. Nothing contained herein is intended to imply that the Contractor does not have the right to have tests performed on any material at any time for its own information and job control so long as Texas Tech is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence.
over these procedures.

8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.

8.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.

8.2.5.1 Materials to be tested include, but are not limited to, the following:

8.2.5.1.1 Concrete and foundations.
8.2.5.1.2 Structural members.
8.2.5.1.3 Structural member connections.
8.2.5.1.4 Soils and bases.
8.2.5.1.5 Bituminous material.
8.2.5.1.6 Roofing systems.
8.2.5.1.7 Mortar, grout, and masonry products.
8.2.5.1.8 Fireproofing.
8.2.5.1.9 Waterproofing.

8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor’s expense.

8.3 Submittals.

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

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

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

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

8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.1.5 Texas Tech may establish routine review procedures and schedules for submittals at the preconstruction conference. All submittals will be subject to review by Texas Tech and routine review procedures shall be in accordance with those established by Texas Tech at a pre-construction conference held at the start of the Work. Items on which submittals are required are listed in the Specifications, but failure to list an item does not exempt the Contractor from being required to submit information on such items if requested by the Design Professional, Texas Tech and/or ODR.

8.3.1.6 Contractor shall submit four (4) copies of the submittal register and submittal schedule. The schedule shall be structured and list submittal items in numerical order of Specification Division numbers. Identify each submittal in list with an item number, Specification Division number, name of product, and type of submittal (shop drawing, product data, or sample).

8.3.1.7 Submittals defined include Conditions of Site reports, Contractor’s Construction Schedule(s), Contractor’s Submittal Schedule(s), Product Data, Shop Drawings, Samples and Options Selections, Integrated Drawings, Field Reports, Certificates of Compliance, Project Photographs, Reproducible Mylar Sepias ‘as built’ drawings, Requests for Information (RFI) and Change Requests (CR). The number of copies of each item for review will be determined in the Pre-Construction meeting. Upon receipt of the submittals, shop drawings, samples manufacturer’s information and other documentation, the Design Professional will review items for accuracy and conformance to the project construction documents, within the allocated time frame.
agreed to by the Design Professional and Texas Tech.

8.3.1.7.1 Distribution of copies to A/E, Texas Tech and all contractors’, subcontractor’s, suppliers, manufacturers, etc. is to be provided by the Contractor.

8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner’s written specific approval of the particular deviation.

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

8.3.2.2 The A/E will note discrepancies, substitutions and inaccuracy. Upon receipt of items related to interior finishes, the A/E will be required to forward those items immediately to Texas Tech’s ODR, prior to the A/E’s review, so that interior finishes reviews are expedited by Texas Tech. Once the A/E has completed formal review and stamped individual submittals for review, the A/E will retain two copies for their files and forward the remainder to Texas Tech for review and approval. Texas Tech will review all items received within two-weeks of receipt and return to the A/E for transmittal back to the Contractor. On the date of receipt of reviewed correspondence from the A/E, the Contractor will be required to acknowledge receipt by informing Texas Tech’s ODR that correspondence for review has been received.

8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E’s and ODR’s review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

8.3.4.1 Shop Drawings will be marked with Texas Tech's project name, project number, and pages numbered consecutively. Each detail and drawing will give reference to appropriate sheet and detail number from Contract Documents. Shop Drawings shall
be complete in every respect, bound in sets, and accompanied by letter of transmittal listing numbers and dates of all drawings submitted. Prior to the Design Professional’s review, Shop Drawings shall be reviewed by Contractor and shall bear his stamp stating drawing has been checked for conformance with the Contract Documents, pending the Design Professional’s review. Any drawings submitted without Contractor's stamp will not be considered. If shop drawings show variations from requirements of Contract because of standard shop practice or other reason, Contractor shall make mention of such variation in his letter of transmittal. The Contractor will not be relieved of responsibility for executing the work in accordance with the Contract even though such Shop Drawings have been reviewed. Shop Drawings will not be considered approved unless the Contractor, Design Professional and Texas Tech’s stamps appear on them.

8.3.4.1.1 If the Contractor considers any correction indicated on the revised Shop Drawings to constitute a change to the Contract Drawings or Specification, notice as required under Article 11 et. seq. herein, and the extension thereof in the Special Conditions, shall be promptly given to Texas Tech.

8.3.5 No Substitutions Without Approval. ODR and A/E may receive and consider Contractor’s request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor’s request for a substitution may be considered by ODR and A/E when:

8.3.5.1 The Contract Documents do not require extensive revisions; and

8.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and

8.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:

8.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;

8.3.5.3.2 The request directly relates to an “or-equal” clause or similar language in the Contract Documents;

8.3.5.3.3 The request directly relates to a “product design standard” or “performance standard” clause in the Contract Documents;

8.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;

8.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;

8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;

8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or

8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.

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

8.3.6.1 Substitutions of any materials other than those specifically called for shall be submitted to the Design Professional and Texas Tech for approval. All substitutions must be approved by the Design Professional and Texas Tech in writing. For this purpose the Contractor shall submit to the Design Professional within 35 calendar days after execution of the contract, a typewritten list containing a description of each proposed substitute item or material. Sufficient data, drawings, samples, literature or other detailed information as will demonstrate to the Design Professional that the proposed substitute is equal in quality and utility to the material specified shall be appended to this list. The Design Professional will approve, after receiving written concurrence from Texas Tech, in writing, such proposed substitutions as are, in the Design Professional’s opinion, equal in quality and utility to the times or materials specified. Such approval shall not relieve the Contractor from complying with the requirements of the Drawings and Specifications, and the Contractor shall be responsible at his own expense for any changes resulting from his proposed substitutions which affect other parts of the work. Failure of the Contractor to submit proposed substitutions for approval in the manner described and within the time prescribed shall be sufficient cause for disapproval by the Design Professional of any substitutions otherwise proposed. Whenever catalog numbers and specific brands or trade names are not followed by the designation "or equal" or used in conjunction with a designated material, product, or service mentioned in these specifications, no substitutions will be approved.

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

8.3.7.1 The Contractor shall submit Material Safety Data Sheets (MSDS) for all materials provided, installed, and/or utilized in this Project for review by the Design Professional and Texas Tech or its designated representative. The Contractor will not be permitted to bring any material(s) onto Texas Tech University System property until the Design Professional and Texas Tech have reviewed such MSDS information

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and are satisfied the materials(s) are in compliance with applicable laws, ordinances, regulations, and policies. The A/E's and ODR’s review of MSDS information shall not constitute acceptance, nor shall it release the Contractor from its obligation to furnish acceptable materials.

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

8.4 Field Mock-up.

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

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

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

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

8.4.1.4 Mock-ups samples shall be submitted as required by the Specification Division. The approved mock-up samples shall be dated, initialed by persons present for approval, clearly identified, and remain protected on the job site until project completion and acceptance. Contractor's failure to protect and maintain the approved samples shall not relieve him from the responsibility of furnishing and installing finish brick, pavers, or mock-ups to the satisfaction of Texas Tech’s ODR.

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

8.5 Inspection During Construction.

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

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

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

8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

8.5.3 Owner Quality Assurance.

8.5.3.1 Texas Tech will make visits to the site to confirm Project progress and quality of the Work, conduct 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 Texas Tech.

8.5.3.2 Texas Tech, ODR, or the Design Professional may employ one or more special inspectors to provide inspections during construction on the types of work listed under Section 1704 of the International Building Code.

8.6 Condemnation and Removal of Defective Work.

8.6.1 The ODR has the authority to reject and condemn Work, which does not meet the requirements of the Contract Documents and to order such work removed and replaced in accordance with paragraph 8.6.2 et. seq. 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. Failure of the ODR to reject the Work does not relieve the Contractor from the responsibility to correctly perform the Work in accordance with the Contract Documents.

8.6.2 If any materials or Work furnished under this Contract are condemned by Texas Tech, the Contractor shall, after notice from Texas Tech, proceed to remove materials, whether worked or unworked, and to take down all portions of the Work condemned. Contractor shall make good all Work damaged or destroyed by the removal and replacement process.

8.6.3 Upon notice of condemnation, the Contractor may request to prove to Texas Tech, at Contractor’s sole cost, that the Work should be accepted because it meets performance, and other relevant standards. Texas Tech shall respond to Contractor's showing of proof in writing.

8.6.4 Should work be identified by either the Design Professional and/or ODR as not being in compliance with the Contract Documents, such work shall be corrected by the Contractor at its expense. The approval of work by either the Design Professional and/or the ODR, or their failure to reject work, does not relieve the Contractor from compliance with all requirements of the Contract Documents.
8.6.5 The Contractor shall, without charge, replace any material or correct any workmanship found by Texas Tech not to conform to the Contract requirements, unless in the public interest Texas Tech consents in writing to accept such material or workmanship with an appropriate adjustment in the Contract Sum. The Contractor shall promptly correct all Work rejected by Texas Tech as defective or as failing to conform to the Contract Documents, whether observed before or after the Date of Substantial Completion or Final Inspection and acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.

8.6.6 If the Contractor does not promptly replace rejected material or correct rejected workmanship, Texas Tech may, 1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, 2) terminate the Contractor’s employment, or 3) take any action Texas Tech deems appropriate.
Article 9. Construction Schedules

9.1 **Contract Time.** TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner’s additional inspection, project management, and maintenance cost to the extent caused by Contractor’s failure to achieve Final Completion.

9.2 **Notice to Proceed.** Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.

9.3 **Work Progress Schedule.** Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including submittals, mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

9.3.1 **Schedule Requirements.** Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor’s actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

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

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

9.3.1.3 **The Work Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and Submittals.** If required by the Special Conditions, the Contractor shall also submit a separate Submittal Schedule, correlated with the Work Progress Schedule that shows the dates the Contractor intends to make the required submittals.

9.3.2 **Schedule Updates.** Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor’s judgment it becomes necessary for the management of the Work.
shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary
accompanying the updated schedule for review prior to final implementation of revisions into a
revised Baseline Schedule. Schedule changes that materially impact Owner’s operations shall be
communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule
without ODR’s consent.

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

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

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

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

9.3.4 In accordance with the approved Critical Path Schedule, the Contractor shall coordinate the
work specified under all Divisions herein. This coordination shall be done so that
interferences will be avoided and provisions will be made sufficiently in advance of need to
accommodate all of the Work required to complete the project.

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

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

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

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

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

9.5.1.4 Expedite delivery of materials.

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

9.6 Modification of the Contract Time.

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

9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor’s progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A “Weather Day” is a day on which Contractor’s current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. The “Weather Days” claimed shall be compared to the weather day allowances included in the Special Conditions, and any day in excess of the stated number of normal weather days shall be allowed as an additional day, unless there are days in previous months that are not used. These shall be credited to the days requested. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO (as defined in 11.9) for fair and reasonable time extension.

9.6.2.1.1 "Inclement weather" as used herein means unusually severe weather that is beyond the normal weather recorded and expected for the locality and/or the seasons or seasons of the year. Normal weather shall be determined based on records for the closest stations of the United States Environmental Data Service.

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

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

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

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

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

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

9.6.3 Contractor’s relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor’s schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

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

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

9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor’s proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.

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

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

9.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

9.9.3.1 The nature of the delay and its cause; the basis of Contractor’s claim of entitlement to a time extension.

9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor’s Work Progress Schedule, and any concurrent delays.
9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

9.9.4 Owner’s Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

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

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

9.9.4.3 Such an Extension of Time is effective on the date ODR 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 11.

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

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

9.11.1 Should the Contractor fail to complete the Work within the Contract period, including all officially approved extensions thereto, Texas Tech may collect from the Contractor or deduct from any funds owed the Contractor an amount equaling the damages caused by such delay. Damages shall include those specifically enumerated in the Contract Documents, such as liquidated damages, as well as any others authorized by law, including the cost of additional administrative, Design Professional, and ODR’s expenses.
Article 10. Payments

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

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

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

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

10.1.3 **The Contractor shall not change the Schedule of Values or breakdown of the Contract Price once the Schedule of Values has been approved.** Changes can only be made with written approval from the ODR.

10.1.4 **All expended contingencies will be tracked on the Schedule of Values.**

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

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

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

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

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

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

10.2.1.5 Construction payment affidavit;

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

**10.2.1.7 State of Texas Construction Voucher.**

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

**10.2.2.1 Contractor’s Application for Payment shall be signed by a corporate officer or a representative specifically named by the Contractor.**

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

**10.3 Owner’s Duty to Pay.** Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor’s updated Work Progress Schedule; and 3) confirmation that Contractor’s record documentation at the Site is kept current.

**10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.**

**10.3.2 Retainage.** Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformance with Tex. Gov’t Code, Chapter 2252, Subchapter B.

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

**10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.**
10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.

10.3.2.4 Upon Final Completion and Texas Tech’s acceptance of all of the Work covered in the Contract Documents, Texas Tech will release the retainage to the Contractor, minus any amounts that Texas Tech is otherwise entitled to withhold.

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

10.3.3.1 Defective or incomplete Work not remedied;

10.3.3.2 Damage to Work of a separate Contractor;

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

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

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

10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or

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

10.3.3.8 Failure to furnish all close-out documents as required by the Contract Documents.

10.3.3.9 For Contracts with a value of less than $25,000 for which no payment bond is posted, receipt of written notice by Texas Tech of unpaid bills, filed in conformance with §53.232 et seq., Texas Property Code. Any funds so withheld shall be released to the Contractor if it furnishes a bond for release of lien as provided in §53.236, Texas Property Code.

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

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

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

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

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov’t Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

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

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

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

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

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

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

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

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

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

10.5.9 Upon Owners request, Contractor shall submit photographs of the stored materials.

10.6 Time for Payment by Contractor Pursuant to Tex. Gov’t Code § 2255.022.

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

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

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

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

11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor’s costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by all parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov’t Code, Chapter 2260.

11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.

11.1.3.1 Effect of a Change Order. The execution of a Change Order by the Owner, Contractor, and A/E constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order for foreseeable impacts on the Contract Sum or the Contract Time; provided, however, that a Change Order may be reformed by a written modification signed by the Owner, Contractor, and the A/E for the limited purpose of correcting an error in computation.

11.1.3.2 Effect of a Unilateral Change Order conversion to a 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 a written objection to the ULCO 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 the ULCO shall have the full force and effect of a Change Order.

11.1.3.3 Execution of Change Order. Not more than 45 days following the date of acceptance
noted on the Change Directive (CD), or the deemed effective date pursuant to §11.7.6.1, but not later than the 90th day following the date of Substantial Completion, the Owner shall issue a Change Order, executed by the Owner and the Design Professional, attaching a copy of the accepted CD and incorporating it fully by reference. The Contractor shall execute the Change Order within 10 days of receipt of the executed Change Order.

11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.

11.1.6 Owner-Initiated Changes. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. When the Owner wishes to order changes in the Work, the Owner shall submit to the Contractor a Change Request (CR), 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 21 days of receipt of the Owner's CR, the Contractor shall submit a Change Proposal (CP) to the Owner, stating that the proposed change is a no-cost change, or proposing an adjustment in the Contract Sum, as provided under Article 11. Where an Owner-Initiated Change in the Work requires no increase in cost, the Owner shall issue and the Contractor shall execute a Change Directive (CD) documenting the change in scope of the Work that does not authorize a change in the Contract Sum.

11.1.7 Contractor-Initiated Changes. If the Contractor claims that it will incur additional cost or time because of any written instruction or interpretation of the Contract Documents, or instruction concerning the execution of the Work, issued by the Owner or the Design Professional, 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 9. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the A/E constitutes a change in the Work affecting the Contract Sum, the Contractor shall so notify the Owner as soon as possible, but not later than 15 days after receipt of the instruction or interpretation, and shall submit a CP to the Owner as soon as possible thereafter, but not later than 21 days after issuance of the notice. This CP shall contain a proposal for an adjustment in the Contract Sum, as provided under Article 11. The CP shall be accompanied by a copy of the writing containing the instruction or interpretation, evidence of the date the Contractor received the writing and an explanation of how the writing creates the need for a change, including all the changes as attributable to the schedule of values.

11.1.8 Commencement of Work. The Contractor shall not commence work on a change prior to receipt of a CD, or an ULCO, as set out in Article 11.
11.2 **Unit Prices.** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.

11.3 **Claims for Additional Costs.**

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

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

11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case,

11.3.3.1 Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

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

11.5 **Concealed Site Conditions.** Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Directive or Change Order, subject to the prior approval of ODR.

11.6 **Extension of Time.** All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
11.7 Administration of Change Order Requests and Change Directives. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.

11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a CR form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor’s cost proposal by A/E and ODR will be required for authorization (Change Directive or Change Order) to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

11.7.2 All proposed costs for changes in the Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Directive or Change Order.

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

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

11.7.5.1 Owner will incorporate Change Orders and Change Directives into the Contract by formal amendment, signed by both parties.

11.7.6 Response to CP. As soon as possible, but not more than 21 days after receipt of any CP submitted by the Contractor, the ODR shall respond in writing 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. The ODR may also respond in writing by specifying that the change will cause the Contingency Allowance to be exceeded, and specifying that additional time is needed to process the change and receive necessary approvals. In those cases where Change work causes the Contingency Allowance to be exceeded, approval of the Owner will be necessary and approval of higher authority may be necessary. If such approvals are necessary, the Owner will have at least one hundred and twenty (120) additional calendar days to process such agreed changes.

11.7.6.1 Change Directive (CD). When agreement has been reached concerning the adjustment of cost, the ODR shall accept the Contractor’s CP, or any subsequently...
revised CP issued pursuant to negotiation, by endorsing the CP "Accepted," with the date, and returning it to the Contractor. A CP that has been accepted is a Change Directive (CD). A CD is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, and entitles the Contractor to submit the adjusted cost of the Work on succeeding Pay Applications, as it is completed.

11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.

11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, plus the total cost of State and Federal payroll taxes and of worker’s compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined.

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

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor’s Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first $10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second $10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding $20,000.

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

11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.

11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.

11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 15.

11.10 Final Resolution of Changes. Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to adjustment.

11.11 Contractor's Risk of Performance. Except as expressly provided in Article 11, 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.
**Article 12. Project Completion and Acceptance**

12.1 **Closing Inspections.**

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

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

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

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

12.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E
and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor’s right to receive Final Payment.

12.1.2.2 **Representatives that may participate in Final Inspection include but are not limited to:**

12.1.2.2.1 **The Design Professionals**

12.1.2.2.2 **The Contractor and Major Sub-Contractors**

12.1.2.2.3 **TTU, Angelo State University (ASU) and/or TTUHSC ODR’s/Construction Inspectors**

12.1.2.2.4 **TTU, ASU and/or TTUHSC Facilities Operation and Maintenance Representatives**

12.1.2.2.5 **Grounds Maintenance and The Landscape Architect**

12.1.2.2.6 **Custodial Operations**

12.1.2.2.7 **Others as required**

12.1.2.3 The A/E’s final Punchlist from comments produced by the Final Inspection will be distributed as follows:

12.1.2.3.1 **Texas Tech’s ODR and**

12.1.2.3.2 **Contractor**

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

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

12.1.5 **Additional Inspections.**

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

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

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

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

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

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

12.2.2 Administration as Change Order. The Early Occupancy Proposal shall be administered as a Change Directive pursuant to the provisions of Article 11, except that the Contractor shall submit a Change Proposal (CP) as soon as possible, but not later than the seventh day following receipt of the Early Occupancy Proposal. All cost adjustments, including any increased costs of insurance, related to the Early Occupancy Proposal, shall be stated in the CP; 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 Article 11. If an early completion date is not required, the Contractor shall submit any claim for time extension as a Change in the Work and Change Directive. If by the date designated by the Owner as the proposed date of occupancy, the Owner 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 Owner may issue a ULCO.

12.2.3 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 Article 12 shall apply. All required documentation shall be furnished by the Contractor to the Owner on or before the date of occupation by the Owner.

12.3 Acceptance and Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.

12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov’t Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor’s affidavit notes that claim as an exception.

12.3.2.1 Prior to Final Payment, Contractor shall submit all project record documents including “As-Built” record documents. Project record documents include but are not limited to: Contract Drawings and Specifications, Addenda, Approved Shop Drawings, Change Order, negotiated changes, submittal registers, RFI registers, punchlist, field test reports and inspections, materials testing reports, field reports, approved submittal data, equipment operation and maintenance manuals, and warranty information.

12.3.2.2 Prior to Final Payment, Contractor shall submit two (2) copies each of above to Design Professional for review and approval, one (1) copy of which shall be returned to Contractor approved or with instructions for changes. After approval, submit
four (4) hardcopies and two (2) electronic copies to Design Professional who will forward three (3) hardcopies and one (1) electronic copies to Texas Tech Facilities Planning & Construction (FP&C) for distribution.

12.3.2.3 Label each document "PROJECT RECORD" and accompany each submittal with transmittal letter containing: date, project title, TTU/ASU/TTUHSC Facilities Management project number, Contractor's name and address, title of each record document, certification in writing that each document, as submitted, is complete and accurate, and signature of Contractor or his authorized representative.

12.3.2.4 All the above shall be submitted and approved prior to Final Payment to Contractor.

12.3.2.5 Failure to supply any of the above, and if Texas Tech must otherwise obtain this information and data, the costs for obtaining it will be deducted from the Contractor's Final Payment.

12.3.2.6 AS-BUILT DRAWINGS. Upon completion of construction and prior to Final Payment, Contractor shall provide Design Professional with clean, complete set of prints and CD marked to record actual construction showing all deviations from, additions to, or changes in Contract Drawings. A color copy of the final jobsite as-built drawings and specifications will be submitted to Operations Division A/E Services.

12.3.2.7 SPECIFICATIONS AND ADDENDA. Upon completion of construction and prior to Final Payment, Contractor shall provide Design Professional with a CD and a clean, complete set of Specifications, and Addenda, each Section marked to record the manufacturer, trade name, catalog number of each product, and item of equipment actually installed and any changes made by Change Order or Change Request or any other matters not originally specified on the Contract Documents.

12.3.2.8 OPERATING AND MAINTENANCE MANUALS AND INDEX. Prior to Final Payment, Contractor shall provide maintenance information and operations instructions for equipment and systems installed. Prepare operating and maintenance instructions for equipment, particular Mechanical and Electrical items that will require adjustment, servicing, or attention for its proper operation. Provide the following data bound in a neat brochure including all approved fixture brochures, wiring diagrams, control diagrams, and directions; repair parts list of major equipment items including suppliers and companies servicing installed equipment; valve tag charts and diagrams; list of products incorporated in work, referenced to Specification Section if other than product specified. Provide and Index listing equipment referenced to Specification Sections.

12.3.2.9 Prior to Final Payment, Contractor shall provide Operating instructions for heating, cooling, and other mechanical systems necessary for Texas Tech to make full and efficient use of equipment including recommended maintenance and seasonal change-over procedures. Submit two (2) copies of instructions to Design Professional for review and approval, one (1) copy of which shall be returned to Contractor approved or with instructions for changes. After approval, submit three (3) copies of instructions covering equipment to Design Professional who will forward two (2) copies to Texas Tech for information and use.

12.3.2.10 APPROVED MECHANICAL AND ELECTRICAL SUBMITTAL DATA. Prior to
Final Payment, Contractor shall provide three (3) copies of Mechanical and Electrical Submittal Data to Design Professional who will forward two (2) copies to Texas Tech for information and use.

12.3.2.11 ADDENDA AND NEGOTIATED CHANGES. Prior to Final Payment, Contractor shall provide three (3) copies of Addenda and Negotiated Changes to Design Professional who will forward two (2) copies to Texas Tech for information and use.

12.3.2.12 SYSTEMS DEMONSTRATIONS. After submission of written instructions and prior to Final Payment, Contractor shall furnish competent operation engineer or engineers at such time or times as directed by Design Professional to meet with Texas Tech representatives, to fully explain instructions and to demonstrate and fully familiarize Texas Tech or his representatives with equipment and phases of its operation and maintenance. Instructions shall be adequate to extent that Texas Tech's personnel may proceed with normal operations in a safe and efficient manner.

12.3.2.13 FINAL PAYMENT SUBMISSION. Submit three (3) copies of the following to Design Professional who will forward two (2) copies to Texas Tech:

12.3.2.13.1 Certificate of Substantial Completion (AIA Form G704)

12.3.2.13.2 Certificate of Punch List Completion on Architect's letterhead with a copy of the punch list attached

12.3.2.13.3 Change Orders

12.3.2.13.4 AIA form G701

12.3.2.13.5 Incorporates Change Letters and deducts remainder of the Allowance from Contract amount

12.3.2.13.6 All Change Letters, back-up material, and authorizations

12.3.2.13.7 Consent of Surety Company for Final Payment, AIA form G707

12.3.2.13.8 Submit State of Texas Construction Voucher marked ESTIMATE NO.________, FINAL. Include HUB Vendors Subcontractor Payment Sheet indicating Final Submission.

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

12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner’s receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner’s approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

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

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

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

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

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

12.3.6.5 The phrase “relating to the condition of the Work" as used herein means “relating to defects in materials and workmanship.”

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

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.
Article 13. Warranty and Guarantee

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

13.1.1 In case of work performed by Subcontractors and where guarantees are required, the Contractor shall secure warranties from said Subcontractors addressed to and in favor of Texas Tech; deliver copies of same to Texas Tech upon completion of the Work; and guarantee and assume full responsibility for the full period of said warranties. Delivery of said guarantees shall not relieve the Contractor from any obligations assumed under any other provisions of the Contract. This warranty and guarantee is not the exclusive remedy of Texas Tech but is in addition to the general obligation of the Contractor to faithfully perform the Contract, and it in no way limits the responsibility of the Contractor for faulty materials or workmanship.

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

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

13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.

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

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

13.4.1 Observations by Owner and/or A/E;

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

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

13.4.4 Use or occupancy of the Work or any part thereof by Owner;
13.4.5 Any acceptance by Owner or any failure to do so;

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

13.4.7 Any inspection, test or approval by others.

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

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

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

13.5.3 **WARRANTIES AND GUARANTEES.** Prior to Final Payment, Contractor shall provide to the Design Professional three (3) hard copies and one (1) electronic copy of all warranties, guarantees, and bonds required in various sections of Specifications. Contractor shall submit to Design Professional three (3) hard copies and one (1) electronic copy of a warranty written on Contractor's letterhead and in form approved by Design Professional, for work material and equipment for a minimum period of one (1) year from Substantial Completion. For equipment and component parts of equipment put into service during progress of construction, warranty will begin at the Date of Substantial Completion. For items of work where acceptance is delayed materially beyond the Date of Substantial Completion, provide updated submittal within ten (10) days after acceptance listing the date of acceptance as the start of the warranty period. Where guarantees for periods beyond one (1) year from date of final acceptance of work are required, such guarantees shall be written, and three (3) hard copies and one (1) electronic copy furnished to the Design Professional, on Contractor's letterhead using following format:

"GUARANTEE FOR

We hereby guarantee that the ______________________________________________________ which we have installed on the campus of Texas Tech University/Texas Tech University Health Sciences Center/ASU, (insert “City”), has been done in accordance with the Drawings and Specifications, and that the work as installed will fulfill the requirements of the Guarantee included in the Specifications. We agree to repair or replace any or all of our work, together with any other adjacent work which may be displaced by so doing that may prove to be defective in its workmanship or materials within a period of (insert guarantee period) year(s) from date of acceptance of the above
mentioned structure by the Regents of Texas Tech University/Texas Tech University Health Sciences Center/ASU, ordinary wear and tear and unusual abuse or neglect excepted.

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

Signed____________________________________
Subcontractor and/or Supplier

Countersigned_________________________________
Prime Contractor

Warranty and Guarantee periods shall commence on the date of the Certificate of Substantial Completion unless otherwise specified.

Form of Submittal. Bind in commercial quality 8-1/2" x 11" three-ring binders, with hardback, cleanable, plastic covers. Also include one (1) electronic copy. Label cover of each binder with typed or printed title "WARRANTIES, GUARANTEES AND BONDS", with title of Project; name, address and telephone number of Contractor; and name of responsible principal. List Table of Contents, neatly typed, in the sequence of the Table of Contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of Product or work item. Separate each warranty or bond with index tab sheets keyed to the Table of Contents listing. Provide full information, using separate typed sheets as necessary. List subcontractor, supplier, and manufacturer, with name, address, and telephone number of responsible principal.

13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.

13.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA— 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor’s application for Final Payment.
Article 14. Suspension and Termination

14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

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

14.2 Suspension of Work for Owner’s Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 Termination by Owner for Cause.

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

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

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

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

14.3.1.4 Failure to remedy defective work condemned by ODR;

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

14.3.1.6 Persistent endangerment to the safety of labor or of the Work;

14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;

14.3.1.8 Any material breach of the Contract; or

14.3.1.9 Contractor’s insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.

14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.

14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.

14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.

14.3.5.3 This obligation for payment survives the termination of the Contract.

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

14.3.5.5 When the Contract is terminated by Texas Tech for cause, the Contractor will not be entitled to recover loss of anticipated profits or incidental damages.

14.3.5.6 If Texas Tech sues the Contractor or Surety on account of failure to pay such difference in cost upon demand, the Contractor and Surety will pay all costs in connection therewith, including reasonable attorney's fees and expenses. These obligations for payment shall survive the termination of the Contract.
14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor’s recovery for termination shall be strictly limited to the payments allowable under Section 14.5.

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

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

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

14.5.2.1 Stop all work.
14.5.2.2 Place no further subcontracts or orders for materials or services.
14.5.2.3 Terminate all subcontracts for convenience.
14.5.2.4 Cancel all materials and equipment orders as applicable.
14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.

14.5.3 When the Contract is terminated for Owner’s convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.

14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

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

15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov’t Code, Chapter 2260, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.

15.1.1 A Contractor's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to the Vice Chancellor for Facilities Planning and Construction with an additional copy to the Vice Chancellor and General Counsel. Said notice shall also be given to all other representatives of Texas Tech and the Contractor who are otherwise entitled to notice under the Agreement. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.

15.1.2 The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by Texas Tech if the Parties are unable to resolve their disputes in the ordinary course of business or under section 26.1.2 of this provision, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the Civil Practices and Remedies Code.

15.1.3 Pursuant to Chapter 2260, the submission, processing and resolution of the Contractor's claim is governed by the published rules adopted by the Texas Attorney General's Office, as currently effective, hereafter enacted or subsequently amended.

15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov’t Code, Chapter 2260.

15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner’s right to seek redress on any disputed matter in a court of competent jurisdiction.

15.4 NEITHER THE EXECUTION OF THE CONTRACT, ANYTHING IN THESE UNIFORM GENERAL CONDITIONS AND SUPPLEMENTARY GENERAL CONDITIONS, NOR ANY CONDUCT OF ANY REPRESENTATIVE OF TEXAS TECH UNIVERSITY SYSTEM OR ITS COMPONENT INSTITUTIONS SHALL WAIVE OR BE CONSIDERED A WAIVER OF SOVEREIGN IMMUNITY TO SUIT.

15.5 Neither the occurrence of an event nor the pendency of a claim under this provision constitutes grounds for the suspension of performance by the Contractor, in whole or in part.
Article 16. Miscellaneous

16.1 **Supplementary General and Special Conditions.** When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions and **Supplementary General Conditions** of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:

16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.

16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.

16.2 **Federally Funded Projects.** On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

16.3 **Internet-based Project Management Systems.** At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.

16.3.1 **Accessibility and Administration.**

16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.

16.3.1.2 Owner shall administer the software.

16.3.2 **Training.** When used, Owner shall provide training to the Project team members.

16.4 **WRITTEN NOTICE.** Written notice shall be considered to have been duly given if delivered in person to the individual or member of the firm or to an officer of the entity for whom it is intended, or if delivered at or sent by registered or certified mail to the last business address known to one who is giving the notice. Notice is deemed effective when received. Written notice to Texas Tech shall be delivered to:

Vice Chancellor for Facilities Planning and Construction
Texas Tech University System
Box 42014
Lubbock, Texas 79409-2014
1901 University Ave. Suite 200
Lubbock, Texas 79410-2014
Phone No.: (806) 742-2116

With an additional copy of any Notice of Termination or Notice of Claim to:

Vice Chancellor and General Counsel
Texas Tech University System
University and Broadway
Administration Building, #115
Lubbock, Texas  79409-2021
Phone No.: (806) 742-2155

END OF SECTION 004000
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<table>
<thead>
<tr>
<th>TRADE</th>
<th>HOURLY RATE</th>
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<tr>
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<td>Air Condition Installer</td>
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<td>DataCom/Tele Com</td>
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<td>Fireproofing Installer</td>
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<tr>
<td>Iron Worker – Structural</td>
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<td>Laborer – Mason Tender (Brick)</td>
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<td>Laborer – Mason Tender (Cement/Concrete)</td>
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<td>Laborer – Pipelayer</td>
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<tr>
<td>Laborer – Roof Tearoff</td>
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<td>Sheet Metal Worker – HVAC Duct Installation Only</td>
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<td>Sheet Metal Worker – Excludes HVAC Duct Installation</td>
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<td>Sprinkler Fitter</td>
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<td>Terrazzo Worker</td>
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<td>Tile Finisher</td>
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<td>Truck Driver – Dump Truck</td>
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<td>Truck Driver – Flatbed Truck</td>
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<td>Truck Driver – Semi-Trailer Truck</td>
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<tr>
<td>Truck Driver – Water Truck</td>
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</tbody>
</table>
Wallcoverer $8.00
Waterproofer $10.50
Welder – Certified Receive rate prescribed for craft performing operation to which welding is incidental.

POWER EQUIPMENT OPERATORS

Tower Crane $29.00
Crane - 60 Tons and above $28.75
Crane - 59 Tons and under $27.50
Backhoe/Excavator/Trackhoe $14.25
Bobcat/Skid Steer/Skid Loader $13.93
Bulldozer $18.29
Drill $16.22
Forklift $14.83
Grader/Blade $13.37
Loader $13.55
Mechanic $17.52
Paver (Asphalt, Aggregate and Concrete) $16.03
Roller $12.70

This job classifications list is not inclusive of all possible trades that may be needed on a construction project. Classifications for work not included within the scope of the classifications listed above may not be added after the award of the contract. It is the responsibility of the contractor to classify workers in accordance with the published classifications, and demonstrate that workers are paid commensurate with determined rates.

EXHIBIT B
County of Lubbock
Heavy and Highway Construction Projects
Prevailing Wage Rates

<table>
<thead>
<tr>
<th>TRADE</th>
<th>HOURLY RATE</th>
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</thead>
<tbody>
<tr>
<td>Asphalt Heaterman</td>
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<tr>
<td>Electrician</td>
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<td>Flagger</td>
<td>$7.25</td>
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<tr>
<td>Form Builder/Form Setter - Paving &amp; Curb</td>
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</tr>
<tr>
<td>Form Builder/Form Setter - Structures</td>
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<tr>
<td>Laborer – Asphalt Raker</td>
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<tr>
<td>Laborer - Flagger</td>
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<td>Laborer - Common</td>
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<td>Laborer - Utility</td>
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<tr>
<td>Laborer – Work Zone Barricade Servicer</td>
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<td>Laborer - Utility</td>
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<tr>
<td>Mason – Concrete Finisher</td>
<td>$13.55</td>
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<tr>
<td>Mason - Concrete Finisher-Helper</td>
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<tr>
<td>Mechanic</td>
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<td>Mechanic - Helper</td>
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<tr>
<td>Servicer</td>
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<td>Steel Worker - Reinforcing</td>
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<tr>
<td>Truck Driver – Lowboy-Float</td>
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<td>Truck Driver – Single Axle Truck</td>
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<tr>
<td>Truck Driver – Single or Tandem Axle Dump Truck</td>
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<tr>
<td>Truck Driver – Tandem Axle Tractor with Semi-Trailer Truck</td>
<td>$12.49</td>
</tr>
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</table>
| Welder – Certified                         | Receive rate prescribed for craft performing operation to which welding is incidental.
## POWER EQUIPMENT OPERATORS

<table>
<thead>
<tr>
<th>Job Classification</th>
<th>Wage Rate</th>
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<tbody>
<tr>
<td>Asphalt Distributor</td>
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<tr>
<td>Asphalt Paving Machine</td>
<td>$13.40</td>
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<td>Broom and Sweeper</td>
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<td>Bulldozer</td>
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<tr>
<td>Crane - Lattice Boom 80 Tons or Less</td>
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<tr>
<td>Crawler Tractor Operator</td>
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<tr>
<td>Concrete Paving Machine</td>
<td>$7.75</td>
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<tr>
<td>Excavator – 50,000 lbs or Less</td>
<td>$13.46</td>
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<tr>
<td>Front End Loader – Over 3 CY</td>
<td>$12.77</td>
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<td>Front End Loader – 3 CY or Less</td>
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<tr>
<td>Loader/Backhoe</td>
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<tr>
<td>Mechanic</td>
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<tr>
<td>Milling Machine</td>
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<td>Motor Grader, Rough</td>
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<td>Motor Grader, Fine</td>
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<tr>
<td>Pavement Marking Machine</td>
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<td>Reclaimer/Pulverizer</td>
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<td>Roller - Asphalt</td>
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<tr>
<td>Spreader Box</td>
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</table>

This job classifications list is not inclusive of all possible trades that may be needed on a heavy and/or highway construction project. Classifications for work not included within the scope of the classifications listed above may not be added after the award of the contract. It is the responsibility of the contractor to classify workers in accordance with the published classifications, and demonstrate that workers are paid commensurate with determined rates.
REPORTING REQUIREMENTS FOR BUILDING OR CONSTRUCTION PROJECTS FOR GOVERNMENTAL ENTITIES.

I. DEFINITIONS: The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

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

B. Building or construction - Has the meaning defined in the Texas Labor Code, 406.096(e)(1).

C. Contractor - A person turning in a proposal for or awarded a building or construction project by a governmental entity.

D. Coverage - Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, 401.011(44).

E. Coverage agreement - A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84 filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

F. Duration of the project - Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

G. Persons providing services on the project ("subcontractor" in 406.096 of the Act) - 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 but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, of 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.

H. Project - Includes the provision of all services related to a building or construction contract for a governmental entity.

II. Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been 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 certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.
III. A governmental entity that enters into a building or construction contract on a project shall:

A. include in the proposal specifications, all the provisions of section (IV) of this rule, using the language required by paragraph (G) of this subsection;

B. as part of the contract, using the language required by paragraph (G) of this subsection, require the contractor to perform as required in section (IV) of this rule;

C. obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;

D. obtain from the contractor a new certificate of coverage showing extension of coverage:
   1. before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project, and;
   2. no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;

E. retain certificate of coverage on file for the duration of the project and for three years thereafter;

F. provide a copy of the certificates of coverage to the commission upon request and to any person entitled to them by law.

G. use the following language for proposal specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

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

   Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project.

   "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

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

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

7. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten 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.

8. 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.

9. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
   a. 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, 401.011(44) for all of its employees providing services on the project, for the duration of the project;
   b. 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;
   c. 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;
   d. obtain from each other person with whom it contracts, and provide to the contractor:
      i. a certificate of coverage, prior to the other person beginning work on the project; and
      ii. 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;
   e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
   f. 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
g. contractually require each person with whom it contracts, to perform as required by paragraphs (III.G.9.a-g), with the certificates of coverage to be provided to the person for whom they are providing services.

10. 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.

11. 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.

IV. A contractor shall:

A. provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

B. provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to the beginning work on the project;

C. provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

D. 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;

E. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

F. 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;

G. post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words of changes:

REQUIRED WORKERS’ COMPENSATION COVERAGE “The law requires that each person working on this site or providing services related to this construction project must be
covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at (512) 440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage." and

H. 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 for all of its employees providing services on the project, for the duration of the project;
2. provide a certificate of coverage to the contractor prior to that person beginning work on the project;
3. include in all contracts to provide services on the project the language in subsection (V.C.) of this rule;
4. 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;
5. 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. prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
6. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
7. 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
8. contractually require each other person with whom it contracts, to perform as required by paragraphs (IV.H.1-8), with the certificate of coverage to be provided to the person for whom they are providing services.

V. A person providing services on a project, other than a contractor, shall:

A. provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
B. provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;
C. have the following language in its contract to provide services on the project: "By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract 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."

D. provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;

E. obtain from each person providing services on a project under contract to it, and provide as required by its contract:
   1. a certificate of coverage, prior to the other person beginning work on the project; and
   2. prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

F. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

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

H. contractually require each other person with whom it contracts to:
   1. provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
   2. provide a certificate of coverage to it prior to that other person beginning work on the project;
   3. include in all contracts to provide services on the project the language in subsection (V.C.) of this rule;
   4. provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
   5. obtain from each other person under contract to it to provide services on the project, and provide as required by its contract;
      a. a certificate of coverage, prior to the other person beginning work on the project; and
      b. prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the contract;
   6. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
   7. notify the governmental entity in writing by certified mail or personal delivery, within ten 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
   8. contractually require each person with whom it contracts, to perform as required by paragraphs (V.H.1-8), with the certificate of coverage to be provided to the person for whom they are providing services.
VI. If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

VII. This rule is applicable for building or construction contracts advertised for proposal by a governmental entity on or after September 1, 1994.

END OF SECTION 005500
1.1 RELATED DOCUMENTS
   A. Drawings and general provisions of the Contract, including Uniform General Conditions and Supplementary General Conditions and Division-01 Specification sections, apply to this section.

1.2 LOCATION AND SCOPE OF PROJECT
   A. The project is located at the BLEDSOE HALL dormitory on the campus of Texas Tech University, Lubbock, Texas.
   A. The work in this project consists of 1) Interior renovation of the shower/toilet/custodial/trash areas on levels 1 – 3 of the North wing and the shower/toilet/custodial/trash areas on levels 1 of the South wing. 2) Interior renovation of the trash areas on levels 2-3 of the South wing 3) Renovation of a 120 sf Women’s restroom on the ground floor and 4) Renovation of a 40 sf restroom on the second floor at BLEDSOE Hall dormitory on the campus of Texas Tech University as described in the Proposal Documents.

1.3 RELATED REQUIREMENTS
   A. Instructions to Proposers
   B. Agreement Forms
   C. General Conditions

1.4 EQUAL OPPORTUNITY CLAUSE
   A. Attention is called to the Equal Opportunity Clause applicable to this project and included in the Specifications.

1.5 EXAMINATION OF FIELD CONDITIONS
   A. The Contractor shall take field measurements and verify field conditions and shall carefully compare these field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing work. Errors, inconsistencies, or omissions discovered shall be reported to the Design Professional before proceeding with the work.

1.6 ADDENDA
   A. Any Addenda issued in writing by the Section Coordinator during the period of proposing shall be covered by the Proposal. In closing the Contract, such Addenda will become a part thereof and modify these Specifications and/or the Drawings accordingly. Verbal changes in the work as shown or described, made during the time of proposing, will not be binding.

1.7 START OF WORK
   A. The Contractor will commence work on or after a date to be specified in a written "Notice to Proceed" by Texas Tech.

1.8 SUBMISSION OF WORK PROGRESS SCHEDULE
   A. In reference to the provisions of Article IX, Heading 9.3 of the Uniform General Conditions and Supplementary General Conditions, the following shall apply.
      1. For contracts $300,000.00 and greater, the Contractor shall submit a proposed Progress Schedule for the Work within twenty-one (21) calendar days of the “Notice to Proceed”.
      2. For contracts less than $300,000.00, the Contractor shall submit a proposed Progress Schedule for the Work within ten (10) calendar days of the “Notice to Proceed”.

1.9 COORDINATION
   A. All contractors and subcontractors on the project shall coordinate their work with each other, advising on work schedules, equipment locations, etc.
1.10 **DRAWINGS AND SPECIFICATIONS**
A. The drawings and specifications are intended to describe and provide for a finished and complete piece of work and all work must meet the requirements of all the applicable and governing laws, ordinances, rules and regulations of the locality.
B. No extra compensation will be allowed for oversight of any such requirements, except by written order issued by Texas Tech.
C. Should any doubt arise regarding Drawings or Specifications, clarification shall be requested of Texas Tech’s Representative or the Design Professional. Failure to do so will not relieve the Contractor from the responsibility to complete the work to Texas Tech's satisfaction.

1.11 **MEASUREMENTS**
A. Before ordering any material or doing any work, the Contractor shall verify all measurements of the work and shall be responsible for the correctness of same; any difference, which may be found, shall be submitted to the Design Professional for consideration before proceeding with the work.

1.12 **PROTECTION OF EXISTING FACILITIES**
A. The Contractor shall take precautions to protect existing facilities and features within the designated construction limits and along the access to the construction site.
B. After materials, equipment and machinery are installed, properly protect all work until the several portions thereof are accepted.
C. Any damage from whatever cause shall be repaired by the Contractor without cost to Texas Tech, whether the repair is made with Contractor’s own materials and labor or by others under Contractor’s directions.

1.13 **REFERENCE STANDARDS**
A. For products specified by association or trade standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
B. The date of the standard is that in effect as of the Proposal date, except when a specific date is specified.
C. Obtain copies of standards when required by Proposal Documents. Maintain a copy at job site during progress of the specific work.

1.14 **MANUFACTURER'S DIRECTIONS**
A. All manufacturer's articles, materials and equipment shall be applied, installed, connected, erected, secured, used, cleaned, and put in operation as recommended, directed or specified by the manufacturer, for the type of installation called for.

1.15 **ITEMS SPECIFIED BY TRADE NAME**
A. Reference to items by specific trade name is made as a basis of quality and function. Equivalent items may be used instead; however, the right of determining such quality shall remain with Texas Tech. The terms "similar to", "or equal" or similar phrases shall be interpreted similarly.

1.16 **SUBSTITUTIONS**
A. Substitutions of any materials other than those specifically called for shall be submitted to the Design Professional and Texas Tech for approval.

1.17 **SAFETY REQUIREMENTS**
A. Store volatile wastes in covered metal containers, and remove from the premises daily.
B. Prevent the accumulation of wastes that create hazardous conditions.
C. Provide adequate ventilation during the use of volatile or noxious substances.
D. Conduct cleaning and disposal operations to comply with local ordinances and antipollution laws.
E. Do not burn or bury rubbish and waste materials on project site.
F. Do not dispose of volatile wastes such as mineral spirits, oil or paint thinner in storm or sanitary drains.

1.18 REPAIR OF DAMAGE
A. The Contractor shall be responsible for any loss or damage caused by Contractor, Contractor’s employees, or subcontractors to the work or materials, to tools and the equipment of one another, to adjacent property and persons, and shall make good any loss, damage or injury without cost to Texas Tech.

1.19 CLEANING
A. The Contractor shall promptly remove from the building, lot, sidewalks, and streets all rubbish and dirt due to the work done under this Contract. At the completion of work, completely clean the areas in which work has been done, including glass, and leave the building "broom-clean" and ready for occupancy. All construction debris shall be removed.

1.20 REMOVAL OF DEBRIS
A. The Contractor shall remove from Texas Tech and dispose of all unused materials and debris created by this construction. The Contractor is to keep the streets and construction area free of rubbish and debris. Grass and weeds within the construction fence are to be kept mowed. The site shall comply with the City Code and Environmental Safety regulations. The Contractor shall broom the streets during the excavation and filling process so that all spillage is removed as the work progresses.
B. Recycling of designated demolition and construction waste materials is required. Refer to requirements of Section 017419 “Construction Waste Management and Disposal”.

1.21 WRITTEN GUARANTEE
A. In addition to the requirements of the Uniform General Conditions and Supplementary General Conditions, the Contractor shall submit to Texas Tech a Written Guarantee, prior to release of final payment, on a form approved by the Design Professional and Texas Tech for the work, materials and equipment for a one year period.

1.22 WORKERS' COMPENSATION INSURANCE
A. The Texas Workers' Compensation Commission rules for coverage and reporting are set forth in Section 005000 - WORKERS' COMPENSATION INSURANCE of these specifications.

1.23 DELAYS AND EXTENSION OF TIME
A. In addition to the provisions of Article IX of the Uniform General Conditions and Supplementary General Conditions, the following provisions shall apply.
1. In reference to Article IX, Heading 9.6.2.1, the number of days of measurable precipitation for the following months shall be considered normal weather days for Lubbock, Texas.

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1.24 ASBESTOS-CONTAINING AND ENVIRONMENTALLY HAZARDOUS MATERIALS
A. There shall be no asbestos-containing or environmentally hazardous materials identified by E.P.A. or O.S.H.A. used or installed in any category of work under this Contact.
B. The Contractor shall submit three copies of a letter on the Contractor’s letterhead stating that no asbestos containing or environmentally hazardous materials identified by E.P.A. or O.S.H.A. were
used or installed in any category of work under this Contract. This documentation shall be submitted with the project close-out documents.

C. The Contractor shall submit three copies of MSDS documentation for each product used or installed in all categories of work under this Contract. This documentation shall be submitted with the project close-out documents.

1.25 ASBESTOS CONTAINING ROOFING MATERIALS (ACRM)

A. Flashing, field materials and patching materials may contain asbestos. Texas Tech will be responsible for testing and informing the Design Professional and the Contractor if the asbestos is non-friable in its present state.

B. The Contractor is directed to strictly conform with the following procedures in all areas where the asbestos containing roofing materials are required to be removed or disturbed.

C. Personnel from the TTU Environmental Health and Safety Department/TTUHSC Safety Services will conduct personal and area monitoring samples to ensure compliance with exposure levels established by OSHA and EPA. The cost of this sampling will be paid by Texas Tech and will not be included in the Contract sum.

D. Results from the air samples will be analyzed by personnel from the TTU Environmental Health and Safety Department/TTUHSC Safety Services and/or personnel from an accredited laboratory capable of performing phase contrast microscopy (PCM). The cost of the analysis will be paid by Texas Tech and will not be included in the Contract sum.

E. Should employee exposure levels to asbestos exceed allowable limits, all further removal and disposal of ACRM shall be performed under separate contract by others. If a separate contract for the removal and disposal of the ACRM is required, the cost of the separate contract will be paid by Texas Tech. All other work required by the Contract Documents shall remain fully in effect, and shall be performed under this Contract with no change to the Contract sum. No additional compensation shall be due the Contractor because of the work of the separate contract involving the ACRM.

F. Every effort must be made by the Contractor to minimize the potential for release of asbestos fibers into the environment. The visible release of friable asbestos fibers into the environment is not permitted by EPA (NESHAPS). The Contractor shall be required to wet the material during the removal process and prior to the transportation of the ACRM to the approved Type I landfill for disposal.

G. Even though the asbestos containing roofing material is considered to be non-friable, information supplied by MRCA indicated the ACRM could be made friable during the removal process. As a result, the Contractor must notify the Texas Air Control Board prior to initiation of the project. A copy of the notification form ACB-99 from the Texas Air Control Board must be provided to the Design Professional and Texas Tech prior to initiation of the project. A copy of the notification letter approving the projected removal, if issued by the TACB, must also be furnished to the Design Professional and Texas Tech prior to the project start-up.

H. Under regulations adopted by the Texas Department of Health entitled "Asbestos Exposure Abatement in Public Buildings", section 289.141-289.156, notification must be given to the TDH 10 days prior to the date on which the asbestos-related project is to commence. A copy of the notification letter must be provided to the Design Professional and Texas Tech prior to the initiation of the project.

I. The Contractor shall provide the following information to the Design Professional and Texas Tech:

1. Name and address of the Contractor.
2. Name and address of the project supervisor.
3. Location and description of the project.
4. Description of the work practices.
5. Description of the personal safety protection.
6. Name and address of the waste disposal site.
7. Dates of participation in the project.
8. Roster of employees used in the project.

J. A copy of any and all violations issued to the Contractors and/or Subcontractors by EPA, OSHA, state agencies or the local government during the course of the project as a result of activities connected with this project shall be provided to the Design Professional and Texas Tech immediately upon receipt of such notification.

K. The Contractor must obtain permission from an approved Type I landfill for the disposal of the ACRM. This permission must be in writing and a copy of the letter must be provided to the Design Professional and Texas Tech. The Contractor must certify that the proposed landfill is certified as a Type I landfill and is currently actively accepting asbestos or special waste. Such certification should be available from the operator of the landfill or from the TWC, which is the agency responsible for certification. Documentation required by this section shall be made available for verification prior to initiation of the ACRM removal project.

L. Copies of the bills of lading for each delivery of ACRM taken from the project made to the Type I landfill shall be provided to the Design Professional and Texas Tech during the removal process.

M. In addition to compliance with those regulations dealing with ACRM, the Contractor must comply with any and all regulations applicable to the project. This pertains to portions of volume 29 of the Code of Federal Regulations enforced by OSHA including, but not limited to, parts 1926 and 1910 for construction and general industry respectfully. Violations of recognized safety or health regulations by the Contractor, the Subcontractor or employees of the Contractor or Subcontractor shall be brought to the attention of the Design Professional and Texas Tech. Continued violations shall result in a request for an on-site inspection by OSHA for purposes of clarification of those violations identified.

N. Prior to the initiation of the removal project, the Contractor shall provide the Design Professional and Texas Tech with a copy of his/her Hazard Communication program, including copies of Material Safety Data Sheets (MSDS) for any and all hazardous chemicals the Contractor will use in the course of the removal project.

O. A copy of the TTU Hazard Communication program will be made available to the Contractor as well as any pertinent MSDS sheets for the project in which his/her employees shall be involved. This will enable the Contractor to comply with the provisions of 29 CFR 1910.1200/CFR 1926.59.

P. All ACRM must be bagged and tagged prior to its removal from the roof.

END OF SECTION 010100