

OGC Form No. S-2004-3

SUPPLEMENTAL GENERAL CONDITIONS

AND

SPECIAL CONDITIONS

**University of Houston System
UH - Downtown**

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requires approval of the Office of the General Counsel***

SUPPLEMENTAL GENERAL CONDITIONS
AND
SPECIAL CONDITIONS

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SUPPLEMENTAL GENERAL CONDITIONS and SPECIAL CONDITIONS

General: 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.

Supplemental General Conditions

May describe the standard procedures and requirements of contract administration followed by the Owner. Supplemental General 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 General Conditions are of such a character that is to be anticipated that the Owner will normally use the same, or similar, conditions to supplement each of its several projects.

In the cases of modification of a part or provision of the General Conditions, the unaltered part and/or provision shall remain in effect.

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.

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1. Communications: The UHD Facilities Management Department is intended to complement the activities of the Architect/Engineer during the period of construction covered by this contract. Communication shall be as follows:

- a. All official communication from the UHD FM to the Contractor shall be given through the Architect/Engineer.
- b. Normal daily observation of construction is by the University's Representative assigned to the project.
- c. Additional observation, if required, shall be by the request of the University Representative and the Architect/Engineer and approved by the Office of Facilities Planning and Construction.

2. Pre-Work Conferences: Pre-work conferences will be called by the University prior to commencement of the work of each trade. Contractor shall be represented by superintendent and representatives of applicable trades.

3. Progress Meetings : Progress Meetings will be called by the University as often as deemed necessary. Contractor shall be represented by superintendent and representatives of applicable trades.

4. Subcontracts: The Contractor shall not employ any subcontractor to which the Owner has a reasonable objection and notifies the Contractor in writing within fifteen (15) working days after receipt of the list. If the Owner does not respond in writing within that 15-day period, the listed subcontractors shall be deemed approved by the Owner. The bidder/Contractor will not be required to employ any subcontractor against which it has a reasonable objection.

The Contractor shall have every first-tier subcontractor agree to bound in the same exact manner it is bound to the Owner to the extent of the portion of the work covered under the subcontract, including without limitation with respect to the preparation and submittal of cost estimates and change order proposals in complete detail. The Contractor shall defend, indemnify, and save harmless the Owner from and against any subcontractor's claim that may result from the failure of the Contractor so to bind every subcontractor to said terms.

The Contractor shall be responsible for acts and omissions of his employees and his subcontractors, their agents and employees. The owner may, in writing, require the Contractor to remove from the work any of its employees or subcontractors' employees that the Owner's representative finds to be careless, incompetent or otherwise objectionable.

5. Conditions at Site or Building: It is Contractor's sole responsibility to verify to its own satisfaction all site information, including but not restricted to topographic data, borings, subsurface information, utilities and easements. Owner makes no representation as to the

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accuracy or completeness of site information, and does not warrant same, and is not responsible for any interpretations or conclusions reached by the contractor. 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 his proposal. Any failure to do so will not relieve it from responsibility for successfully performing the Work without additional expense to the Owner.

6. Trenching Safety Precautions, applicable only if the project requires excavation which exceeds a depth of five (5') feet, shall comply with the following:

The successful low bidder will submit a trenching plan to the Owner within fifteen (15) days after bid opening. The plan will be approved and sealed by a professional engineer registered in the State of Texas and employed by the Contractor. Said engineer cannot be anyone who is employed on this project by the Owner or the Owner's Architect or Engineer. Receipt of the plan is prerequisite to award of a contract. Failure to submit a plan as required will result in forfeiture of the bid bond.

The regulation identified as 29 CFR (Code of Federal Regulations) Subpart P - Excavations, consisting of sections 1926.650 through 1926.652 with Appendices A through F, of the OSHA Health and Safety Regulations, as presented in the Federal Register on October 31, 1989, are by this reference made a part of these Specifications. The Contractor shall meet and comply with this regulation and all other applicable safety standards which have been adopted by government agencies which have jurisdiction over this Project.

7. Discrepancies - Although information shown on the drawings is the best available and believed to be accurate, it shall be the Contractor's responsibility to ascertain location and conditions of existing construction and utilities at and adjacent to the site. Dimensions on the drawings are subject to accurate field measurement check by the Contractor.

The Contractor shall provide without extra charge, all incidental items required as part of the work, even though not particularly specified or indicated on the drawings.

The Contractor shall promptly bring to the attention of the Architect/Engineer and Owner any discrepancies between the drawings, specifications and actual field conditions. Adjustments, as required, will be issued through the Architect/Engineer to the Contractor.

8. Definitions: Day: The term "day" is a calendar day of 24 hours, beginning at 12:00 midnight. All computations of and references to time shall be based upon a calendar day.

Pre-Final Inspection: An inspection conducted to determine that a project, or a portion thereof, is substantially complete.

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Final Inspection: An inspection conducted to determine that all deficiencies found in the pre-final inspection or subsequently have been corrected and that it is appropriate to release retainage and/or make final payment.

Interpretation of Phrases: Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that references to the drawings accompanying this specification is made unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is "furnish and install", unless stated otherwise. Whenever the words, "required", "permitted", "designated", "considered necessary", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Architect/Engineer and Owner is intended; and, similarly, the words "approval", "acceptable", "satisfactory", or words of like import shall mean approved by or acceptable or satisfactory to the Architect/Engineer and Owner.

Whenever in the Specifications or drawings the terms or description of various qualities relative to finish, workmanship, or other qualities of similar kind which cannot, from their nature, be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then in all such cases, any questions of the fulfillment of said specifications shall be decided by the Architect/Engineer and Owner, and said work shall be done in accordance with their interpretations of the meaning of the words, terms or clauses defining the character of the work.

9. Safety Precautions and Programs: 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. Secs. 651 et seq., the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all the provisions of this Act.

In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered. Compensation shall be based on a time and materials cost basis for emergency work performed by the Contractor.

The Contractor's Schedule of Values will include a separate value for trench safety systems, and the Contractor's Progress Payment Requests will include a separate pay item based on the value represented by the percentage of completion of such systems. It is the sole duty, responsibility, and prerogative of the Contractor, not the Owner or the Owner's Architect or Engineer, to determine the specific applicability of the designed trench safety systems to each field condition and to make inspections of the trench safety systems. The Contractor shall maintain a permanent record of inspections. The Contractor shall indemnify and hold harmless the Owner and its employees and agents, including the Owner's Architect and

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Engineer, from any and all damages, costs (including, without limitation, legal fees, court costs, and the cost of investigation), judgments, and claims by anyone for injury or death of persons resulting from the collapse or failure of trenches constructed under this contract. The Contractor shall at its own cost and expense protect its employees and other persons from risk of death, injury or bodily harm arising out of or in any way connected with the Contractor's Work.

The Contractor shall ensure that all its employees perform their work in strict compliance with all safety rules and regulations. No Contractor or their respective employees, shall in any way rely upon Owner nor any of its employees, to ensure compliance with such rules and regulations applicable to Contractor nor shall any Contractor, or any of its employees, rely upon the Owner to supply any safety equipment, safety devices or other safety precautions necessary to the performance of Contractor as set forth in the contract documents.

The Contractor shall indemnify, defend and save the Owner harmless from any liability, loss, cost, penalty, damage or expense, including attorneys' fees, which Owner may incur as a result of any claim, damage, injury, course of action, proceeding, citation, or work stoppage arising out of or in any way connected with any alleged violation by Contractor of any such statute, regulation, order, rule, requirement or standard.

10. Observation Review: The following items of work as they may apply to this Project must be witnessed or reviewed by the University's representative during the course of the work. Notice of not less than 24 hours shall be given by Contractor before commencing any of the following:

- a. Installation, testing and location of underground plumbing lines.
- b. Sanitary sewer tie-ins.
- c. Electric service tie-ins.
- d. Activation of all connections to University supplied utilities.
- e. Pressure tests on all lines.
- f. Location of all valves.
- g. Concrete placements.
- h. Checking of all reinforcing steel prior to placement of concrete.
- i. Hardware delivery.
- j. Backfill compaction.
- k. All special item tests.
- l. Emergency generator test.
- m. Ductwork installation.
- n. Waterproofing.
- o. Roofing.
- p. Welding.
- q. Flushing of heating and cooling lines.
- r. Cleanliness of premises prior to running any air handling unit.

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11. Removal of Defective Work: As set forth in the General Conditions 12.3, the Owner's representatives and the Architect/Engineer shall interpret the Contract requirements and shall be the final judge of the acceptability of the work under the Contract Documents. If any materials furnished under this Contract are condemned by the Owner and/or Architect/Engineer, the Contractor shall, after having received notice from the Owner and/or Architect/Engineer to that effect, proceed to remove from the grounds or buildings all condemned materials, whether worked or unworked, and to take down all portions of the Work which the Owner and/or Architect/Engineer shall by like written notice condemn as unsound or improper or as in any way failing to conform to the Drawings and Specifications, and shall make good all work damaged or destroyed thereby.

The Contractor shall, without charge, replace any material or correct any workmanship found by the Owner or Architect/Engineer not to conform to the contract requirements. The Contractor shall promptly correct all Work rejected by the Owner or Architect/Engineer as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Owner may, 1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or 2) terminate the contract.

If any portion of the Work is concealed by subsequent work contrary to the instructions of the Owner or Architect/Engineer or to the requirements, specifically expressed in the Contract Documents, it must be uncovered for observation and recovered at the Contractor's expense.

If any other portion of the Work has been covered which the Owner or Architect/Engineer has not specifically requested to observe prior to being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and recovering shall, by appropriate Change Order, be charged to the Owner. If such Work is not found to be in accordance with the Contract Documents, the Contractor shall pay such costs.

12. Royalties and Patents: The Contractor shall pay all royalties and license fees, and defend all suits or claims for infringement of any patent rights and shall indemnify and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified; provided, however, if the Contractor has reason to believe the design, process or product specified constitutes an

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infringement of a patent, he shall be responsible for such royalties, license fees and loss unless he promptly gives such information to the Owner and the Architect/Engineer.

13. Equal Materials: It is not the intent of the Specifications to limit materials 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 so as to set a definite standard and a reference for comparison as to quality, application, physical conformity, and other characteristics. It is not the intention to 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 material shall not be made without prior written approval from the Owner and the Architect/Engineer. The Contractor shall be responsible for any additional costs or delays resulting from having furnished materials, equipment or fixtures other than those specified, and shall reimburse the Owner for any increased design costs resulting from such substitutions. The Owner shall be the final judge of whether a proposed substitution meets or exceeds the characteristics of a specified item and decisions of the Owner relative to the equality of items proposed as substitutes for specified items shall be final and conclusive. The Contractor shall make any corrections required and shall resubmit the required number of corrected copies of the Shop Drawings or new Samples of materials until approved. The Contractor shall direct specific attention in writing to any new revisions other than the corrections requested on previous submissions.

14. Shop Drawings: 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.

- a. The Contractor shall submit a minimum of one (1) reproducible sepia and six direct prints of shop and erection drawings promptly after the contract has been awarded. The drawings shall be prepared by a skilled draftsman and presented in a clear and thorough manner. This will be strictly enforced and any drawings not complying will be promptly rejected. Instructions regarding the shop drawings to be submitted for review will be given the successful contractor at the pre-construction conference.
- b. The sepia will be returned with any comments or corrections noted. If no exceptions have been taken, sepia shall then be printed for distribution as required for fabrication and erection. When re-submittal is required, the shop or erection drawings shall be corrected or redrawn and a new sepia and print submitted for review. Any time delay caused by correcting and resubmitting shop drawings will be the responsibility of the Contractor.
- c. Contractor shall affix the following endorsement to all shop drawings: "Contractor has checked shop drawings and certified that shop drawings meet contract requirements".

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Date: _____ By: _____
General Contractor: _____

- d. The Architect/Engineer will stamp and note the shop drawings as follows:
"TO THE CONTRACTOR"

- ☐ No exceptions taken
- ☐ Comments noted
- ☐ Re-submittal required
- ☐ Returned for failure to note
comments and compliance with
intent of Contract Documents.

- e. The Contractor shall, where required under the several sections of the Specifications, furnish for approval within thirty (30) days of date of contact, samples of the material he proposes to use in the work. In the instance of a proposed substitution, samples of both the material specified and the proposed substitute material shall be submitted. Samples shall be so packed as to arrive at destination in good condition and with all transportation charges prepaid by the sender.
- f. Subcontractors shall be required to submit samples to the General Contractor who shall determine that such meet the requirements of the Specifications and then forward in one transmittal to the Architect/ Engineer the samples of all materials to be selected.
- g. Within three weeks after issuance of Notice to Proceed, Contractor shall submit to Architect/ Engineer for concurrence a list of required shop drawings and samples and schedule of submittal.

15. Cleaning: The Contractor shall at all times keep the premises clean and free from accumulation of waste materials or rubbish caused by the work under this contract. Upon completion of the Project, and prior to the final inspection, the Contractor shall have the premises in a neat and clean condition.

16. Contractor's As-Built Drawings/Specifications/Contract Documents: The Contractor shall be responsible for maintaining at the project site, one (1) complete set of Master As-Built Drawings/Specifications/Contract Documents, on which all changes to the work are duly recorded to provide accurate, factual information relative to the work as constructed, both visible and concealed. Identify in the Specifications the Manufacturers and products actually used in the project. These specifications are to be maintained in good condition by the Contractor and forwarded to the University or Owner at the end of the project.

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The Contractor shall direct subcontractors to maintain a set of As-Built Drawings/ Specifications/Contract Documents on a daily basis and to transfer entries to the Master As-Built set on a weekly basis. All final drawings are to be placed on CAD and a copy furnished to the Owner. Master As-Built Drawings shall be available for review upon request by Architect/Engineer or Owner.

Master As-Built Drawings shall consist of blue line or black line contract drawings and shop drawings. Entries shall be made with erasable colored pencil to clearly describe, by notes or graphic lines, all changes, deviations, clarifications, field established dimensions and details, and actual location and invert elevations of all underground or concealed utilities.

At the completion of the project, Contractor shall deliver Master As-Built Drawings and subcontractor's As-Built Drawings to the UHD FM. Accompany submittal with letter certifying that the documents as submitted are complete and accurate, and reflect actual conditions at the project site.

Upon review and approval, the UHD FM will transmit Master As-Built Drawings set to Project Architect/Engineer for preparation of Final Record Drawings.

17. Operation and Maintenance Manuals: The Contractor shall submit separate Operation and Maintenance Manuals arranged for the following Divisions; Door, Windows, Glass - Division 8; Elevators - Division 14; Mechanical - Division 15; Electrical - Division 16; and any additional data requested by Owner for equipment or systems requiring Operation and Maintenance information.

Operation and Maintenance Manuals shall be completely indexed, thumb tabbed for each section and bound in vinyl covered three-ring binders, properly labeled on spine and cover, and shall consist of the following:

- a. Complete description of each system, item of equipment, and apparatus provided under the Division, including ratings, capacities, performances, data and curves, characteristics identifying name and number, locations, and wiring diagrams.
- b. Fully detailed parts lists, including all numbered parts, and recommended spare parts, of each item of equipment and apparatus provided under the Division.
- c. Manufacturer's printed instructions describing operation, service, maintenance, and repair of each item of equipment and apparatus.
- d. Typewritten record of all tests made of materials, equipment and systems included under the Division. Such records shall state the dates the tests were

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conducted, name(s) of person(s) making and witnessing the tests, and citing any unusual conditions relevant to the tests.

The Contractor shall submit four (4) copies of Operation and Maintenance Manuals for all equipment and systems specified. Operation and Maintenance Manuals shall be Architect/Engineer approved and delivered to the UHD FM prior to the date of substantial completion.

18. Operation Instructions for Owner: Upon completion of the work and before substantial completion, the Contractor shall instruct the Owner's operating personnel in the operation and maintenance of all equipment and systems.

The instructions shall consist of a minimum of twelve (12) hours per system, performed during normal working hours unless otherwise noted in project specifications.

19. Contract Changes: In addition to or for further clarification to the General Conditions, Article XXI, the following shall apply:

Change Orders: A Change Order is a written order to the Contractor signed by the Owner and the Architect/Engineer issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

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

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

Procedures for administration of Change Orders shall be as follows:

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Owner/Architect/Engineer shall issue to Contractor sequence numbered bulletins or Change Order Requests (COR) prepared by Owner/Architect/Engineer at Owner's direction, describing the work to be done along with necessary drawings.

Contractor shall submit to Owner and Architect/Engineer a Change Proposal form incorporated herein prepared by Contractor detailing cost and time changes, if any, and bearing sequence number of bulletin, complete with material quantities and unit costs, labor quantities and unit costs, plus fees.

Format: Unless otherwise directed, proposed contract changes shall be a net lump sum estimate after adds/deducts of labor and material costs and subcontracts for each applicable line item of the Schedule of Values, quoted on the change proposal form provided herewith or in format as directed, with matching quotations of subcontractors performing work on the site as support. Labor shall include wages necessary to perform the changes in work. Equipment used to perform the work shall be included as consumables, if taxable. Create a separate line item, if equipment is not taxable.

Markups: Payroll insurance, taxes and benefits markups used by Contractor and each subcontractor shall be evidenced by submittal of the following or any other documentation if requested on first quotations or any subsequent change in rates used in quotations:

Insurers Rating sheet for charges due to applicable Worker's Compensation , Public Liability and Property Damage Insurance. Employer's Association (AGC, ABC, Employers Council, etc.) current wage agreement sheet for charges due to benefits. State Unemployment and Federal Excise Tax Certificates for charges due to unemployment insurance. Social Security Taxes.

Lower Tier Quotations: Subcontractors' quotations from their Subcontractors performing work on the site.

Origin and Authentications: Contract changes shall be issued by the Architects or Owner's Representative at Owner's direction, incorporating the agreed quotation for the work and its description. Change orders shall be signed by Owner and Contractor to be effective.

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UNIVERSITY OF HOUSTON SYSTEM
UH - Downtown
Facilities Management

CHANGE PROPOSAL

CHANGE PROPOSAL No. _____

Company Name _____

Project Name _____

Address _____

Bulletin No. _____

Date _____

Architect _____

Address _____

AS PER THE ATTACHED QUANTITY LIST, THE FOLLOWING BREAKDOWN OF PROPOSED COSTS FOR:

_____ IS AS FOLLOWS:

- | | | | |
|----|----|--|----------|
| A. | 1. | Cost of Material & Supplies | \$ _____ |
| | 2. | Cost of Labor | \$ _____ |
| | 3. | Cost of Transportation of Material (if applicable) | \$ _____ |
| | 4. | Subtotal | \$ _____ |
| B. | 5. | Total Cost for Subcontractor(s) | \$ _____ |
| | 6. | Subtotal of Lines 4&5
(Part B - Line5 not applicable if no subcontractor is involved) | \$ _____ |
| | 7. | Cost of Insurance (Builder's Risk Only)
(Percentage of Line 4 or 6) | \$ _____ |
| | 8. | Cost of Performance & Payment Bonds If Applicable
(Percentage of Line 4 or 6) | \$ _____ |
| | | Total Value of Proposal | \$ _____ |
| C. | | Request _____ calendar day(s) to be added to contract time for this change. | |

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SIGNATURE

DATE

UNIVERSITY OF HOUSTON DOWNTOWN

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Where deductive changes occur, the Contractor and the applicable Subcontractor shall prepare credit proposals in the same manner as for added work except where the word add appears insert the word deduct.

Except as provided above, no order, oral statement, or direction of the Owner or its duly appointed representative shall be treated as a change under the article or entitle the Contractor to an adjustment thereunder.

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

21. Unit Prices: If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted as provided in these Supplemental General Conditions. Each unit price bid by the Contractor shall include all costs applicable to the work, including but not limited to mobilization, demobilization, labor, materials, equipment, supervision, delays, overhead at any level, and profit.

22. Progress Payments: No progress payments will be made prior to receipt and approval of the schedule and breakdown, which shall be in such detail as may be required by the Owner. The breakdown shall be submitted to the Architect and Owner not less than twenty (20) days prior to the first request for payment, and this shall be a condition precedent to the processing of the first payment. The breakdown shall follow the trade divisions of the specifications and each item thereunder shall include its pro rata part of overhead and profit so that the sum of the items will equal the contract price. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the work in place when completed. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Five percent (5%) retainage will be held on each pay request.

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Owner/Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed, or corrected, is less than 5% retainage stipulated in the Contract Documents, and if bonds have been furnished as required, such payment shall be made under the terms and conditions governing final payment, and shall not constitute a waiver of claims. Final payment shall be made after completion of the Work by the Contractor in accordance with the Contract Documents. The provisions of Title 10 of the Texas Government Code § 2251.021, Vernon's Texas Code Annotated apply to payments under this Contract.

Payment shall be requested on University standard request forms. Multiple copies are stipulated.

In preparing estimates all material delivered and labor performed shall be included in the progress upon which payment is based. However, payment for materials will not be made prior to approval of materials for which submission and approval is specified. Furthermore, stored materials will be paid for on the basis of invoice price.

In addition to the reasons given in Article 13.5 of the General Conditions, the Owner may also withhold or, on account of subsequently discovered evidence, nullify that part of any certificate to such extent as may be necessary to protect the Owner from loss on account of: Claims filed or reasonable evidence indicating probable filing of claims; Failure of the Contractor to make payments properly to Subcontractors for material or labor; Default of the Contractor in the performance of the terms and/or conditions of the contract; Assessment of Fines For Violation of Federal Wage Rate Laws.

All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from 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 as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

The Contractor agrees that at any time upon request of either the University or the Architect/Engineer, it will submit a sworn statement setting forth the work performed or material furnished by Subcontractors and materialmen, and the amount due and to become due to each, and that before the final payment called for hereunder it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for materials and labor used in connection with the work called for hereunder.

Pay estimate certificates must be signed by a corporate officer or a representative specifically named by the Contractor.

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If the Owner so requires, the Contractor in requesting payments for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

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

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

The Owner's representative shall ascertain the facts and the extent of the delay and extend the time for completing the work when in the representative's judgement the findings justify such an extension of contract time. The findings of the Owner's representative are final and conclusive on both parties.

24. Failure to Complete Work on Time: The time set forth in the Contract for the completion of Work is of the essence of this Contract. Contractor's failure to complete the Work within such time will cause damage to the Owner. Where appropriate, the value of such damages are stated in this paragraph.

A breach of contract as to completion time will cause damage to the Owner; therefore, for each and every calendar day after the expiration of the Contract Time that any work, including the correction of deficiencies found during the final inspection, is not completed and accepted, the amount per day as stipulated in the Contract will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages and added expense for contract supervision and Owner's delay costs in obtaining the use of the Work.

<u>Contract Amount From More Than</u>	<u>Contract Amount To and Including</u>	<u>Calendar Day</u>
\$	\$ 25,000	\$ 42.00
25,000	50,000	70.00
50,000	100,000	105.00
100,000	500,000	140.00
500,000	1,000,000	210.00
1,000,000	2,000,000	280.00
2,000,000	5,000,000	420.00
5,000,000	over 5,000,000	600.00

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

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

An increase in working forces; an increase in equipment or tools; an increase in hours of work or number of shifts and expedite delivery of materials.

The Contractor shall, within five (5) calendar days after being so informed, notify the Owner of the specific measures taken and/or planned to increase the rate of progress together with an estimate as to when scheduled progress will be regained. Should the plan of action be deemed inadequate by the Owner, the Contractor will take additional steps or make adjustments as necessary to its plan of action until it meets with the Owner's approval. The increased rate of work will continue until scheduled progress is regained. Scheduled progress will be established from the latest revised progress schedule for the job. Timely completion will be understood to be the contract completion date as revised by all time extensions granted at the time acceleration is undertaken. The Contractor shall not be entitled to additional compensation for the additional effort it applies to the work under the terms of this subparagraph. The time specified for completion in the Agreement shall cover final cleanup of the premises and completion of punch list deficiencies.

26. Beneficial Occupancy: Beneficial occupancy will often be extended to cover:

- a. Complete control of project.
- b. Circulation of services.
- c. Personnel occupancy.
- d. Operation of mechanical, electrical, and plumbing systems.

Inspection for substantial completion for beneficial occupancy will be based on the following, but not limited thereto:

- a. Completeness of the work.
- b. Operation of heating, ventilating, and air conditioning systems.
- c. Operable electrical systems.
- d. Inspection by the Owner/ Architect/Engineer and the development of composite Punch List for spaces desired for Beneficial Occupancy must be made prior to any acceptance.
- e. Spaces which are accepted for Beneficial Occupancy must be accessible by elevator, stair, walk, drive, etc. and have toilet facilities available.
- f. Life Safety (All aspects of Life Safety Requirements)

27. Additional Inspection Costs: Contractor shall be charged with any cost for re-inspection resulting from substantial differences between the Contractor's list of items to be

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completed or corrected and the list of items resulting from the Owner/Architect/Engineer inspection.

28. Temporary Facilities:

Field Offices: Contractor to maintain field offices for its own Foreman.

Parking: Contractor employee parking will be restricted to an area designated by the Owner. Parking in other existing University facilities will not be allowed except as specifically stated in the Contract. The Contractor shall be responsible for enforcement of employee parking within the construction site.

The University reserves the right to impound or have impounded any vehicle which is parked in a manner dangerous to vehicular or pedestrian traffic or otherwise in violation of University parking regulations. The vehicle owner will be responsible for the costs involved in removing, impounding, and storing such vehicles. Copies of the University's traffic regulations will be made available to the Contractor.

Workmen Restrictions: The University will not permit workmen the use of elevators, telephones, hand tools, power tools, furniture, toilets, food service or any facility or convenience specifically restricted to University personnel use.

Sanitary Facilities: The Contractor shall provide sanitary facilities separate from the project construction and keep these clean.

Utilities: All costs involved with utility connections will be at Contractor's expense including restoration to original condition.

Electrical Power: Will be as shown on the plans and defined in the Specifications. Any use of existing University secondary service is only with the permission of the UHD FM.

Heat: Contractor shall provide and pay for heat. Contractor may use Owner furnished heat, if available at the site, at no cost to the Contractor. Connections will be made at the University's convenience.

Water Service: Will be as designated on the drawings. Point and time of connection will be coordinated with UHD FM.

Telephone: A minimum of one each, city phone, separate from UHD for General Contractor and one for University Representative shall be installed and maintained for duration of the work. Contractor will advise the University of date of installation of all phones and phone numbers of each instrument.

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Emergency Contacts: Contractor shall maintain in an accessible place, and publish monthly an updated list of phone numbers for emergency contacts. List is to include: job number, office numbers of Subcontractors and home numbers of key personnel who will be responsible for the project.

Temporary Building: With the Owner's express written approval, the Contractor may erect temporary buildings at its expense, which shall remain its property. The Contractor shall remove such buildings and associated utilities service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

Temporary Roadways: The Contractor will use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Load limits of vehicles shall not exceed the limits prescribed by appropriate regulations or law. The Contractor will provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage, and any damage thereto shall be repaired by and at the expense of the Contractor.

Entrances and Routes: The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.

29. Delivery of Mail and Packages: The University will not deliver or accept Contractor's mail. Contractors are requested to direct all project mail to the Contractor's off-campus offices, or to a project mailing address which is different from the University's address.

30. Permits: Permits, licenses, assessments and Utility Tap Fees necessary for the construction of the project shall be secured and paid for by the Contractor as required.

After building occupancy by UHD obtain burn permit from UHD FM prior to welding or cutting torch work. Care should be taken to avoid false alarm from the building fire alarm system due to smoke or dust.

Any Contractor with roofing operations using ignited torches, open flame, or other flame-producing devices, must have the proper permits ordained by all applicable city and state agencies; including but not limited to the City Council of the City of Houston, Texas. All permits shall be secured and paid for by the Contractor.

Copies of applicable permits and licenses shall be furnished to the UHD FM.

Contractor shall indemnify and hold harmless Owner for any and all claims arising out of the failure to obtain the proper permits.

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31. Protection of Property: Barricade construction site as follows: The construction site designated on the Contract Drawings shall be surrounded by a minimum 6' high fence, made of 6 x 6 No. 10 (6" maximum opening), with posts at 10'-0" o.c., and a strand of #9 smooth wire at top and bottom or other fence system as approved by the Owner. Location of gates for Contractor's use to be approved by the University. Remove fence at completion of job.

Work necessary outside the barricades shall be accomplished only with prior approval by University and with proper protection. University may revise the entrance to the site if reasonable conditions indicate.

All fencing shall be installed and maintained in the manner shown in the Contract Documents. If any variation from the Contract Documents is desired, Contractor must secure the approval of UHD FMJ.

32. Trees to be Protected: All existing trees to remain on the site are to be carefully protected by the Contractor from foliage, trunk and root damage.

Barricade all trees to remain. Provide 4' chain link or high density UV stabilized orange polyethylene fence enclosure at drip line of tree. Such fenced areas shall not be used for storage of building materials or for any purpose likely to damage tree roots or branches. The fences shall be left in place until the Owner/Architect/Engineer approves removal.

Protect trees designated to remain from:

Compaction of root area by equipment or material storage.

Trunk damage by moving equipment, material storage, nailing or bolting.

Strangling by tying ropes or guy wires to trunks or large branches.

Poisoning by pouring solvents, gas, paint, etc., on or around trees and roots.

Cutting on roots by excavating, ditching, etc.

Damage of branches by improper pruning.

Failure to water trees or cutting or changing normal drainage patterns past roots so that tree suffers drought.

Changes of soil pH factor by disposal of lime base materials, such as concrete, plaster, etc., is prohibited.

Damaged Trees: University shall select and retain a tree expert, at the Contractor's expense, to make necessary repairs.

Replacement: Replacement shall be made if, in the opinion of the tree expert, the tree is beyond repair. Replacement value will be established by the following scale:

"Tree Caliper" or greatest trunk diameter at any point from the base to a point 30 inches above ground, as expressed in the following chart:

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3 inches	\$ 300.00
4 inches	450.00
5 inches	600.00
6 inches	800.00
7 inches	1,000.00

Over 7 inches, the price will be determined by the University at the time the tree is damaged.

33. Use of Premises, Removal of Debris, Street Cleaning and Rodent Control:

Contractor shall maintain the site keeping it clean; building rubbish shall be removed periodically. No excessive rubbish accumulation will be allowed. Clean site of construction debris at completion of project. Dispose of debris off University property.

No fires for disposal of anything are allowed at any time. No open fires for heating purposes will be allowed.

At completion of construction, the entire building shall be cleaned to the extent that the Owner can occupy the building for its intended use without additional cleaning.

Contractor shall designate a place approved by University for washing concrete truck chutes and will be responsible to dispose of the rubble from the site. No concrete rubble or other waste is to be buried on the site.

Dirt, debris and water which accumulates on University streets and city streets as a result of this contract shall be removed by the Contractor. Such cleaning must be accomplished at least once a day and in some limited instances, it may be necessary for University to request continual cleaning.

Contractor shall provide trash receptacles with tight fitting lids or disposal of food residue. Containers shall be emptied daily off University property. Extensive rodent and pest control programs shall be initiated as early as applicable and as approved by the University.

34. Interruption of Services and Functions - Disconnection, Moving, Reconnecting, Reinstalling Utilities and Appurtenances: Interruption of utility services must be held to a minimum and cannot be scheduled so as to interrupt classes. UHD FM will coordinate and schedule interruptions with the Contractor.

Notify in writing UHD FM of need to interrupt services as far in advance as possible (a minimum of 10 calendar days). Interruption of services will be scheduled at the earliest possible time that is most convenient to the University.

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Should the interruption of services be required at a time other than normal working hours, the expense of such premium labor time shall be paid for by the Contractor.

UHD FM desires to do the following work on the existing utility services to accommodate the Contractor:

- Open and close all valves on chilled water, steam heating water, and domestic water.

- Open and close all switches on primary electric feeders.

When overtime work is required by the Contractor during the utility tie-ins (or correction of Contractor's damage to existing utilities), then Physical Plant personnel must be involved. This work shall be coordinated with them for their availability. In the event of correction to broken utilities, the cost of the UHD FM personnel will be backcharged to the Contractor.

The Contractor shall bear all expenses for temporary services required during interruption and shall bear the University's expense every time shutdown causes University lost work time.

35. Connecting to University Supplied Utilities: As project nears completion, the following requirements must be met prior to connection of University supplied utilities.

All valves feeding utilities into the Contractor's building area from the Owner's utilities system will be opened and closed by University's personnel.

Contractor will, at all times, respect the use of Owner supplied utilities, using them prudently.

Utility feeds will be turned on after the building is totally broom cleaned, with the following activities having been completed 100 percent:

- a. Terrazo grinding and cleanup
- b. Plastering and cleanup
- c. Spray painting
- d. Any work causing airborne contaminants, specifically the use of materials with cement or lime base
- e. Piping cleaned and flushed
- f. Insulation complete on all cold services

Inspection of job will be accomplished by University to determine if conditions listed above have been met prior to opening of valves for service.

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Steam and/or hot water return from the units will be dumped in lieu of being returned through the existing system for a period of time to be determined by the University. Contractor should determine at what point in his system this will be accomplished and submit that information for the University's approval.

Chilled water return from the units will be dumped in lieu of being returned through the existing system for a period of time to be determined by the University. Contractor should determine at what point in his system this will be accomplished and submit that information to the University for approval.

After initial filling of the system as above, all strainers in piping shall be blown down and left clean when placed back in service. Valves shall be checked for tight closing.

Prior to placing a full load on the electric service, the University will be notified and the activation of the full loads into this service will be at a time agreeable to the University and under the supervision of the University personnel coordinated through UHD FM.

36. Broken Utility Lines: The following is a procedure guide to be followed when one of the University utilities has been inadvertently broken by the Contractor:

Report break immediately to the Owner's Representative.

If the Owner's Representative is unavailable, report this break immediately to the UHD FM, Telephone: 713-221-8026.

If neither of the above is available, contact the UHD Police, Telephone: 713-221-8065.

University will turn off and place out of service all utilities involved. They will also turn on these same utilities when the Contractor's repair is completed.

Repairs to the outdoor lighting system shall be as follows:

- a. Inform the UHD FM that the break has occurred and request them to lock that circuit out of use. Caution should be observed, because this may be a high voltage direct current series circuit.
- b. DO NOT REPAIR CIRCUIT. The University will effect necessary repairs at the Contractor's expense.

37. Waiver

No consent of waiver, express or implied, by either party to this Contract or any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a party hereunder. Failure on the part of any party hereto to complain of

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any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute waiver of the rights of such party hereunder. Inspection or failure of Owner to perform any inspection hereunder, shall not release Contractor of any of its obligation hereunder.

38. Material Safety Data Sheets

Contractor shall maintain current MSDS documentation for all material at contractor's UHD FM Office, work area, and contractor's home office.

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PROJECT SPECIAL CONDITIONS

The Special Conditions shall be subject to the requirements of the General Conditions as well as the Supplemental General Conditions. These Special Conditions shall be used in conjunction therein as a part of the Contract Documents.

- I. The term "Architect/Engineer" shall mean: Barbre Consulting Inc, 222 Pennbright, Suite 115, Houston Tx 77090
- II. Project shall be: Elevator Modernization 7a,7b,8a,8b
- III. Project Manager shall be the Owner's representative on the job.
- IV. Contractor shall visit the project site, verify all the existing conditions to be renovated and become familiar with conditions affecting the work before submitting price proposal.
- V. The Contractor obtain Drawings and Specifications at his own expense at location as specified.
- VI. Any work related to Fire Alarm Systems, including installation of new devices or relocating existing devices, must be reported to UHD FM (713-221-8026) so that fire alarm testing may be conducted. Fire sprinkler subcontractor(s) must be present during the testing.

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