

**GENERAL CONDITIONS FOR
MAINTENANCE CONTRACTS
AND
OPERATIONS JOB ORDER CONTRACTS**

TABLE OF CONTENTS:

Article I	General Contract Definitions	Page 3
Article II	General Governing Laws	Page 6
Article III	Compliance with and Enforcement of Prevailing Wage Laws	Page 8
Article IV	Drawings and Specifications	Page 8
Article V	Bonds	Page 10
Article VI	Insurance Requirements	Page 11
Article VII	General Responsibilities of Owner and Contractor	Page 15
Article VIII	Additional Contractor Responsibilities when the Owner Awards Separate Contracts	Page 21
Article IX	The Contractor's Responsibility for Jobsite Safety	Page 23
Article X	Materials and Workmanship; Licensing and Testing	Page 24
Article XI	Shop Drawings and Submittals	Page 28
Article XII	Inspection of the Project During Construction	Page 30
Article XIII	Contract Payments	Page 31
Article XIV	Closing Inspections	Page 33

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Article XV	Early Occupancy	Page 36
Article XVI	Contract Final Acceptance and Payment	Page 37
Article XVII	Contract Warranty and Guarantee	Page 39
Article XVIII	Good Faith Effort Subcontracting Program (HUBs)	Page 40
Article XIX	Concealed Site Conditions	Page 42
Article XX	Change Orders	Page 42
Article XXI	Administration of Change Order Requests	Page 44
Article XXII	Pricing Change Order Work	Page 48
Article XXIII	Time Allotted for Performance; Schedules	Page 50
Article XXIV	Modification of the Contract Time	Page 52
Article XXV	Termination and Suspension of the Contract Prior to Completion	Page 56
Article XXVI	Dispute Resolution	Page 59
Article XXVII	Miscellaneous	Page 60

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GENERAL CONDITIONS FOR

MAINTENANCE CONTRACTS AND OPERATIONS JOB ORDER CONTRACTS

Article I - General Contract Definitions

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

- 1.1 *Architect/Engineer* means a person registered as an architect pursuant to Article 249a, Tex. Civ. Stat. Ann., as a landscape architect pursuant to Article 249c, Tex. Civ. Stat. Ann., and/or a person licensed as a professional engineer pursuant to Article 3271a, Tex. Civ. Stat. Ann., or a firm employed by Owner to provide professional architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract.
- 1.2 *Change Authorization (CA)* means a Change Order Proposal Evaluation (CPE) which has been marked "Accepted" by the ODR and, upon receipt of the CA by contractor, constitutes notice to proceed with the changed work described therein.
- 1.3 *Change Order* means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and, in the case of a Type I change only, the Architect/Engineer.
- 1.4 *Change Order Proposal Evaluation (CPE)* means a Contractor-generated document in response to a Change Order Request (COR) which states the adjustment necessary to Contract Sum and Time, if any, in response to the

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changed work described in the Change Order Request (COR).

- 1.5 *Change Order Request (COR)* means an Owner-generated document which describes a change in the Work, including a description and Drawings and Specifications, as necessary, to inform the Contractor of the nature of the change.
- 1.6 *Close-out documents* means the standard product brochures, product/equipment maintenance and operations instructions, manuals, etc., and as may be further defined or identified and required by the Contract Documents.
- 1.7 *Contract* means the Contract Documents between the Owner and the Contractor.
- 1.8 *Contract Date* is the date of the Owner-Contractor Agreement is effective between the Owner and Contractor.
- 1.9 *Contract Documents* means the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary General and Special Conditions), the Drawings, the Specifications, the Bidding Documents, Advertisement, Invitation and Instruction to Bidders, Contractor's Proposal, Contract Award and all Addenda issued prior to and any Change Orders issued after execution of the Contract.
- 1.10 *Contractor* means the individual, corporation, company, partnership, firm or other organization that has contracted to perform the Work under the Contract with the Owner.
- 1.11 *Contract Sum* mean the total compensation payable to the Contractor for completion of the Work in accordance with the Contract Documents as originally contracted for and as subsequently adjusted by Change Order.
- 1.12 *Contract Time* means the period between Date of Commencement and the date scheduled for substantial completion in the Contract Documents, as may be amended by Change Order.
- 1.13 *Date of Commencement* means the date designated in the Notice to Proceed that Contractor shall commence the Work.
- 1.14 *Day* means a calendar day, unless otherwise specifically stipulated.

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- 1.15 *Drawings* means the work product of the Architect/Engineer which depicts the location and quantity of elements of the Work.
- 1.16 *Final Completion* means the date established by the Architect/Engineer in a certificate when the Contract is fully performed according to the Contract Documents and is acceptable to Owner.
- 1.17 *Interim Change Authorization (ICA)* means an Owner generated document which authorizes the Contractor to proceed with changed work before submitting a CPE, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule or to maintain safety.
- 1.18 *Maintenance Contract* means a project with a set beginning and end date that has specified tasks or duties to be performed on a specified cycle or frequency.
- 1.19 *Operations Job Order* means the scope of work for a specific individual task that cannot be addressed by a maintenance job order.
- 1.20 *Operations Job Order Contract* means a project consisting of several operations job orders.
- 1.21 *Owner* means the State of Texas acting through any responsible instrumentality of the State of Texas, which is identified in the Contract as the Owner.
- 1.22 *Owner's Designated Representative (ODR)* means the individual appointed or assigned by the Owner to be its on-site representative during the Project, to exercise certain power on behalf of the Owner and to undertake certain contract administration activities as specifically outlined in the Contract.
- 1.23 *Project* means the Work as described by the Contract Documents for either a maintenance contract or an operations job order contract.
- 1.24 *Samples* means the physical examples of materials, equipment or workmanship, that are representative of some portion of the Work and which establish standards by which the Work will be judged.
- 1.25 *Schedule of Values* means the detailed breakdown of the cost of the materials and labor necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and

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Architect/Engineer.

- 1.26 *Shop Drawings* means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.
- 1.27 *Site* means the geographical area at the location where the Work is to be performed.
- 1.28 *Special Conditions* means the documents containing terms and conditions, which relate to specific project and are peculiar to it. Special Conditions when used, are a part of the Contract Documents and supercede the General Conditions to the extent of conflict.
- 1.29 *Specifications* means the Owner/Architect'/Engineer's work product which establishes the quality of the products and processes to be used to produce the Work.
- 1.30 *Subcontractor* means a person or organization who, as an independent contractor, contracts directly or indirectly with Contractor to perform part or all of the Contract between the Owner and the Contractor. The term does not include the Architect/Engineer.
- 1.31 *Substantial Completion* means the date certified by the Owner/Architect/Engineer when the Work or a designated portion thereof, is so sufficiently complete, in accordance with the Contract Documents, as to be fully operational in all its components and fit for the use for which it is intended.
- 1.32 *Supplementary General Conditions* means the standard procedures and contract administration requirements of the owner that alter or expand upon matters covered in the Uniform General Conditions. Supplementary General Conditions, when used, are a part of the Contract Documents and supercede the General Conditions to the extent of conflict.
- 1.33 *Unit Price Work* means Work to be paid for on the basis of unit prices.
- 1.34 *Unilateral Change Order (ULCO)* means a Change Order issued by the Owner without the agreement of the Contractor as more fully described in § 20.4.

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

Article II - General Governing Laws

- 2.1 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, and environmental protection and wage rates. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State and Local laws, ordinances and regulations which in any manner affect the conduct of the Work. The Contractor shall indemnify and save harmless the State and its official representatives against any claim arising from violation of any such law, ordinance or regulation by himself, his subcontractors and his employees. Except where expressly required otherwise by applicable laws and regulations, neither Owner nor the Architect/Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations.
- 2.1.1 The Contractor shall cooperate with city or other governmental officials at all times where their jurisdiction applies. The Contractor shall make application pay all fees and provide supporting documentation necessary to secure permits, which are required for the performance of the Contract Documents and the Work. Contractor has a continuing obligation throughout the term of the Contract to conduct his operations under duly issued permits and, in the event Contractor loses or has revoked a necessary permit, Contractor must take immediate steps to apply for and receive another permit.
- 2.2 State Sales and Use Taxes. The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Chapter 151, Texas Tax Code. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
- 2.3 Antitrust Claims. The Contractor hereby assigns to the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq.

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- 2.4 Venue for Suits. The venue for any suit brought for breach of Contract for this Project shall be in a court of competent jurisdiction in Harris County, Texas.
- 2.5 Licensing of Trades. The Contractor shall comply with all applicable provisions of state law related to required licensing of skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.
- 2.5.1 In the event the Contractor or one of his Subcontractors loses his license for any reason during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.
- 2.6 Patents and Copyrights. The Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work.
- 2.6.1 Whether or not Owner has specified the use of a particular design, devise, material or process, the Contractor shall pay all royalties and license fees and shall provide, prior to commencement of the Work hereunder, and at all time during the performance of same, for the lawful use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with patentee, copyright holder or their duly authorized representative.
- 2.6.2 Contractor shall defend all suits or claims for infringement of any patent or copyright and shall save the Owner harmless from loss or liability, direct or indirect, arising with respect to the Contractor's process in the formulation of its bid or performance of the Work or otherwise arising in connection therewith. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright, in which event the Contractor shall indemnify and save harmless the Owner from all costs and expenses, including reasonable attorney's fees and judgements, arising from such defense.
- 2.7 Environmental Regulations. At all times, Contractor shall conduct its activities in compliance with applicable laws and regulations relating to the environment, and its protection. Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor covenants to conduct its operations consistent with stormwater run-off permit conditions.

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Contractor shall be responsible for any hazardous materials brought to the site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible. No hazardous materials shall be incorporated into the Work without prior approval of Owner.

- 2.8 Antiquities. Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner's property shall remain property of State of Texas, the Texas Historical Commission. If it is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in the Contractor's cost of, or time required for, performance of the Work, Contractor may file with the ODR a Notice of Claim as described in § 21.1.2.2.

Article III- Compliance with and Enforcement of Prevailing Wage Laws

- 3.1 Contractor shall comply with current Federal Minimum Wage Rates.

Article IV - Drawings and Specifications

- 4.1 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the Owner/Architect/Engineer are, and shall remain, his property. They are not to be used on any other project and, with the exception of one contract set for each party to the Contract, are to be returned to the Owner/Architect/Engineer, upon request, following completion of the Work.
- 4.2 Copies Furnished. The Contractor will be furnished free of charge the number of complete sets of the Contract Drawings and Specifications 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.

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- 4.3 Interrelation of Documents. The Drawings depict the location and quantity of elements of the work. The specifications indicate quality. All documents are intended to be complimentary to produce the Work.
- 4.4 Resolution of Conflicts in Documents.
- 4.4.1 In the event of conflict between 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.
- 4.4.2. In the event of conflict among the drawings, the large scale drawings prevail over the small scale drawings.
- 4.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, the Contractor shall examine and compare: the Contract Documents; information furnished by the Owner pursuant to §§4.7; relevant field measurements made by the Contractor; and any visible conditions at the Site affecting the Work.
4. 6 Discrepancies and Omissions in Drawings and Specifications.
- 4.6.1 If in the course of the performance of the obligations in § 4.5, the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations.
- 4.6.2 The Contractor has no liability for errors, omissions, or inconsistencies described in §§ 4.5 and 4.6.1 unless the Contractor knowingly failed to report a recognized problem to the Owner. If, however, the Contractor fails to perform the examination and reporting obligations of these provisions, the Contractor shall be responsible for any avoidable costs or direct damages.

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4.6.3 The Owner shall develop a solution and provide it to Contractor. If the solution prompts changes to the Contract Sum or Contract Time the contract shall be adjusted under Article XX.

4.7 Other Information Provided to Contractor.

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

Article V - Bonds

5.1 Performance and Payment Bonds. The Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.

5.1.1 A Performance Bond is required if the Contract Price is in excess of \$100,000. The performance bond is solely for the protection of the state, in the full amount of the Contract and conditioned on the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Attorney General of Texas.

5.1.2 A Payment Bond is required if the Contract Price is in excess of \$25,000. A payment bond is payable to the state, in the full amount of the Contract and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. The form of bond shall be approved by the Attorney General of Texas.

5.1.3 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

5.2 The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

5.3 Owner shall furnish certified copies of a payment bond and the related

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Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.

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

Article VI - Insurance Requirements

6.1 Insurance Requirements.

- 6.1.1 The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Contractor prior to, during construction and during the warranty period. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Contract, as proof of continuing coverage. Acceptance of the insurance policy declaration pages by the Owner shall not relieve or decrease the liability of the Contractor.
- 6.1.2 Unless otherwise provided for in Supplementary General Conditions, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverages in the minimum amounts as described below. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

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Type of Coverage	Limits of Liability
a. Worker's Compensation	Statutory
b. Employer's Liability	
Bodily Injury by Accident	\$500,000 Ea. Accident
Bodily Injury by Disease	\$500,000 Ea. Employee
Bodily Injury by Disease	\$500,000 Policy Limit
c. Commercial General Liability, including coverage for the following:	
1) Premises Operations	Combined Single
2) Independent Contractors	Limit for Bodily
3) Products/Completed Operations	Injury and Property Damage of
4) Personal Injury	\$1,000,000 per occurrence or its equivalent.
5) Contractual Liability	
6) Explosion, Collapse, Underground	
7) Broad form property damage, to include fire legal liability	
d. Business Automobile Liability owned/leased, owned, hired	Combined single limit for Non-Bodily Injury and Property Damage of \$1,000,000 Per Occurrence or its Equivalent
e. Owner's Protective Liability Insurance Policy, naming the State of Texas, its employees, and the Architect/Engineer as insured with the following limits:	
Bodily Injury	\$1,000,000 Each Occurrence \$1,000,000 Aggregate
f. Builder's Risk Insurance When Specified in Supplemental G.C. or S.C.	

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

1. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.
 2. For renovation projects and or work, the Owner waives subrogation for damage by fire to existing building structure(s), if building structure(s) is in care, custody or control of Contractor.
 3. Builder's Risk Policy shall be endorsed to include coverage for existing building structure(s).
- g. Flood insurance when specified in Supplementary General Conditions or Special Conditions.
- h. Umbrella coverage when specified in Supplementary General Conditions or Special Conditions.
- i. Lost Key Policy when specified in S.G.C. or S.C.

6.1.3 Policies must include the following clauses, as applicable.

- a. "This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner."
- b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the state agency for liability arising out of operations under the Contract with the Owner."

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- c. “The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner.” This is not applicable to the workers’ compensation policy.
- d. “The workers’ compensation and employers’ liability policy will provide a waiver of subrogation in favor of the Owner.”

6.1.4 The workers’ compensation insurance coverage must include the responsibility of the General Contractor to provide coverage for every worker either under the general Contractor’s policy or under the policy provided by a Subcontractor. The general Contractor’s policy shall provide that, in the event that a Subcontractor’s policy fails to provide worker’s compensation coverage of a worker, that such insurance coverage is provided by the general Contractor’s policy. Contractor shall obtain certificates of coverage from Subcontractors carrying their own policies, prior to any Subcontractor providing services to the Project.

6.1.4.1 By signing the Contract or providing or causing to be provided a certificate of coverage, Contractor is representing to Owner that all employees of the Contractor who will provide services on the Project will be covered by workers’ compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or in the case of self-insured, with the Texas Workers’ Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

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

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- 6.2 The furnishing of the above listed insurance coverage, as may be modified by Supplementary General Conditions or Special Conditions, must be tendered prior to execution of the Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.
- 6.3 Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out in 6.1.2.

Article VII - General Responsibilities of Owner and Contractor

7.1 Owner's General Responsibilities.

- 7.1.1 The Owner is the entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.
- 7.1.2 Preconstruction Conference. Prior to the issuance of Notice to Proceed, a conference will be held attended by the Owner, Contractor, Architect/Engineer and Subcontractors, as appropriate, to establish a working understanding among the parties as to the Work, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the Project and effective communications on Site.
- 7.1.3 Owner's Designated Representative. Prior to the start of construction, Owner shall designate in writing the Owner's Designated Representative (ODR), who shall have express authority to act and bind the Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract. Unless otherwise specifically provided for, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.
- 7.1.4 The Owner shall furnish all surveys describing the physical characteristics, legal description and limitations, site utility locations and other information under the Owner's control to the Contractor. Necessary actions of the Owner, including processing of payments

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to the Contractor, shall be accomplished with reasonable promptness and subject to Article XIII hereof. The Owner shall pay for all routine testing of materials agreed by the Owner and the Architect/Engineer to be required by the Contract Documents, except for retesting of materials failing the initial test which will be paid for by the Contractor.

7.1.5 Owner supplied materials and information. Information, equipment or services under the Owner's control shall be furnished by the Owner to the Contractor with reasonable promptness to avoid delay in orderly progress of the work.

7.1.6 Availability of Lands. Owner shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use by Contractor. Owner shall identify any encumbrances or restrictions specifically related to use of lands so furnished with which Contractor will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Owner fails to furnish these lands, rights of way or easements in a timely manner, Contractor may make a claim under Article XXI.

7.1.7 The foregoing listing is in addition to the specific duties and authority of Owner and the ODR found in other Articles of the Contract.

7.2 Limitation on Owner's and ODR's Duties. Owner and ODR will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner and ODR are not responsible for any failure of Contractor to comply with laws and regulations applicable to furnishing or performing the Work. Owner and ODR are not responsible for the failure of Contractor to perform or furnish the work in accordance with the Contract Documents. Owner and ODR are not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

7.3 Role of Architect/Engineer.

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

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Architect/Engineer's contract with Owner, in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Architect/Engineer will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless otherwise noted. The Architect/Engineer's efforts will be directed toward providing the Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, Architect/Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. Architect/Engineer visits and on-site observations are subject to all the limitations on Architect/Engineer's authority and responsibility set forth in § 7.4.

7.3.6 Clarifications and Interpretations. Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by Architect/Engineer and will be binding on Owner and Contractor. If Owner or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Owner and Contractor may make a claim therefore as provided in Articles XX and XXI.

7.3.7 The duties listed above are in addition to other duties, responsibilities and actions to be undertaken by Architect/Engineer as specified in other Articles of the Contract.

7.4 Limitations on Architect/Engineer Authority. Architect/Engineer will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. Architect/Engineer is not responsible for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work. Architect/Engineer is not responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

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Architect/Engineer is not responsible for the acts or omissions of Contractor, or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

7.5 Contractor's General Responsibilities.

- 7.5.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor shall supervise and direct the Work using the best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 7.5.2 Contractor's Foreman. The Contractor shall employ a competent resident foreman who shall be in attendance at the Project Site during the progress of the Work. The foreman shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner unless he leaves the employment of the Contractor. The foreman shall represent the Contractor at the Site and shall have full authority to act on behalf of the Contractor. All communications given to the foreman shall be binding on Contractor. All oral communications affecting Contract Time, Contract Sum and contract interpretation will be confirmed in writing to Owner.
- 7.5.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- 7.5.4 Services, Materials, and Equipment. Unless otherwise specified in the Supplementary General Conditions, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

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- 7.5.5 No Substitutions Without Approval. The Contractor may make substitutions only with the consent of the Owner, after evaluation and recommendation by the Architect/Engineer and in accordance with a Change Order.
- 7.5.6 Documents and Samples at the Site. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.
- 7.5.7 Should Work be identified by either the Architect/Engineer and/or the ODR as not being in compliance with the Contract Documents, the ODR shall communicate the finding to Contractor and such Work shall be corrected by the Contractor at its expense. The approval of Work by either the Architect/Engineer or ODR does not relieve the Contractor from compliance with all requirements of the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the Contractor or the lack of time to judge the performance characteristics of the particular Work item.
- 7.5.8 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections in writing. If a rejection causes a change to the Contract Sum, Contractor may file a contractor-initiated Type I change claim under Article XX. Contractor shall not be required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor will not substitute Subcontractors without the approval of Owner.
- 7.5.8.1 Contractor shall enter into written agreements with all Subcontractors and suppliers which specifically bind the Subcontractors and suppliers to the applicable terms and conditions of the Contract Documents for the benefit of the Owner and the Architect/Engineer.

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The Owner reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and sub-subcontractors 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.

7.5.8.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner through Contractor.

7.5.9 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with Owner. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as Owner and Contractor may agree in writing.

7.5.10 Cleaning. The Contractor shall at all times keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the Work in a neat and clean condition.

7.5.11 Acts and Omissions of Contractor, his Subcontractors and employees. The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees.

7.5.12 Indemnification of Owner. Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including

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but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Owner, officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

7.5.12.2 Contractor shall promptly advise the Owner in writing of any claim or demand against the Owner or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract.

7.5.13 The duties listed above are in addition to the duties, responsibilities an activities to be undertaken by Contractor as specified throughout the Articles of the Contract.

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

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

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- 8.1.1 When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate Contract. This Contractor shall cooperate with the separate contractors and Owner's own forces. This Contractor shall properly connect and coordinate its work with the work of the separate contractors as defined in these Contract Documents. If any part of this Contractor's work depends for proper execution or proper results on the work of any of the separate contractors, this Contractor shall inspect and promptly report in writing to the ODR any visually apparent discrepancies or defects found in such other work that render it unsuitable for such proper execution and results. Failure of this Contractor to so inspect and report the visually apparent discrepancies or defects shall constitute an acceptance of the separate contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the separate contractor's work after the execution of this Contractor's work.
- 8.1.2 Should this Contractor cause damage to the Work or property of any separate contractor on the Project, this Contractor shall, upon due written notice, endeavor to settle with the separate contractor by agreement. If such separate contractor does not settle with this Contractor, the Owner shall initiate a Dispute Resolution process and each party to the dispute shall be financially accountable for any damages or loss based on their proportionate fault determined by the Dispute Resolution process.
- 8.1.3 This Contractor shall afford the Owner, the Architect/Engineer, the separate contractors and Owner's own forces, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.
- 8.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of this Contractor, who shall cooperate with them. This Contractor shall participate with other separate contractors and the Owner in reviewing the respective construction schedules, when directed to do so. This Contractor shall make any revisions to his construction schedule as necessary, after receiving Owner's instructions.

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- 8.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction by the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor. Contractor may make claim for such amounts as outlined in Articles XX.

Article IX - The Contractor's Responsibility for Jobsite Safety

- 9.1 Unless otherwise specified in Supplementary General Conditions, Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Contractor and all of its Subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of the Act. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.
- 9.1.1 Contractor shall notify owners of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them or their facilities, and shall cooperate with them in the protection, removal, relocation and replacement of their facilities and/or utilities.
- 9.2 In any emergency affecting the safety of persons or property, the Contractor shall act reasonably to prevent threatened damage, injury or loss. Contractor shall give the ODR and Architect/Engineer prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by its emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with Articles XX and XXI.
- 9.2.1 Authorized agents of Contractor shall respond immediately to call out at anytime of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage, restriction or limitation or to take such action pertaining to the Work as may be necessary to provide for the safety of the public. Should Contractor fail to respond, Owner is

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authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from the funds due the Contractor under the Contract.

- 9.3 In the event of an accident involving a lost time injury to an individual on or near the Work, Contractor shall notify the ODR within 24 hours of the event. Contractor shall record the location of the event, the circumstances surrounding the event, by using photography or other means, and shall gather witness statements and other documentation which describes the event. Contractor shall supply the ODR and Architect/Engineer with a set of documents no later than 36 hours after the occurrence of the event.

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

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

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

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Article X - Materials and Workmanship; Licensing and Testing

10.1 Materials and Workmanship. The Contractor warrants and guarantees that all Work shall be executed in a good and workmanlike matter in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs. Unless otherwise specified, all materials and equipment incorporated into the Work under the Contract shall be new.

10.2 Contractor's Warranty of Workmanship.

10.2.1 Limits on Warranty. Contractor's Warranty and guarantee hereunder excludes defects or damage caused by:

- a. Abuse, modification or improper maintenance or operation by persons other than Contractor, Subcontractors, suppliers or any other individual or entity for whom Contractor is responsible, or
- b. Normal wear and tear under normal usage.

10.2.2 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- a. observations by Owner and/or Architect/Engineer;
- b. Recommendation to pay any progress or final payment of Architect/Engineer;
- c. The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- d. Use or occupancy of the Work or any part thereof by Owner;
- e. Any acceptance by Owner or any failure to do so;

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- f. Any review of a Shop Drawing or sample submittal; or
- g. Any inspection, test or approval by others.

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

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

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

10.3.2 Materials incorporated into the Project will be subject to routine tests as required to insure their compliance with the specifications. Materials to be tested include, but are not limited to, the following:

- a. Concrete - Primary mix design, slump tests and cylinder compression tests.
- b. Steel - Tensile tests.
- c. Welds - Field inspection and X-ray equipment.
- d. Soils - Subsoil investigation, physical analysis and compaction tests.

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- e. Pavement - Physical analysis and compaction tests.
- f. Roofing - Samples cut from in-place roof.
- g. Other material testing as deemed necessary by Owner.

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

10.3.2.1 Not included in tests provided by the Owner are:

- a. Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications, which testing shall be paid for by Contractor.
- b. Tests on mechanical systems required to insure their proper installation and operation, which, if undertaken, shall be paid for by Contractor.

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

- a. Contractor may select the laboratory for further testing, but selection must be approved by the Owner.
- b. Quality and nature of tests will be determined by the Owner.
- c. All tests shall be taken in the presence of the Owner or ODR.
- d. If tests prove that the material complies with specifications, the laboratory fees will be paid by the Owner. If noncompliance is proved, laboratory fees will be paid by the Contractor.

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- e. Proof of noncompliance will make the Contractor liable for any corrective action which the Owner feels is prudent, including complete removal and replacement of defective material.

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

10.3.4 Special Testing. The Owner or the Architect/Engineer may require special inspection, testing or approval of material or Work for compliance with requirements of the Contract Documents. Upon direction by the Owner and the Architect/Engineer, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. The costs of special testing shall be at Owner's expense, except if the materials fail, Contractor shall pay the expense.

10.4 If any Work (or the work of others) that is to be inspected, tested or approved is covered by Contractor without written concurrence of Owner, or if any Work is covered contrary to the written request of Owner or Architect/Engineer, the covered work must, if requested by Owner, be uncovered and recovered at Contractor's expense, except as set forth in § 12.2.3.

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

Article XI – Shop Drawings and Submittals

11.1 Contractor's Submittals. The Contractor shall submit, with reasonable promptness consistent with the Project Schedule and in orderly sequence, all Shop Drawings, Samples or other information required by the Contract Documents, or subsequently required by the Owner/Architect/Engineer as governed by Change Orders. The Contractor shall review each submittal for

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compliance with Contract Documents and shall certify that it has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without such the Contractor certification will be returned without review or other comment, and any delay resulting therefrom will be the Contractor's responsibility.

11.1.1 Shop Drawings, Samples or other required information shall be properly identified, as specified or as the Owner and/or the Architect/Engineer may require. At the time of submission, the Contractor shall inform the Owner and the Architect/Engineer in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

11.1.2 By submitting Shop Drawings, Samples or other required information, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents and he shall so certify as required by § 11.1.

11.2 Nature and Effect of Review. The Architect/Engineer and the Owner, if required by Supplementary General Conditions, will review and approve all submittals with reasonable promptness, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Such approval will be indicated in writing. The approval of a separate item shall not indicate approval of an assembly in which the item functions. The approval of the Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Architect/Engineer in writing of such deviation at the time of submission and the Owner or the Architect/Engineer has not objected to the specified deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

11.3 Correction and Resubmission. The Contractor shall make any corrections required to a submittal and shall resubmit the required number of corrected copies of the submittals promptly so as to avoid delay, until approved. The Contractor shall direct attention in writing to the Architect/Engineer and the Owner when required, to any new revisions other than the corrections requested on previous submissions.

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

Article XII - Inspection of the Project During Construction

- 12.1 Contractor Quality Control. Contractor is responsible for controlling the quality of the work as set forth in the Contract Documents.
- 12.2 Owner Quality Assurance.
- 12.2.1 The Owner will make periodic visits to the site to familiarize itself

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with the progress and quality of the Work, conduct inspections and tests and to determine if the Work is proceeding in accordance with the Contract Documents. The Contractor shall provide sufficient, safe and proper facilities at all reasonable times for observation and/or inspection of the Work by the authorized representatives of the Owner.

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

12.2.3 The Contractor shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the Owner of the anticipated need for a cover up inspection. Should the Owner fail to make the necessary inspection within the five (5) working day period, or as mutually agreed, the Contractor may proceed with cover up work.

12.3. Condemnation and Removal of Defective Work.

12.3.1 The ODR has the authority to reject and condemn Work, which does not meet the requirements of the Contract and to order such work removed and replaced in accordance with paragraph 12.3.2 hereof. The approval of a work item by the ODR does not relieve the Contractor from compliance with the Contract Documents where such requirements are not judged at the time of observation of the Work due to work sequences by the contractor or the lack of time to judge the performance characteristics of the particular work item.

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

12.3.3 Upon notice of condemnation, the Contractor may request to prove to Owner, at Contractor's sole cost, that the Work should be accepted because it meets performance, and other relevant

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standards. Owner shall respond to Contractor's showing of proof in writing.

Article XIII – Contract Payments

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

13.2 Progress Payments. Periodic progress payments will be made to the Contractor for Work performed, and materials in place or suitably stored and protected on sites or as otherwise agreed to by the Owner and the Contractor. Payment shall not become due until receipt by the ODR or his designee of a correct and complete Pay Application, certified by the Architect Engineer pursuant to this article.

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

- 1) The Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the approved Schedule of Values; and
- 2) A schedule update, HUB Subcontracting Plan Reports, and such additional documentation as Owner may require and as specified in the Supplementary General Conditions of the Contract.

13.2.2 Contractor's Periodic Invoice. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the Architect/Engineer and ODR shall meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. On the basis of this review, the ODR and the AE may require modifications to the Preliminary Pay Worksheet prior to the submittal of a Periodic Invoice, and shall return the Preliminary Pay Worksheet to the Contractor at the close of the Periodic Invoice review meeting, annotated to show any required modifications, and any additional documentation required

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by the ODR and the AE to support the Contractor's application for payment. As soon as practicable, but in no event later than seven days following the Periodic Invoice review meeting, the Contractor shall submit a Periodic Invoice reflecting the required modifications to the AE, and attaching all additional documentation required by the ODR and AE, as well as his affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work or other indebtedness connected with the Contractor's Periodic Invoice have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Periodic Invoice shall be complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

13.2.3 Certification by Owner/Architect/Engineer. As soon as practicable, but in no event later than five days following the AE's receipt of the Contractor's Periodic Invoice, the Architect/Engineer shall review the same for completeness, and shall forward the Periodic Invoice to the ODR, with a copy to the Contractor, together with the AE's certificate that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Periodic Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Periodic Invoice for processing in accordance with this §13.2.3. Should Architect/Engineer fail to certify and forward a complete Periodic Invoice to the ODR within the time specified, the Periodic Invoice shall be deemed approved by the Architect/Engineer, and the Contractor shall be entitled to submit the Periodic Invoice directly to the ODR with an affidavit certifying the passage of the Architect/Engineer review deadline and providing such supporting documentation as to prove the passage of the deadline. Upon receipt of such a Periodic Invoice and affidavit, the Owner shall make payment as though the Periodic Invoice had been certified for payment by the Architect.

13.3 Owner's Duty to Pay. The Owner shall have no duty to pay the Contractor except on receipt by the ODR of (1) a complete Periodic Invoice certified by the AE or (2) receipt by the ODR of a complete Periodic Invoice accompanied by the Contractor's affidavit certifying the failure of the AE to timely certify a complete Periodic Invoice, pursuant to §13.2.

13.4 Retainage. The Owner shall withhold from each progress payment, as

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retainage, the amount authorized by law, as set out in the Supplementary General Conditions. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

- 13.5 Reduction to Cover Loss. The Owner may reduce any Periodic Invoice prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:
- a. Defective work not remedied;
 - b. Damage to work of a separate contractor;
 - c. Failure to maintain scheduled progress;
 - d. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or
 - e. For Contracts with a value of less than \$25,000 for which no payment bond is posted, receipt of written notice by the Owner of unpaid bills, filed in conformance with § 53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if he furnishes a bond for release of lien as provided in § 53.236, Texas Property Code.
- 13.6 Title to all material and Work covered by progress payments transfers to the Owner upon payment. Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.
- 13.7 Progress payments to the Contractor shall not release the Contractor or his surety from any obligations under this Contract.

Article XIV - Closing Inspections

- 14.1 Substantial Completion Inspection. When the Contractor considers the entire Work Substantially Complete, the Contractor shall so notify the ODR and the Architect/Engineer in writing that the Work will be ready for Substantial Completion Inspection on a date certain. The Contractor shall include with this notice a list of items to be completed or corrected prior to final inspection. On the date indicated by Contractor, or as soon thereafter as is practicable, the ODR, the Architect/Engineer, and the Contractor shall inspect the work and if the Architect/Engineer determines that the Work is Substantially Complete a Certificate of Substantial Completion shall be issued to the ODR and

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Contractor, fixing the date of Substantial Completion. The Architect/Engineer shall submit with this certificate a list of items to be completed prior to final inspection (the Pre-Final Punchlist). This list may include additional items not included on the Contractor's list, which are deemed necessary by the Architect/Engineer or by the Owner to correct or complete prior to Final Inspection.

- 14.2 Final Inspection The Contractor shall fully complete the list of items listed on the Prefinal Punchlist prior to Final Inspection. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 30 days of the certified date of Substantial Completion. When the Contractor has completed the Prefinal Punchlist, he shall give written notice to the ODR and Engineer that the Work will be ready for Final Inspection on a date certain. On this date, or as soon thereafter as is practicable, the ODR, the Architect/Engineer and the Contractor shall inspect the Work and the Architect/Engineer shall submit to the Contractor a list of items which the Owner and the Architect/Engineer have determined to require correction or completion before the Work will be accepted by the Owner (the Final Punchlist).
- 14.3 The Contractor shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Contractor shall complete this work within 7 days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Contractor shall notify the Architect/Engineer and ODR, and the Architect/Engineer and Owner shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Contract is fully performed according to the Contract Documents, and is acceptable to the Owner, the Architect/Engineer shall issue a certificate fixing the date of Final Completion. Final Completion shall be a condition precedent to the Contractor's right to receive Final Payment.
- 14.4 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work.
- 14.5 Purpose of Inspection. Inspection by the Owner and Architect/Engineer is for the purpose of determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the Owner or Architect/Engineer to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with punchlist items left incomplete,

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does not constitute a waiver of such a defect or of the Owner's rights under the Contract Documents or relieve the Contractor of its warranties contained at Article XVII.

14.6 Additional Inspections.

14.6.1 If on the basis of the Substantial Completion Inspection, the Owner/Architect/Engineer determines that the Work is not Substantially Complete, the Owner/Architect/Engineer shall give the Contractor written notice thereof, and shall inform the Contractor what Work was found to be incomplete, out of compliance with the Contract Documents, or defective in operation or workmanship, and setting a time in which incomplete or defective work is to be completed. The Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

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

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

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

Article XV - Early Occupancy

- 15.1 Right of Occupancy. The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion, provided that such occupancy or use is consented to by any and all insurers of the Work. Should the Owner wish to use or occupy the Work, or part thereof, prior to final completion, the ODR shall so notify the Contractor in writing. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article.
- 15.2 Occupancy of Substantially Completed Work. If the Owner wishes to occupy all or part of the Work that has been Substantially Completed it shall so notify the Contractor and the Architect Engineer prior to the Substantial Completion Inspection, and the Owner/Architect/Engineer shall annotate the Certificate of Substantial Completion to set out, pursuant to §§ 14.4, 14.6 or the parties' written agreement, the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, operation of permanent equipment, and insurance. The Certificate of Substantial Completion shall be submitted to the ODR and Contractor for their written acceptance of the responsibilities assigned to each of them in such Certificate. The accepted Certificate shall constitute an agreed Change Order. See Article XX.
- 15.3 Occupancy of Work Prior to Substantial Completion.
- 15.3.1. Notice and Early Occupancy Proposal. If the Owner determines that substantial hardship will result if it is unable to occupy some portion of the Work prior to substantial completion, it shall so inform the Architect/Engineer and the Contractor no less than 30 days before

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the date the Owner wishes to occupy the Work, and designate those portions of the Work to be occupied and the uses to be made of the occupied premises. As soon as practicable, but not less than five working days after receiving this notice, the Contractor shall make the designated portions of the Work available to the Architect/Engineer and the Owner for observation. The Architect/Engineer and the Owner shall observe the Work jointly with the Contractor. As soon as practicable, but not later than the third day next following the date of the inspection, the Architect/Engineer 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 the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal shall also specify whether the area to be occupied must be Substantially Complete before occupation, and shall specify the date for Substantial Completion of the Work to be occupied if other than the date previously specified by the Contract Documents.

- 15.3.2. Administration as Change Order. The Early Occupancy Proposal shall be administered as an Interim Change Authorization pursuant to the provisions of § 21.5, except that the Contractor shall submit a CPE as soon as possible, but not later than the seventh day next following receipt of the Early Occupancy Proposal. All cost adjustment, including any increased costs of insurance, related to the Early Occupancy Proposal, shall be stated in the CPE; any such relief not so requested shall be deemed waived. If the Early Occupancy Proposal requires early Substantial Completion, the Contractor shall be entitled to an equitable cost adjustment for acceleration and impact costs, to be submitted pursuant to §22.2 (Type II Changes) If an early completion date is not required, the Contractor shall submit any claim for time extension as a Type I change in the Work and Interim Change Authorization. If by the date designated by the Owner as the proposed date of occupancy, the ODR and Contractor have not reached an agreement concerning adjustment of time or cost, or the division of responsibility for the occupied portions of the Work, the ODR may issue a ULCO.

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- 15.3.3. Project Completion Administration with Early Occupancy. Where under the provisions of this Article the Contract Time is modified for any part of the Work due to early occupancy, then the provisions of §14.6 shall apply. All required documentation shall be furnished by the Contractor to the ODR on or before the date of occupation by the Owner.
- 15.3.4. Nonwaiver of Timely Completion. Early occupancy of any portion of the Work does not waive the Contractor's duty to complete the remaining Work within the Contract Time as specified by the Contract Documents or as subsequently modified by Change Order.

Article. XVI - Contract Final Acceptance and Payment

- 16.1 Request for Final Payment. At any time following the date of Final Completion certified by the Owner/Architect/Engineer, but no later than thirty days after such_date, the Contractor shall submit a certified Application for Final Payment, including all sums held as retainage, to the Owner/Architect/Engineer for his review and approval.
- 16.2 Final Payment Documentation. The Contractor shall submit, prior to or with the Application for Final Payment, all close out documents, including maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract Documents. The Contractor shall also submit an affidavit that all payrolls, bills for materials and equipment, subcontracted_work and other indebtedness connected with the Work, except as specifically noted, have been paid or will be paid or otherwise satisfied within the period of time required by Chapter 2251, Texas Government Code. If required by the Owner, the Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. The Owner is entitled to rely upon this affidavit; the Contractor may not submit a claim on behalf of a subcontractor or vendor if that claim has not been noted as an exception in the affidavit.
- 16.3 Owner/Architect/Engineer Approval. The Owner/Architect /Engineer shall review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, Owner/Architect/Engineer shall either: 1) return the Application for Final

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Payment to Contractor with corrections for action and resubmission; 2) accept it, note his approval and process for payment. Should Owner/Architect/Engineer fail to take action within the deadline specified, the Application for Final Payment shall be deemed approved by the Owner/Architect/Engineer. Contractor shall be entitled to submit the Application for Final Payment directly to the Owner with an affidavit certifying the passage of the Architect/Engineer review deadline and providing such supporting documentation as to prove the passage of the deadline.

- 16.4 Offsets and Deductions: The Owner may deduct from the Final Payment all sums due from the Contractor for any reason, all deductions authorized by §13.3, and as Liquidated Damages. If the Certificate of Final Completion notes any Work remaining incomplete or defects not remedied, the Owner may deduct the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, the Owner shall identify each deduction made and the reason therefor, and furnish the Contractor with an explanation of the deduction and the amount deducted on or by the 21st day after Owner's receipt of an approved, or deemed approved Application for Final Payment.
- 16.5 Final Payment Due. Final Payment shall become due and payable by Owner, subject to all allowable offsets and deductions, on the 31st day next following the receipt of the approved or deemed approved Application for Final Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the thirtieth day next following receipt of Final Payment; failure to do so will bar any subsequent claim for payment of amounts deducted.
- 16.6 Effect of Final Payment: Final Payment shall constitute a waiver of all claims by the Owner relating to the condition of the Work except those arising from (1) faulty or defective Work appearing after Substantial Completion (latent defects); (2) failure of the Work to comply with the requirements of the Contract Documents; (3) terms of any special warranties required by the Contract Documents, and (4) claims arising from personal injury or property damage to third parties. Final payment shall constitute a waiver of all claims by the Contractor except those specifically enumerated at the time of Final Payment. Provided, however, that the Contract shall not be deemed fully performed and closed until the expiration of all periods provided under the Contract Documents for the Contractor to submit a claim or protest a ULCO.

Article XVII - Contract Warranty and Guarantee

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- 17.1 Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §16.6, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.
- 17.2 Warranty Period. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Substantial Completion of the Work as a whole. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within 30 days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.
- 17.3 Separate Warranties. Where a particular piece of equipment or component of the work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the Owner/Architect/Engineer and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in §§17.1 and 17.2, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply

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with the requirements of the Contract Documents, the Contractor shall remain liable to the Owner on all elements of the required warranty that are not provided by the assigned warranty.

Article XVIII - Good Faith Effort Subcontracting Program (HUBs)

18.1 General Program Description. State agencies are required by statute to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in participating in contract awards issued by the State. The General Services Commission rules, 1 TAC 111.11-111.28, outline the state's policy to encourage outreach to and potential utilization of HUBs in state contracting opportunities through race, ethnic, and gender neutral means. The goal of this program is to promote full and equal business opportunity for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study.

A Contractor who contracts with the State in an amount in excess of \$100,000 shall be required to make a good faith effort to award subcontracts to HUBs in accordance with GSC Rule 111.14 by submitting a HUB Subcontracting Plan at the time of bidding and complying with the Subcontracting Plan after it is accepted by the Owner and during the term of the contract. The annual program goal for building construction contracts an agency expects to award in a fiscal year is 25.1% for Black Americans, Hispanic Americans, and American Women, and 1.0% for Asian Pacific Americans and Native Americans. The Commodity purchase goal is 12.6% of annual purchases. The goal for heavy construction (non-building) is 11.9% of annual purchases. These Good Faith Effort Program goals do not prevent any business group from participating in contracting opportunities with the State of Texas.

18.2 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.

Contractor shall:

- a. Prior to substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB Subcontracting Plan;
- b. Conduct the good faith effort activities required and provide Owner with necessary documentation to

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justify approval of a change to the approved HUB Subcontracting Plan;

- c. Cooperate in the execution of a Change Order or such other approval of the change in the HUB Subcontracting Plans as the Contractor and Owner may agree to;
- d. Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB Subcontracting Plan;
- e. Upon receipt of payment for performance of Work, the Contractor shall submit to Owner a compliance report, in the format required by Owner, that demonstrates Contractor's performance of the HUB Subcontracting Plan;
- f. 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 HUB Rule 111.14.

18.3 Failure to demonstrate Good Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good faith effort to fulfill the Subcontracting Plan or any contract covenant detailed above, the Owner may, in addition to all other remedies available to it, report the failure to perform to the General Services Commission Vendor Performance and Debarment Program.

Article XIX - Concealed Site Conditions

19.1 The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Owner.

19.2 If, in the performance of the Contract, subsurface, latent or concealed

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conditions at the Site are found to be materially different from the information included in the bid documents, or if unknown conditions of an unusual nature are discovered differing materially from the conditions usually inherent in Work of the character shown and specified, the Owner shall be notified in writing of such conditions before proceeding with the Work. If necessary, the Owner shall develop a solution and provide it to Contractor. If the solution prompts changes to the Contract Amount and/or Time, the Contract shall be adjusted under Article XX hereof.

19.3 For environmental matters, see § 9.4.

Article XX - Change Orders

20.1 Change Order Defined. A Change Order is a written modification of the Contract between the Owner and the Contractor, signed by the Owner, the Contractor and, in the case of a Type I change only, the Architect/Engineer .

20.2 Effect of Change Order. A Change Order authorizes a change in the Scope of the Work or an adjustment in the Contract Sum or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents.

20.3 Modifications for which a Change Order is Required. All changes in the scope of the Work, the Contract Sum and the Contract Time shall be documented by a Change Order. Change Orders are the exclusive method for modifying the Contract Sum or Contract Time. Neither the Architect/Engineer, the ODR may change the scope of the Work, the Contract Sum or the Contract Time by any method, expressed or implied, other than a Change Order.

20.4 Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

20.4.1 Agreed Change Orders. An Agreed Change Order is a Change Order jointly executed by the Owner and the Contractor, in which each agrees to all of the terms of the amendment.

20.4.2 Effect of An Agreed Change Order. The execution of a Agreed Change Order by the ODR and the Contractor constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order for foreseeable impacts on the Contract Sum or the Contract Time; provided,

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however, that an Agreed Change Order may be reformed by a written modification signed by the Contractor and the ODR, for the limited purpose of correcting an error in computation.

- 20.4.3 Unilateral Change Order. A Unilateral Change Order is a Change Order issued by the Owner without the agreement of the Contractor.
- 20.4.4 Effect of a Unilateral Change Order; conversion to an Agreed Change Order. The issuance of a ULCO does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting 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 an Agreed Change Order.
- 20.5 Who May Request Change Orders. Change Order Requests may be initiated by the Owner or by the Contractor as provided in §§20.6 and 20.7.
- 20.6 Type I Change Orders. A Type I Change Order adjusts the Contract Sum and/or Contract Time because of an actual or constructive change in the scope or character of the Work, which originates from the Owner or Architect/Engineer. Type I Change Orders are initiated in one of two ways:
- 20.6.1 Owner-Initiated Changes. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions.
- 20.6.2 Contractor-Initiated Changes. If the Contractor claims that it will incur additional cost or time because of any writing containing a written interpretation of the Contract Documents, or instruction concerning the execution of the Work, issued by the Owner or the Architect/Engineer, and constituting a constructive change in the scope or character of the Work, the Contractor may request a Change Order pursuant to this Article and, if appropriate, a Time Extension Request as provided by Article XXIV.

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20.6.3 Commencement of Work. The Contractor shall not commence work on a Type I change work prior to receipt of a Change Authorization, or a Interim Change Authorization, as set out in §§ 21.3.3 and 21.5, respectively.

20.7 Type II (Claim) Change Orders A Type II Change Order adjusts the Contract Sum or Contract Time because of a change in the conditions of performance of the Work that changes the cost or time required for performance without changing the scope of the Work to be performed under the Contract Documents. The Contractor may request a Type II Change Order for damages under the following circumstances only:

- a. The occurrence of excusable, compensable delays as designated in § 24.3.3;
- b. Unanticipated physical conditions at the Site, pursuant to § 19.2, which the Owner/Architect/Engineer addresses by means of changes in the Drawings and Specifications, or unanticipated conditions at the Site as described in §§ 2.8 and 2.9;
- c. The existence of errors, omissions and imperfections in the design documents which the Owner/Architect/Engineer corrects by means of changes in the Drawings and Specifications; (The correction of E&O is a type I)
- d. The failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents or to provide information required by the Contractor to proceed with the Work;
- e. The failure of the Owner to provide reasonable access to the Site;
- f. The failure of the Owner to timely provide materials which are to be furnished by the Owner under the Contract Documents; and
- g. Detrimental or obstructive actions of the Owner or of separate contractors employed by the Owner; and
- h. The failure of the Owner to grant a meritorious request for time extension pursuant to Art XXIV (Constructive acceleration).

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

Article XXI - Administration of Change Order Requests

21.1 Requests For Changes.

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

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

21.1.2.1. Type I Change Orders.

Owner-initiated Changes. When the Owner wishes to order changes in the Work, the ODR shall submit to the Contractor a Change Order Request (COR), consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. Within 30 days of receipt of the Owner's COR, the Contractor shall submit a Change Order Proposal Evaluation (CPE) to the ODR, stating that the proposed change is a no-cost change, or proposing an adjustment in the Contract Sum, as provided under Article XXII. Where an Owner-Initiated Change in the Work requires no increase in cost, the ODR shall issue and the Contractor shall execute a Change Order documenting the change in scope of the Work that does not authorize a change in the Contract Sum.

Contractor-initiated Changes. When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Owner or the Architect 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 CPE to the ODR as soon as possible thereafter, but not later than 30 days after issuance of the notice. This CPE shall contain a proposal for an adjustment in the Contract Sum, as provided under Article XXII. The CPE shall be accompanied by a copy of the writing

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containing the instruction or interpretation, evidence of the date Contractor received the writing and an explanation of how the writing creates the need for a change.

21.1.2.2 Type II Change Orders.

Notice of Claim. If the Contractor claims that additional cost is involved because of the occurrence of one or more of the circumstances set forth in §20.7, the Contractor shall give the ODR written notice of its intent to submit a claim and shall proceed immediately to document all increased costs actually incurred as a result. Such notice shall be given as soon as the Contractor becomes aware that such circumstances exist, but not later than 30 calendar days after the onset of the circumstance giving rise to the claim. This notice shall identify the circumstances giving rise to the additional cost, the elements of cost affected, and the claimed contractual basis for entitlement to relief. Such notices shall be accompanied by sufficient written evidence to document the occurrence of a cost impact, but the full amount of the claim need not be stated at the time the notice is given to the ODR. The Contractor and Owner recognize and agree that it is beneficial to each other to identify factors affecting the Contractor's cost of performance, and to take prompt action to control them. Therefore, it is agreed that the Contractor shall not be entitled to request a Type II cost adjustment unless the required notice is submitted timely.

Submission of Claim. Claims for adjustment of the Contract Sum for Type II Change Orders shall be made in the form of a CPE submitted to the ODR no later than 90 calendar days after the cessation of the circumstances giving rise to the claim. The CPE shall set forth the Contractor's proposed cost adjustment, computed pursuant to Article XXII, together with the Contractor's documentation of costs incurred.

21.3 Processing Requests for Change.

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- 21.3.1 Response to CPE. As soon as possible, but not more than 30 days after receipt of any CPE 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.
- 21.3.2 Effect of Owner's Failure to Respond Timely. If the ODR, without justification, fails to respond to the Contractor in writing during the required time, the Contractor's CPE shall be deemed accepted as proposed as of the 30th day next following the receipt of the CPE by the ODR, and shall be administered as a Change Authorization.
- 21.3.3 Change Authorization. When agreement has been reached concerning the adjustment of cost, the ODR shall accept the Contractor's CPE, or any subsequently revised CPE issued pursuant to negotiation, by endorsing the CPE "Accepted", with the date, and returning it to the Contractor. A CPE that has been accepted is a Change Authorization (CA). A CA is effective upon receipt and constitutes the Contractor's notice to proceed with the changed work, entitles the Contractor to submit the adjusted cost of the Work on succeeding Pay Applications, as it is completed.
- 21.3.4 Execution of Change Order. Not more than 45 days following the date of acceptance noted on the CA, or the deemed effective date pursuant to §21.3.2, but not later than the 90th day following the date of Substantial Completion, the ODR shall issue a Change Order, executed by the Owner and, in the case of a Type I change, the Architect/Engineer, attaching a copy of the accepted CA and incorporating it fully by reference. The Contractor shall execute the Change Order within 10 days of receipt of the executed Change Order.

21.4 Unilateral Change Orders.

- 21.4.1 For any Type I or Type II change, the ODR may issue a Unilateral Change Order (ULCO), establishing such adjustment of cost, if any, as the Owner deems fair and reasonable, under the following circumstances:
1. If the Contractor fails to submit a CPE within the time required under §§ 21.1.2.1 and 21.1.2.2 above, or fails or

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refuses to execute an Agreed Change Order within the time required by § 21.3.4 above;

2. If negotiations fail to achieve an agreed price; and
3. If, in the Owner's judgment based on the Progress Schedule, a failure to authorize the Contractor to proceed with a Type I change in the Work may adversely affect the timely completion of the Work. In addition to the above, the ODR shall issue a ULCO on any CPE that remains unresolved 90 days after Substantial Completion of the Project.

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

21.5. Interim Change Authorization. When the Owner determines that an Owner-initiated Type I change in the Work, or a written instruction or interpretation of the Contract Documents for which the Contractor has given notice of its intent to initiate a Type I claim, must be made promptly in order to prevent damage to the Work in place, to prevent significant delay in the Project Schedule or to maintain safety, the ODR may issue an Interim Change Authorization (ICA) directing the Contractor to proceed with changed work before submitting a CPE. The ICA shall authorize the Contractor to bill work as completed on the basis of either (1) time and materials or (2) cost not to exceed a specified amount. Upon receipt of an ICA, the Contractor shall proceed immediately to document all increased costs actually incurred as a result of the Work required under the ICA. At any time prior to the completion of the changed Work, the Contractor may submit a CPE containing a lump sum proposal for the cost of the changed Work, which shall be administered as a Type I change; provided, however, that if the Work is completed prior to acceptance by the ODR of the Contractor's CPE, the Contractor's adjustment of the cost shall be limited to the actual cost of the Work. If the ODR determines that a Contractor-initiated Type I change is without merit, the ODR shall notify the Contractor to proceed according to the subject written interpretation or instruction. Such a notice to proceed shall have the same effect as a Unilateral Change Order pursuant to §20.4.4, and the Contractor's rights shall be as set forth in § 20.4.4.

Article XXII - Pricing Change Order Work

22.1 Lump Sum Cost Proposals. All proposals for an adjustment in Contract Sum shall be made on a lump sum basis, setting forth the Contractor's estimated

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or actual costs attributable to the changed Work only. The proposed lump sum cost adjustment shall consist of a Base Cost, reflecting the Contractor's actual or estimated cost of performing the changed Work, in the case of a Type I change, or the increased cost of performance in the case of a Type II change. The Base Cost of Type I changes may be marked up to cover the Contractor's profit, general conditions costs, scheduling costs, bonding and insurance costs, home office, and all other costs associated with the performance of the Work. The markup also covers all foreseeable impact costs on unchanged Work. If the Contractor believes that the markup is insufficient to cover actual or anticipated impact costs, the Contractor may submit a Type II change request for these additional costs. These lump sum cost provisions also apply to Work performed by or claims submitted by Subcontractors as part of the Contractor's CPE.

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

- a. The total cost of materials and supplies, reflecting all available discounts, itemized by cost and quantity;
- b. The total cost of all labor, including supervision up to the level of Project Foreman, itemized to show manhours by trade and classification, burdened hourly rates, and total labor cost;
- c. The cost of additional supervision at and above the level of Project Foreman, itemized by job function, manhours, and multiplied by the Contractor's as-bid burdened unit cost for supervision as set out at Contractor's Proposal;
- d. The equipment cost calculated for each type of equipment used in performing the changed Work, based on hours of use, and multiplied by the most recent version of the Rental Rate Blue Book for Construction Equipment (published by Primedia Information, Inc.) to yield total cost. Mobilization costs will not be allowed except when the Contractor demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work;
- e. All transportation costs for delivery and handling of materials, equipment and supplies, and the removal of waste or debris; and
- f. All storage costs in excess of 30 days for materials and supplies, if necessitated solely by the changed Work.

22.1.2 Markup on Type I Changes.

No Markup is authorized on the base cost of a Type I claim.

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22.2 Cost Computation for Type II Changes.

- 22.2.1 Costs and documentation. For a Type II change, the CPE shall include a reasonably detailed narrative setting forth (1) the nature of the cost impact and its cause, (2) the basis of the Contractor's claim of entitlement to a cost adjustment, (3) description and documentation of steps taken by the Contractor to mitigate the claimed cost impact, and (4) such other information that the Contractor considers necessary to justify its claim. The cost adjustment proposal for a Type II claim shall be based on itemized documented costs actually incurred. If and only if the actual cost claimed cannot be demonstrated with reasonable certainty, the Contractor may utilize mathematical formulas or models to compute the proposed cost adjustment, but no CPE will be valid unless accompanied by documentation showing that the increased costs claimed in fact resulted from the alleged cause.
- 22.2.2 No Markup Authorized. No mark up is authorized on the Base Cost of a Type II claim.
- 22.2.3 Certification. On CPEs for Type II changes, the Contractor shall certify in writing that all information contained in the CPE is true and correct, and that the costs claimed were incurred as a result of the alleged cause, and were reasonably necessary for the performance of the Work. In the case of Subcontractor pass-through claims, the Contractor shall further certify that the claim stated by the Subcontractor constitutes a legitimate claim against the Contractor, that it is not barred by the terms of the subcontract, and whether and to what extent the claim has been paid. The Contractor may not subsequently modify a claim that has been so certified except for the correction of errors. No Type II CPE shall be considered valid that is not certified.
- 22.2.4 Cost Computations Under Interim Change Authorizations. Where the Owner issues an ICA authorizing the Contractor to proceed on a time and materials, or a cost not to exceed basis, the Contractor may submit the cost of the Work for payment, as authorized by the ICA, in succeeding Pay Applications. At any time after receipt of an ICA, the Contractor may submit a CPE proposing a lump sum cost

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for the changed work, which shall be processed as a Type I change under §22.1 above.

Article XXIII - Time Allotted for Performance; Schedules

23.1 Contract Time. The Contract Time will be measured from the date designated in the Notice to Proceed to the date specified for completion by the Contract Documents, including any modification by Change Order. Failure to achieve Substantial Completion within the Contract Time will subject the Contractor to Liquidated Damages as provided in § 24.5.1. Unless otherwise specified in the Special Conditions or elsewhere in the Contract Documents, the date of Contract Completion shall be the date on which the Work is certified as Substantially Complete, pursuant to Article XIV.

23.2 Work Progress Schedule. Within the period set forth in the Special Conditions, the Contractor shall submit in duplicate to the Owner and the Architect/Engineer, for review and acceptance, a proposed Progress Schedule for the Work. The Progress Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored. Unless otherwise provided in the Special Conditions, the schedule should utilize the Critical Path Method. The Progress Schedule shall take account of the time required for the preparation and review of required Shop Drawings and submittals. If required by the Special Conditions, the Contractor shall also submit a separate Submittal Schedule, correlated with the Progress Schedule, that shows the dates the Contractor intends to make the required submittals.

23.2.1 Schedule Requirements. The Progress Schedule should be accurate and reliable representations of the progress of the Work to date, and of the Contractor's actual plans for its completion. The Progress Schedules shall be capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner and Architect/Engineer that the Contractor will follow the schedule as submitted in performing all Work as yet not completed, and that all progress to date shown on the schedule is accurately depicted.

23.2.2 Schedule Updates. The Progress Schedule and Submittal Schedule (if required) shall be updated periodically to reflect

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

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

23.2.4 Ownership of Float. Float time contained in the Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but may be consumed by either as needed.

Article XXIV - Modification of the Contract Time

24.3 Delays of and Extension of Time. When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor shall be entitled to an extension of time, and in certain instances to compensation for the direct cost of delay, as set forth in § 24.3.3. The Contract Time shall be extended by the number of working days lost by reason of excusable delay, as measured by the Contractor's progress

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schedule (or current update). All extensions of time shall be given in working days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

24.3.1 Time Extensions for Weather Days. A “Weather Day” is a day on which the Contractor’s current schedule indicates Work is to be done, on which inclement weather and related Site conditions prevented the Contractor from performing seven continuous hours of Work between the hours of 7:00 AM and 6:00 PM. Weather days are excusable noncompensable delays. At the end of each calendar month, the Contractor shall submit to the Owner and Architect/Engineer a list of Weather Days occurring in that month. The Owner and Architect/Engineer shall meet with the Contractor to discuss and resolve any disagreements concerning the number of Weather Days. If by the close of the seventh business day after the Owner’s receipt of the contractor’s list, the Contractor and the Owner have not reached an agreement on the total number of Weather Days in the month, and signed a memorandum to that effect, the Owner in its sole discretion shall determine the number of working days it will allow, and the completion time shall be adjusted accordingly. The Owner shall so notify the Contractor in writing by 5:00 PM on the next business day. Should the Owner fail to do so, the Contract Time shall be extended by the number of Weather Days claimed by the Contractor. The requirements of §24.4 concerning requests for time extension shall not apply to requests for extensions of time for Weather Days, which are governed by this section alone. The Contractor’s sole relief for delay for Weather Days will be a time extension.

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

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

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- c. War, civil unrest or insurrection;
- d. Other unforeseeable causes beyond the control of either the Contractor or the Owner.

24.3.3 Excusable Compensable Delay. The Contractor shall be entitled to an equitable adjustment of cost as well as a time extension for delays caused by the following:

- a. Failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents, or to provide information required by the Contractor to proceed with the Work in a timely manner.
- b. Detrimental or obstructive actions of separate contractors employed by the Owner.
- c. Failure of the Owner to provide access to the Site of the Work.
- d. Failure of the Owner to provide materials which are to be furnished by the Owner under the Contract Documents, consistent with the Progress Schedule.
- e. Errors, omissions and imperfections in design which the Owner/Architect/Engineer corrects by means of changes in the drawings and specifications.
- f. Unanticipated physical conditions at the Site which the Owner/Architect/Engineer corrects by means of changes to the drawings and specifications.
- g. Changes in the work ordered by the Owner or the Architect/Engineer.
- h. Suspensions for cause under §24.3.4, which are determined not to have been within the control of the Contractor; or
- i. Suspensions for convenience under § 24.3.5, which prevents Contractor from completing the Work within the Contract Time.

The Contractor's compensation in the event of such delays shall be the cost of extended general conditions for the period of delay. In the event that additional direct costs are incurred solely as a result of the delay, they shall be determined pursuant to Article XXIII.

24.3.4 Suspension of Work for Cause. The Owner may, at any time without prior notice, suspend all or any part of the Work, if, in the Owner's sole discretion, it is considered reasonably necessary to do so to prevent or correct, any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the

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Work when completed. The Owner shall give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work to be suspended. Upon receipt of such notice, the Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, the Owner, with the assistance of the Architect/Engineer, shall initiate and complete an investigation of the circumstances giving rise to the suspension, and shall issue a written determination of their cause. The Contractor will not be entitled to an extension of time or compensation for delay resulting from a suspension if the Owner's investigation determines that the cause was within the control of the Contractor. If the cause is determined not to have been within the control of the Contractor, and the suspension prevents the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Compensable Delay. Suspensions of work under this provision shall be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension.

24.3.5 Suspension of Work for Owner's Convenience. Upon seven calendar days' prior written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty days for its own convenience. The Owner shall give the Contractor a written notice of suspension for convenience, which shall set forth the number of days for which the Work, or any portion of it, will be suspended, and the date on which the suspension of Work shall cease. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is Excusable Compensable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven calendar days' prior written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of Article XXV.

24.3.6 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable under the Contract Documents, the Contractor shall be entitled only to a time extension, and not to compensation, for the period of concurrent

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delay. When the completion of the Work is simultaneously delayed by an excusable compensable delay and an excusable noncompensable delay, the Contractor shall be entitled to a time extension and compensation, as provided under § 24.3.3.

24.3.7 Except as expressly provided in this § 24.3, the Contractor shall not be entitled to an extension of the Contract Time, and shall bear all responsibility for financial risks which may accrue from various causes of delay in the construction progress.

24.4 Time Extension Requests. If the Contractor believes that the completion of the Work has been delayed by a circumstance designated as excusable under § 24.3, other than inclement weather, he shall give the Owner written notice, stating the nature of the delay and the activities potentially affected, within 30 calendar days after the onset of the event or circumstance giving rise to the excusable delay. Such claims should be accompanied by sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days. All requests for extensions of time not submitted in connection with proposed costs for changed or added work must be made in writing within 30 calendar days after the cessation of the delay. Claims for the cost of Excusable Compensable Delays shall be submitted in writing within 90 calendar days after the cessation of the cause of the delay. The Contractor and Owner recognize and agree that it is beneficial to each to identify delays and make necessary schedule adjustments promptly, and that a Progress Schedule prepared and updated by the Contractor provides an effective tool for measuring and tracking the impact of delays. Therefore, it is agreed that no extension of time will be granted unless the required notice is submitted timely, and with sufficient documentation.

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

24.4.1 Contents of Time Extension Requests. Each Time Extension Request shall be accompanied by a quantitative demonstration of the impact of the delay on project completion time, based on the current Progress Schedule. Time Extension Requests shall include a reasonably detailed narrative setting forth (1) the nature of the delay and its cause, (2) the basis of the Contractor's claim of entitlement to a time extension, (3) documentation of the actual impacts of the claimed delay, and any concurrent delays, (4)

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description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Progress Schedule, and (5) such other information that the Contractor considers necessary to justify its claim for an extension of time. No time extensions shall be granted for delays that do not affect the Project completion time.

24.4.2 Owner's Response. The Owner shall respond to the Time Extension Request by providing to the Contractor written notice of the number of days granted, and giving its reason if this number differs from the number of days requested by the Contractor. Such an Extension of Time is effective on the date the Owner's notice is received by the Contractor, but a Change Order reflecting the Extension of Time shall be executed by the parties in accordance with Article XX. The Owner will respond to each properly submitted Time Extension Request within 15 calendar days following its submittal; if the Owner cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner shall so notify the Contractor in writing. Upon written agreement with the Contractor, the Owner shall then have not more than 30 additional calendar days to prepare a final response. If the Owner fails to respond within the agreed time, or in the absence of an agreement, within 45 calendar days from the date the Time Extension Request was originally submitted, then the Contractor shall be entitled to a time extension in the amount requested.

24.5 Failure to Complete Work Within the Contract Time. Time is of the essence of this Contract. The Contractor's failure to complete the Work within the Contract Time will cause damage to the Owner. These damages shall be liquidated by agreement of the Contractor and the Owner, as set forth in the Special Conditions.

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

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

25.1 Termination by Owner for Cause. The Owner may, without prejudice to any right or remedy terminate the employment of the Contractor and take

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possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under the following circumstances:

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

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

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

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

25.2 Termination for Convenience of Owner. The Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for unforeseen causes not limited to court orders, loss of funding, acts of the federal government to discontinue the work, etc., that may occur and render the Owner's continued performance of the Contract impossible or illegal. Upon such an occurrence, the following procedures will be adhered to:

- a. The Owner will immediately notify the Architect/Engineer and the Contractor in writing, specifying the reason for and the effective date of contract termination. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- b. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract.

1. Stop all work.

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2. Place no further subcontracts or orders for materials or services.
3. Terminate all subcontracts.
4. Cancel all materials and equipment orders as applicable.
5. Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.

c. When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed, including any additional work required pursuant to the notice of termination, and for any provable loss and reasonable expenses attributable to the Work resulting from such termination.

25.3 Termination by Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed and for any provable loss and reasonable expenses attributable to the Work resulting from such termination. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

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

Article XXVI - Dispute Resolution

26.1 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the Owner and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor:

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- 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 Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, the contractor shall submit written notice, as required by Subchapter B, to the CDR. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Owner and the Contractor otherwise entitled to notice under the parties' Contract. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.
- b) The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Owner if the parties are unable to resolve their disputes under subparagraph (a) of this article.
- c) Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this Contract by the Owner nor any other conduct of any representative of the Owner relating to the Contract shall be considered a waiver of sovereign immunity to suit.

26.2 The submission, processing and resolution of the Contractor's claim is governed by the published rules adopted by the attorney general pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at GSC Rules, 1 TAC §111.7.

26.3 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 XXVII – Miscellaneous

27.1 Written Notice. Written notice shall be considered to have been duly given if the document is delivered in person to the individual or member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent

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by registered or certified mail to the last business address known to one who gives the notice, or transmitted by fax machine, with a receipt retained to prove delivery. Notice is deemed effective when given rather than when received.

27.2 Supplemental and Special Conditions When the Work contemplated by the Owner is of such a character that the foregoing General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplemental and Special Conditions as described below:

27.2.1 Supplemental Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the General Conditions, where necessary, provided the expansion does not weaken the character or intent of the General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.

27.2.2 Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the General Conditions.

27.3 Federally Funded Projects. If this project is federally funded, the Special Conditions will indicate that fact and will contain any modifications of these General Conditions required as a condition of obtaining federal funding.

27.4 Computation of Time. In computing any time period set forth in this Contract, the first day of the period shall not be included, but the last day shall be.

27.5 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in accordance with the Contract Documents will survive final payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon the Contractor by reason of termination, including without limitation the duty to assign subcontracts and contracts with vendors and suppliers, shall likewise survive the termination of the Contract.

27.6 No Waiver of Performance. The failure of either party in any instance to insist on the performance of any of the terms, covenants or conditions of the

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Contract Documents, or to exercise any of the rights granted thereunder, shall not be construed as waiver of any such term, covenant, condition or right with respect to further performance.

- 27.7 Governing Law. This Contract shall be governed by the law of the State of Texas.
- 27.8 Captions and catchlines. The captions and catchlines used throughout the General Conditions are for ease of reference only and have no effect on the meaning of the terms and conditions set forth herein.
- 27.9 Independent Contractor Status. The Contract Documents create an independent contractor relationship between the Owner and Contractor and neither party's employees or contractors shall be considered employees, contractors, partners or agents of the other party.
- 27.10 No third party beneficiaries. The parties do not intend, nor shall any clause be interpreted to create in any third party, any obligations to, or right of benefit by, such third party under these Contract Documents from either the Owner or Contractor.
- 27.11 Entire Agreement. These Contract Documents supercede in full all prior discussions and agreements (oral and written) between the parties relating to the subject matter hereof and constitutes the entire agreement.
- 27.12 Assignment. This Contract may not be assigned by either party without the prior written consent of the other, except either party may, upon notice to the other party but without the other party's consent, assign this Contract to a present or future Affiliate or successor, provided that any such assignment by Contractor shall be contingent on Owner's determination that the assignee is qualified to perform the work, is in good standing with the State of Texas and otherwise eligible to so business with the State of Texas.
- 27.13 Severability. If any provision, sentence, clause or article of this Contract is found to be invalid or unenforceable for any reason, the remaining provisions shall continue in effect as is the invalid or unenforceable provision were not in the Contract. All provisions, sentences, clauses and articles of this Contract are severable for this purpose.
- 27.14 Parties Bound. Execution of this Contract by each party binds the entity represented as well as its employees, agents, successors and assigns to its faithful performance.

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27.15 No waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of the state's sovereign immunity.

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