



**Contracting Branch | Infrastructure Division
4200 Smith School Road
Austin, Texas 78744**

**REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP)
FOR
STATEWIDE GENERAL CONSTRUCTION
JOB ORDER CONTRACTING (JOC) SERVICES – INDEFINITE
DELIVERY/INDEFINITE QUANTITY (IDIQ)**

Solicitation Number: 2024Statewide-JOC
NIGP Class/Items: 912-00

<i>RFCSP Issue Date:</i>	<i>May 10, 2024</i>
<i>Pre-Proposal Meeting:</i>	<i>10:00 AM, May 16, 2024</i>
<i>Questions Due:</i>	<i>5:00 PM, May 28, 2024</i>
<i>Question/Answers Addendum</i>	<i>(Est) June 5, 2024</i>
<i>Response Due Date:</i>	<i>2:00 PM, June 11, 2024</i>

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ATTENTION: It is the responsibility of interested parties to periodically check the Electronic State Business Daily (ESBD) website for updates to this solicitation prior to submitting a response. The Respondent's failure to periodically check the ESBD will in no way release the selected contractor from "addenda or additional information" resulting in additional cost to meet the requirements of the RFCSP.

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SECTION I – GENERAL INFORMATION AND REQUIREMENTS

1. INTRODUCTION

- 1.1. The Texas Parks and Wildlife Department (Owner or TPWD) is seeking proposals through this Request for Competitive Sealed Proposals (RFCSP) from interested qualified firms (Respondents) to provide General Construction Job Order Contracting (JOC) services on an Indefinite Delivery/Indefinite Quantity (IDIQ) basis for various facilities throughout the state pursuant to Title 10, Texas Government Code, Title 10, Subtitle F, Chapter 2269, Subchapter I, in accordance with the terms, conditions and requirements set forth in this RFCSP. This RFCSP provides sufficient information for interested parties to prepare and submit proposals for consideration by TPWD.
- 1.2. TPWD has determined that the use of JOC benefits the public by providing an effective means of reducing total lead-time, facilitating collaboration between the Contractor and design team, and reducing cost for public works projects. Through the use of unit pricing and job orders, time consuming and costly aspects of traditional public works processes can be eliminated. TPWD seeks to implement a JOC program in which any selected Job Order Contracting Contractor (JOCC) will perform minor construction, repair, rehabilitation, and/or alterations of facilities and buildings, and other projects of interest.
- 1.3. TPWD will select the successful JOCC(s) that offer best value based on the published evaluation criteria provided in [Section II, Subsection 6](#) of this solicitation and on its ranking evaluation. The goal is to award one or more Indefinite Delivery/Indefinite Quantity (IDIQ) contracts to qualified Respondents.
 - 1.3.1. TPWD intends to award one or more contracts from which TPWD may assign Contractor(s) to perform construction services statewide. The number of awarded contracts will depend on the number of proposals received and the evaluation results.

2. SOLICITATION BACKGROUND AND DESCRIPTION

- 2.1. Through the JOC program, TPWD aims to make significant strides in addressing repair backlogs and construction needs at parks and other facilities statewide including wildlife management areas, fish hatcheries, regional offices, and the Game Warden Training Center. The backlog of repairs and construction needs remains substantial and continues to grow as facilities deteriorate due to age, use and weather impacts. Additionally, recent efforts to identify facility Americans with Disabilities Act (ADA) compliance data agency wide point to the need for greater investment of resources to make agency facilities accessible to all Texans.
 - 2.1.1. The primary goal of this Program is to substantially extend the number of resources available to perform essential trade-related work to address the Department's repair and construction needs. TPWD expects to see significant reductions in transactional cost and significant reductions in delays between work identification and work completion for projects suitable to JOC.
- 2.2. TPWD's facilities are extremely diverse, varying in age, construction, maintenance history, current condition, etc. This RFCSP will cover all of these diverse facilities. Respondents must be able to provide a wide variety of general construction services for TPWD facilities at locations throughout the state. Projects will range in size and complexity.
 - 2.2.1. The Austin Headquarters Complex contains over 145,000 square feet of office space at TPWD Headquarters (HQ) and 45,000 square feet of leased space at Airport Commerce Park. The HQ building was completed in 1976 and is in significant need of repair, renovation and upgrade.
 - 2.2.2. The State Parks Division is the largest division in TPWD with over one third of the agency's staff. The State Parks Division is responsible for the maintenance and operation of 96 State Parks, State Natural Areas, and State Historic Sites throughout the state of Texas. These sites include a wide range of facilities ranging from restrooms, showers, staff residences, cabins, camping sites,

restaurants, retail stores, and more. In order to ensure that these facilities remain safe and available to the public, ongoing maintenance and repair projects are needed at these facilities.

- 2.2.3. The Law Enforcement Division is supported by staff at 29 offices across Texas.
- 2.2.4. The Wildlife Division manages 50 wildlife management areas which provide opportunities for research, education, and public use on 748,660 acres across diverse ecological regions.
- 2.2.5. The agency's Coastal and Inland Fisheries divisions operate eight fish hatcheries and two research centers. Additionally, the divisions have staff located in various locations throughout the state.

- 2.3. The services solicited in this RFCSP may be funded through allocations from federal and/or state funding sources and shall be performed in accordance with all applicable federal, state, and local laws.
- 2.4. TPWD requires JOCC(s) to provide materials, installation, repairs and other services associated with general construction projects of all types at facilities throughout the state. Projects assigned under any contract resulting from this RFCSP shall be considered "turnkey" and will vary in size and quantity. Services provided will supplement TPWD's internal resources and will cover all types of general construction.

3. SOLICITATION METHOD AND INTENT

- 3.1. The RFCSP solicitation method allows qualified respondents to submit a written proposal addressing pricing, qualifications, experience, location, availability, approach and other factors that will be employed to ensure successful accomplishment of the requirements set forth herein. TPWD will review, compare and evaluate proposals based on the criteria and weights identified in this RFCSP.
- 3.2. It is TPWD's intent to identify qualified respondents and award multiple contracts for JOC services on an IDIQ basis for general contractor service, on an as needed basis, as described herein. It is TPWD's sole discretion to determine best value. After award, as TPWD develops specifications and funding for specific projects, TPWD, at its sole discretion, will request a Job Order proposal from an awarded JOCC that is determined to provide the best value to the agency for each project.
 - 3.2.1. TPWD seeks proposers with the ability to quickly respond to project development and the start of construction for each project. Having a history of completing projects within budget, meeting or exceeding project schedules and consistently providing high quality materials and high job performance while simultaneously working on multiple projects with a high level of safety is essential.
 - 3.2.2. Proposers must be able to provide a wide variety of general construction services as projects will vary in size, scope, and complexity.
- 3.3. Reservation of Rights: TPWD intends to use the selected JOCCs while reserving the right to obtain services from other sources or perform services in-house. TPWD makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFCSP for any project and no such representation is intended or should be construed by the issuance of this RFCSP.
- 3.4. Type of Contract: Any contract resulting from this solicitation will be in the form of the latest version of the JOC Master Agreement between TPWD and selected firm, a copy of which is included in the solicitation documents, see [Exhibit I](#).

4. CONTRACT TERM

- 4.1. Contract Term: The JOC program will consist of base contracts with qualified JOCCs for the purpose of performing Job Order Assignments on a recurring basis. The initial contract term will commence upon execution of the JOC Master Agreement by TPWD and shall expire on August 31, 2026.
- 4.2. Renewal Options: The contract may be renewed for three (3) additional one (1) year terms, subject to the terms of the contract. TPWD reserves the right to review coefficient pricing and negotiate an adjustment for any extension of the initial two (2) year period and any renewal period(s). However, TPWD will in no way be obligated to renew the contract past the initial term.

- 4.3. Contract Extensions: In the event that the contract(s), if any, resulting from the award of this RFCSP shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, TPWD may, with the written consent of the awarded JOCC(s), extend the contract for a period of time as may be necessary to permit TPWD continued supply of the identified services (not to exceed twelve month extension period). Any extensions shall be at the same terms and conditions, plus any approved changes.

5. DEFINITIONS

- 5.1. Contractor's Coefficient (Coefficient): A numerical adjustment factor that represents costs not considered as included in any line item associated to the Unit Price Book, including general and administrative and other overhead costs, insurance costs, travel costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, contractor's profit and indirect costs. Separate coefficients may be used for normal working hours and other than normal working hours.
- 5.2. Contract Documents (Contract): All documents that form the Contract between TPWD and the successful Respondent(s). The Contract Documents consist of the JOC Master Agreement, Conditions of the Contract as described in this RFCSP, the Uniform General Conditions (UGC), Supplemental Conditions, any Additional or Special Conditions issued for this RFCSP, Specifications, Pricing and Delivery Schedule, Execution of Offer, Proposer's Questionnaire, and all Addenda and Amendments issued prior to and after the execution of any Contract. Contract Documents for the successful Respondent(s) shall also include the documents for individual Job Orders including but not limited to the Job Order Proposal; the Job Order agreement; terms, conditions, specifications, requirements, drawings, etc. for the Job Order; and any Change Orders.
- 5.3. Job Order (JO) or Job Order Assignment (JOA): An individual project assignment under a JOC Master Agreement. Each individual project to be accomplished under the Contract shall be through the issuance of a Job Order. TPWD shall be responsible for the creation of the Job Order as well as the supervision and acceptance of the Job Order Proposal and, if acceptable, shall issue a Job Order for the Work described therein. Each Job Order shall include a workplace, a line-item cost proposal, a detailed narrative Scope of Work, construction performance schedule, description of Historically Underutilized Business (HUB) compliance, any additional requirements contained herein, and any special conditions that might apply to that specific Job Order.
- 5.4. Job Order Contract or Job Order Master Agreement (Master Agreement): A master agreement, based on a competitively solicited sealed proposal, for accomplishing construction, alterations, repairs, modernization, rehabilitation, flooring, moving, roofing, waterproofing, building envelope services, mechanical systems services, landscaping and other tasks for which Unit Prices have been established. Work shall be accomplished through the issuance of individual Job Orders. Each Job Order issued under the Job Order Contract shall be a lump-sum, firm fixed priced order for accomplishing a specific task or project.
- 5.5. Master Agreement Priced Items (MAPI): These items are exclusive from the Unit Price Book items used for Pre-Pricing of Work Items. MAPI are a distinct set of individual items of work, service(s), reimbursement(s), or other deliverable(s) specifically named and listed individually within the terms of the Master Agreement for which the Contractor has provided pricing through its own costing methods and which have been established within the Master Agreement to be applied for payment of the actual quantities of such work, service(s), reimbursements or other deliverables when required to complete the Scope of Work of a discrete Job Order. Master Agreement Priced Items shall be separately categorized when submitted in a Job Order Proposal.
- 5.6. Non-Pre-priced Item (NPPI): A necessary, but incidental, part of a job or project ordered under a specific Job Order that is not susceptible to unit pricing using the pre-priced tasks in the Unit Price Book. Justification for usage of a NPPI cannot be based on profitability of a pre-priced line item. Validation of a NPPI shall occur by competitive pricing as appropriate. The proposed Contractor Coefficient for Normal Working Hours for the corresponding contract period and corresponding Response Zone will be applied to NPPIs. NPPIs are considered at bare cost rate of materials, labor and equipment before application of the proposed

Coefficient. Non-pre-priced items shall not exceed ten percent (10%) of the total cost for any individual Job Order, unless an excess over such ten percent (10%) limit is (i) caused solely and directly because TPWD has requested the inclusion of certain products in the Job Order; (ii) pre-approved by TPWD; and (iii) caused by the cost of the product that is determined to be a reasonable value by TPWD, at TPWDs discretion.

- 5.7. Unit Price Book (UPB): A compilation of real property repair, rehabilitation, alteration, maintenance, and minor construction tasks, along with the associated units of measure and unit prices designated or provided by TPWD to be used in the administration of any contract resulting from this RFCSP. Unit prices include direct material, labor and equipment cost, but not indirect costs or profit. The UPB for any contract resulting from this RFCSP shall be the most current version of the *R.S. Means Online Facilities Construction Cost Book*® hereby incorporated by reference.

The “Total Bare Costs” (not including profit and overhead) column of the UPB shall be used to calculate pricing on individual job order projects. The applicable City Cost Index (CSI) shall be the most current index published in the UPB for the geographically closest Texas city to the project work site. All CSI Division 1 (General Requirements) line items are excluded from the Unit Price Book and associated costs are to be considered as part of the Contractor Coefficients.

- 5.8. Response Zone: A geographic area of the State of Texas identified by TPWD as indicated on TPWD’s Job Order Contracting Response Zone Map (*Exhibit F*). By establishing multiple Response Zones across the State, Respondent is provided an opportunity to develop coefficients based on their individual ability to respond and provide services within each of the established Response Zones in lieu of single statewide coefficients.

6. MINIMUM QUALIFICATIONS

- 6.1 Minimum Qualifications and Experience: Respondent (and awarded Contractor) shall meet the following minimum qualifications:
- 6.1.1 Respondent must have been regularly engaged in the State of Texas for general construction services for a period of no less than five years. All personnel of successful Respondent(s) must be fully equipped with standard tools of the trade and licensed and/or certified appropriately in the State of Texas. All information requested in [Section 8](#) must be submitted in accordance with instructions contained in this RFCSP – incomplete Proposals may be deemed non-responsive and not considered for award.
 - 6.1.2 Respondent shall be skilled in developing schedules using computerized Critical Path Method (CPM) with fully editable logic; preparing construction cost estimates and understanding construction methods and techniques; project plan analysis and assessment; sequencing of work; building material applications, compatibility and alternatives; project risk assessment and management; construction cost reduction methods and efficiency analysis; field data collection and work quantity calculations; and coordinating and communicating the activities of the project team throughout various phases of the project to all members of the team.
 - 6.1.3 Respondent shall be familiar with regional labor, prevailing wage requirements and the subcontracting markers and be capable of working well with subcontractors.
 - 6.1.4 Respondent shall be skilled in establishing and maintaining a comprehensive quality assurance and control program in order to assure themselves and TPWD that all materials and workmanship are in strict accordance with the provisions of the specifications.
 - 6.1.5 Respondent must have a consistently maintained and enforced proactive safety program incorporating appropriate training for all personnel including subcontractors and must provide appropriate personal protective equipment (PPE).
 - 6.1.6 Negative responses and experiences from state client agencies, regulatory agencies, and TPWD, which are familiar with the Respondent’s performance, depending on problems encountered, may be grounds for disqualification.
 - 6.1.7 Out-of-state vendors doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the submittal.

6.1.8 Respondent shall be in good financial standing. TPWD reserves the right to request a copy of the respondent's audited or un-audited financial statements.

6.2 Supporting Documentation: Respondent shall complete and submit [Exhibit B – Statement of Qualifications, and Exhibit C – Proposed Key Personnel](#) to provide documentation to support the above qualifications. (Ref: [Section II](#))

7. SCOPE OF WORK AND SPECIFICATIONS

TPWD seeks to obtain the services of experienced general construction contractors to provide JOC services which may include miscellaneous project support services. The scope of work for JOC services includes a collection of detailed repair and construction tasks and specifications that have established unit prices for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, demolition and construction of infrastructure, buildings, structures, or other real property. Miscellaneous project support services may include but are not limited to construction cost estimating and scheduling, constructability peer reviews, value analysis reviews, and other various project support services that may be necessary during development of construction projects which may or may not be performed under a JOC project.

7.1 TPWD intends to form a team consisting of TPWD as the Owner and the JOCC(s) that will work well together in a cooperative and mutually supportive manner for the benefit of all the members of the team. To ensure success of the JOC program, it will be important to continually educate stakeholders and develop open lines of communication in order to obtain feedback and provide direction.

7.2 TPWD anticipates the maximum aggregate contract price to be \$20,000,000.00 during the base period and \$10,000,000.00 during each additional optional renewal period. TPWD does not guarantee the number of projects, job orders or dollar values of the projects allocated for each JOC contract. TPWD reserves the right to exceed the Maximum Aggregate Contract Price at any time during the Contract term, including any renewal term.

7.3 Job Orders will be issued on an as needed basis. Work may require a variety of trades including, but not limited to, carpentry, masonry, concrete, paving, roofing, excavation, plumbing, sheet metal, painting, demolition, welding, HVAC, electrical, mechanical, carpeting, flooring, drywall finishing, hardware, doors, glazing, sidewalk, utilities, landscaping, historic building repair or rehabilitation, and telecommunications cabling services. The specific work requirements will be identified in the Job Order.

7.3.1 Job Orders may be issued for miscellaneous project support services on an as needed basis. Work will require contractor personnel with extensive knowledge and experience of capital building project development, building construction management and construction contracting and other project support services related to building construction project development as required in [Section 6](#).

7.4 Job Order Assignment Procedures:

7.4.1 Each Job Order Assignment (JOA) will define the work by applicable Statement of Work, Drawings and Specifications, and other details and the contract amounts will be determined by applying a coefficient to the unit prices contained in the standardized UPB and other criteria described in the Contract Documents. NPPI(s) of work included in the individual project shall be proposed by JOCC using the defined proposal format provided by TPWD.

7.4.1.1 Job Orders issued for miscellaneous project support services only will be priced by applying a coefficient to the unit prices proposed for MAPI's contained within [Exhibit G](#) of this document.

7.4.2 As projects arise and performance under any Contract resulting from the RFCSP is required, TPWD shall notify JOCC in writing to start the process of assessing requirements for the project, including an initial site visit.

- 7.4.3 After documentation requirements and scope have been established, a written Job Order Proposal request will be issued and will include the required response date. Upon receipt of such notification, the JOCC shall acknowledge TPWD's request within 24 hours unless otherwise indicated. A project site visit will be scheduled for JOCC and its appropriate representatives to attend.
- 7.4.4 JOCC shall develop a proposal with a line-item cost estimate in a format established by TPWD and using the UPB, NPPI's, MAPI's and including application of a Contractor Coefficient for the corresponding contract period and Response Zone corresponding to the project worksite location, the JOCC will submit the proposal to TPWD for approval by the required response date. Extended time for submitting a proposal may be agreed upon by the JOCC and TPWD.
 - 7.4.4.1 The proposal must be supported by all documentation necessary to demonstrate adequate engineering and planning to accomplish the project. Additional documentation may be requested by TPWD.
- 7.4.5 After receipt, TPWD will review the proposal for completeness. TPWD may negotiate any and all NPPI, performance times, methods of work performance, materials chosen, quantities, etc. prior to issuance of a JOA.
- 7.4.6 Upon approval of a JOA containing any changes to the original proposal, TPWD will issue a Job Order and the JOCC will proceed with completing the assignment in a timely manner.
- 7.5 If applicable, the Job Order Proposal Request will include appropriate prevailing wage rates. The JOCC must comply with all applicable state and federal laws, regulations and rules including but not limited to those concerned with labor, equal employment opportunity, safety and minimum wages. The JOCC shall obtain and pay for all permits required in connection with the execution of JOCC's Work. TPWD shall be furnished with certified copies of permits if requested. If such laws, regulations or rules conflict with the JOA, then the laws, regulations or rules shall govern instead of the JOA, except in such cases where the JOA exceeds them in quality of materials or labor, then the JOA shall be followed.
- 7.6 The size and quantity of Job Orders issued to a JOCC will vary depending on project need, schedule, the contractor's workload, and availability of funding. Any Job Orders with an estimated value exceeding \$500,000.00 must be approved by the Texas Parks and Wildlife Commission.
- 7.7 TPWD reserves the right to unilaterally withdraw or cancel a JOA request for any reason prior to issuance of a Job Order. When a JOA is withdrawn or cancelled by TPWD, the JOCC may be reimbursed up to two-thousand dollars (\$2,000.00) as retribution for time and effort required to attend the on-site joint scope meeting, preparing meeting notes, gathering field measurements and data, performing quantity calculations and cost estimations, refinement of the scope of work, work schedule preparation, and other actions required to prepare and develop a scoping package and job order proposal. JOCC is not entitled to reimbursement if JOCC rescinds their JOA acceptance after a scoping package and proposal has been developed, or when TPWD withdraws or cancels the JOA due to JOCC non-responsiveness.
 - 7.7.1 Prior to reimbursement JOCC shall submit copies of all the documentation items listed above regarding the preparation and development of a scoping package and proposal. All information contained within the documentation submitted will become property of TPWD for use at its sole discretion. JOCC must submit a detailed invoice breaking out costs for the work performed in order to receive reimbursement.
 - 7.7.2 TPWD will review the documentation to determine the total reimbursement amount. Payment will be at TPWD's discretion with a maximum reimbursement amount not-to-exceed two-thousand dollars (\$2,000.00).
- 7.8 While TPWD may self-perform the development of specifications and drawings, professional services may also be obtained from outside firms. Job Orders may proceed with or without plans and specifications at the sole discretion of TPWD. If plans and specifications are required, such are not intended to cover every detail of materials, equipment, labor, services or construction.

8. SELECTED CONTRACTOR REQUIREMENTS

- 8.1. The successful Respondent(s) shall abide by all terms, conditions and requirements in this RFCSP as well as all attached and referenced documents, including the Uniform General Conditions (UGC), Supplementary Conditions, any Special Conditions, Specifications, Addenda, etc., as such documents form a part of this RFCSP.
- 8.2. The successful Respondent(s) must adhere to all TPWD standards, guidelines, rules and regulations in providing materials and/or services in conjunction with any Contract resulting from this RFCSP. For the life of any Contract resulting from this RFCSP, standards, guidelines, rules and regulations may be updated – such updates shall become a part of any Contract resulting from this RFCSP. No changes to the successful Respondent’s cost proposal will be allowed when such changes occur.
- 8.3. Selected JOCC(s) shall conduct all its services under the awarded contract by and through appropriate communications with TPWD. No work, installation or other services shall be undertaken by the JOCC except with the prior written authorization by TPWD. JOCC understands and agrees that work, installation or other service performed without prior written authorization of the TPWD is work outside the scope of this contract and shall be performed exclusively at JOCC’s risk.
- 8.4. Prior to issuance of the first Job Order for an individual project, TPWD will conduct a conference to acquaint the JOCC with TPWD policies and procedures that are to be observed during the prosecution of the work. This conference aims to ensure an understanding relative to the administration of both the overall Master Agreement and individual Job Orders.
- 8.5. Selected JOCC(s) agrees to provide a variety of services including, but not limited to, cost estimating, assessment of construction options and scheduling while performing construction and repair projects throughout the state.
- 8.6. Selected JOCC(s) shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, bonds, subcontracts, supervision, management, reports, incidentals, and quality assurance and control, and shall perform all operations necessary and required for construction management and construction work as defined in each Job Order.
- 8.7. Selected JOCC(s) is responsible for all costs incurred in the performance of the contract.
- 8.8. When the scope of work for any given Job Order requires the services of more than two (2) building trades (ex: carpentry, plumbing, etc.) to accomplish the work, the JOCC shall perform a minimum of work equivalent to twenty-five percent (25%) of the total amount of work using its own workforce. Out of this, only ten percent (10%) may be allocated for administrative and/or supervisor staff performance. Additionally, in all proposals, schedules of value and work progress schedules, the JOCC must specify the work it intends to perform with its own workforce and indicate the percentage of the total work this represents.
- 8.9. Individual Job Order pre-construction conferences will be held for all Job Order projects. During this meeting the Contractor and Owner’s Designated Representative (ODR) shall agree on a sequence of procedure; means of access to premises and building(s); storage areas for materials and equipment; delivery of materials, use of approaches; use of corridors, stairways, elevators, and similar means of communication and the location of partitions, eating spaces, and restrooms for Contractor’s employees and the like.
- 8.10. Selected JOCC(s) shall comply with all laws, ordinances, statutes and regulations pertaining to the services requested herein, and shall obtain such permits, licenses or other authorizations as may be required.
- 8.11. All electrical items must meet all applicable Occupational Safety and Health Administration (OSHA) standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 8.12. Selected JOCC(s) shall provide full documentation to TPWD of all work, including, but not limited to: field measurements and calculations for all job order line-item cost estimate quantities, weekly meetings

notes/minutes during construction, inspection reports, a comprehensive monthly summary report including status of all open Job Orders, punch-list reports, as-built drawings and other related items, as needed.

- 8.13. State Sales Tax: Purchases made for State of Texas use are exempt from the state sales tax and federal excise tax. TPWD will furnish Tax Exemption Certificates upon request. The Contractor represents and warrants that it shall pay all taxes or similar accounts resulting from the contract, including, but not limited to, any federal, state, or local income, sales, or excise taxes of Contractor or its employees. TPWD shall not be liable for any taxes resulting from this Contract.

The Contractor shall comply with applicable provisions of Chapter 34, Rules 3.291 and 3.357 of the Texas Administrative Code, or other procedures as may be prescribed by the State Comptroller of Public Accounts. Refer to UGC, Article 2.

9. TPWD RESPONSIBILITIES

- 9.1. TPWD will designate a Project Manager to oversee each Job Order. Work performed under a resulting contract shall be under the direction of the Project Manager.
- 9.2. No additional material, labor, equipment, or facilities will be provided by TPWD for this contract.
- 9.3. Contract Administration: TPWD will monitor the successful Respondent's progress and performance and ensure services conform to the established specifications and requirements. At the conclusion of the job orders or contract term, TPWD will complete a vendor performance form assessing the output and outcome measures and compliance with the terms and conditions of the contract.
- 9.3.1. Any issues identified by TPWD involving an awarded JOCC's proficiency or productivity may be considered as a cause for termination.

10. INSURANCE

- 10.1. Respondents shall procure, carry and maintain during the entire period of their performance under this contract the minimum insurance as specified in the UGC, see [Exhibit J](#).
- 10.2. The required coverage is to be with companies licensed in the state of Texas, with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.
- 10.3. Proof of insurance shall be submitted by the successful Respondent within seven (7) days of receipt of Contract for execution. Respondent shall furnish to TPWD, for approval, a certificate of insurance as proof that the required insurance is in full force and effect. The certificate of insurance shall be sent to: Jennifer Feliciano, Infrastructure Division, Texas Parks & Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or may be emailed INFcontracting@tpwd.texas.gov.

11. BONDS

- 11.1. Payment and Performance Bonds: Payment and performance bonds, when required shall be executed on forms furnished by TPWD, refer to [Attachment 1 – Bond Forms](#). Payment bonds will be required for Job Order Assignments of \$25,000.00 or greater. Performance Bonds will be required for Job Order Assignments of \$100,000.00 or greater. No bonds will be required on Job Order Assignments totaling less than \$25,000.00. Each bond shall be issued in accordance with the requirements of the UGC.
- 11.1.1. When required, the payment and performance bonds will be due from JOCC within seven (7) days of receipt of written notice by TPWD. TPWD reserves the right to reject a bond if the surety is not acceptable to TPWD.

12. HUB SUBCONTRACTING PLAN

- 12.1. It is the policy of TPWD to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB) in all contracts. In accordance with Chapter 2161 of the Texas Government Code and Title 34 of the Texas Administrative Code, state agencies must make a good faith effort to utilize HUBs in contracts for construction services.
- 12.2. In accordance with Texas Gov't Code §2161.252 and 34 Texas Administrative Code §20.285, TPWD has determined that subcontracting opportunities in connection with this solicitation are not probable and subcontracting goals have not been established.
 - 12.2.1. If it is anticipated that a single Job Order Assignment will exceed \$100,000, then the Contractor shall be required to develop and submit a HUB Subcontracting Plan (HSP) with their proposal for that single job order, refer to [Attachment 2](#). Contractor shall comply with the HSP after it is accepted by TPWD and during the performance of the Job Order in accordance with TPWD policy.
- 12.3. Respondent must submit a HUB Subcontracting Statement of Responsibility with their solicitation response stating that they will comply with the HUB requirements at the Job Order Assignment level. HUB subcontracting goals will be established for each individual Job Order Assignment issued under the Contract resulting from this solicitation.

SECTION II – RESPONSE REQUIREMENTS

1. SCHEDULE OF EVENTS

TPWD intends to proceed according to the following schedule. These dates represent a tentative schedule of events. TPWD reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the Electronic State Business Daily as an Addendum.

Event	Date/Time
RFCSP Issue Date:	May 10, 2024
Pre-Proposal Meeting:	May 16, 2024; 10:00 AM CT
Questions Due:	May 28, 2024; 5:00 PM CT
Proposal Due Date:	June 11, 2024; 2:00 PM CT
Anticipated Date for Commencement of Services	September 1, 2024

2. PRE-PROPOSAL MEETING

2.1. An **optional** pre-proposal meeting will be held virtually via Microsoft® Teams on May 16, 2024, at 10:00 a.m. (CT). Although the pre-proposal meeting is not mandatory, Respondents are strongly encouraged to attend this meeting as important information regarding proposal procedures, requirements, specifications and other details will be discussed.

2.1.1. Respondents may use their browser to access the meeting or the Microsoft® Teams application using the information below:

Pre-Proposal Meeting: 2024Statewide-JOC

[Click here to join the meeting](#)

Meeting ID: 262 908 271 557

Passcode: krV2tr

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 737-222-7112,,1586155#](#)

Phone Conference ID: 158 615 5#

2.1.2. Following the online meeting, the PowerPoint™ presentation will be posted to the Electronic State Business Daily.

3. INQUIRIES

3.1. **CONTACT:** All requests, questions, or other communications about this Solicitation shall be made in writing to TPWD's Infrastructure Contracting Branch, addressed to the following person:

Jennifer Feliciano, CTCD, CTCM
Texas Parks & Wildlife Department
Infrastructure Division
4200 Smith School Road
Austin, Texas 78744

Email: INFContracting@tpwd.texas.gov

3.2. **CLARIFICATIONS:** TPWD reserves the right to issue addenda at any time prior to the deadline for receipt of proposals. Interpretations or clarifications in any other form, including oral statements, will not be binding and should not be relied on when preparing responses to this solicitation. TPWD will allow written requests for clarification of this solicitation. Questions may be e-mailed to the point-of-contact listed in [Section II, Subsection 3.1](#). Questions should be submitted in the following format: a) Reference the Solicitation

number; b) Reference the Section number, Page number, Paragraph number, and Text of passage being questioned; and c) Question.

- 3.3. **DEADLINE FOR SUBMISSION OF QUESTIONS:** To provide TPWD with sufficient time to adequately prepare responses to vendor inquiries, all questions must be submitted by the deadline specified in [Section II, Subsection 1](#).
- 3.4. **ANSWERS TO QUESTIONS:** The target date for answering questions is within three business days after deadline for questions. Official answers will be posted as an addendum to this solicitation, on the Electronic State Business Daily at <http://www.txsmartbuy.com/esbd>. Respondent names will be removed from questions in the responses released. TPWD reserves the right to amend answers prior to the proposal submission deadline.
- 3.5. **PROHIBITED COMMUNICATIONS:** Upon issuance of this solicitation, TPWD, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s), except for the written inquiries described in [Section II, Subsection 3.2](#) above. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. **Failure to observe this restriction may disqualify respondent.** Respondent shall rely only on written statements issued through or by TPWD's contracting staff. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this solicitation.
- 3.6. **PUBLIC INFORMATION:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after award of a Contract. However, certain information may be confidential and fall under an exception to disclosure under the Public Information Act such as proprietary information, trade secrets, and certain commercial and financial information where disclosure might cause "substantial competitive harm to your business." If the Respondent believes that their response to this solicitation contains confidential information in those categories, the Respondent must specifically document this at the top or bottom of each page that contains the information the Respondent considers confidential. The Respondent's documentation must include a statement that confidential information is contained on that page, refer to its exact location on the page, and describe the specific nature of the exception to the Texas Public Information Act that the Respondent believes applies to this information, i.e., copyrighted, trade secret, proprietary, financial, etc. A general disclaimer that the Respondent's response contains confidential information will not be sufficient to meet this requirement. If such documentation is not provided, TPWD will assume that all information provided in the response to this solicitation is disclosable under the Texas Public Information Act.
- 3.6.1. TPWD strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFCSP information.

4. SUBMISSION INFORMATION

Below is a summary of required and requested information. Proposals submitted without this information will be evaluated accordingly. All responses will be evaluated on the completeness and quality of the content. Only those respondents providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail. TPWD reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

- 4.1. **Electronic submittals are required for this solicitation.** Submit proposals by email to INFContracting@tpwd.texas.gov.
- 4.1.1. Enter the Solicitation Number and RFCSP opening date in the subject line of email.
- 4.2. All responses shall be received electronically by TPWD prior to 2:00 PM Central Time on the date specified in [Section II, Subsection 1](#). Late responses will not be considered under any circumstance.
- 4.3. It is the responsibility of the Respondent to ensure that their proposal is received by TPWD prior to the time and date indicated.

- 4.4. Respondents shall submit **one (1)** PDF of the Proposal inclusive of all exhibits and addenda, with Exhibit A signed in ink.
 - 4.4.1. Include **one (1) PDF** copy of the proposal inclusive of all exhibits and addenda.
 - 4.4.2. Proposals should include a cover letter, not to exceed one (1) single sided page that includes a single point of contact along with contact information for the purposes of this solicitation.
 - 4.4.3. Proposal should be on 8 ½ x 11-inch pages.
 - 4.4.4. The minimum font size for all text in the Proposal shall be no less than 11 point.
 - 4.4.5. Proposals should be paginated and contain a full table of contents.
- 4.5. Electronic proposals should be in PDF format and should be all inclusive as a single file.
- 4.6. Respondents must submit only material directly pertinent to the requirements of this solicitation. Extraneous narrative, elaborate brochures, public relations material, and other similar documents may not be submitted.
- 4.7. Each proposal must be completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity submitting the proposal.
- 4.8. **Telephone, and facsimile responses are NOT an acceptable response to an RFCSP.** All submitted responses become the property of TPWD after the RFCSP due date/deadline. Responses submitted shall constitute an offer for a period of ninety (90) days or until selection is made by TPWD, whichever is earlier.
- 4.9. **No Reimbursement for Costs:** Respondent acknowledges and accepts that any costs incurred from the Respondent's participation in this RFCSP process shall be at the sole risk and responsibility of the Respondent. Respondents submit a response at their own risk and expense.
- 4.10. Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.
- 4.11. Proposals may be withdrawn prior to the solicitation deadline. An email notification submitted to the Point of Contact identified in [Section II, Subsection 2](#) will be acceptable as written notice for withdraw. No response may be withdrawn after the solicitation deadline.
- 4.12. A virtual proposal opening will be conducted by TPWD via Microsoft® Teams to identify the names of Respondents. Other contents of the Proposals will be afforded security sufficient to preclude disclosure of the contents of the Proposal prior to award. Within 45 days after the date of opening the Proposals, TPWD will evaluate and rank each Proposal in accordance with the evaluation criteria contained in this RFCSP. After evaluation and ranking, an award may be made in accordance with [Section II, Subsection 6](#).
 - 4.12.1. To facilitate the opening, TPWD will host all proposal openings one (1) hour after the solicitation deadline. Interested attendees must register in advance using the link below to obtain information regarding the virtual opening. After registering, participants will receive a confirmation email containing information about joining the meeting.

Proposal Opening Registration form:

<https://forms.office.com/g/hGfNbJ7TbW>

5. SELECTION PROCESS

- 5.1. The purpose of the selection process is to determine the most qualified Job Order Contract Contractor (JOCC) based on evaluation of proposal and pricing in the form of coefficient markups based upon the identified UPB and MAPI.
- 5.2. A contract will be awarded to the responsible Respondent(s) who submits a complete proposal determined to be the best value to the State and who meets all requirements included in this solicitation. The evaluation of the Proposals shall be based on the requirements described in this RFCSP.

- 5.3. The JOCC selection will consist of two phases. TPWD will notify respondents after each phase of the process as to whether they will be moving on to the next phase, as appropriate.
- 5.4. Phase I will consist of an administrative review followed by an initial evaluation.
- 5.4.1. Step 1 – Administrative Review by Infrastructure: Only a complete response that contains the required documents will be considered. Failure to meet the minimum qualifications and submit the required documents will result in a response being declared non-responsive. Proposals that do not conform to the instructions included in this RFCSP may be rejected by TPWD.
- 5.4.1.1. During the Administrative Review, TPWD will evaluate Proposals based on a pass/fail basis of the following criteria:
- Minimum Requirements
 - Responsiveness
 - Compliance with the RFCSP
 - Certain vendor performance checks including but not limited to, vendor past performance as reported in CPA's Vendor Performance Tracking System in accordance with Section 2262.055 of the Tex. Gov't Code.
- 5.4.2. Step 2 – Initial Evaluation: An evaluation committee will evaluate and score each response based on established criteria in accordance with [Section II, Subsection 6](#). The highest ranked firms will be invited to participate in Phase II of the selection process.
- 5.5. Phase II will consist of an evaluation of pricing information and an oral evaluation.
- 5.5.1. The respondents will submit pricing in the form outlined in [Section II, Subsection 6, Item 6.3](#) of this RFCSP.
- 5.5.2. The respondents will be interviewed by the evaluation committee and scored in accordance with [Section II, Subsection 6, Item 6.2](#) of this RFCSP.
- 5.6. **Selection of the successful JOCC(s) will be based on the highest scores of Phase II.**

6. EVALUATION AND AWARD

- 6.1. **Phase I**: An evaluation committee that includes employees of TPWD and may include other impartial individuals who are not TPWD employees will perform an evaluation of proposals. Respondents shall not contact any members of the evaluation team. Responses will be evaluated according to the respondent's ability to best satisfy TPWD requirements. Respondent's submission will be evaluated and scored based on the following criteria:

Item No.	Evaluation Criteria	Weight
1	HUB Program Statement of Responsibility	Pass/Fail
2	Demonstrated bonding capacity	Pass/Fail
3	Safety program and safety record	Pass/Fail
4	Ability and qualifications	20%
5	Past performance	20%
6	Ability to meet time and budget requirements	20%
7	References	10%
8	Construction Estimating and Scheduling Experience	10%
9	Recent, current and projected workload	10%
10	Concept of proposal	10%
	Total	100%

Item No. 1: HUB Program Statement of Responsibility**Pass/Fail**

There are no subcontracting goals established for this solicitation. HUB subcontracting goals will be set for each individual Job Order Assignment. In response to the solicitation, Respondents must submit a HUB Program Statement of Responsibility acknowledging their intent to comply with TPWD's HUB subcontracting requirements and submit a HUB Subcontracting Plan (HSP) for each Job Order Assignment, as necessary.

Item No. 2: Demonstrated bonding capacity**Pass/Fail**

Include a statement from your bonding agent stating Respondent's ability and commitment to acquire bonding equaling or exceeding a minimum of \$5,000,000 per year. List the company name, agents name, address, telephone, fax, and email of your bonding agency.

Item No. 3: Safety program and safety record**Pass/Fail**

Provide a description of your organization's safety program and include the name and job title of the person(s) in your organization that manage your safety program.

Provide a copy of your organization's safety plan that would be similar to one to be developed for this JOC.

Item No. 4: Ability and qualifications**20 points**

Respondent must submit *Exhibit B, Statement of Qualifications* that includes the following:

- Company-wide organization chart.
- Project organization chart showing project leadership and proposed staffing for this contract.

Respondent must submit *Exhibit C, Proposed Key Personnel* that includes the following:

- Provide a list of key personnel including their roles and responsibilities:
 - Include resumes, specifically, your proposed corporate personnel directly assigned to the contract.
 - Describe the JOC experience of personnel assigned to this project.

Provide a written narrative describing your management approach for the contract. Include your plan for communicating with TPWD and coordinating the execution of multiple job order assignments simultaneously.

Item No. 5: Past performance**20 points**

Respondent must submit *Exhibit B, Statement of Qualifications* that includes the following:

- Job Order Contracting construction experience for three (3) successfully completed contracts within the past seven (7) years of comparable size, scope and complexity to the Work described in the Contract Documents as requested below.

Technical Construction/Experience Required

- Public works projects located throughout the State of Texas.
- Oversight and management of multiple subcontractors.
- Oversight and management of at least ten (10) concurrent projects actively in the construction phase while maintaining a critical path schedule on all projects.
- Oversight and management of plumbing, masonry, carpentry, concrete, landscaping, HVAC, electrical, demolition, remediation, historical preservation, site/civil, paving and drainage, roofing/building envelope, interior finishes, and/or prefabricated or modular buildings.

- Experience working in an environment that operates 24 hours a day/7 days per week with personnel living and working in the facility and open to public visitation/usage.
- Experience in adapting to changing site conditions and projects.

Item No. 6: Ability to meet time and budget requirements**20 points**

Describe your firm's experience and ability to meet the project timelines and budget requirements.

- Provide potential strategies that can be used to minimize delays, maximize the value of a project, avoid unknowns, and areas for possible time savings.
- Provide potential strategies that can be used to control costs including to ensure that excessive line items and inaccurate quantities are not submitted, either intentionally or accidentally.

Item No. 7: References**10 points**

Respondent must submit *Exhibit D, References* that includes the following:

- Provide references with current telephone numbers and email addresses of at least five Owners, Owners' Project Managers and Stakeholders with which you have worked as a Contractor within the past three years.

Item No. 8: Construction estimating and scheduling experience**10 points**

Describe your firm's experience in construction estimating and in construction scheduling for unit-price based contracting. Describe key personnel experience in each of these areas. Provide examples that were developed and utilized on prior jobs.

Item No. 9: Recent, current and projected workload**10 points**

Provide a brief description of your firm's history, firm size, location of home and corporate offices, and your firm's capabilities to perform the requirements of this contract. Include annual volume, financial position, and bonding capacity. Summarize recent, current, and projected workloads (include number, size, and average monthly volume) of your firm.

- Describe strategies you use to deal with Owner fiscal deadlines and sudden surges in proposal requests.

Item No. 10: Concept of proposal**10 points**

Describe your understanding of the Job Order Contracting method of service delivery. Detail how you will integrate construction estimating, project scheduling, quality assurance, etc. into Job Order Assignments. Describe your approach in working with the Owner and project stakeholders. Explain how you will assure that a successful team atmosphere will be nurtured. Discuss how you plan to provide services for TPWD.

6.2. **Phase II:** Based on the ranking of Phase I, Respondents with the highest scores will be notified and scheduled to participate in interviews with the evaluation committee. Respondents will be required to submit their pricing schedule (*Exhibit G*) prior to interviews.

6.2.1. Pricing will be reviewed in accordance with *Subsection 6.3* prior to interviews.

6.2.2. Interviews will be scheduled for a total of sixty (60) minutes each and will include a virtual interview/presentation of at least the top three (3) firms.

6.2.3. Interviews are not an opportunity to change a submission.

6.2.4. Scoring and awarded points from Phase I will not be carried into Phase II of the selection.

6.2.5. Interviewing firms should address each of the following in their presentation:

6.2.5.1. Ability and qualifications – 25 points

6.2.5.2. Past performance – 20 points

6.2.5.3. Ability to meet time and budget requirements – 20 points

6.2.5.4. Recent and current workload – 20 points

6.2.5.5. Price - 15 points

- 6.3. **Price:** Selected Respondents will be notified to submit a Pricing Schedule (*Exhibit F*) which includes a coefficient(s) to cover overhead, profit and any other costs that are not included in the UPB. The Respondent's coefficient is a numerical value, to three (3) decimal places, that the Respondent proposes as a multiplier to the UPB.
- 6.3.1. For the purposes of evaluating pricing, TPWD makes the following assumptions:
 - A. Although there may be projects where work is required outside of normal business hours, almost all of the work will be performed during normal working hours. For purposes of evaluation, 90% of the work will be done during normal working hours and the remaining 10% will be done outside of normal working hours.
 - 6.3.2. The evaluation of this criterion will be calculated by dividing the lowest coefficient average by the Respondent's coefficient average and multiplying that by the total points awarded:
Lowest coefficient average/Respondent's coefficient average x 15 points = Score
 - 6.3.3. All work in development of the Respondent's coefficient MUST be fully detailed including supporting documentation and rationale utilized in computing profit and coefficients as part of the response for Phase II. Supporting documentation shall include rates, bases, and methods of computation. This information is required for evaluation of the coefficient proposed in response to Phase II only. The proposed coefficient must represent all allowable costs.
- 6.4. **Acceptance of Evaluation Methodology:** By submitting its Proposals in response to this RFCSP, the Respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified" firm will require subjective judgments by the TPWD. The results of this most qualified determination will be combined with the Proposals evaluation results to determine the "best value" proposition for TPWD.
- 6.5. **Reservation of Rights:** TPWD reserves the right to award a contract for all or any portion of the requirements proposed in response to this RFCSP; award multiple contracts; or to reject any and all Proposals if deemed in the best interest of the Department. If so, TPWD reserves the right to resolicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the procurement. TPWD makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFCSP and no such representation is intended or should be construed by the issuance of this RFCSP.
- 6.6. **Award:** TPWD reserves the right to award a contract to a single firm, or award to more than one firm, whichever provides the best value to TPWD in performance of this service. TPWD will be the sole judge of best value.
- 6.7. **REQUIRED RESPONSE CONTENT:**
Respondents MUST include the following documentation in their response. ***Failure to submit with the response will result in disqualification.***
- 6.7.1. **HUB Program Statement of Responsibility:** Respondents must submit a HUB Program Statement of Responsibility acknowledging their intent to comply with TPWD's HUB subcontracting requirements and submit a HUB Subcontracting Plan (HSP) for each Job Order Assignment, as necessary.
 - 6.7.2. **Proposal Letter of Bonding Capacity:** Proposals must include a letter from an approved Bonding Company indicating that Respondent has the bonding capacity equaling or exceeding at minimum of \$5,000,000 per year and shall timely issues the applicable Payment Bond and/or Performance Bond as required by statute on each assignment. The letter from the Bonding Company shall be submitted with the Proposal. Blanket bonds are acceptable provided such bonds are in compliance with the laws and statutes of the State of Texas. Bonding information must be maintained for the life of any awarded contract including any and all renewal terms.
 - 6.7.3. **Safety program and safety record:** Respondents shall provide a description of the organization's safety program and include the name and job title of the person(s) that manages the safety program. Include a copy of the organization's safety plan that would be similar to one to be developed for this JOC.

6.7.4. **Exhibit A – Execution of Response:** Respondent must submit original signed, dated and completed *Exhibit A*. Respondent shall fully complete the form leaving no blanks.

6.7.5. **Exhibit B – Statement of Qualifications:** Include completed *Exhibit B* to include past history of successful completion of a minimum of 3 projects of similar size, scope and complexity completed within the last seven years. Respondent shall fully complete the form leaving no blanks.

Out of State firms doing business in Texas shall have a Certificate of Authority to do business in Texas. A copy of the certificate shall be submitted with the response.

6.7.6. **Exhibit C – Proposed Key Personnel:** Include completed *Exhibit C* (or a reasonable facsimile or resumes) for all proposed key personnel that span the range of skills necessary in response to this solicitation.

6.7.7. **Exhibit D – References:** Include completed *Exhibit D* (or a reasonable facsimile).

6.7.8. **Addenda:** Respondent shall acknowledge receipt of any addenda generated as part of this solicitation. The respondents should include the signed and dated addendum(s) with their response submission.

6.7.9. **Past Performance:** A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Gov't Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- a. The Vendor has a score less than C or Legacy Unsatisfactory in the Vendor Performance System,
- b. Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts (CPA),
- c. Having repeated negative Vendor Performance Reports for the same reason,
- d. Having Purchase Orders/Contracts that have been cancelled in the previous 12 months for non-performance (i.e., failure to remedy defective work, late delivery, etc.).

6.7.10. Contractor performance information is located on the CPA web site at: www.txsmartbuy.com/vpts. TPWD may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.115), TPWD may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of Contracts. Any such investigations shall be at the sole discretion of TPWD, and any negative findings, as determined by TPWD, may result in non-award to the Respondent.

6.8. **REQUESTED RESPONSE CONTENT:**

Respondents MUST include the following documentation when requested by TPWD.

6.8.1. **Exhibit E - Authorization and Consent for Disclosure of Criminal History Information:** Completed *Exhibit E* shall be returned upon request by TPWD, if selected for award.

6.8.2. **Exhibit G – Pricing Schedule:** Completed *Exhibit G* shall be returned by the highest ranked firms, upon request by TPWD.

EXHIBIT A – EXECUTION OF RESPONSE

NOTE: THIS EXHIBIT MUST BE SIGNED AND RETURNED WITH THE SOLICITATION RESPONSE. RESPONSES THAT DO NOT INCLUDE THIS EXHIBIT WILL BE DISQUALIFIED. THE RESPONSE SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS EXHIBIT.

1. By signature hereon, the Respondent certifies that:

- 1.1. All statements and information prepared and submitted in the response to this RFCS are current, complete and accurate.
- 1.2. Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- 1.3. Respondent understands that all obligations of TPWD under the contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the contract may be terminated by TPWD.
- 1.4. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
- 1.5. Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 1.6. Respondent represents and warrants that TPWD's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
- 1.7. Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
- 1.8. Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
- 1.9. Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
- 1.10. Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
- 1.11. Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- 1.12. Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised TPWD in writing of the facts and circumstances surrounding the convictions.
- 1.13. Respondent shall have no authority to act for or on behalf of TPWD or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of TPWD or the State of Texas.
- 1.14. Respondent has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to sign the Execution of Response or signing it with a false statement shall void the submitted offer or any resulting contracts.
- 1.15. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the bidder, nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the Federal antitrust laws, or (2) communicated directly or indirectly the contents of this bid to any competitor or any other person engaged in the same line of business as the respondent.
- 1.16. Respondent represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to TPWD a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.
- 1.17. By signing this RFCS, respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Respondent as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.
- 1.18. Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004(a), Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this response or contract is based.

- 1.19. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 1.20. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 1.21. **RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TEXAS PARKS AND WILDLIFE DEPARTMENT (TPWD), ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ANY AGENT, EMPLOYEE, CONTRACTOR, SUBCONTRACTOR, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND TPWD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TPWD FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TPWD OR ITS EMPLOYEES.
- 1.22. Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify TPWD in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.
- 1.23. Under Section 231.006 of the Family Code, the respondent certifies that the individual or business entity named in this RFCSP is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate in addition to other remedies set out in 231.006(f).
- 1.24. Respondent agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
- 1.25. Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Respondent represents that no person who served as an executive of TPWD, in the past four (4) years, was involved with or has any interest in the contract. If Respondent employs or has used the services of a former executive of TPWD, then Respondent shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.
- 1.26. Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 1.27. Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
- 1.28. In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 1.29. Respondent certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/public/SAM/>.
- 1.30. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 1.31. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 1.32. Pursuant to Government Code Section 2275.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2275.0103, or (2) headquartered in any of those countries. Respondent shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state,

other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Respondent will notify TPWD before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

- 1.33. In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.
- 1.34. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 1.35. Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
- 1.36. Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
- 1.37. Respondent represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
- 1.38. Respondent verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TPWD.
- 1.39. Respondent represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.
- 1.40. Pursuant to Section 2254.004 of the Texas Government Code, the Respondent certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only.
- 1.41. Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Respondent and members of its team shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
- 1.42. If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to TPWD pursuant to and in accordance with Section 2054.5192 of the Government Code.
- 1.43. Upon request of TPWD, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
- 1.44. Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code and that payments made by TPWD to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
- 1.45. Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Respondent to TPWD herein are at least as favorable as the benefits, pricing and hourly rates granted by Respondent to any previous client of Respondent for services and/or products similar to those provided hereunder. If Respondent enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, Respondent shall notify TPWD promptly of the existence of such more favorable benefits, pricing and/or hourly rates and TPWD shall have the right to receive the more favorable contractual terms immediately. If requested in writing by TPWD, Respondent hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.
- 1.46. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TPWD's consideration of the Response. If Respondent is unable to make the preceding representation and

warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TPWD's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TPWD in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TPWD shall constitute breach of contract and may result in immediate termination of the contract.

2. In the case of a tie between two (2) or more Respondents, the award will be made in accordance with preferences as outlined in TAC, Title 34, Part 1, Chapter 20, Subchapter C, Section 20.306. If a tie still exists after review of preferences claimed by Respondents, TPWD will draw lots to break the tie.

Check below to claim a preference under 34 TAC Rule 20.38

- Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service-disabled veteran
- Agricultural products produced or grown in TX
- Agricultural products and services offered by TX bidders
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value

Failure to sign the Response or signing it with a false statement shall void the submitted offer or any resulting contracts. If it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Response, Respondent will be in default under the contract and TPWD may terminate or void the contract.

By submitting this Response, Respondent represents and warrants that the individual signing this Response and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response. Failure to sign and return this form will subject the response to disqualification.

COMPANY NAME	AUTHORIZED SIGNATURE	DATE
ADDRESS	PRINTED NAME	
CITY STATE ZIP	TITLE	
() OFFICE PHONE NUMBER	() CELL PHONE NUMBER	
EMAIL ADDRESS	() FAX NUMBER	
TEXAS IDENTIFICATION NUMBER	FEDERAL EMPLOYER IDENTIFICATION NUMBER	

JOC Experience <i>Include three representative Job Order Contracts of similar size and scope. Recent contracts are preferable.</i>				
Construction Firm Name:				
Contract/Project Name:				
Owner/Entity Name:				
Contract Duration (Years):		Start Date:	End Date:	
Total Contract Amount:	\$	Total Number of Projects Completed under Contract:		
Amount Billed to Contract:	\$			
Owner's Representative:				
Owner's Phone Number:		Email Address:		
Services Provided:				
Names of Proposed Key Personnel that worked on this Contract (if any):				
Describe approach to review scope of work prior to proposal submission:				
Describe Scheduling Methods used:				
Describe Approach for coordination of mobilization:				
Describe level of supervision during construction:				

JOC Experience <i>Include three representative Job Order Contracts of similar size and scope. Recent contracts are preferable.</i>				
Construction Firm Name:				
Contract/Project Name:				
Owner/Entity Name:				
Contract Duration (Years):		Start Date:	End Date:	
Total Contract Amount:	\$	Total Number of Projects Completed under Contract:		
Amount Billed to Contract:	\$			
Owner's Representative:				
Owner's Phone Number:		Email Address:		
Services Provided:				
Names of Proposed Key Personnel that worked on this Contract (if any):				
Describe approach to review scope of work prior to proposal submission:				
Describe Scheduling Methods used:				
Describe Approach for coordination of mobilization:				
Describe level of supervision during construction:				

JOC Experience <i>Include three representative Job Order Contracts of similar size and scope. Recent contracts are preferable.</i>				
Construction Firm Name:				
Contract/Project Name:				
Owner/Entity Name:				
Contract Duration (Years):		Start Date:	End Date:	
Total Contract Amount:	\$	Total Number of Projects Completed under Contract:		
Amount Billed to Contract:	\$			
Owner's Representative:				
Owner's Phone Number:		Email Address:		
Services Provided:				
Names of Proposed Key Personnel that worked on this Contract (if any):				
Describe approach to review scope of work prior to proposal submission:				
Describe Scheduling Methods used:				
Describe Approach for coordination of mobilization:				
Describe level of supervision during construction:				

EXHIBIT C – PROPOSED KEY PERSONNEL

Respondent Name: _____

Respondents shall provide a Key Personnel profile – Exhibit C, **for each** key personnel to be assigned under the resulting contract as listed in Section 18 of Exhibit B. *Include all requested information for each key personnel.* Submit one Exhibit C (or reasonable facsimile) or resume - not to exceed 1 page per person for each key personnel. **Failure to return this exhibit (or reasonable facsimile) may result in proposal being considered non-responsive.**

Key Personnel:

Full Name: _____

Job Title: _____

Total Years Employed by Respondent: _____ Total Years' Experience (in required service): _____

Qualifications and Experience: _____

Specific Education, Training, Certifications: _____

Personnel - Reference 1:

Company Name: _____

Contact/Title: _____

Phone: _____ Service Period: _____

Roles and Responsibilities: _____

Personnel - Reference 2:

Company Name: _____

Contact/Title: _____

Phone: _____ Service Period: _____

Roles and Responsibilities: _____

EXHIBIT D – REFERENCES

Respondents shall use this exhibit (*or reasonable facsimile*) to provide a minimum of three (3) references for projects completed within the past seven (7) years that illustrate experience in successfully completing work of a similar nature and scope as the work described in this solicitation. *Include all requested information. Failure to return this exhibit (or reasonable facsimile) may result in proposal being considered non-responsive.*

Company - Reference 1:

Company Name: _____

Contact Name/Title: _____

Phone: _____ Email: _____

Service Period: _____ Contract Value: _____

Brief Project Description: _____

Company - Reference 2:

Company Name: _____

Contact Name/Title: _____

Phone: _____ Email: _____

Service Period: _____ Contract Value: _____

Brief Project Description: _____

Company - Reference 3:

Company Name: _____

Contact Name/Title: _____

Phone: _____ Email: _____

Service Period: _____ Contract Value: _____

Brief Project Description: _____

Company - Reference 4:

Company Name: _____

Contact Name/Title: _____

Phone: _____ Email: _____

Service Period: _____ Contract Value: _____

Brief Project Description: _____

EXHIBIT E – AUTHORIZATION AND CONSENT FOR DISCLOSURE OF CRIMINAL HISTORY INFORMATION

Selected Contractor shall complete and return a copy of the attached Authorization and Consent for Disclosure of Criminal History Information upon request by TPWD.



Authorization and Consent for Disclosure of Criminal History Information

Life's better outside.®

In connection with the evaluation of my suitability for employment, volunteer status or contracted services to TPWD (either as an independent contractor or as an employee of an organization or business who has entered into a contract with TPWD), I give my consent for TPWD to obtain criminal history information related to my application for employment, volunteer status or contracted services to TPWD. I understand that criminal history information includes any criminal conviction records for deferred adjudication, misdemeanor or felony offenses at age 17 or older. Any such information will be used solely for employment, volunteer status or contracted services related considerations and not for any other purpose.

I authorize, consent, and grant permission to any person or entity to release to TPWD or its agent(s) any and all information regarding my criminal history. I waive any and all claims I may have with respect to providing such information. I understand that TPWD and its agent(s) are not responsible for the accuracy or completeness of the information contained in such reports. I release TPWD and its agent(s) from any and all liability, claims, and lawsuits with respect to the information obtained from any or all the sources used by TPWD and its agent(s).

I understand that this authorization is not an offer of employment, volunteer status or contracted services by TPWD and that any false or misleading information I have provided to TPWD may result in a refusal to hire, promote, reassign, or continue employment, volunteer status or contracted services. I also understand that this authorization is a continuing authorization and will remain valid until such time as I inform TPWD in writing that I revoke this authorization.

Please Legibly Print or Type:

Posting Number: _____ If Volunteer, Type of Volunteer: _____

Position Title: _____

State Park/or Facility Location: _____

Print Name: _____
(Last) (First) (Middle)

Address: _____
(Street) (City) (State) (Zip)

Date of Birth: _____ Male Female
(MM / DD / YYYY)

Driver's License Number: _____ Phone: _____
(State) (Number) Alt. Phone: _____

Signature of Applicant may be obtained during interview or any time prior to hire.

Date

Texas Parks and Wildlife Department • 4200 Smith School Road, Austin, Texas 78744 • 1-800-792-1112, press 8 • www.tpwd.state.tx.us/jobs

NOTICE: Texas Parks and Wildlife Department maintains the information collected through this form. With few exceptions, you are entitled to be informed about the information we collect. Under Sections 552.021 and 552.023 of the Texas Government Code, you are also entitled to receive and review the information. Under Section 559.004, you are also entitled to have this information corrected.

TPWD Office Use Only:	
Program/Site:	_____
Contact:	_____
TPWD Human Resources: Approved by:	_____
Date:	_____

EXHIBIT F – RESPONSE ZONE FACILITY LIST AND MAP

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
A	Culberson	Sierra Diablo WMA	Wildlife
		Wildlife District 1 Field Office -Van Horn	Wildlife
	El Paso	El Paso Law Enforcement Office	Law Enforcement
		Franklin Mountains SP	Parks
		Hueco Tanks SP & SHS	Parks
	Wildlife District 1 Field Office - El Paso	Wildlife	
B	Brewster	Barton Warnock Center	Parks
		Black Gap WMA	Wildlife
		Elephant Mountain WMA	Wildlife
		Wildlife Big Game Program - Alpine	Wildlife
		Wildlife District 1 Management Office - Alpine	Wildlife
		Wildlife Management Area Office - Alpine	Wildlife
		Wildlife Management Area Office - Elephant Mountain	Wildlife
	Wildlife Region 1 Management Office - Alpine	Wildlife	
	Jeff Davis	Davis Mountains SP	Parks
		Indian Lodge	Parks
		State Parks Region 1 Office- Fort Davis	Parks
		Wildlife District 1 Field Office - Fort Davis	Wildlife
	Pecos	Wildlife District 1 Field Office - Fort Stockton	Wildlife
	Presidio	Big Bend Ranch SP	Parks
		Chinati Mountains SNA	Parks
		Fort Leaton SHS	Parks
	Reeves	Balmorhea SP	Parks
Howard	Big Spring SP	Parks	
Kimble	South Llano River SP	Parks	
C	Midland	Midland Law Enforcement Office	Law Enforcement
		Wildlife District 1 Field Office - Midland	Wildlife
	Mitchell	Lake Colorado City SP	Parks
	Taylor	Abilene Law Enforcement Office	Law Enforcement
		Abilene SP	Parks
		Inland Fisheries District Office Abilene	Inland
	Tom Green	Inland Fisheries District Office San Angelo	Inland
		San Angelo Law Enforcement Office	Law Enforcement
		San Angelo SP	Parks
Ward	Monahans Sandhills SP	Parks	
D	Briscoe	Caprock Canyons SP	Parks
	Castro	Playa Lakes WMA - Armstrong Unit	Wildlife
		Playa Lakes WMA - Dimmitt Unit	Wildlife
	Cochran	Yoakum Dunes WMA	Wildlife
	Cottle	Matador WMA	Wildlife
		Wildlife District 2 Field Office -Paducah	Wildlife
		Wildlife Management Area Office - Paducah	Wildlife
	Donley	Playa Lakes WMA - Taylor Lakes Unit	Wildlife
	Hall	Caprock Canyons Trailway	Parks
	Hardeman	Copper Breaks SP	Parks
	Hemphill	Gene Howe WMA	Wildlife
		Wildlife Management Area Office - Canadian	Wildlife
	Hockley	Wildlife Management Area Office - Levelland	Wildlife
	Lipscomb	Gene Howe WMA - W. A. Pat Murphy Unit	Wildlife
	Lubbock	Lubbock Law Enforcement Office	Law Enforcement
		Wildlife District 2 Field Office - Lubbock	Wildlife
		Wildlife Diversity Field Office - Lubbock	Wildlife
Potter	Amarillo Law Enforcement Office	Law Enforcement	
Randall	Inland Fisheries District Office Amarillo	Inland	
	Palo Duro Canyon SP	Parks	
	Wildlife District 2 Management Office - Canyon	Wildlife	

Exhibit F

Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
E	Archer	Dundee FH	Inland
	Clay	Lake Arrowhead SP	Parks
	Dallas	Cedar Hill SP	Parks
		Communication Office: Outreach and Education DFW Field Office	Communications
		Garland Law Enforcement Office	Law Enforcement
	Denton	Ray Roberts Lake SP - Elm Fork Unit	Parks
		Ray Roberts Lake SP - Greenbelt Unit	Parks
		Ray Roberts Lake SP - Isle du Bois Unit	Parks
		Ray Roberts Lake SP - Johnson Branch Unit	Parks
		Ray Roberts Lake SP - Jordan Unit	Parks
		Ray Roberts Lake SP - Pecan Creek Unit	Parks
		Ray Roberts Lake SP - Pond Creek Unit	Parks
		Ray Roberts Lake SP - Sanger Unit	Parks
	Fannin	Ray Roberts Lake SP - Trail Corridor Unit	Parks
		Bonham SP	Parks
		Caddo National Grassland-Bois D'arc	Wildlife
	Grayson	Caddo National Grassland-Ladonia	Wildlife
		Eisenhower SP	Parks
		Inland Fisheries District Office Denison	Inland
	Hunt	Ray Roberts Lake SP - Buck Creek Unit	Parks
		Lake Tawakoni SP	Parks
		Tawakoni WMA	Wildlife
	Jack	Wildlife District 5 Field Office - Fate	Wildlife
		Fort Richardson SHS	Parks
		Fort Richardson SP & SHS - Lost Creek Reservoir State Trailway	Parks
	Johnson	Cleburne SP	Parks
	Kaufman	Cedar Creek WMA-Big Island Unit	Wildlife
	Palo Pinto	Palo Pinto Mountains SP	Parks
		Poosum Kingdom FH	Inland
		Poosum Kingdom SP	Parks
Roger R Fawcett WMA		Wildlife	
Wildlife Management Area Office - Gordon		Wildlife	
Parker	Lake Mineral Wells SP	Parks	
	Lake Mineral Wells Trailway	Parks	
Somervell	Dinosaur Valley SP	Parks	
Tarrant	Fort Worth Law Enforcement Office	Law Enforcement	
	Inland Fisheries District Office Dallas-Fort Worth	Inland	
Wichita	Inland Fisheries District Office Wichita Falls	Inland	
	Wichita Falls Law Enforcement Office	Law Enforcement	
F	Bastrop	Bastrop SP	Parks
		Buescher SP	Parks
		State Parks Region 3 Office-Bastrop	Parks
		Wildlife District 7 Field Office - Bastrop	Wildlife
	Bell	Communication Office: Temple	Communications
		Temple Law Enforcement Office	Law Enforcement
	Blanco	Blanco SP	Parks
		Pedernales Falls SP	Parks
	Bosque	Meridian SP	Parks
	Brown	Brownwood Law Enforcement Office	Law Enforcement
		Lake Brownwood SP	Parks
		McGillivray and Leona McKie Muse WMA	Wildlife
		Wildlife District 3 Management Office - May	Wildlife
		Wildlife Management Area Office - May	Wildlife
	Wildlife Region 2 Management Office - Brownwood	Wildlife	
Burleson	Lake Somerville SP - Nails Creek Unit	Parks	
	Lake Somerville Trailway SP	Parks	

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
F	Burnet	Inks Lake SP	Parks
		Longhorn Cavern SP	Parks
	Caldwell	Lockhart SP	Parks
	Coryell	Mother Neff SP	Parks
	Gillespie	Lyndon B. Johnson SP & SHS	Parks
	Hamilton	Game Warden Training Center	Law Enforcement
	Hays	A E Wood FH	Inland
		Fish Health and Genetics Lab	Inland
		Inland Fisheries District Office San Marcos-Austin	Inland
		Inland Fisheries Region 2 Office	Inland
		John J. Stokes San Marcos River	Parks
	Hill	River Studies Program	Inland
		Lake Whitney SP	Parks
	Lee	Lake Somerville SP - Nails Creek Unit	Parks
		Lake Somerville SP - Nails Creek Unit	Parks
		Wildlife District 7 Field Office - Giddings	Wildlife
	Limestone	Fort Parker SP	Parks
	Llano	Enchanted Rock SNA	Parks
	Mason	Mason Mountain WMA	Wildlife
		Wildlife Management Area Office - Mason	Wildlife
	Mclennan	Inland Fisheries District Office Waco	Inland
		Inland Fisheries Region 1 Office	Inland
		State Parks Region 5 Office- Waco	Parks
		Waco Law Enforcement Office	Law Enforcement
	San Saba	Colorado Bend SP	Parks
	Travis	Airport Aviation Branch Law Enforcement	Law Enforcement
		Airport Commerce Park	Support Resources
Austin Headquarters Complex		Support Resources	
Austin Warehouse		Support Resources	
Communication Office: Outreach and Education Austin Field Office		Communications	
McKinney Falls SP		Parks	
Williamson	Promontory Point Records Office	Support Resources	
	Granger Public Hunt Land	Wildlife	
G	Atascosa	Wildlife District 8 Management Office- Pleasanton	Wildlife
	Bandera	Albert & Bessie Kronkosky SNA	Parks
		Hill Country SNA - Louise Merrick Unit	Parks
		Lost Maples SNA	Parks
		State Parks Satellite Office- Pipe Creek	Parks
	Bexar	Government Canyon SNA	Parks
		Inland Fisheries District Office San Antonio	Inland
		San Antonio Law Enforcement Office	Law Enforcement
	Comal	Guadalupe River SP	Parks
		Honey Creek SNA	Parks
	Edwards	Devil's Sinkhole SNA	Parks
	Gonzales	M. O. Neasloney WMA	Wildlife
		Palmetto SP	Parks
		Wildlife Management Area Office - Gonzales	Wildlife
	Kendall	Old Tunnel SP	Parks

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
G	Kerr	Heart of the Hills Research Station	Inland
		Kerr WMA	Wildlife
		Kerrville Law Enforcement Office	Law Enforcement
		Wildlife District 4 Management Office- Kerrville	Wildlife
		Wildlife Management Area Office - Hunt	Wildlife
	Kinney	Kickapoo Cavern SNA	Parks
	Medina	Wildlife District 8 Field Office - Devine	Wildlife
	Uvalde	Garner SP	Parks
		Wildlife District 8 Field Office - Uvalde	Wildlife
	Val Verde	Devils River - Del Norte SNA	Parks
		Devils River SNA - Dan A Hughes Unit	Parks
		Seminole Canyon SHS	Parks
	H	Anderson	Big Lake Bottom WMA
Gus Engeling WMA			Wildlife
Wildlife Management Area Office - Tennessee Colony			Wildlife
Angelina		Alazan Bayou WMA	Wildlife
		Lufkin Law Enforcement Office	Law Enforcement
		Wildlife Management Area Office - Nacogdoches	Wildlife
		Wildlife Management Area Office - Zavalla	Wildlife
Cass		Atlanta SP	Parks
Cherokee		Rusk Law Enforcement Office	Law Enforcement
		Wildlife District 6 Field Office - Rusk	Wildlife
Delta		Cooper Lake SP - Doctors Creek Unit	Parks
		Cooper Lake SP - Johns Creek Unit	Parks
		Cooper Reservoir WMA	Wildlife
Freestone		Fairfield Lake SP	Parks
		Richland Creek WMA	Wildlife
		Wildlife Management Area Office - Streetman	Wildlife
Harrison		Caddo Lake SP	Parks
		Inland Fisheries District Office Marshall	Inland
		Wildlife Management Area Office - Karnack	Wildlife
Henderson		Cedar Creek WMA-Bird Island Un	Wildlife
		Cedar Creek WMA-Telfair Island	Wildlife
		Texas Freshwater Fisheries Center	Inland
Hopkins		Cooper Lake SP - South Sulphur Unit	Parks
		Wildlife Management Area Office - Cooper	Wildlife
Houston		Mission Tejas SHS	Parks
Lamar		Pat Mayse WMA	Wildlife
		Pat Mayse WMA	Wildlife
	Wildlife Management Area Office - Powderly	Wildlife	
Leon	Fort Boggy SP	Parks	
	Keechi Creek WMA	Wildlife	
Madison	Wildlife District 5 Field Office - Madisonville	Wildlife	
Marion	Caddo Lake WMA	Wildlife	

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
H	Morris	Daingerfield SP	Parks
		White Oak Creek WMA	Wildlife
		Wildlife Management Area Office - Omaha	Wildlife
	Nacogdoches	Wildlife District 6 Management Office-Nacogdoches	Wildlife
		Wildlife Diversity Field Office - Nacogdoches	Wildlife
	Navarro	Wildlife District 5 Field Office - Purdon	Wildlife
	Rusk	Martin Creek Lake SP	Parks
	Sabine	Moore Plantation	Wildlife
	San Augustine	Bannister WMA	Wildlife
	Shelby	North Toledo Bend WMA	Wildlife
	Smith	Inland Fisheries District Office Tyler	Inland
		Inland Fisheries Region 3 Office	Inland
		Old Sabine Bottom WMA	Wildlife
		State Parks Region 6 Office- Tyler	Parks
		The Nature Center	Wildlife
		Tyler Law Enforcement Office	Law Enforcement
		Tyler SP	Parks
		Wildlife District 5 Management Office-Tyler	Wildlife
		Wildlife Management Area Office - Lindale	Wildlife
	Wildlife Region 3 Management Office - Tyler	Wildlife	
	Titus	Lake Bob Sandlin SP	Parks
		Mount Pleasant Law Enforcement Office	Law Enforcement
	Trinity	Alabama Creek WMA	Wildlife
Upshur	Wildlife Field Office - Gilmer	Wildlife	
Van Zandt	Purtis Creek SP	Parks	
I	Austin	Stephen F Austin SP	Parks
	Brazoria	Follets Island Coastal Management Area	Coastal
		Justin Hurst WMA	Wildlife
		Nannie M Stringfellow WMA	Wildlife
		Sea Center Texas	Coastal
	Brazos	College Station Law Enforcement Office	Law Enforcement
		Communication Office: Outreach and Education - College Station	Communications
		Wildlife District 5 Field Office - College Station	Wildlife
		Wildlife Region 3&4 GIS Specialist	Wildlife
	Burleson	Inland Fisheries District Office College Station-Houston	Inland
		Lake Somerville SP - Birch Creek	Parks
	Chambers	Candy Abshier WMA	Wildlife
	Colorado	Wildlife District 7 Field Office - Columbus	Wildlife
	Fayette	Wildlife District 7 Management Office- La Grange	Wildlife
	Fort Bend	Brazos Bend SP	Parks
		Wildlife District 7 Field Office - Rosenberg	Wildlife
	Galveston	Atkinson Island WMA	Wildlife
		Coastal Fisheries- Galveston By Ecosystem Office	Coastal
		Coastal Fisheries- Upper Coast Region 1 Office	Coastal
		Communication Office: Dickinson	Communications
		Galveston Island SP	Parks
	La Marque Law Enforcement Office	Law Enforcement	
	Hardin	Village Creek SP	Parks
Harris	Armand Bayou Coastal Preserve	Coastal	
	Battleship Texas SHS	Parks	
	North Houston Law Enforcement Office	Law Enforcement	
	Sheldon Lake SP	Parks	
	South Houston Law Enforcement Office	Law Enforcement	
State Parks Region 4 Office-Houston	Parks		

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
I	Jasper	Angelina Neches/Dam B WMA	Wildlife
		East Texas Conservation Center	Wildlife
		East Texas Fish Hatchery	Inland
		Inland Fisheries Aquatic Vegetation Control	Inland
		Inland Fisheries District Office Jasper	Inland
		Martin Dies, Jr. SP	Parks
	Jefferson	Beaumont Law Enforcement Office	Law Enforcement
		Coastal Fisheries- Sabine Lake Ecosystem Office	Coastal
		J D Murphree WMA	Wildlife
		Sea Rim SP	Parks
		Wildlife Management Area Office - Port Arthur	Wildlife
	Liberty	Davis Hill SP	Parks
	Matagorda	Coastal Fisheries- Matagorda Bay Ecosystem Office	Coastal
		Mad Island WMA	Wildlife
		Matagorda Peninsula	Coastal
		Perry R Bass Marine Research Station	Coastal
		Wildlife Field Office- Bay City	Wildlife
	Orange	Lower Neches WMA - Adams Bayou Unit	Wildlife
		Lower Neches WMA - Nelda Stark Unit	Wildlife
		Lower Neches WMA - Old River Unit	Wildlife
		Tony Houseman/Blue Elbow Swamp WMA	Wildlife
	Polk	Lake Livingston SP	Parks
	San Jacinto	Sam Houston National Forest	Wildlife
	Tyler	Wildlife District 6 Field Office - Woodville	Wildlife
	Walker	Huntsville SP	Parks
		Wildlife District 6 Field Office - Huntsville	Wildlife
	Washington	Wildlife District 7 Field Office - Brenham	Wildlife
Wharton	Wildlife District 7 Field Office - El Campo	Wildlife	
	Wintermann Waterfowl Area	Wildlife	
J	Aransas	Coastal Fisheries- Aransas Bay Ecosystem Office	Coastal
		Coastal Fisheries- Corpus Christi Bay Ecosystem Office	Coastal
		Coastal Fisheries- Lower Coast Region 2 Office	Coastal
		Goose Island SP	Parks
		Rockport Law Enforcement Office	Law Enforcement
		State Parks Region 2 Office-Rockport	Parks
		Wildlife Region 4 Management Office- Rockport	Wildlife
		Wildlife District 7 Field Office - Brenham	Wildlife
	Calhoun	Coastal Fisheries- San Antonio Bay Ecosystem Office	Coastal
		Guadalupe Delta WMA - Mission Lake Unit	Wildlife
		Matagorda Island WMA	Wildlife
		Powderhorn SP	Parks
		Powderhorn WMA	Wildlife
		Welder Flats WMA	Wildlife
		Wildlife Field Office - Port O'Connor	Wildlife
	Dimmit	Chaparral WMA	Wildlife
	Goliad	Goliad SHS	Parks
	Kleberg	Wildlife District 8 Field Office - Kingsville	Wildlife
	La Salle	Wildlife Management Area Office - Cotulla	Wildlife
	Lavaca	Wildlife District 7 Field Office - Hallettsville	Wildlife
	Live Oak	Choke Canyon SP - North Shore Unit	Parks
		Choke Canyon SP - South Shore Unit	Parks
		James E. Daughtrey WMA	Wildlife

Exhibit F
Response Zone Facility List

Response Zone	County	Location Name	TPWD Division
J	McMullen	Choke Canyon SP - Calliham Unit	Parks
		Wildlife Management Area Office - Tilden	Wildlife
	Nueces	CCA/CPL Marine Development Center	Coastal
		Coastal Fisheries- Upper Laguna Madre Ecosystem Office	Coastal
		Communication Office: Outreach and Education - Corpus Christi	Communications
		Corpus Christi Law Enforcement Office	Law Enforcement
		Mustang Island SP	Parks
		Redhead Pond WMA	Wildlife
		Wildlife District 8 Field Office - Corpus Christi	Wildlife
	Refugio	Guadalupe Delta WMA - Guadalupe River Unit	Wildlife
		Guadalupe Delta WMA - Hynes Bay Unit	Wildlife
	San Patricio	Inland Fisheries District Office Corpus Christi	Inland
		Lake Corpus Christi SP	Parks
	Victoria	Guadalupe Delta WMA - San Antonio Unit	Wildlife
		Victoria Law Enforcement Office	Law Enforcement
		Wildlife Field Office - Victoria	Wildlife
	Webb	Lake Casa Blanca SP	Parks
		Laredo Law Enforcement Office	Law Enforcement
Wildlife District 8 Field Office - Laredo		Wildlife	
K	Cameron	Boca Chica SP	Parks
		Brownsville Law Enforcement Office	Law Enforcement
		Coastal Fisheries- Lower Laguna Madre Ecosystem Office	Coastal
		Las Palomas WMA - Anacua Unit	Wildlife
		Las Palomas WMA - Arroyo Colorado Unit	Wildlife
		Las Palomas WMA - Carricitos Unit	Wildlife
		Las Palomas WMA - Ebony Unit	Wildlife
		Las Palomas WMA - Longoria Unit	Wildlife
		Las Palomas WMA - Tucker-Deshazo Unit	Wildlife
		Las Palomas WMA - Voshell Unit	Wildlife
		South Bay Coastal Preserve	Coastal
	World Birding Center - Resaca de la Palma SP	Parks	
	Hidalgo	Las Palomas WMA - Baird Unit	Wildlife
		Las Palomas WMA - Champion Unit	Wildlife
		Las Palomas WMA - Chapote Unit	Wildlife
		Las Palomas WMA - Kelly Unit	Wildlife
		Las Palomas WMA - Kiskadee Unit	Wildlife
		Las Palomas WMA - McManus Unit	Wildlife
		Las Palomas WMA - Penitas Unit	Wildlife
		Las Palomas WMA - Taormina Unit	Wildlife
		Wildlife Management Area Office - Weslaco	Wildlife
		World Birding Center - Bentsen-Rio Grande Valley SP	Parks
	World Birding Center - Estero Llano Grande SP	Parks	
	Starr	Falcon SP	Parks
		Las Palomas WMA - La Grulla Unit	Wildlife
		Las Palomas WMA - Prieta Unit	Wildlife
	Willacy	Las Palomas WMA - Frederick Unit	Wildlife



JOB ORDER CONTRACTING RESPONSE ZONES (A THRU K)

TPWD PROPERTY AND OFFICES

- COASTAL
- COMMUNICATIONS
- INLAND
- LAW ENFORCEMENT
- PARKS
- SUPPORT RESOURCES
- WILDLIFE

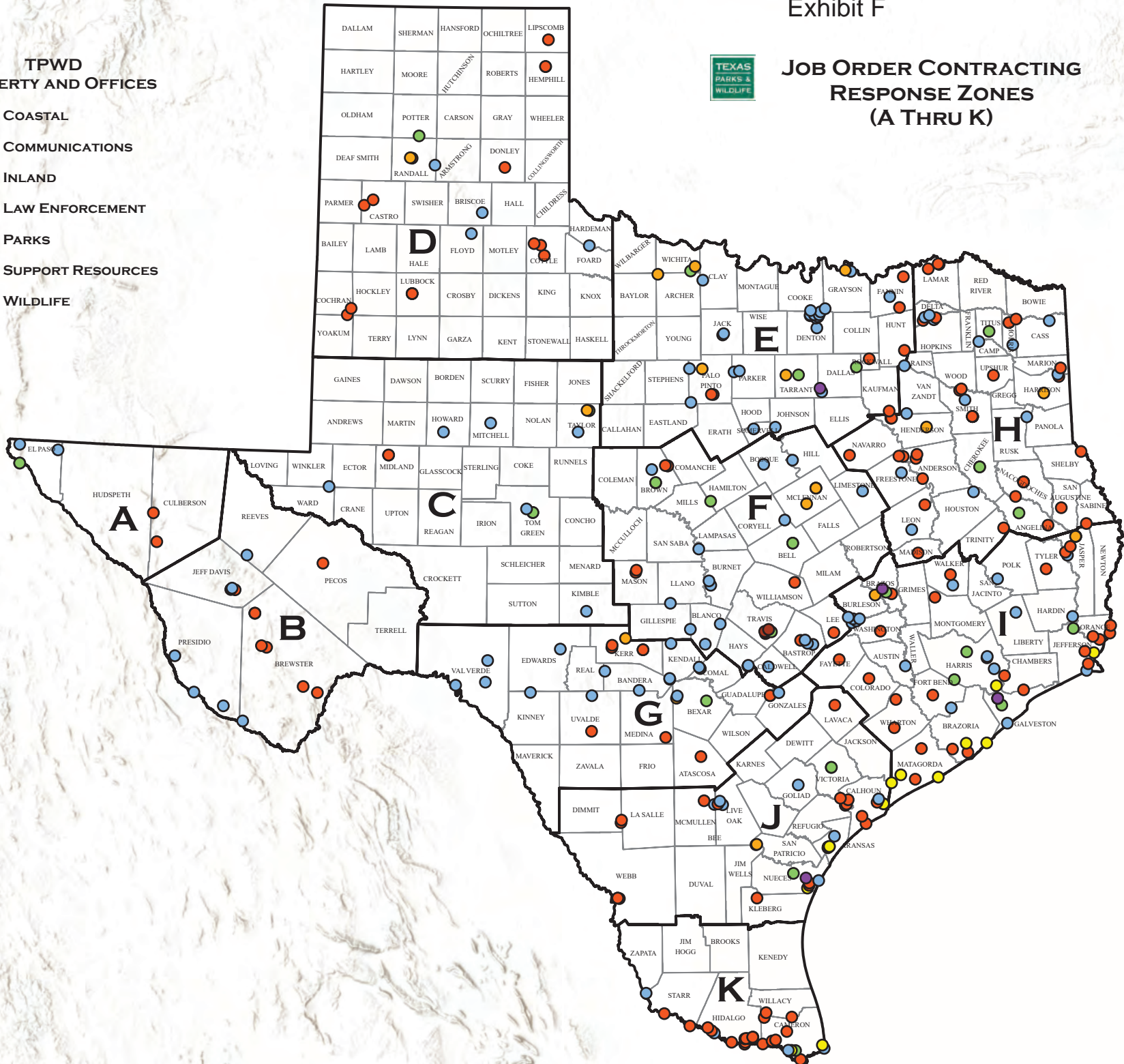


EXHIBIT G – PRICING SCHEDULE

Selected Respondents will be notified by TPWD to complete the attached Pricing Schedule as outlined in [Section II, Subsection 5, Item 5.5.1](#).

PRICING SCHEDULE FOR CONTRACTOR’S COEFFICIENTS

**STATEWIDE GENERAL CONSTRUCTION
JOB ORDER CONTRACTING SERVICES
INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ)
FOR THE
TEXAS PARKS AND WILDLIFE DEPARTMENT**

(Full legal Name of Firm Responding) _____

(Contact Name and Title) _____

(Contact Email Address) _____

(Mailing Address) _____

(City) _____ (State) _____ (ZIP) _____

(Telephone No.) _____

Having carefully examined ALL information contained and/or referenced in this Request for Competitive Sealed Proposals, as prepared by TPWD, the undersigned proposes to furnish all labor, materials, and equipment necessary to complete the entire work in accordance with the Contract Documents at the pricing proposed in this Section.

CONTRACTOR’S COEFFICIENT (BID) PRICING SCHEDULE

The Unit Price Book (UPB) for any contract resulting from this RFCSP shall be the most current version of the *R.S. Means Online Facilities Construction Cost Book*®, incorporated by reference. To determine final pricing for each Job Order, the awarded Respondent’s proposed Contractor’s Coefficient for the Response Zone (*Ref: [Response Zone Facility List and Map - Exhibit F](#)*) corresponding to the project worksite location shall be applied to the Unit Prices in the UPB after adjustment by a City Cost Index for the geographically closest Texas city to the project work site location.

The Contractor’s Coefficient is firm for the initial two (2) years and for each renewal year if option to renew is exercised. Line items within the UPB which relate in full or in part to the items listed below must be EXCLUDED from job order cost proposal(s), due to inclusion within a Respondent’s Coefficient. Costs not associated to the UPB line items must be included in the Contractor’s coefficient. The Contractor’s Coefficient must include all labor, materials, and equipment as well as all costs associated with providing all services, materials, labor, equipment, travel costs, etc. including but not limited to:

- **Overhead** – corporate office expenditures, site office establishment, equipping, office supplies and staffing. Daily cost of doing business, as associated to the life of Contract, inclusive of any and all similar items associated to subcontractor(s)/vendor(s)/supplier(s). While line items may or may not have subcontractor(s)/vendor(s)/supplier(s) markups included in their cost, the Contractor’s coefficient will consider them as included.
- **Profit (both prime and Subcontractors)** – the applicable amount associated to this coefficient, as “mark-up” for all components related to the Contractor and the subcontractor(s)/vendor(s)/supplier(s), per each Job Order.
- **Insurance** – all associated insurance for doing business within the State of Texas, Builder’s Risk, and indemnification, exclusive of cost associated to performance and payment bonds.
- **Compliance with environmental laws** – corporate and site office staff training, development of procedures/protocol/processes associated to the protection of the office, Work, associated areas affected by the Work and final disposition of all items removed from TPWD, exclusive of Job Order specific site conditions which

would require barriers for prevention of incidents (i.e., storm water prevention, oil and hazardous material prevention).

- **Compliance with tax laws** – TPWD will provide the awarded Contractor with a tax exemption certificate, for sales tax exemption for materials related to Work. Taxes associated to rental equipment will be considered as included within the coefficient. Any and all changes to tax laws, city, county, state and federal, will be considered as included for the duration of the base period and each option year. No adjustments, beyond what is proposed by the Contractor will be allowed at any time, especially not during the start of any option periods.
- **Protection and/or moving of TPWD property** – security of the project site becomes the sole responsibility of the successful Contractor from the Notice to Proceed until the Beneficial Occupancy. Any and all items left within the Work area, and the surrounding areas, will be within the Contractor's responsibility to maintain within their existing or better condition. TPWD, prior to the pre-construction meeting for all Job Orders, will perform a photographic inventory. Successful Contractor must provide adequate protection of work in place and on-site during construction until project completion. Moving is defined as incidental, within a building, on the same floor, to rooms or hallways with prior Fire Marshall approval, near or adjacent to the Work area. Successful Contractor must provide protection (dust, damage, etc.) and return the items upon project completion. Furniture (chairs, desks, file cabinets, shelves, etc.) is defined as NOT attached, fastened to or part of the structure (walls, floor, ceiling, columns, etc.). Systems or landscape furniture are not considered under this provision and require specific attention within the Job Order assignment.
- **Administrative support** – cost associated with day-to-day operations at both corporate and job site offices, in order to maintain all relevant project information and the administering of support services to all Contractor associated personnel.
- **Architectural and Engineering graphics design services (preparation of As-Builts)** – with consideration to JOC Joint Scope projects, the successful Contractor is expected to have these services to meet the needs of projects that fall below the minimum requirements for architectural and engineering, as determined by State of Texas law. As-Built drawings must be provided electronically for ALL projects, in a format compatible with TPWD systems and software.
- **Submittals and Samples** – as defined in each Job Order and its associated drawings and specifications, with no cost to TPWD. Magnitude of project is NOT a consideration. This requirement includes shop drawings, mock-ups, the entire variety of samples and ALL significant and appropriate manufacturers' information as associated to materials and equipment being placed within any and all projects related to TPWD and defined by specifications. TPWD recommends successful Contractor maintains a library of approved standard submittals.
- **Preparing and providing price proposals** – all activities associated with the preparation of preliminary to final proposals, inclusive of Work scope development, prior to issuance of the Job Order will be considered as included within the Contractor's Coefficient.
- **Clean up - both daily and final** - each and every Job Order construction site must be cleaned daily, no later than the close of work on every day work is performed. Each work site must be maintained in a safe and clean manner as the workday progresses in order to maintain a safe work environment. Final cleanup must be professional in appearance. The successful Contractor shall be solely responsible for this action whether the work is performed by Contractor's staff or delegated to a subcontractor/vendor/supplier. **ALL COST OF FINAL CLEAN UP AND REMOVAL AND HAULING OF TRASH, DEBRIS AND RUBBISH MUST BE INCLUDED IN UNIT PRICING. TPWD WILL NOT PAY NOR ACCEPT ANY LINE ITEMS FOR FINAL CLEAN UP OR RUBBISH HAULING, ETC. ON JOB ORDERS UNLESS EXCLUSIONS ARE EXPLICITLY NOTED IN UNIT PRICING.**
- **All waste, shrink/swell and excess materials** – defined as losses during installation of specific materials (i.e., lumber, site work, etc.). When working with any and all associated materials, NO additional percentages or allowances shall be granted in development of proposals or price quotations.
- **Permits, licenses and fees (excluding City of Austin permits)** – work performed on TPWD locations typically require no permits, licenses or fees. The successful Contractor shall acquire these items at cost multiplied by the appropriate Coefficient.
- **Mobilization/de-mobilization for total Contract and each Job Order** – mobilization and de-mobilization as associated to Contract and individual Job Order assignments are considered included within the coefficient. Any and all line items within the UPB in name or reference to mobilization and de-mobilization shall not be allowed in any proposal.

- **Shipping and delivery costs (normal and expedited)** – all costs associated with this category shall be considered as included within the Coefficient unless the Work is affected by delay on behalf of or at TPWD's request.
- **Close-out (process and documents) training and warranty tags** – including all actions associated to commissioning of a project site, inclusive of but not limited to: preparation of operation and maintenance manuals, training of appropriate Facilities personnel per specific installation, identification of infrastructure items installed by the successful Contractor and placement of warranty tags on equipment. Costs associated with this category shall be considered as included in the successful Contractor's Coefficient.
- **Signs and barriers** – all project sites must be identified for the appropriate hazards, using OSHA/International Symbol senate. Barriers include: railings, caution tape, ropes/cables, cones, minor barriers and any other additional markings for the project site. Staging areas outside of the building must be barricaded by chain link fence, to contain vehicles, dumpsters, materials and equipment, which shall be considered part of the successful Contractor's Coefficient. Dust partitions requiring more than plastic sheeting and tape shall be considered for line item development, but only with the consideration and approval of TPWD for each Job Order.
- **Project management and supervision** – successful Contractor must have a dedicated presence managing and supervising all Job Order projects. Persons supervising Work shall have no greater workload than ten (10) Job Order projects per person, or no greater than one million dollars in value. Management is defined as on-site personnel, coordinating all efforts (i.e., meeting attendance, subcontractor management, etc.), other than supervision of the project and may require more than one person. Specific Job Orders may require dedicated personnel, at TPWD's request and at no additional cost to TPWD. All scenarios associated to this category shall be considered as included in the Contractor's Coefficient.
- **Quality control** – successful Contractor must have a proactive quality control program, minimizing TPWD's need for an extensive construction inspection program. Routine testing and its associated costs shall be considered part of any associated line item and included (i.e., balancing of HVAC systems, soaping of joints, hydrostatic testing, compaction testing for backfill, etc.). TPWD will identify specific Job Order needs potentially requiring a certified, third party engineering/testing report. Existing materials, as identified by specification or by TPWD, will be covered at TPWD's expense with prior approval.
- **Parking at Jobsite** – except as otherwise noted, parking shall be considered a part of the successful Contractor's Coefficient. Parking at the worksite as well as staging areas will be designated and coordinated with the Owners Designated Representative. Space for a mobile office or trailer is not guaranteed at any worksite and use of a mobile office or trailer at a given worksite will require coordination with and written approval of the Owners Designated Representative. Any associated costs are considered part of the Coefficient.
- **Safety program and personal protective equipment (PPE)** – successful Contractor must have a proactive safety program, maintained on a weekly basis and enforced daily. The program must incorporate training of and implementation by all the successful Contractor's staff, and effective implementation by all subcontractor(s)/vendor(s)/supplier(s). Hard hats shall be considered mandatory for ALL personnel, while other PPE shall be required per project specific activities. Costs associated with this category are within the Contractor's Coefficient.
- **Office management, staff and equipment** – successful Contractor must maintain equipment required to manage office production and coordinating field operations (i.e., computers, copiers, radios/cellular phones, etc.). Contractor shall not use any TPWD equipment without prior approval. This category includes all office supplies and accessories. All cost within this category shall be considered as included in the Contractor's Coefficient.
- **Interest associated with funding of equipment and payroll.**
- **Depreciation of equipment and mobile offices** – while TPWD MAY provide a location for a mobile office, all costs associated with such an office (i.e., utilities, phones, etc.) shall be the sole responsibility of the successful Contractor and shall be considered a part of overhead costs, which are included in Contractor's Coefficient. Any space the Contractor deems necessary for operations away from TPWD provided location (if any), and its associated costs whether leased, rented or purchased, shall be the sole responsibility of the Contractor. All costs associated with this category shall be considered as included within the Contractor's Coefficient.
- **Employee payroll taxes, insurance and fringe benefits** – all payroll taxes and payments mandated by law associated to labor and individual workers including, but not limited to, Workers' Compensation and

Unemployment Insurance, Social Security, Medicare and employee benefits are considered part of Contractor's Coefficient.

- **Increases in costs of labor.**
- **Risk of lower than expected contract dollar volume** – any anticipated maximum dollar value of any contract resulting from this RFCSP is merely an estimate, based on historical information on previous projects and is provided for reference only. Costs associated with this category shall be considered part of Contractor's Coefficient.
- **Risk of high inflation costs including when renewal years are exercised** – associated with all components comprising a line item unit price within any given year of the UPB (i.e., labor, materials, equipment and all related/associated accessories). Costs associated with this category shall be considered part of Contractor's Coefficient. Line items stated in the UPB include labor, materials and equipment for a complete and in place installation associated to a specific construction project, and the successful Contractor shall assume all risk for labor, material and equipment rate increases after award of a contract.
- **Risk of poor Subcontractor performance as well as any required reworks/reperformance** – inclusive of loss of and difference in productivity, corrective actions and Contractor imposed overtime, including weekends and holidays. Costs associated with this category shall be considered part of Contractor's Coefficient.
- **Other risks of doing business** – including but not limited to project size, location and/or complexity, adverse conditions, all types of weather conditions, building material shortages, TPWD imposed delays, restrictions or security, site accessibility, etc. All costs in this category shall be considered part of Contractor's Coefficient.
- **Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.)**
- **Ladder, scaffolding and other similar equipment for work below 15 feet above any particular work surface**
- **Square, level and plumb are the sole responsibility of the successful Contractor**, and measuring, layout, staking, etc. in conjunction with drawings, specifications and/or joint scope shall be considered as a part of the Contractor's Coefficient.
- **Activities associated with labor**, within the line items such as manual loading, unloading and storage of materials to and from vehicles and the job site; tools of the trade including moving and storage of tools; material and equipment handling up to three stories of a building, up to 15 feet above finished flooring height, and up to 150 feet of the project site; material delivery, layout, assembly and measuring; and items associated with Section 5.3 used to develop the Contractor's Coefficient
- **Items associated to materials**, within in the line items – all materials shall be sales tax exempt, inclusive of all related/associated accessories necessary for proper manufacturer or specification installation, submittals, sample and shop drawings, and delivery of materials within 150 feet of project
- **Items associated with equipment**, within the line items – loading, unloading, storage, handling up to three stories of a building, to 15 feet above finished floor height, and up to 150 feet of project site and installation into its final location.
- **Division One line items of the UPB shall not be used by the successful Contractor without the express authorization of the Owners Designated Representative. No items within CSI Division One that are associated to the Coefficient and/or identified above shall be considered in any manner.**

CONTRACTOR COEFFICIENTS

Contractor Coefficients must be proposed for each Response Zone (Ref: [Exhibit F](#)) listed below. The Coefficient Multipliers must be proposed using the most current version of the *R.S. Means Online Facilities Construction Cost Book*©.

Contractor Coefficients must be proposed for the base period as well as each of the potential renewal periods for each Response Zone. Each optional renewal term beyond the base period will be subject to that period's Coefficients as proposed below. The most current UPB shall be used during the base period and any renewal period(s).

Base Period (First Twenty-Four (24) Months):

Contractor's Coefficients for each Response Zone shall apply during the base period of the contract and remain firm for the base years.

Response Zone A:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone B:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone C:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone D:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone E:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone F:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone G:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone H:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone I:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____ %

Response Zone J:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Years 1 & 2 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Years 1 & 2 _____%

Response Zone K:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Years 1 & 2 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Years 1 & 2 _____%

First Renewal Option Period (Third Twelve (12) Months):

Contractor's Coefficients for each Response Zone shall apply during the first renewal period of the contract and remain firm for the entire first renewal term.

Response Zone A:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____%

Response Zone B:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____%

Response Zone C:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Response Zone D:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Response Zone E:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Response Zone F:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Response Zone G:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Response Zone H:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Response Zone I:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient– Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Response Zone J:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Response Zone K:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 3 _____ %

Second Renewal Option Period (Fourth Twelve (12) Months)

Contractor's Coefficients for each Response Zone shall apply during the second renewal period of the contract and remain firm for the entire first renewal term.

Response Zone A:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone B:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone C:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone D:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone E:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone F:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____ %

Response Zone G:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Response Zone H:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Response Zone I:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Response Zone J:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Response Zone K:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 4 _____%

Third Renewal Option Period (Fifth Twelve (12) Months)

Contractor's Coefficients for each Response Zone shall apply during the third renewal period of the contract and remain firm for the entire first renewal term.

Response Zone A:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Response Zone B:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Response Zone C:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Response Zone D:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Response Zone E:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____%

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone F:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone G:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone H:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone I:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone J:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Response Zone K:

Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

Other Than Normal Working Hours:

Awarded Contractor shall perform all functions called out in any Job Order during other than normal working hours for the line item pricing in the UPB multiplied by the coefficient factor:

Coefficient – Year 5 _____ %

DELIVERY SCHEDULE FOR PROPOSALS

Proposer shall perform all functions necessary to complete and present to TPWD, a preliminary proposal in a format provided by TPWD including a work plan, preliminary performance schedule, narrative statement of work (joint scope projects and/or project clarifications), and the line items for the total project cost. **All time periods shall be represented in calendar days.**

Project Cost Level	TPWD Expectations	Proposer's Commitment
Under \$50,000	Five (5) days or less	_____
\$50,000 to \$100,000	Ten (10) days or less	_____
Over \$100,000	Fifteen (15) days or less	_____

METHOD FOR CALCULATION OF PRICING

Provide a narrative description of how Contractor Coefficients were calculated, describing all costs included.

RESPECTFULLY SUBMITTED

Authorized Signature: _____

Printed Name and Title: _____

Telephone: _____

Email Address: _____

Date: _____

MASTER AGREEMENT PRICED ITEMS (MAPI)

FEE SCHEDULE FOR MISCELLANEOUS PROJECT SUPPORT SERVICE PERSONNEL

Respondent (Company/Firm): _____

Respondents shall submit all costs for services listed in all line items. Respondent shall include all additional costs pertaining to the service in spaces provided.

Respondent is to enter \$0 (zero) if the item will be provided at no charge or if the price for that line item is included in price of another line item. Rates shall remain firm throughout the full term of the contract.

Rates proposed below shall be the bare hourly labor rates for the positions listed. To determine pricing for each Job Order for Miscellaneous Project Support Services, the awarded Respondent's proposed Contractor Coefficient for the Response Zone (Ref: *Response Zone Facility List and Map - Exhibit F*) corresponding to the project worksite location shall be applied to the bare hourly labor rate to cover overhead and profit of the MAPI line items listed below. No travel cost reimbursement will be provided in association with use of MAPI line items.

THE SCHEDULE OF FEES WILL BE USED TO ESTABLISH FIXED PRICES FOR SERVICES.

After award and as individual Miscellaneous Project Support Services are identified, Contractor will be requested to submit a fee proposal detailing the total fee for providing the services for the specific project expressed. The total fee shall be provided as a "not to exceed" amount and the number of hours and rates (by position in accordance with the approved fee schedule) shall be listed to support the total fee proposed. Contractor shall be responsible for all expenses associated with the work identified in the job order.

Line Item	Description	Unit of Measure	Bare Unit Labor Rate
MAPI-1	Cost Estimator/Scheduler (Base Period: Years 1 & 2)	Hourly	\$
MAPI-2	Construction Manager (Base Period: Years 1 & 2)	Hourly	\$
MAPI-3	Project Manager (Base Period: Years 1 & 2)	Hourly	\$
MAPI-4	Cost Estimator/Scheduler (First Renewal Period: Year 3)	Hourly	\$
MAPI-5	Construction Manager (First Renewal Period: Year 3)	Hourly	\$
MAPI-6	Project Manager (First Renewal Period: Year 3)	Hourly	\$
MAPI-7	Cost Estimator/Scheduler (Second Renewal Period: Year 4)	Hourly	\$
MAPI-8	Construction Manager (Second Renewal Period: Year 4)	Hourly	\$
MAPI-9	Project Manager (Second Renewal Period: Year 4)	Hourly	\$
MAPI-10	Cost Estimator/Scheduler (Third Renewal Period: Year 5)	Hourly	\$
MAPI-11	Construction Manager (Third Renewal Period: Year 5)	Hourly	\$
MAPI-12	Project Manager (Third Renewal Period: Year 5)	Hourly	\$

EXHIBIT H – RESPONSE SUBMISSION CHECKLIST

The following checklist is provided for the convenience of Respondents in their response preparation process. It is not intended to represent an exhaustive list of the mandatory requirements for this RFCSF. Respondents must ensure that all mandatory requirements for this RFCSF are met, even if they are not included in this checklist. The mandatory documentation must be submitted with the original response.

A completed checklist shall not be binding on TPWD’s administrative review for compliance with the mandatory response contents specified in this RFCSF. As step one of the evaluation process, TPWD will review all responses to ensure compliance with the mandatory response contents as specified in *Section II* of the RFCSF and reject any response that does not comply.

All responses must be received by TPWD on or before 2:00 p.m. (CT) on the date specified in Section II, Subsection 1 of the solicitation. No late responses will be considered.

Item	Check
Response sent via email to: INFContracting@tpwd.texas.gov	
Enter the solicitation number, RFCSF opening date and Respondent Firm Name in the subject line of email. Example: “Solicitation No. 2024Statewide-JOC, June 11, 2024, Company Name”	
Package contains one (1) signed original (clearly marked) of the complete response	
Package contains one (1) additional copy of the complete response	
Response cover references “RFCSF Solicitation No. 2024Statewide-JOC” and includes the name and address of the Respondent	
Mandatory Response Contents	
HUB Program Statement of Responsibility (per Section II, Subsection 6)	
Letter of Bonding Capacity (per Section II, Subsection 6)	
Safety program and safety record (per Section II, Subsection 6)	
Exhibit A – Execution of Response (per Section II, Subsection 6)	
Exhibit B – Statement of Qualifications (per Section II, Subsection 6)	
Exhibit C – Proposed Key Personnel (per Section II, Subsection 6)	
Exhibit D – References (per Section II, Subsection 6)	
Exhibit H – Response Submission Checklist (this checklist)	
Addenda – Acknowledge receipt of all addenda issued to this solicitation by returning a signed copy of each addendum (per Section II, Subsection 6)	

EXHIBIT I – SAMPLE CONTRACT

Instructions to all Respondents

1. Respondents are required to review this Exhibit I prior to submission of proposals.
2. Other than for typographical or scrivener's errors, all exceptions to, and/or requests for modification of, this Exhibit I must be submitted with Respondent's proposal by the submission deadline.
3. TPWD will not consider any exceptions and/or requests for modification submitted after the date and time for submission of proposals.
4. The following Articles, Sections and Attachments of this Agreement are not negotiable:
5. The Job Order Contracting Master Agreement shall be fully negotiated between TPWD and the Successful Respondent(s) PRIOR TO award.
6. Upon notice of award, Successful Respondent(s) shall submit a final, negotiated version of Attachment A – Pricing Schedule.



JOB ORDER CONTRACTING MASTER AGREEMENT

This Agreement is made as of the « », 2024 (the "Effective Date")

By and between

The **Owner:** Texas Parks and Wildlife Department
Infrastructure Division
4200 Smith School Road
Austin, TX 78744

and **Contractor:** _____

for the **Project:** INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ)
JOB ORDER CONTRACTING SERVICES FOR GENERAL CONSTRUCTION

Solicitation Number:
Contract Number:

This Agreement is for the provision of specified construction contracting services, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement pursuant to Texas Government Code, Section 2269, Subchapter I. Contractor represents that it has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The **Owner** and **Contractor** agree as follows:

ARTICLE 1 TERM OF AGREEMENT

1.01 Initial Term: The initial term of this Agreement shall commence on the effective date and shall expire on August 31, 2026 unless renewed or terminated in accordance with the terms of the Agreement.

1.02 Order of Precedence: The original Request for Competitive Sealed Proposals (RFCSP) including all attachments and exhibits, and the response to the RFCSP by the Contractor are incorporated by reference into and form a part of this Agreement. This Agreement shall apply to all Job Orders agreed to by the parties within the term of this Agreement until completion of the Job Order. In the event of a conflict between terms and conditions of this Agreement and a Job Order, the terms of the Job Order shall take precedence for the Work provided pursuant to the Job Order. As used herein "Job Order" has the same meaning as the terms "Job Order Assignments," "JOA Projects," and "JOA" in the RFCSP.

1.03 Renewal Option: Owner has the option to renew the term of this Agreement for three (3) additional one (1) year terms upon written notice to Contractor at least thirty (30) days prior to the expiration of the initial or any subsequent term. TPWD may request an extension not to exceed three (3) months for purposes of re-solicitation. Any extension or renewal of this Agreement shall be implemented by an amendment to the Agreement signed by both parties and shall be subject to the provisions, terms and conditions of this Agreement to include any TPWD approved changes.

1.04 Completion of Work in Progress: Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Contractor to complete work on any project approved by Owner prior to the expiration of the Agreement.

ARTICLE 2 JOB ORDERS

2.01 Issuance and Acceptance: It is expressly understood that Owner is under no obligation to issue any Job Orders and no minimum amount of work is required under this Agreement. The Contractor may decline to accept any Job Order issued by the Owner. All service requests will be made by Owner on an as-needed basis, subject to future agreement on the scope of the work and its cost.

2.02 Execution of Work: The Contractor shall execute the Work set forth in each agreed upon Job Order. Each Job Order shall state the name, location, and detailed description of the Project; identify the Architect or Engineer; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

2.03 Contract Documents: The Owner shall make the Contract Documents available to the Contractor prior to execution of the Job Order, and thereafter, upon request. The Owner may charge the Contractor for the reasonable cost to reproduce the Contract Documents provided to the Contractor.

2.04 Contingency: If the Contract Sum under a Job Order may include a contingency (the "Contingency"), the Contingency is established and may be used only for increases in: (i) the cost of the Work incurred by the Contractor for unforeseen causes; (ii) details not capable of reasonable anticipation at the time of the execution of this Agreement; or (iii) material price increases that are unexpected and could not have been reasonably anticipated. The Contingency is not intended for increases in the cost of the Work that result from changes in the scope of the Work, nor shall it be used for rework or for correcting defective work. Any use of funds from the Contingency must be approved by Owner in advance and in writing. In written requests to use the Contingency, Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs. Further, absent prior written approval from the Owner, the Contingency is not intended to reimburse Contractor for expenses and costs that would not otherwise be recoverable as part of the Contract Sum under this Agreement. It is understood that the amount of any such Contingency, except as otherwise provided in this Agreement, is the maximum sum available to the Contractor to cover costs incurred for the reasons set forth above and any cost overruns in excess of the amount of the Contingency will be borne by the Contractor. The Contractor will provide a monthly report to Owner of the Contingency utilized for that month. In the event Owner provides a written and reasonable objection to Contractor's use of particular funds from the Contingency, then the objectionable funds will be deducted from future payments to Contractor.

2.05 Liquidated Damages: The Contractor agrees that if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner will sustain damages and loss as a result of such failure. The exact amount of such damages and loss will be difficult to ascertain. Therefore, the Owner and the Contractor agree that if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor liquidated damages as set forth in the applicable Job Order commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion. These liquidated damages are agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work. The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the rate set forth herein.

ARTICLE 3 PAYMENTS

3.01 Contract Sum: The overall maximum value of this Agreement is indefinite. The cost of each specifically authorized project will be established in a "Job Order" issued by Owner. Established cost amounts shall not be increased except by written change order to a previously issued Job Order executed by Owner and Contractor.

3.02 Payments: The Owner shall pay the Contractor for Work performed on Projects authorized by Owner in writing via a written Notice to Proceed, subject to allowable additions and deductions. The Owner shall make progress payments on account as provided by the Uniform General Conditions, Supplementary Conditions and Special Conditions. As multiple Job Orders with critical scheduling

requirements will be in process most times, Contractor must submit payment applications in a timely manner, no later than 45 days after completion and acceptance of any Job Order, including all required close-out documentation. Any invoices received after this period risk forfeiture of payment unless approved in advance by Owner. Late invoicing could also place Contractor at risk of non-renewal of Agreement.

3.02.1 Contractor's payment applications shall include Contractor's Vendor Identification Number, Job Order number and project location. Payment applications must include the Purchase Order number and sufficient detail to allow for matching with the awarded Job Order. Payment applications shall be submitted directly to the Owner's Project Manager.

ARTICLE 4 SCOPE OF WORK – SPECIFIC JOB ORDER PROJECTS

4.01 General: Contractor agrees to provide general and specific construction services on a per-project basis at various facilities throughout Texas as requested by the Owner in accordance with the terms of this Agreement. Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications associated with any Job Order. The Professional Services Provider for each Job Order shall be as specified in the individual Job Order documents. Contractor shall do everything required by this Agreement, the Uniform General Conditions, the Additional General Conditions and any Special Conditions of the Contract, the Addenda, the Specifications and Drawings for each Job Order and any other requirements incorporated into this agreement or a specific Job Order by reference.

4.02 Project Scope: The specific scope of work for each Job Order shall be determined in advance and in writing between the Owner and the Contractor.

4.03 Request for Job Order Proposal: For each project under this Agreement, the Owner shall prepare a Request for Job Order Proposal ("RJOP") identifying the project and describing the drawings, specifications, and other appropriate materials, the intended scope and character of the project, and the schedule for completion of the Work. For Job Orders with an anticipated cost over \$100,000, the Owner shall determine whether subcontracting opportunities exist and require a HUB Subcontracting Plan as part of the Job Order Proposal. The Owner's Contract Manager will contact the Contractor to request a Job Order Proposal.

4.04 Job Order Proposal: In response to a Request for Job Order Proposal, the Contractor shall provide the Owner with a written proposal that will include the following:

- a. A narrative description of Contractor's understanding of the scope of work;
- b. A description of particular phases of the scope of work, if applicable;
- c. A Cost Proposal detailing:
 1. The cost of the 'pre-priced' items as taken from the Unit Price Book;
 2. The cost of any non-pre-priced items;
 3. Any other costs that the Contractor intends to charge to the project;
 4. A written statement that all Contractor fees, overhead expenses and general conditions are included in the Cost Proposal; and
 5. A lump sum figure for performing the Work, if appropriate.
- d. A proposed date to commence the Work;
- e. A list of all subcontractors that Contractor proposes to use in the performance of the work;
- f. A HUB Subcontracting Plan, if required; and
- g. Any qualifications or conditions applicable to the Job Order Proposal.

4.05 Job Order Proposal Review: Owner and Contractor shall review Contractor's Job Order Proposal and negotiate any changes, clarifications or modifications as required. The Contractor shall submit a revised Proposal incorporating any changes, clarifications or modifications made in the review process. Owner may accept, reject or seek modification of any RJOP.

4.06 Job Order Award: Contractor will proceed with the work under the project only after the Job Order Proposal is approved by the Owner's Contract Manager through the issuance of a Purchase Order

and subsequent Notice to Proceed. Purchase Order shall be subject to the terms and conditions set forth in this Agreement and shall include a Detailed Scope of Work and identify required documentation (bonds, HSP, etc.) that must be submitted by Contractor prior to receiving a Notice to Proceed.

4.06.1 Prior to commencement of work under a Purchase Order issued under this Agreement, Contractor is required to tender payment and performance bonds to Owner as required by Texas Government Code, Chapter 2253. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner using TPWD's form, attached hereto and incorporated herein as **Attachment C – Bond Forms**, and in compliance with the relevant provisions of the Texas Insurance Code.

4.07 Notice to Proceed: The Notice to Proceed authorizes the Contractor to begin the work identified in the Job Order Proposal on the date specified in the Notice. Contractor shall complete the Work within the number of days specified in the Job Order Proposal accepted by Owner, subject to extensions of time approved by Owner through a Change Order. The time set forth for completion of the Work for each Job Order is an essential element of the project. The Notice to Proceed shall include a Job Order Assignment Purchase Order number specific to the project.

4.07.1 Any work completed by Contractor without a Purchase Order will not be paid for by Owner; provided, however, that in the event of an emergency, Contractor may begin service upon verbal authorization from the TPWD designated Project Manager. The Project Manager shall confirm verbal direction in the form of an email within one (1) business day of the initial verbal approval, followed by a fully approved Purchase Order issued by the assigned Contract Manager.

ARTICLE 5 CONTRACTOR'S GENERAL RESPONSIBILITIES

5.01 Project Manager: Contractor shall manage the Work on any project authorized pursuant to this Agreement. Contractor shall provide all labor, materials and equipment necessary and reasonably inferable for the complete performance of any Work authorized pursuant to this Agreement.

5.02 Standard of Care: Contractor agrees to use its best efforts, skills, judgment and abilities to perform the Work in an expeditious and timely manner as is consistent with the orderly progress of any project authorized pursuant to this Agreement. Contractor shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in the schedule.

5.03 Compliance with Laws: Contractor shall endeavor to perform the Work in compliance with all applicable national, federal, state and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Work.

5.04 Existing Conditions: Contractor shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor by Owner, or any other party, that Contractor uses for the Project.

5.05 Correction of Work: Contractor shall promptly correct any known or discovered error, omission, or other defect in the Work without any additional cost or expense to Owner.

5.06 Phasing: Contractor shall not proceed beyond any previously authorized phase of the Work for a project unless authorized by the Owner in writing, except at Contractor's own financial risk. Applicable phases of the scope of work shall be identified in the Job Order Proposal.

5.07 Materials, Programming, and Software: Contractor shall make all repairs and supply all parts specified as set forth in the Job Order, including wiring or cabling. All parts used in repairs must be new or, if refurbished, shall be listed as such on quotes and proposals. If refurbished, all parts must carry the same warranty as new parts. All parts must be equal to or exceed existing parts. All parts must be

compatible with the existing systems. Refurbished equipment and components will be accepted by TPWD on a case-by-case basis.

5.08 Licensing and Code Compliance: Contractor shall ensure service and maintenance technicians are properly trained, certified and licensed, to perform the assigned work. Owner reserves the right to verify that the certification or license is current for the individual working on each piece of equipment or system under the Agreement. Contractor is responsible for providing training, certification, or license renewals for their employees. Contractor shall be responsible for code compliance assessment and for ensuring that all services performed under this Agreement will be accomplished in accordance with the most current codes.

5.09 Contractor Personnel: At all times during the term of the Agreement, Contractor shall have available, under direct employment and supervision, the necessary qualified and licensed personnel, organization and facilities to properly fulfill the terms and conditions of this Agreement. Owner reserves the right to review for approval any changes to assigned project managers or project superintendents. Contractor shall provide alternate project manager(s) or superintendent(s) for any deemed unacceptable for the assigned Job Order. During projects that require sub-contracting or multiple trades, supervisor oversight and coordination will be required until project is complete.

5.09.1 Owner may request that the Contractor replace unsatisfactory personnel, which request shall not be reasonably denied.

5.10 Criminal Background Checks: Contractor's employees and subcontractors may be subject to a criminal background check. Contractor shall complete an **Attachment B - Authorization and Consent for Disclosure of Criminal History Information** upon request by TPWD.

5.11 Documentation: Contractor shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Job Order Proposal. Contractor shall bear the cost of providing all plans, specifications and other documents used by Contractor and its consultants.

5.12 Drawings: If required, and as applicable, as-built drawings shall be furnished to the TPWD Project Manager within five (5) business days of completion of each project. On a lengthy project, as-built drawings will be furnished at logical intervals as the project progresses. AutoCAD DWG format is preferred, but hand-drawn red-line is the minimum standard for drawings. Final payment will be withheld pending delivery of complete and accurate as-built drawings.

5.13 Modifications to Specifications or Drawings: Modifications to specifications or drawings must receive written approval from the TPWD Project Manager prior to performance of services. Contractor must notify the Project Manager of any discrepancies in the drawings. Contractor shall provide a marked-up set of specifications and drawings, marked in red, with any in-place installations differing from those originally shown. Any material or installation method proposed by Contractor not included in these specifications shall be specified in the proposal, including manufacturer's product data.

ARTICLE 6 OWNER'S RESPONSIBILITIES

6.01 Representative: Owner shall designate and authorize a Project Manager to act on the Owner's behalf with respect to each individual Job Order. Contractor shall coordinate its work solely through the designated representative. The instructions of the Project Manager are to be strictly and promptly followed by Contractor at all times. The Project Manager is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Project Manager all necessary assistance during those inspections and/or audits. Owner's Project Manager will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The Project Manager will determine the amount of work performed and materials furnished which are to be paid under this Agreement. Failure of the Project Manager during the progress of the Agreement to: (i) discover or reject unacceptable work; (ii)

discover work not in accordance with the Agreement; or (iii) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof or a waiver of TPWD's right to full performance of the Agreement.

6.01.1 Contractor agrees to conduct all of its services under this Agreement by and through appropriate and frequent communications with Owner's Project Manager.

6.02 Special Information: Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner shall furnish other special investigations of the Project site as requested by Contractor and as reasonably necessary for the Project. Contractor shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to Contractor by Owner or by others.

6.03 Entry on Land: Owner shall assist Contractor in gaining entry to state owned or controlled property as necessary for Contractor to perform its services under this Agreement.

6.04 Administrative Services: Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for the Project.

6.05 Review of Work: Owner will review the Work in progress as appropriate. Owner will notify Contractor in writing of any material error or omission or other defect in the Work or any conflict in the contract documents that Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

6.06 Time for Response: Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Contractor's services and of the Work.

ARTICLE 7 ACCEPTANCE OF WORK

7.01 Owner's Satisfaction: All Work performed under this Agreement shall be completed to the satisfaction of Owner's representative assigned to the project. Owner's representative shall decide all questions regarding Contractor's performance under the Agreement and such decisions shall be final and conclusive.

7.02 Correction of Work: Should Contractor's Work not conform to the requirements of this Agreement and the RJOP as determined by Owner's representative, Owner may order Contractor to correct the Work at no additional expense to Owner or deduct the cost of correcting the Work from any other monies payable to Contractor.

7.03 Liability: Owner's approval or acceptance of Contractor's Work will not release Contractor from any liability for any defects in the Work.

ARTICLE 8 COST PROPOSALS

8.01 Required for Each Project: Contractor shall prepare a cost proposal for each RJOP requested by Owner. The cost proposal shall identify the pre-priced items, the non-pre-priced items, and any other costs proposed to be included in the cost of the Work for a Project at the rates set forth in **Attachment A – Pricing Schedule**. Owner shall pay Contractor for performance of the Contract on a Job Order Contract basis based on the relevant Statement of Work, subject to allowable additions and deductions, and make payment on account as provided by this Agreement. The price for a job or project ordered by Owner under this Agreement (the "Job Order Amount") shall be based on the Unit Price Book utilizing the pricing as awarded and identified in **Attachment A – Pricing Schedule**. Owner shall have the unconditional right to withdraw a Job Order Price Proposal request at any time before or after Contractor has submitted its proposal for the Job Order Contract. For a Job Order Contract under this Agreement to

become effective, it must be (a) signed by Owner, (b) include a fixed price, lump sum amount for work, and (c) include a Statement of Work that has been agreed to by Owner and Contractor.

ARTICLE 9 PAYMENT

9.01 Owner shall pay Contractor for Work performed on Projects authorized by Owner in writing in a Notice to Proceed, subject to allowable additions and deductions, and make payment on account as provided by the Uniform General and Additional General Conditions.

As multiple Job Orders and/or Work Orders with critical scheduling requirements will be in process most times, Contractor must submit payment applications in a timely manner, no later than 45 days after completion and acceptance of any Work Order, including all required close out documentation. Any invoices received after this period risk forfeiture of payment unless approved in advance by Owner. Late invoicing could also place Contractor at risk of non-renewal of contract.

ARTICLE 10 DISPUTE RESOLUTION

Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this Agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

- (a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Contractor's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Contractor may make a claim against TPWD for breach of contract and TPWD may assert a counterclaim against the Contractor as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Contractor must provide written notice to TPWD of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Contractor seeks as damages; and (3) the legal theory of recovery.
- (b) The chief administrative officer, or if designated in the contract, another officer of TPWD, shall examine the claim and any counterclaim and negotiate with the Contractor in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- (c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Agreement as to the parts of the claim that are not resolved.
- (d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with TPWD, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by TPWD if the parties are unable to resolve their disputes as described in this section.
- (e) Nothing in the Agreement shall be construed as a waiver of the state's or TPWD's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or

immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. TPWD does not waive any privileges, rights, defenses, or immunities available to TPWD by entering into this Agreement or by its conduct, or by the conduct of any representative of TPWD, prior to or subsequent to entering into this Agreement.

- (f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Contractor: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

ARTICLE 11 HISTORICALLY UNDERUTILIZED BUSINESSES (“HUBS”)

11.01 In accordance with state law, it is TPWD’s policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. Owner encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor’s obligations with Owner. If Contractor utilizes a subcontractor and/or supplier for some or all of the services to be performed under this Agreement, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in **Attachment D – HUB Subcontracting Plan (HSP)**. Contractor shall report any changes to the HSP by submitting a revision to the approved HSP. Upon TPWD’s approval of HSP revision(s), such revisions(s) shall become, without further notice or action, a part of the HUB Subcontracting Plan. In addition, Contractor shall provide Owner with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on **Attachment E – HSP Progress Assessment Report Form (“PAR”)**, attached hereto and incorporated herein for all purposes. PARs shall be submitted with each invoice and are a condition of payment.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.01 Assignment: Contractor may not assign the Agreement or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Agreement without the prior written consent of the Owner, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

12.02 Name and Organizational Changes: Contractor must provide Owner with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition, corporate reorganization or sale no later than sixty (60) days prior to such change. In its notice to TPWD, Contractor shall describe the circumstances of the name or organizational change, state its new name, provide the new Tax Identification Number, if available, and describe how the change will impact its ability to perform under the Agreement. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Agreement. If the change entails personnel changes for personnel performing the responsibilities of the Agreement for Contractor, Contractor shall identify the new personnel and provide resumes to Owner, if resumes were originally required by the solicitation. Owner may request other information or documents related to the change and its impact on the Agreement and Contractor shall supply the requested information within five (5) working days of receipt of the request.

Written consent shall be at the sole and absolute discretion of Owner with no requirement to be reasonable. Owner may terminate the Agreement due to any change to Contractor that materially alters Contractor’s ability to perform under the Agreement.

12.03 Governing Law and Venue: This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. The venue of any suit arising under this Agreement shall be in a court of

competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Owner.

12.04 E-Verify: By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of:

- (i) all persons employed to perform duties within the State of Texas, during the term of the Agreement; and
- (ii) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Agreement, within the United States of America.

Contractor shall provide, upon request of Owner and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of Owner, and at no fault to Owner, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that Owner must undertake to replace the terminated Agreement.

12.05 Independent Contractor: Contractor is associated with Owner only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, Contractor is and shall be an independent contractor. Subject only to the terms of this Agreement, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for Owner whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

12.06 Severability: If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

12.07 No Waiver: Nothing in this Agreement shall be construed as a waiver of sovereign immunity by the State of Texas. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Owner does not waive any privileges, rights, defenses, or immunities available to Owner by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement.

12.08 Survival of Terms: Expiration or termination of the Agreement for any reason does not release Contractor from any liability or obligation set forth in the Agreement that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Agreement, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

12.09 Schedule of Attachments: The following are Attachments to this Agreement and are incorporated for all purposes.

- a. Attachment A – Pricing Schedule
- b. Attachment B – Authorization and Consent for Disclosure of Criminal History Information
- c. Attachment C – Bond Forms
- d. Attachment D – HUB Subcontracting Plan ("HSP")

- e. Attachment E – HSP Progress Assessment Report Form (“PAR”)

ARTICLE 13 NOTICES

13.01 All notices, consents, demands and requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of Contractor or Owner; or mailed by U. S. mail to the last known business address of the designated representative. Mail notices are deemed effective three business days after the date of mailing. All Notices hereunder shall be addressed as follows:

If to Owner: Texas Parks and Wildlife Department
Attention: Contracting Branch, Infrastructure Division
4200 Smith School Road
Austin, Texas 78744

With Copies to: Texas Parks and Wildlife Department
Attention: Todd George, Attorney, Legal Division
4200 Smith School Road
Austin, Texas 78744

If to Contractor: _____

ARTICLE 14 TERMINATION

14.01 Termination for Default: Owner may terminate this Agreement immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Agreement. In the event of abandonment or default, Contractor will be responsible for paying damages to Owner, including but not limited to, the cost to re-solicit this Agreement and any consequential damages to the State of Texas or TPWD resulting from Contractor’s non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.

14.02 Termination for Convenience: Owner may, at its sole option and discretion, terminate this Agreement at any time, for any reason whatsoever, in whole or in part, by giving written notice (the “Notice of Termination”) to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by Owner under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 14.03 below.

14.03 Implementation of Termination: Contractor shall terminate all work under the Agreement to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by Owner’s Project Manager to preserve the work in progress and to protect materials, properties, and equipment. In the event of termination by Owner, Owner shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

14.04 Termination by Contractor: Contractor may terminate the Agreement upon providing sixty (60) days’ written notice to Owner. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Agreement and shall perform the acts outlined in Section 2.02(c) above. Contractor will be held responsible for additional cost incurred from the termination of this Agreement.

ARTICLE 15 ENTIRE AGREEMENT AND MODIFICATION

15.01 This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, **Owner** and **Contractor**, have executed and delivered this Master Agreement, effective as of the date identified above.

TEXAS PARKS AND WILDLIFE DEPARTMENT

CONTRACTOR NAME

By: _____
David Yoskowitz, Ph.D.
Executive Director

By: _____
Name
Title

Date signed: _____

Date signed: _____

EXHIBIT J – UNIFORM GENERAL CONDITIONS

Uniform General Conditions
for
Construction Contracts

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Article 1. Definitions

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

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.5 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.6 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.7 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all

- Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.8 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that document to the best of A/E's and ODR's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.9 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor, and A/E.
- 1.10 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.11 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.12 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.13 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.14 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.15 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.16 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.17 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.18 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Ch. 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the

- contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.19 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.20 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.21 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.
- 1.22 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.23 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.24 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.25 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Ch. 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.26 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.27 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.28 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.
- 1.29 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

- 1.30 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.31 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.32 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.33 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.34 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.35 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.36 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.37 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.38 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.39 *Site* means the geographical area of the location of the Work.
- 1.40 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.41 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

- 1.42 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.43 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.44 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.45 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.46 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.47 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.48 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.49 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is

not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.

2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

2.2.1.1 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.

2.2.1.2 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.

2.2.1.3 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Ch. 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

2.2.1.4 Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

2.2.1.5 Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.

- 2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule
- 2.2.3 Complaints of Violations.
 - 2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation.
 - 2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.
 - 2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.
 - 2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.
- 2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise be designated in the Supplementary General Conditions.
- 2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

- 2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Ch. 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.

- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
 - 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
 - 3.1.2.4 The ODR will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various project team members that have a key role in these duties.
- 3.1.3 Owner Supplied Materials and Information.
- 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
 - 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
- 3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities,
- 3.1.5 Limitation on Owner's Duties.
- 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
 - 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.

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

3.2.1 Site Visits.

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

3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.

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

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

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

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

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

3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention

to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion.

- 3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.
- 3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.
- 3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or

ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the Owner accept a bid or proposal from a Subcontractor but the Owner requires another bid or proposal to be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of Owner's requirement to select another bid or proposal rather than the one recommended.

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

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

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

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

3.3.10 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.

3.3.11 Acts or Omissions. Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.12 Infringements.

3.3.12.1 Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN

ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

3.3.12.2 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

3.3.12.3 If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

3.3.12.4 Taxes/Workers' Compensation/Unemployment Insurance–Including Indemnity.

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

AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3.3.12.4.1 CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

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

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

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

- 3.3.13.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.
- 3.3.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
- 3.3.13.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.
- 3.3.14 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.15 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.16 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.
- 3.3.17 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).
 - 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. §

20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.

- 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.
- 4.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
 - 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
 - 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
 - 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
 - 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.
 - 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available in the Index Forms Library on the Facilities Design & Construction page of the Texas Facilities Commission website.
 - 4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).
- 4.3 Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of

Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5. Bonds and Insurance

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

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

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

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

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

5.1.3 When Bonds Are Due.

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

- 5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.
- 5.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee.
- 5.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.

5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.

5.2.2 Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.

5.2.3 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

5.2.4 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.2.5 The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

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

5.2.6.1 Insurance Coverage Required.

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

\$1,000,000 each accident;

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

\$1,000,000 disease policy limit.

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

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$5,000 Medical Expense each person;

\$1,000,000 Personal Injury and Advertising Liability;

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

\$50,000 Damage to Premises Rented to You; and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

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

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

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

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

Employer's liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$500,000 disease policy limit.

If this Contract is for asbestos abatement only, the Special Form builder's risk or Special Form installation floater (e) is not required.

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

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

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

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

- 5.2.6.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.
 - 5.2.6.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.
 - 5.2.6.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.
 - 5.2.6.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
 - 5.2.6.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
 - 5.2.6.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
 - 5.2.6.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.
- 5.2.6.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.7 Policies must include the following clauses, as applicable:

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

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

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

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

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

5.2.9 Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

Article 6. Construction Documents, Coordination Documents, and Record Documents

6.1 Drawings and Specifications.

- 6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and workmanship); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control and more specific requirements shall govern over general requirements. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

- 6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

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

- 6.2.2 Maintain the Record Documents including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 7. Construction Safety

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

- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
 - 7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
 - 7.3.2 Give ODR and A/E prompt notice of all such events.
 - 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
 - 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 7.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.
- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
 - 7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with

written notification within one week of such catastrophic event if legal counsel delays submission of full report.

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

7.5.1 Bind all Subcontractors to the same duty.

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

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

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

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

Article 8. Quality Control

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

8.2 Testing.

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

- 8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
 - 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
 - 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
 - 8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
 - 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
 - 8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.

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

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

8.3 Submittals.

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

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

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

- 8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data to the extent possible from existing conditions and design information provided by A/E prior to fabrication; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or ODR shall not make formal changes to the Contract Documents via the submittal process. Changes

to the Construction Documents shall be accomplished via Section 3.2.2 and Article 11 Changes.

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

8.3.5.1 The Contract Documents do not require extensive revisions; and

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

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

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

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

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

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

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

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

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

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

8.3.5.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

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

8.4 Field Mock-up.

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

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

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

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

8.5 Inspection During Construction.

8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. "Reasonable times" of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.

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

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

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

Article 9. Construction Schedules

9.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within thirty (30) calendar days after Substantial Completion or a mutually agreed upon longer period of time between Contractor and Owner, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

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

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

9.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize

and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

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

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

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

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

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

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

9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract.

Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

- 9.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.
- 9.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
- 9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:
- 9.5.1.1 An increase in working forces.
 - 9.5.1.2 An increase in equipment or tools.
 - 9.5.1.3 An increase in hours of work or number of shifts.
 - 9.5.1.4 Expedite delivery of materials.
 - 9.5.1.5 Other action proposed if acceptable to Owner.
- 9.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.
- 9.6 Modification of the Contract Time.
- 9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.
- 9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for

delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A “Weather Day” is a day on which Contractor’s current schedule indicates Work is to be done, and on which inclement weather and/or related site conditions prevent Contractor from performing seven (7) continuous hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

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

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

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

9.6.2.2.3 Failure of Owner to have secured property, right-of-way or easements necessary for Work to begin or progress.

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

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

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

9.6.2.2.7 Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

9.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

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

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

9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.

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

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

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

- 9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
 - 9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
 - 9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.
- 9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.
- 9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

Article 10. Payments

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

- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
 - 10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two(2) lines, one (1) for labor and one (1) for materials.
- 10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2. Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
 - 10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
 - 10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
 - 10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
 - 10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;

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

10.2.1.5 Construction payment affidavit.

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

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

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

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

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

- 10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
 - 10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.
 - 10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
- 10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
- 10.3.3.1 Defective or incomplete Work not remedied;
 - 10.3.3.2 Damage to Work of a separate Contractor;
 - 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
 - 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
 - 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
 - 10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or
 - 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
- 10.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.
- 10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until substantial completion, responsibility for the care and protection of materials and Work in areas where punch list items are completed until final completion or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

- 10.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.
- 10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
- 10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
- 10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.
- 10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.
- 10.5 Off-Site Storage. With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.
- 10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.
- 10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.
- 10.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
- 10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
- 10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
- 10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
- 10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

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

10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2251.022.

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

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

Article 11. Changes

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

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

11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the

sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Ch. 2260.

- 11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.
 - 11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
 - 11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.
- 11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.
- 11.3 Claims for Additional Costs.
- 11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.

- 11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.
- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.
- 11.4 Minor Changes. A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.
- 11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are further disturbed or subsequent related work proceeds. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications

between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the establish Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
- 11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
 - 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of

value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.

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

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

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

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

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

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

Article 12. Project Completion and Acceptance

12.1 Closing Inspections.

12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining

work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

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

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, insurance and utilities. A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice

with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

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

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

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

12.1.5 Additional Inspections.

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

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

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate.

Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

12.2 Owner's Right of Occupancy. Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security, maintenance, insurance and utilities. Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

12.3 Acceptance and Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.

12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract.

Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Ch. 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

12.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.

12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.

12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:

12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);

12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;

12.3.6.3 Terms of any warranties required by the Contract, or implied by law;
or

12.3.6.4 Claims arising from personal injury or property damage to third parties.

12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

Article 13. Warranty and Guarantee

13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

13.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.

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

13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.

13.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.

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

13.4.1 Observations by Owner and/or A/E;

13.4.2 Recommendation to pay any progress or final payment by A/E;

13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;

13.4.4 Use or occupancy of the Work or any part thereof by Owner;

13.4.5 Any acceptance by Owner or any failure to do so;

13.4.6 Any review of a Shop Drawing or sample submittal; or

13.4.7 Any inspection, test or approval by others.

13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.

13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.

13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.

- 13.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor’s application for Final Payment.

Article 14. Suspension and Termination

- 14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
- 14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 14.2 Suspension of Work for Owner’s Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 Termination by Owner for Cause.

14.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;

14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;

14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;

14.3.1.4 Failure to remedy defective work condemned by ODR;

14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Ch. 2251;

14.3.1.6 Persistent endangerment to the safety of labor or of the Work;

14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;

14.3.1.8 Any material breach of the Contract; or

14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.

14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.

- 14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
 - 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.
 - 14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 14.3.5.3 This obligation for payment survives the termination of the Contract.
 - 14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.
- 14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
 - 14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - 14.5.2.1 Stop all work.
 - 14.5.2.2 Place no further subcontracts or orders for materials or services.
 - 14.5.2.3 Terminate all subcontracts for convenience.

14.5.2.4 Cancel all materials and equipment orders as applicable.

14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.

14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

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

14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 15. Dispute Resolution

15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.

15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114.

15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.

15.4 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

Article 16. Miscellaneous

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 Training. When used, Owner shall provide training to the Project team members.
- 16.4 Administrative Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records

may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code § 2262.003 the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

End of Uniform General Conditions

EXHIBIT K – SUPPLEMENTARY CONDITIONS

Supplementary General
Conditions for Job Order
Contracted Projects
Administered by the
Texas Parks and Wildlife
Department



**TPWD SUPPLEMENTARY GENERAL CONDITIONS (SGCs)
TO THE STATE OF TEXAS 2015 EDITION
OF THE UNIFORM GENERAL CONDITIONS
FOR
JOB ORDER CONTRACTED PROJECTS

TEXAS PARKS AND WILDLIFE DEPARTMENT
INFRASTRUCTURE DIVISION**

NOTE: These Additional General Conditions are a part of the Contract Documents and take precedence over the Uniform General Conditions and are the standard procedures and contract administration requirements of the Texas Parks and Wildlife Department (TPWD), Infrastructure Division, for all Job Order Contracted projects, unless further supplemented by the specific project Owner's Special Conditions. They replace or are added to [if below indicated] the correspondingly numbered paragraphs of the Uniform General Conditions. The paragraphs and subparagraphs of said Uniform General Conditions not thus replaced continue in force, unaltered. Newly added numbered paragraphs below are added to the requirements of the Uniform General Conditions and are a part of the Contract Documents.

ARTICLE 1. DEFINITIONS

1.3 [Paragraph 1.3 is voided and replaced by the following]

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

1.4 [Paragraph 1.4 is voided and replaced by the following]

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

1.7 [Paragraph 1.7 is voided and replaced by the following]

Certificate of Final Completion: Certificate of Final Completion means the certificate issued by TPWD that indicates certification by the ODR and/or A/E that documents, to the best of A/E's and/or ODR's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre- final Punchlist items, final cleanup and Contractor's provision of As-Built Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents. Additional documentation may be required by TPWD for consideration of the Contractor's Application for Final Payment.

1.9 [Paragraph 1.9 is supplemented to add the following to the last sentence]

Change Order: when an A/E is required for the project.

1.10 [Paragraph 1.10 is voided and replaced by the following]

Close-out Documents: Closeout Documents mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, As-Built documents, affidavit of payment, release of lien and claims, and as may be further defined identified, and required by the Job Order Master Agreement documents as well as the discrete Job Order documents.

1.11 [Paragraph 1.11 is voided and replaced by the following]

Contract: Contract means the entire agreement between Owner and Contractor, including all of the contract documents, the Job Order Master Agreement Documents and all discrete Job Orders documents.

1.13 [Paragraph 1.13 is supplemented to add the following to the last sentence]:

Contract Documents: and all subsequent discrete Job Order documents, Change Orders and/or Field Orders.

1.14 [Paragraph 1.14 is voided and replaced by paragraph 1.62 “Job Order Sum”]

1.15 [Paragraph 115 is voided and replaced by the following]:

Contract Time: Contract time means the time allowed for the Contractor to complete the Work required under a discrete Job Order and is defined as the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.

1.16 [Paragraph 1.16 is voided and replaced by the following]

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

1.22 [Paragraph 1.22 is supplemented to add the following]

Drawings: The drawings consist of all project drawings and any drawings issued by addenda.

1.24 [Paragraph 1.24 is supplemented to add the following]

Final Payment: Final Payment means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which

payment has not been made, amounts owing to adjustments to the final Job Order Sum resulting from approved change orders, and release of Contractor's retainage.

1.26 [Paragraph voided and replaced by the following]

Notice to Proceed: Notice to Proceed means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion of a discrete Job Order.

1.28 [Paragraph 1.28 is supplemented to add the following]

Owner: Owner herein shall mean the Texas Parks and Wildlife Department.

1.33 [Paragraph 1.33 is voided and replaced by the following]

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

1.39 [Paragraph 1.39 is voided and replaced by paragraph 1.77]

1.41 [Paragraph 1.41 voided and replaced by the following]

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

1.42 [Paragraph 1.42 the following sentence is added]

Subcontractor: Business entities providing prefabricated and/or modular building construction or prefabricated and/or modular building components for a project will be classified as subcontractors under this contract.

1.45 [Paragraph voided and replaced by the following]

Supplementary General Conditions: Supplementary General Conditions mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions. Texas Park and Wildlife Department has prepared the TPWD Supplementary General Conditions for Job Order Contracted Maintenance and Construction Projects which is a separate document from the Uniform General Conditions and is applicable to all Job Order contracted projects.

1.50 [Paragraph 1.50 is added]

Alternates: An alternate is an amount proposed by the Contractor and stated on the Job Order Proposal Form that will be added to or deducted from Base Proposal amount to

arrive at the original Job Order Sum, if the Owner decides to accept a corresponding change in either scope of work or in products, materials, equipment, systems, or installation methods described in Contract Documents. Coordinate related work and modify or adjust adjacent work as required to ensure that work affected by each accepted Alternate is complete and fully integrated into each project. Include as part of each alternate, miscellaneous devices, appurtenances, and similar items incidental to or required for a complete installation whether or not mentioned as part of the Alternate.

1.51 [Paragraph 1.51 is added]

As-Built Drawings and Specifications: As-Built Drawings and Specifications means the drawings set specifications and other materials prepared by the Contractor, in the field, that documents the changes made by the contractor. Collectively, these are also called “red-lines” or “as-builts.”

1.52 [Paragraph 1.52 is added]

Construction Inspector: Construction Inspector means the TPWD representative, designated in writing that inspects for compliance with the Contract any or all parts of the work and the materials used.

1.53 [Paragraph 1.53 is added]

Contract Manager: Contract Manager means the TPWD representative that manages all phases of contracting on behalf of TPWD. This person ensures contract compliance with the administrative and contractual requirements of the contract.

1.54 [Paragraph 1.54 is added]

Contractor’s Coefficient: A numerical factor that represents costs not considered as included in any line-item associated in the Unit Price Book, including general and administrative and other overhead costs, insurance costs, travel costs, equipment rental, protective gear and clothing, contingencies such as charges in wage rates and inflation, contractor’s profit, and indirect costs. Separate coefficients may be used for normal working hour and other-than-normal working hours or for other designations as established by TPWD within the contract.

1.55 [Paragraph 1.55 is added]

Contractor’s Project Manager: An employee of the prime Contractor who is designated in writing as being the representative of the Contractor and is able to receive instructions from the ODR or other authorized TPWD personnel and/or agents and to act for the Contractor.

1.56 [Paragraph 1.56 is added]

Infrastructure Division: Infrastructure Division means one of the TPWD Divisions responsible for contracting, managing and executing construction and maintenance projects.

1.57 [Paragraph 1.57 is added]

Job Order: Job Order means a contracting document for a discrete project assignment governed by a Job Order Master Agreement. The requirements of which are defined by Written Statement of Work, Working Drawings and/or Standardized Specifications and Details and other criteria described in the Job Order Request for Proposal document for said Job Order. It is negotiated by quantities of work, and Pre-Priced Item unit prices from a standardized Unit Price Book with adjustments in cost by Contractor Coefficients and the City Cost Index, Non-Pre-Priced Items and Master Agreement Priced Items to determine the Job Order lump sum, firm fixed price.

1.58 [Paragraph 1.58 is added]

Job Order Contracting (JOC): Job order contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work are indefinite. Job Order Contracting shall be implemented in accordance with Tex. Gov't Code § 2269.401.

1.59 [Paragraph 1.59 is added]

Job Order Cost Estimate: A cost estimate prepared by the Contractor which shall include detailed line-item pricing for Pre-Priced Items, Non-Pre-Priced Items, Master Agreement Priced Items, quantities and the appropriate City Cost Index and the Contractor's Coefficient required to complete the Scope of Work identified in the Request for Job Order Proposal issued by TPWD. All prices shall be based on field measurements or design plans with no allowance for waste and/or incidental extra materials to be used in the performance of Work.

1.60 [Paragraph 1.60 is added]

Job Order Master Agreement: a contract document referenced under "Contract" per 1.11 of the Uniform General Conditions. and is the foundational contracting document from which all subsequent Job Orders originate and are governed.

1.62 [Paragraph 1.62 is added]

Job Order Proposal: Job Order Proposal means the Contractor prepared document providing a lump sum, firm fixed price for the completion of a detailed Scope of Work as requested in TPWD's Request for Job Order Proposal and for other conditions contained within this contract.

1.63 [Paragraph 1.63 is added]

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

1.64 [Paragraph 1.64 is added]

Joint Scope Meeting: An onsite meeting attended by the Contractor, A/E, if applicable, and TPWD personnel to discuss, confirm and refine the Scope of Work such as: examining

existing work conditions and general facility conditions; identifying possible options or alternative methods, materials, etc.; gathering measurements and quantities; identifying potential permitting requirements; identifying potential environmental or cultural issues; identifying utility issues; identifying unique conditions that may impact construction of the work; and any other project specific information necessary to refine the Scope of Work for a potential Job Order project as deemed necessary by TPWD.

1.65 [Paragraph 1.65 is added]

Master Agreement Priced Items: Master Agreement Priced Items are exclusive of the Unit Price Book items used for Pre-Pricing of Work Items. The Master Agreement Priced Items are a distinct set of individual items of work, service(s), reimbursement(s), or other deliverable(s) specifically named and listed individually within the terms of the Job Order Master Agreement for which the Contractor has provided pricing through its own costing methods and which have been established within the Master Agreement to be applied for payment of the actual quantities of such work, service(s), reimbursements or other deliverables when required to complete the Scope of Work of a discrete Job Order. Master Agreement Priced Items shall be separately categorized when submitted in a Job Order Proposal.

1.66 [Paragraph 1.66 is added]

Master Agreement Sum: The Master Agreement Sum is the total of all Job Order Sums of Job Orders issued under the Master Agreement.

1.67 [Paragraph 1.67 is added]

Normal Working Hours: Normal Working Hours occur during the hours of 7:00 A.M. to 6:00 P.M. CST Monday thru Friday, excluding State observed holidays.

1.68 [Paragraph 1.68 is added]

Non-Pre-Priced Item (NPPI): Those units of Work that are not included in the Unit Price Book but are within the general scope and intent of this Contract and may be negotiated into the Contract as needs arise. Non-Pre-Priced Items shall be incorporated into and made a part of this Contract for the discrete Job Order to which they pertain and may be applied to other job orders after acceptance. Non-Pre-Priced Items shall be separately categorized when submitted in a Job Order Proposal. Contractor Coefficients applied to NPPI's shall be the Normal Working Hours coefficient for the corresponding Response Zone of the project work site.

1.69 [Paragraph 1.69 is added]

Other-than-Normal Working Hours: Other-than-normal working hours shall be considered only when pre-approved by the ODR and are defined as pre-approved Work times before or after normal working hours (**7:00 A.M. to 6:00 P.M. CST Monday thru Friday**) and all ODR pre-approved time worked on weekends or State observed holidays. TPWD shall not consider any requests for additional time or compensation for pre-approved other-than-normal, weekend or State observed holidays when requested by the Job Order Contractor for its convenience or benefit.

1.70 [Paragraph 1.70 is added]

Pre-Priced Item: A unit of Work included within the Unit Price Book for which a unit price has been established. Pre-Priced Items shall be separately categorized when submitted in a Job Order Proposal.

1.71 [Paragraph 1.71 is added]

TPWD Project Manager (PM): Project Manager means the TPWD representative with overall responsibility for a project. This person ensures the project is in compliance with all requirements and meets its goals including performance, schedule, budget, and safety. The Project Manager may also be referred to as the ODR.

1.72 [Paragraph 1.72 is added]

Request for Job Order Proposal (RJOP): A document issued by TPWD requesting a specific Job Order proposal from the Contractor. It includes a scope of work, conditions, project objectives, constraints, due dates and other project specific information necessary for the Contractor to prepare and submit a Job Order Proposal in response to TPWD's request.

1.73 [Paragraph 1.73 is added]

Scope of Work: Also known as "Work", per 1.48 of the Uniform General Conditions, and includes the description of services to be provided by the Contractor pursuant to each discrete Job Order. The scope of Work description may include a narrative description of the Work, partial design documents, or full design documents, depending on the complexity of the specific Project.

1.74 [Paragraph 1.74 is added]

Scoping Package: A written document prepared by the Contractor containing detailed project specific information related to the Scope of Work, Job Order Cost Estimate, Work Progress Schedule, Work Plan, and other unique details of a potential Job Order project determined during a Joint Scope Meeting with TPWD personnel.

1.75 [Paragraph 1.75 is added]

TPWD Supplementary General Conditions: TPWD Supplementary General Conditions mean the documents containing terms and conditions, which may be unique to Texas Parks and Wildlife Department. Supplementary General Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.

1.76 [Paragraph 1.76 is added]

Unit Price Book: A comprehensive listing of specific construction related items and tasks together with a specific unit of measurement and a unit price. Unit prices include direct material, labor and equipment cost, but not indirect costs or profit. For the purposes of this contract, the most current version of RS Means Online is the Unit Price Book for determining the unit price of Pre-Priced Items. All CSI Division 1 (General Requirements)

line items are excluded from the Unit Price Book and associated costs are to be considered as part of the Contractor Coefficients.

1.77 [Paragraph 1.77 is added]

Work Site: Work site means the geographic area where construction work is performed to construct the project. It includes both on-site locations within a TPWD owned or leased facility and off-site locations outside of a TPWD facility where components of the project are assembled and/or partially fabricated before being transported to the final place of installation at the on-site work location.

ARTICLE 2. WAGE RATES AND OTHER LAWS GOVERNING CONSTRUCTION

2.5 [Paragraph is supplemented by adding the following to the last sentence]

...and Owner.

2.7 [Paragraph 2.7 is added]

Buy America Requirements for Iron and Steel Used in Construction: In accordance with Texas Government Code 2252, Section 2252.202, all iron or steel products (i.e., rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.

2.8 [Section 2.8 is added to include the following paragraphs]

2.8 Other Governing Laws and Contract Clauses:

2.8.1 [Paragraph 2.8.1 is added]

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. 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.

2.8.2 [Paragraphs 2.8.2 A, B, & C are added]

Proprietary or Confidential Information; Texas Public Information Act:

- A.** Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure

because it contains some proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

- B. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (“the Texas Public Information Act”).
- C. In accordance with Section 2252.907 of the Texas Government Code, Bidder is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Bidder will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

2.8.3 [Paragraph 2.8.3 is added]

Contracting Information Responsibilities: In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract, (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

2.8.4 [Paragraph 2.8.4 is added]

Immigration Reform: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

2.8.5 [Paragraph 2.8.5 is added]

Civil Rights: The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination

under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

2.8.6 [Paragraph 2.8.6 is added]

Federal, State and Local Requirements: Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. **Contractor shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Contractor's omission or breach of this Section.**

2.8.7 [Paragraph 2.8.7 is added]

Severability Clause: If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will remain in full force and effect.

2.8.8 [Paragraph 2.8.8 is added]

Deceptive Trade Practices; Unfair Business Practices: Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com Code, Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

2.8.9 [Paragraph 2.8.9 is added]

Felony Criminal Convictions: Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner in writing of the facts and circumstances surrounding the convictions.

2.8.10 [Paragraph 2.8.10 is added]

Assignments: The Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Owner. Any attempted assignment in violation of this provision is void and without effect.

2.8.11 [Paragraph 2.8.11 is added]

Independent Contractor: Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Contractor nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Contractor shall have no claim against Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and Owner.

2.8.12 [Paragraph 2.8.12 is added]

Patents, Trademarks or Copyrights: Contractor agrees to defend and indemnify the Owner and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Owner's or the State's use of any good or service provided by the Contractor as a result of this solicitation.

2.8.13 [Paragraph 2.8.13 is added]

Force Majeure: Neither Contractor nor Owner shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. The Owner may grant relief from performance of contract if the Contractor is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the Owner.

2.8.14 [Paragraph 2.8.14 is added]

Disaster Recovery Plan: Upon request of Owner, Contractor shall provide descriptions of its business continuity and disaster recovery plans.

2.8.15 [Paragraph 2.8.15 is added]

U.S. Department of Homeland Security's E-Verify System: Contractor certifies that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- A. All persons employed to perform duties within Texas, during the term of the Contract; and
- B. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of Texas Parks and Wildlife Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor shall be in breach of contract, (2) TPWD shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TPWD under the contract, Contractor shall be responsible for all costs incurred by TPWD to obtain substitute services to replace the terminated Contract.

2.8.16 [Paragraph 2.8.16 is added]

Name Changes and Sales: If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request. TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

2.8.17 [Paragraph 2.8.17 is added]

Cybersecurity Training: If required by TPWD, Contractor shall ensure that any Contractor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code. Such training is required to occur during the contract term and the renewal period. Contractor shall provide Owner with verification of the completion of the requisite training.

2.8.18 [Paragraph 2.8.18 is added]

Damage to Government Property: In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.

ARTICLE 3. GENERAL RESPONSIBILITIES OF OWNER and CONTRACTOR

3.1 Owners General Responsibilities:

3.1.2.5 [Paragraph 3.1.2.5 is added]

General Project Administration: When the work required under a Job Order Contracted project does not require the services of an A/E or partially requires services of an A/E to provide construction documents for the design and specifications of specific components, systems, or other features of the project, the ODR will provide the general administration of the construction phase of the project for all portions of work not specifically included in the A/E prepared construction documents. When an A/E provides full construction documents for a Job Order Contracted project, the A/E will be responsible for the general administration services for the Owner.

3.1.2.6 [Paragraph 3.1.2.6 is added]

Clarifications and Interpretations: The ODR will provide clarifications and interpretations of the contract documents for all portions of the work not specifically included in construction documents provided by an A/E. When construction documents from an A/E are provided for a project, or parts of a project, the A/E shall provide clarification and interpretation of the construction documents issued by the A/E as requested by ODR.

3.2 Role of Architect/Engineer:

3.2 [Paragraph 3.2 is supplemented to add the following before the beginning sentence]

When an A/E's services are required for a project, and/or....

3.2.2 [Paragraph 3.2.2 is voided and replaced by the following]

Clarifications and Interpretations: It may be determined that clarifications or interpretations of the Construction Documents are necessary. Upon direction by the ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Construction Documents. A/E will issue these clarifications with reasonable promptness to the Contractor as A/E's supplemental instructions ("ASI") or similar instrument. If the Contractor believes that such clarification or interpretation justifies an adjustment in the Job Order Sum or the Contract Time, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

3.2.3.5 [Paragraph 3.2.3.5 is added]

Limitations on Architect/Engineer Authority: Specifications, construction drawings and/or other construction details and contract documents not specifically prepared by the A/E for the project.

3.3 Contractor's General Responsibilities:

3.3.1 Project Administration:

3.3.1.1 [Paragraph 3.3.1.1 is added]

Agency Project Management System: TPWD utilizes a Project Management Information System called eBuilder® to manage its construction projects. eBuilder is a cloud-based system that is accessible anywhere there is a web connection. eBuilder® shall be used by the Owner, Architect/Engineer and the Contractor for tasks including, but not limited to the following:

- A. Contractor Application for Payment request(s)
- B. Submittals
- C. Request for Information (RFI)
- D. Construction Reports
- E. Architect Supplemental Information (ASI)
- F. Change Order documentation
- G. Progress Meeting Minutes
- H. Site Observation Reports
- I. Inspection Reports
- J. Outsourced (3rd party) Testing Reports
- K. general correspondence
- L. any other Owner requested tasks and/or documents

The TPWD Project Manager will provide an overview of the system and coordinate training for the Contractor's use of the system. The TPWD Project Manager will also assign users with login credentials and ensure required levels of access are established.

The eBuilder® website is: (<https://gov.e-builder.net>)

3.3.4 Services, Materials, and Equipment:

3.3.4 [Paragraph 3.3.4 is supplemented with the following]

When the Scope of Work for any discrete Job Order requires the services of more than two (2) building trades (ex: carpentry, plumbing, etc.) to accomplish the work, the Contractor shall perform on the site, with its own employees, a minimum of work equivalent to twenty-five percent (25%) of the total amount of work under the job order. Only ten percent (10%) of the amount of the twenty-five percent (25%) shall be allowed to be counted by Administrative and/or Supervisor staff

performance. In all proposals, schedules of value and work progress schedules, the contractor must designate all work it intends to perform with its own organization and the percentage of the total work this represents.

3.3.4.1 [Paragraph 3.3.4.1 is added]

Transportation and Placement of Construction Components Constructed Off-Site: Regarding pre-fabricated and/or modular building components, or any other components constructed off-site to become part of the on-site constructed project, the Contractor shall be responsible for verifying and complying with all current regulations and laws associated with transportation to the final installation point of the components which are constructed at the off-site work area; including but not limited to, permitting of oversized loads; compliance with load restrictions on all roads and bridges throughout the delivery route including within TPWD facilities; verification of height limitations and turning limitations along said routes and within TPWD facilities, adherence to all current transportation safety practices; and for obtaining insurance coverage in compliance with Paragraph 10.5.2 of the Uniform General Conditions. Contractor shall be responsible for verification and compliance with all safety regulations and current safe practices associated with the loading, unloading and installation of the components. Two weeks prior to shipment of said components, the Contractor shall submit to the ODR an installation plan indicating the proposed delivery route, any temporary storage locations, detailed information regarding the lifting equipment proposed and exact locations of where lifting equipment will be placed and stabilized during unloading, installation and any potential interim locations that maybe necessary between the point where the component is off-loaded from the delivery vehicle to the final installation point.

3.3.7 Subcontractors:

3.3.7.3 [Paragraph 3.3.7.3 is added]

Prefabricators and Modular Construction: When the Work of a project requires the Contractor to provide prefabricated and/or modular building construction and the Contractor does not perform the Work to fabricate these items itself, any other provider(s) of such prefabricated and/or modular building construction shall under this contract be viewed as a Subcontractor similar to any other Construction Trade Discipline Subcontractor of the Contractor. Additionally, any prefabricated or modular construction work performed outside a TPWD owned or leased facility will be considered to be performed at an off-site Worksite for construction component fabrication and where TPWD personnel and representatives shall have full access to the Work during normal business hours. Contractor shall incorporate into its contract with any Subcontractor for Prefabricated or Modular Buildings and/or building components that said Subcontractor is bound by the terms and

provisions of this Job Order Master Agreement and the discrete Job Order associated with the project.

3.3.10 [Paragraph 3.3.10 is voided and replaced by the following]

Acts and Omissions of Contractor, its Subcontractors, and Employees:

Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees or representatives whom ODR finds does not perform work or manage the project in a proper and skillful manner or is found to be careless, incompetent, unsafe, uncooperative, disruptive, threatening or otherwise objectionable.

3.3.13 Ancillary Areas:

3.3.13.5 [Paragraph 3.3.13.5 is added]

Employee Background Check: For any projects located in security sensitive areas or other locations specifically listed in the Special Conditions,

each individual who will come onto the TPWD Facility under this Agreement will be an employee of Contractor or an employee of a permitted subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the work under this Agreement. Prior to commencing its operations under this Agreement, Contractor will (1) provide TPWD with a list ("List") of all individuals who may be assigned to perform the service, and (2) have an appropriate criminal background screening performed on all such individuals. Contractor shall determine on a case-by-case basis whether each individual assigned to perform the services is qualified to provide such services. Contractor will not knowingly assign any individual to provide services on a TPWD Facility under this agreement. Contractor will update the List each time there is a change in the individuals assigned to perform the services. Prior to commencing performance of the services under this Agreement, Contractor will provide TPWD a letter signed by an authorized representative certifying compliance with the section of the Agreement. Contractor will provide TPWD an updated certification letter each time there is a change in the individuals assigned to perform the services.

3.3.16 [Paragraph 3.3.16 is voided and replaced by the following]

Cooperation with Other Contractors and State Workforces: Throughout construction of the project, the Owner may obtain the services of other contractors or State Forces to perform work in or immediately adjacent to the project work site. The contractor will be required to cooperate and coordinate work activities with other building, roadway, utility and/or other types of contractors providing such work. Occasional disruptions and delays should be anticipated, and additional compensation will not be considered or provided due to occasional disruptions or delays that may result from the work coordination efforts.

3.3.18 [Section 3.3.18 is added to include the following paragraphs]

3.3.18 Joint Scope Meeting: The Contractor's Project Manager shall attend and actively participate in Joint Scope Meetings with TPWD ODR, TPWD facility personnel and A/E personnel, if applicable, at proposed project sites to assist in refining the Scope of Work for each proposed Job Order project. The Contractor shall visit the work site to familiarize themselves with the specific conditions of the Work, general conditions of the facility and any special conditions which may affect the timely progress and completion of the Work. The Contractor shall thoroughly examine any Contract Documents and/or as-built records provided by TPWD in preparation for the Joint Scope Meeting.

The Contractor shall gather all necessary information to prepare a Scoping Package for the project and should be prepared to record and retain field measurements, counts, photos or other data gathering procedures in order to verify existing conditions and to support line-item quantity calculations for all Work items required by the Scope of Work determined during each Joint Scope Meeting.

3.3.19 [Section 3.3.19 is added to include the following paragraphs]

3.3.19 Scoping Package: A Scoping Package shall be prepared by the Contractor with input from the A/E, TPWD's ODR and facility personnel following the conclusion of each Joint Scope Meeting. The Contractor shall use forms provided by TPWD and submit the completed Scoping Package through TPWD's eBuilder Project Management System by the end of the workday listed on the Request for a Joint Scope Meeting Letter issued to the Contractor. The Scoping Package shall include the following:

1. A detailed written description of the Scope of Work identified during the Joint Scope Meeting; include and describe in detail any work options or alternative work items, materials, assemblies, methods, etc. that may be requested for consideration by the ODR;
2. The Contractor's field measurements and quantity calculations for all line-items of work to be included in the Job Order Cost Estimate;
3. An initial Job Order Cost Estimate as described in paragraph 3.3.19 of these Supplementary General Conditions;
4. Identify existing site conditions that may impact the work;
5. Identify potential permitting requirements;
6. Identify potential hazardous materials at the site and/or any that may be required during construction of the work;
7. Identify potential SWPPP requirements and other environmental concerns;
8. List potential utility conflicts or potential utility adjustments that may need to be considered;
9. List any constraints, unique conditions, non-work dates or times (ex: hunt dates/time limits, special event dates, etc.), or other possible work impacting conditions that may be identified during the Joint Scope Meeting; and
10. Any other pertinent project information that the Contractor deems necessary to include in the Scoping Package.

3.3.20 [Section 3.3.20 is added to include the following paragraphs]

3.3.20 Job Order Cost Estimate: A Job Order Cost Estimate shall be prepared by the Contractor utilizing the Work Breakdown Structure provided by TPWD and shall

be included as part of the Scoping Package to be submitted by the Contractor subsequent to each Joint Scope Meeting for a potential project. The Contractor shall use and submit the Job Order Cost Estimate on TPWD issued forms and shall include pricing for all work and any work options or alternates identified during the Joint Scope Meeting in a line-item manner to include all necessary Pre-Priced Items, Non-Pre-Priced Items and Master Agreement Price Items that may be required to complete the work. Separate subtotals shall be provided for each group of pricing listed above and a sum total of all groups shall also be provided.

All of the following information shall be included in the Job Order Cost Estimate for each Pre-Priced Items originating from the Unit Price Book:

1. Work Item Quantity
2. UPB Line Number
3. UPB Item Description
4. UPB Line Source
5. UPB Sub Contracted Indicator
6. UPB Data Release
7. UPB City Cost Index
8. UPB Labor Type
9. UPB Crew Type
10. UPB Daily Output
11. UPB Labor Hours
12. UPB Unit
13. UPB Bare Unit Material Rate
14. UPB Bare Unit Labor Rate
15. UPB Bare Unit Equipment Rate
16. UPB Bare Total Rate
17. UPB Extended Material Cost
18. UPB Extended Labor Cost
19. UPB Extended Equipment Cost
20. UPB Extended Total
21. Contractor's Coefficient of Each Line-item
22. Line-Item Total (UPB Extended Total x Contractor's Coefficient)
23. UPB Notes

3.3.21 [Section 3.3.21 is added to include the following paragraphs]

3.3.21 Job Order Pricing: All CSI Division 1 (General Requirements) line items are excluded from the Unit Price Book and associated costs are to be considered as part of the Contractors Coefficients. Pricing of Pre-Priced Items for a Job Order shall be based on Unit Price Book (UPB) bare cost prices with adjustments to reflect the Contractor's Coefficient for the corresponding Response Zone and the City Cost Index included in the UPB for the geographically closest Texas city to the project worksite. Any Non-Pre-Priced Items (NPPI) shall not exceed 10% of the value of the overall Job Order unless an excess over such ten percent (10%) limit is (i) caused solely and directly because TPWD has requested the inclusion of certain proprietary products in the Job Order, (ii) pre-approved by TPWD; and (iii) caused by the cost of the proprietary product that is determined to be a reasonable value by TPWD, at TPWDs discretion. TPWD shall have the unconditional right to withdraw any Job Order at any time before or after a Proposal for that Job Order has been submitted. For a Job Order to become effective, the Job Order Proposal must be signed by both TPWD and the Contractor. The Job Order Proposal must include a lump sum, firm fixed fee price based on the UPB

and the Scope of Work negotiated and finalized between TPWD and the successful Respondent.

When a Job Order is requested for Miscellaneous Project Support Services the pricing will be based on the MAPI prices included in the Master Agreement with application of a Contractor Coefficient for the Response Zone corresponding to the project worksite location.

3.3.21.1 [Paragraph 3.3.21.1 is added]

Unit Price Book: For this Job Order Master Agreement, the Unit Price Book shall be the most current version of the R.S. Means Online "Facilities Construction" catalog. Cost date categories within R.S. Means Online other than the Facilities Construction Cost category may be applied only when advanced written approval is granted by the ODR for instances where item pricing is not available within the Facilities Construction Cost category but appropriate pricing is available in other R.S. Means Online categories.

All CSI Division 1 (General Requirements) line items are excluded from the Unit Price Book and associated costs are to be considered as part of the Contractors Coefficients.

3.3.21.2 [Paragraph 3.3.20.2 is added]

Non-Pre-Priced-Items: Justification for usage of an NPPI cannot be based on profitability of a Pre-Priced Item line-item. Validation of an NPPI unit price shall occur through competitive pricing.

An NPPI of Work (i.e.: line-items of work not listed in the UPB) shall be supported by a minimum of two (2) competitive quotes and must comply with all HUB subcontracting guidelines if the Job Order exceeds \$100,000; and documentary support must be submitted for each NPPI line-item unit price.

A NPPI unit price shall consist of bare costs only (material, equipment, and labor) and may be multiplied by the Contractor's coefficient for Normal Working Hours for the corresponding Response Zone. An NPPI shall not be accepted without documentation of the competitive pricing back up, including a detailed work description of Work included in each of the price quotes and a detailed cost breakdown of each of the price quotes. NPPI's shall not exceed a maximum of 10 percent (10%) of any Job Order.

Frequently used Items of Work not listed in the UPB which may be applicable future Job Orders under the Job Order Master Agreement, may be negotiated with the ODR and the agreed upon unit price incorporated into the Contract by Change Order. Once executed by Change Order, the unit price of the frequently used items of work shall be treated as Pre-Priced Items.

3.3.21 [Paragraph 3.3.21 is added]

Job Order Proposal: When TPWD issues a Request for Job Order Proposal to the Contractor, the Contractor shall prepare a Job Order Proposal on document forms provided by TPWD and shall include a lump sum, firm fixed price for the completion of all Work included in the Scope of Work requested, and any other conditions contained within this contract.

The Job Order Proposal shall include a detailed Job Order Cost Estimate providing line-item pricing for all for all work required by the Scope of Work and contract requirements; a Schedule of Values and corresponding to the pricing reflected in the Job Order Cost Estimate; a complete list of all Subcontractor's to perform work or render services under the Job Order; a detailed Work Progress Schedule; a work plan narrative; quantity measurements taken and/or quantity calculations performed for all line-items in the cost estimate; any sketches, drawings or other construction plans prepared by the Contractor or its agents for the work to be performed; and any other pertinent supporting documents of the proposal.

Submittal of the Contractor's Job Order Proposal shall be made on or before the due date listed on TPWD's Request for Job Order Proposal. The Proposal and all supporting documentation shall be transmitted to TPWD using TPWD's eBuilder Project Management System. No direct payment will be issued to the Contractor for preparing a Job Order Proposal, all costs associated with preparation of a Job Order proposal shall be the responsibility of the Contractor.

ARTICLE 4. HISTORICALLY UNDERUTILIZED BUSINESS(HUB) SUBCONTRACTING PLAN

4.1 General Descriptions:

4.1.2 [Paragraph 4.1.2 is voided and replace by the following]:

A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan with the Contractor's Job Order Proposal and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Job Order.

4.2.5 [Paragraph 4.2.5 is supplemented to add the following]:

TPWD requires submission of a copy of the compliance report with the Application for Payment for Work Performed.

4.2.5.1[Paragraph 4.2.5.1 is voided and replaced by the following]:

Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available in the Index Forms Library on the Facilities Design & Construction page of the Texas Facilities Commission website (<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>)). Contractor shall submit a PAR to TPWD HUB

Administration no later than the 5th day of the month. Contractor shall submit a copy of the current month's PAR with the Application for Payment.

ARTICLE 5. BONDS AND INSURANCE

5.1 When Bonds are Due:

5.1.1.1 [Paragraph 5.1.1.1 is voided and replaced by the following]:

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

5.1.1.2 [Paragraph 5.1.1.1 is voided and replaced by the following]:

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

5.1.3.2 [Paragraph 5.1.3.2 is voided and replaced by the following]:

Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed Job Order on a Job Order Contracted project and prior to the issuance of any Notice to Proceed.

5.2 Insurance Requirements:

5.2.4.1 [Paragraph 5.2.4.1 is supplemented to add the following]:

Contractor shall deliver to Owner true and complete copies of the General Contractor's certificates prior to the issuance of any Notice to Proceed.

5.2.4.2 [Paragraph 5.2.4.2 is supplemented to add the following]:

Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

5.2.4.3 [Paragraph 5.2.4.3 is supplemented to add the following]:

The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.2.4.4 [Paragraph 5.2.4.4 is supplemented to add the following]:

The insurance coverage and limits established in the Uniform General Conditions, Supplementary General Conditions, or Special Conditions shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

5.2.6.1. Insurance Coverage Required:

5.2.6.1.5 [Paragraph 5.2.6.1.5 is voided and replaced by the following]

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

ARTICLE 6. CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD DOCUMENTS

6.1 Drawings and Specifications:

6.1.1 [Paragraph is supplemented to add the following]

Copies Furnished: Unless otherwise called for in the Special Conditions, drawings and specifications will be furnished to the Contractor electronically in digital format.

6.1.2 [Paragraph 6.1.2 is voided and replaced by the following]

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

6.1.4 Resolution of Conflicts in Documents:

6.1.4.1 [Paragraph 6.1.4.1 is added]:

Explanatory notes on the drawings shall take precedence over conflicting drawn-out indications. Figured dimensions on drawings shall take precedence over scale

measurements. Where figures are lacking, scale measurements may be followed, but in all cases the measurements are to be checked from the work in place and those measured dimensions taken at the site shall take precedence over scale dimensions in drawings.

6.1.4.2 [Paragraph 6.1.4.2 is added]:

In the event of conflict between the Special Conditions, the Supplementary Conditions, and the Uniform General Conditions, the following priority order shall apply in resolving such conflicts: Special Conditions, Supplementary Conditions, and then Uniform General Conditions.

6.1.6 Discrepancies and Omissions in Drawings and Specifications:

6.1.6.1 [Paragraph 6.1.6.1 is supplemented to add the following]:

Upon discovery by Contractor of errors, omissions or inconsistencies in the Contract Documents, Contractor shall promptly report them to the Owner and shall wait for instructions from Owner prior to proceeding with the work. The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner.

6.1.6.2 [Paragraph 6.1.6.2 is voided and replaced by the following]:

It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm, or as a Job Order Contracting firm when an A/E firm is subcontracted by the Job Order Contractor to provide construction documents for all or portions of the project.

6.1.6.4 [Paragraph 6.1.6.4 is voided and replaced by the following]:

When performing as a Design-Build firm, or as a Job Order Contracting firm when an A/E firm is subcontracted by the Job Order Contractor to provide construction documents for all or portions of the project, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications when the subcontracted A/E firm prepares construction documents for all or portions of the project.

6.1.6.6 [Paragraph 6.1.6.6 is voided and replaced by the following]:

Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above or as a Job Order Contracting firm when an A/E firm is subcontracted by the Job Order Contractor to provide construction documents for all or portions of the project. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents:

6.2.2 [Paragraph 6.2.2 is voided and replaced by the following]:

Maintain the As-Builts including Drawings, Specifications, all Field Measurements and Quantity Calculations, and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.

6.2.3 [Paragraph 6.2.3 is voided and replaced by the following]:

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

6.2.4 [Paragraph 6.2.4 is voided and replaced by the following]:

Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up As-Builts and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)

6.2.5 [Paragraph 6.2.5 is voided and replaced by the following]:

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

6.2.6 [Paragraph 6.2.6 is voided and replaced by the following]:

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

6.2.7 [Paragraph 6.2.7 is voided and replaced by the following]:

A/E or ODR shall be responsible for updating the As-Builts for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Construction Documents generated by A/E or ODR and compiling As-Built documentation produced by both the Contractor and by the A/E into the Records Documents for all Construction Documents generated by A/E.

6.3 [Section 6.3 is added]

6.3 Intent of the Contract Documents:

6.3.1. [Paragraph 6.3.1 is added]:

The intent of the Contract Documents is to include all of the work for the contract price and within the contract time. Contract Documents are to be considered as cooperative. All work not specified and/or not shown on the drawings, but which is necessary for the completion and/or functioning and operation of the project, shall be understood and implied as part of the contract to be performed by the Contractor for the contract price. Such work shall be executed by the Contractor in the same manner and with the same character of material as other portions of the contract without extra compensation.

6.3.2. [Paragraph 6.3.2 is added]:

It is the intention of the Contract Documents to call for finished work, tested, and ready for operation.

- A. Any apparatus, material or work described in the Contract Documents and any incidental accessories necessary to make the work complete in all respects and ready for operation (even though not particularly specified) shall be furnished, delivered, and installed by the Contractor without additional expense to the Owner.
- B. Minor details not usually shown or specified but necessary for proper installation and operation are included in the work just as if herein specified or shown.

6.3.3. [Paragraph 6.3.3 is added]:

A duplication of work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.

ARTICLE 7. CONSTRUCTION SAFETY

7.5 Environmental Safety

7.5.4 [Paragraph 7.5.4 is voided and replaced by the following]

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

ARTICLE 8. QUALITY CONTROL

8.1 Materials & Workmanship:

8.1 [Paragraph 8.1 is voided and replaced by the following]

Materials & Workmanship: Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with adopted Standardized

Building Codes and use of accepted construction industry practices. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

8.2 Testing:

8.2.1 [Paragraph 8.2.1 is voided and replaced by the following]:

Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide access to both TPWD personnel and its agents for the purpose of testing at all on-site and off-site work areas. Contractor shall provide the following testing:

8.2.4 Notice of Testing [Paragraph 8.2.4 is supplemented to add the following]:

Contractor shall give Owner a minimum of five (5) working days advance notice prior to testing.

8.3.1 Contractor's Submittals:

8.3.1.1 [Paragraph 8.3.1.1 first sentence is voided and replaced by the following]:

The Contractor shall within **Fifteen (15) CALENDAR DAYS** of the effective date of the Notice to Proceed of construction shall submit to the ODR and the AE.

8.3.2 Review of Submittals:

8.3.2.1 [Paragraph 8.3.2.1 is added]

Review of Submittals: When project submittals are required to be submitted using TPWD's e-Builder Projects Management System:

1. Contractor will be provided, in Owner's Notice to Proceed, an Excel spreadsheet of the list of expected submittals from the Architect / Engineer of Record or the ODR for their use in creating a submittal register per the requirements of the Uniform General conditions, Article 8.3.1.
2. Once received from the Contractor, TPWD will upload the Contractor's submittal register into e-Builder and the Contractor may begin the submittal process. Training will be provided by the Owner to the Contractor.

8.3.3 Corrections and Resubmissions:

8.3.3 [Paragraph 8.3.3 is added]

Correction and Resubmission: Any and all cost, direct or indirect, incurred by Owner in reviewing submittals in excess of two (2) times will be charged to the Contractor and deducted from the total price of the work in accordance with the Uniform General Conditions, Article 10, 10.3.3.

8.5 Inspection During Construction:

8.5.1 [Paragraph 8.5.1 is voided and replaced by the following]:

Contractor shall provide access to both TPWD personnel and its agents for the purpose of observation and inspection at all on-site and off-site work areas. Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. "Reasonable times" of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.

8.5.2.2 [Paragraph 8.5.2.2 is voided and replaced by the following]:

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

8.5.3 [Paragraph 8.5.3 is added]:

Construction components assembled at an off-site work area, such as prefabricated or modular building components or other construction components, shall not be released for transportation from the off-site work area prior to completion and passing of all testing and inspection requirements to be performed on the components during the preassembly process, unless authorized in writing by the ODR. Any and all corrections identified during the preassembly testing and inspections shall be completed prior to release for transportation to either temporary storage facilities or the final point of installation. Passing preassembly testing and/or inspection requirements shall not be considered acceptance of the components.

8.5.4 Paragraph 8.5.4 is added]:

Remote Virtual Inspections: Contractor may be required to facilitate Remote Virtual Inspections (RVI). Contractor will be required to sign TPWD's REMOTE VIRTUAL INSPECTION AGREEMENT, a draft of which is included as an attachment in the solicitation documents.

ARTICLE 9. PROJECT SCHEDULING REQUIREMENTS

9.1 Contract Time:

9.1.1 [Paragraph 9.1.1 is added]

Normal Working Hours: All work required under this contract shall be performed during Normal Working Hours, 7:00 A.M. to 6:00 P.M. CST Monday thru Friday, excluding State observed holidays. Work during other times, including weekends, shall only be allowed with prior request and written authorization of the ODR.

9.1.2 [Paragraph 9.1.2 is added]

Other-than-Normal Working Hours: For this project, other-than-normal working hours shall be considered time worked before or after normal working hours (7:00 A.M. to 6:00 P.M. CST Monday thru Friday) and all time worked on weekends or State observed holidays. **The ODR must approve all other-than-normal working hours in writing in advance.** In the event of an emergency, the ODR may approve other-than-normal working hours verbally. However, verbal authorization shall be confirmed in writing within twenty-four (24) hours of any such emergency work. Without this explicit authorization, TPWD shall not recognize any claim by the Contractor for other than-normal working hours or premium pay.

9.3 Work Progress Schedule:

9.3 [Paragraph 9.3 is voided and replaced by the following]

Work Progress Schedule: Unless indicated otherwise in the Job Order Special Conditions, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire project with the Contractor's Job Order Proposal and the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall be organized in the Work Breakdown Structure provided by TPWD and indicate dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner and after a Notice to Proceed is issued, the initial schedule shall be updated to reflect both the start work date and performance period stated in the Notice to Proceed and the updated schedule shall become the Baseline Schedule for the project and shall be used for all future comparison to actual conditions throughout the Job Order duration. The Schedule shall be updated to indicate the progress of work on the project on a monthly basis and shall be submitted to the ODR as part of the Contractor's monthly pay application document package.

9.3.1.3 [Paragraph 9.3.1.3 is added]

Schedule Requirements: Unless specifically stated as "working day" the term "day" or "calendar day" shall mean every day of the calendar year. Along with the Work Progress Schedule, the Contractor shall submit his schedule for normal working days.

9.1 Liquidated Damages:

9.11 [Paragraph 9.11 is voided and replaced by the following]

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

ARTICLE 10. PAYMENTS

10.1 Schedule of Values:

10.1 [Paragraph 10.1 is voided and replace by the following]

Schedule of Values: Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately listing in a line-item format, whereas the values of materials, labor, and equipment are all combined within a single line, to represent the various classifications of the Work based on the Work Breakdown Structure provided by TPWD and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract. When payment for stored materials are included in a pay application, the contractor shall record separately each material payment request in the "Stored Materials" section included near the bottom of the Schedule of Values template provided by TPWD. Each entry shall include the line-item number of the work requiring the material, quantity of material, payment value of the stored material, storage location, vendor, invoice number and date of invoice. A copy of each material invoice shall be submitted with each separate request. As stored material is incorporated into the work the Contractor shall indicate the reductions in the stored quantities and material values remaining in storage each month until all material is placed in the work of the project.

10.1.1 [Paragraph 10.1.1 is voided and replace by the following]

No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as described in 10.1 of these Supplementary General Conditions, and submitted with the Contractors Job Order Proposal. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Job Order Sum. As appropriate, assign each line-item values, the subtotal thereof equaling the value of the work in place when complete.

10.1.1.1 [Paragraph 10.1.1.1 is voided and replace by the following]

Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes.

10.1.2 [Paragraph 10.1.1 is voided and replace by the following]

Contractor shall retain a copy of all worksheets used in preparation of

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

10.2 Progress Payments:

10.2 [Paragraph 10.2 is voided and replaced by the following]

Progress Payments: Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site per the criteria included within Article 10.7 of these Supplementary General Conditions, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by ODR and/or A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.

10.2.1.1 [Paragraph 10.2.1.1 is voided and replaced by the following]:

The Contractor's estimate of the amount of Work performed using the established Schedule of Values;

10.2.1.5 [Paragraph 10.2.1.5 is supplemented to add the following]:

The referenced affidavit is the Contractor's Progress Payment Affidavit.

10.2.1.6 [Paragraph 10.2.1.6 is added]:

A copy of the monthly update of the Contractor's Submittal Register.

10.2.3 [Paragraph 10.2.1.1 is voided and replaced by the following]

Certification by Architect/Engineer and/or ODR. Within five (5) days or earlier following receipt of Contractor's formal Application for Payment, ODR and/or A/E will review the Application for Payment for completeness. A/E will review and certify only the portions of the Application associated with work performed under construction documents prepared by the A/E. The ODR will review the remainder of the application. Once the Application is reviewed and certified it will be deemed either complete and payable, or that it is incomplete. If it is found to be incomplete, the ODR and/or A/E will state in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.

10.3 Owner's Duty to Pay:

10.3 [Paragraph 10.3 is voided and replaced by the following]

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

10.3.1 [Paragraph 10.3.1 is voided and replaced by the following]:

Excluding special circumstances when prior written approval is granted by the ODR, payment for stored materials and/or equipment confirmed by Owner to be on-site or otherwise properly stored will only be considered for invoices for individual materials totaling fifty-thousand dollars (\$50,000.00) or more in value for materials and/or equipment that will reside in storage no longer than ninety (90) days before being utilized and placed into it's final assembly location within the work. When an invoice for stored materials and/or equipment meeting these criteria is submitted for payment, the payment is limited to eighty-five (85) percent of the invoice price or fifty (50) percent of the scheduled value for the line-item, whichever is less. All stored material and/or equipment invoices submitted for payment shall have been paid in full by the contractor prior to submittal.

10.3.2 [Paragraph 10.3.2 is supplemented to add the following]:

The Owner shall withhold ten percent (10%) of the amount of each progress payment on all contracts estimated at time of execution to cost less than \$400,000 and five percent (5%) of the amount of each progress payment on all contracts estimated at the time execution to cost \$400,000 or more.

10.3.3 Price Reduction to Cover Loss:

10.3.3.5 [Paragraph 10.3.3.5 is voided and replaced by the following]:

Reasonable evidence that the Work cannot be completed for the unpaid portion of the Job Order Sum;

10.3.3.8 [Paragraph 10.3.3.8 is added]:

Failure to maintain or allow Owner's inspection of payroll records.

10.7 On-Site Storage:

10.7 [Paragraph 10.7 is added]:

On Site Storage: When the contractor stores materials on-site, the following conditions must be followed unless otherwise agreed in writing by the ODR.

Failure to protect stored materials as required herein may be grounds for rejection of the material. Owner reserves the right to reject materials at any time prior to

final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.7.1 All on-site storage areas must be preapproved by the ODR. Stored materials must be located in an area secured from theft, destruction, and/or vandalism.

10.7.2 All on-site storage areas must be clean and well drained. All materials stored outdoors that are susceptible to damage or deterioration from inclement weather, dust, dirt, sun exposure, or other atmospheric conditions shall be covered securely with waterproof tarping or other protective coverings to protect the stored material.

10.7.3 Stored materials shall be placed on pallets, dunnage, decking, matting or other supportive materials of sufficient size, shape and strength to provide for the support of the materials and/or equipment above the ground or flooring. Supports shall be made of materials that will not damage or stain the stored materials required finish.

10.7.4 Properly stack and support stored materials in a manner that the material does not become cracked, warped, deformed, susceptible to falling, or otherwise damaged during storage.

10.7.5 All stored materials susceptible to temperature variations shall be stored in a manner which will maintain the stored material within the temperature ranges suggested by the manufacturer.

ARTICLE 11. CHANGES

11.1 Change Orders:

11.1 [Paragraph 11.1 is voided and replaced by the following]

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

11.1.1 [Paragraph 11.1.1 is voided and replaced by the following]:

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

the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.

11.1.3 [Paragraph 11.1.3 is supplemented to add the following]:

Procedures for administration of Change Orders will be provided at the Pre-Construction Conference.

11.2 Unit Prices:

11.2 [Paragraph 11.1. is voided and replaced by the following]

Unit Prices: Unit Prices shall be used to determine and document the cost of any Change Order proposed under a Job Order contract. All Pre-Priced Items, Non-Pre-Priced Items and Master Agreement Priced Items to be included as part of the Work of a proposed Change Order shall be individually listed as line-items in the Change Order cost breakdown documentation and the sum of all line-items shall represent the lump sum amount of the proposed Change Order.

11.3 Claims for Additional Cost:

11.3 [Paragraph 11.3 is voided and replaced by the following]:

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

11.4 [Paragraph 11.4 is voided and replaced by th following]:

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

11.8 Pricing Change Order Work:

11.8 [Paragraph 11.8. is voided and replaced be the following]:

Pricing Change Order Work: When a Change Order to a Job Order is proposed due to a request by the ODR to increase or decrease quantities of line-items of Work previously established in the executed Job Order, pricing for those quantity adjustments shall be made

using the unit prices and the Contractor Coefficients previously established for the line-item in the Job Order at the time of execution.

When unforeseen conditions are encountered or changes in the Scope of Work are requested by the ODR, Change Order pricing for Pre-Priced Items shall be based on the most recent version of bare cost pricing from the Unit Price Book with the City Cost Index included in the UPB for the geographically closest Texas city to the project work site and Contractor's Coefficient applied.

Any Non-Pre-Priced Items for which unit prices were not previously established within the Job Order shall be priced in accordance with the Non-Pre-Priced Item pricing procedure described in 3.3.18.2 of these Supplementary General Conditions. If the Change Order includes adjustments, additions or deductions of Master Agreement Priced Items, the pricing shall be based on the unit prices established in the Job Order Master Agreement.

No additional payment shall be added to a Change Order for Contractor and/or its Subcontractor's profit and overhead in addition to the previously established Contractor's Coefficient.

11.8.1 [Paragraph 11.8.1 is voided and NOT replaced]

11.8.2 [Paragraph 11.8.2 is voided and NOT replaced]

11.8.3 [Paragraph 11.8.3 is voided and NOT replaced]

11.8.4 [Paragraph 11.8.4 is voided and NOT replaced]

11.9 Unilateral Change Orders:

11.9.1 [Paragraph 11.4 is voided and replaced by the following]:

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

ARTICLE 12. PROJECT COMPLETION AND ACCEPTANCE

12.1 Closing Inspections:

12.1.1 [Paragraph 12.1.1 is voided and replaced by the following]

Substantial Completion Inspection: When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing fifteen (15) working days prior to the Substantial Completion inspection that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it

has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

12.1.1.1 [Paragraph is voided and replaced by the following]:

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

12.1.1.2 [Paragraph 12.1.1.2: 2nd Sentence is replaced by the following]:

ODR and/or A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection.

12.1.2 [Paragraph 12.1.2 the last sentence is replaced by the following]

ODR and/or A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.3 Acceptance and Payment:

12.3.2 [Paragraph 12.3.2 is voided and replaced by the following]:

Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, As-Builts and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Ch. 2251. Contractor shall furnish

documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception. The Affidavit referred to above is the Contractor's Final Payment Affidavit.

12.3.3 [Paragraph 12.3.3 is voided and replaced by the following]:

A/E and or ODR will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, ODR and/or A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner

ARTICLE 13. WARRANTY AND GUARANTEE

13.2 [Paragraph 13.2 is voided and replaced by the following]

Warranty Period: Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work or at Final Completion if no Substantial Completion inspection is held. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.

13.4 Events Not Affecting Warranty:

13.4.2 [Paragraph 13.4.2 is voided and replaced by the following]

Recommendation to pay any progress or final payment by ODR and/or A/E;

ARTICLE 14. SUSPENSION AND TERMINATION

14.3 Termination by Owner for Cause:

14.3.5 [Paragraph 14.3.5 is voided and replaced by the following]

If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Job Order Sum.

14.5 Termination for Convenience of Owner:

14.5.4 [Paragraph 14.5.4 is added]

Non-Appropriation of Funds: The contract is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD's or contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

ARTICLE 15. DISPUTE RESOLUTION

15.1 [Paragraph 15.1 is voided and replaced by the following]

Unresolved Contractor Disputes: The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260, and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative Code or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.

(END OF TPWD SUPPLEMENTARY GENERAL CONDITIONS)

EXHIBIT L – SPECIAL CONDITIONS (SAMPLE)

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01000 – SPECIAL CONDITIONS

PART 1 – GENERAL

1.01 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Uniform General and Supplementary General Conditions and other Division 1 specification sections, apply to work of this section.

1.02 DESCRIPTION OF WORK:

Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all work associated with Project information below, such work being as more particularly described in these Special Conditions, the drawings, and elsewhere in the Request for Job Order Proposal and Job Order Contracting Documents.

Project No.	
Project Location	
Project Title	

A. A duplication of work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.

1.03 CONTRACT COMPLETION: **(See also UGC, Article 9)**

A. **Liquidated Damages:** The Owner has determined that the completion of the work in this contract is critical to the proper operation of the facility, and the Contractor's failure to complete the work within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of **\$339.22** per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty but as liquidated damages from added expense, including administrative and inspection costs, for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the time limit set in the contract or authorized extension.

A. Charges for liquidated damages will begin accumulating on the first calendar day following the final contract completion date and continue until the date of final acceptance as established by the Owner. Final acceptance will not be issued until all punch list items have been completed.

B. Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

1.04 SPECIAL INSURANCE REQUIREMENTS: **(See also UGC, Article 5)**

A. Builder's Risk (or Installation Floater for Equipment Installation Only): Builder's Risk is a requirement of this Invitation for Bids and Contract Documents.

B. Umbrella Liability Insurance:

Contractor shall obtain, pay for and maintain umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. The amount of coverage required for umbrella liability insurance is One Million and No/100 Dollars (\$1,000,000.00).

- A. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (“the Texas Public Information Act”).
- B. In accordance with Section 2252.907 of the Texas Government Code, Bidder is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Bidder will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.

1.05 FOR USE IN FEDERAL CONTRACTS: NON-DISCRIMINATION:

The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 or Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color, national origin, age, and sex (in educational activities) or disability. The prime contractor shall ensure that this clause is included in all subcontracts.

PART 2 – EXECUTION

2.01 CONSTRUCTION SITE AND JOB CONDITIONS:

Any temporary connections, appurtenances or extensions for any utilities shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract. Contractor shall provide cellular telephone service at all times and shall keep Owner informed of telephone number.

A. Utilities:

1. Water:

Choose and edit one of the sentences below based upon the CD checklist:

Option 1: TPWD water service is available for Contractor to connect to at no charge to the Contractor.

Option 2: TPWD water service is not available for Contractor use.

2. Electric:

Choose and edit one of the sentences below based upon the CD checklist:

Option 1: TPWD Electrical power is available for Contractor to connect to at no charge to the Contractor.

Option 2: TPWD Electrical power is not available for Contractor to connect to.

3. Internet / data:

1. Internet service to this facility is provided by *(insert service provider – need to add this to CD checklist. In the meantime, get with the DM to obtain this information)*. Due to TPWD IT security requirements, Contractor cannot access the internet through the facility's private network. Contractor will be responsible for obtaining internet service for their use during the project.

B. Project Identification: If Contractor desires to erect project signs of any size or type, Contractor must submit a proposed design to and obtain approval from TPWD prior to installation of any project signs. Project sign(s) may not include any references to TPWD or use TPWD's name, logo or other likeness.

C. Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner. Any fires that start or encroach on the Contractor's limits of construction must be immediately reported to the Site Manager.

2.02 SITE OPERATIONS:

During construction of this project the site will / will not remain open to public visitation. It is the responsibility of the Contractor to maintain convenient access and egress to park facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained by Contractor as needed. The Contractor shall maintain security of construction sites.

END OF SECTION

ATTACHMENT 1 – BOND FORMS

Selected Contractor shall complete and return Bonds as required for specific Job Orders.



PAYMENT BOND

STATE OF TEXAS

Project Number _____

COUNTY OF _____

Contract Number _____

Bond Identification Number _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____, as **PRINCIPAL**,

And we _____, a corporation duly authorized to do business in this State, as **SURETY(IES)**, are this date held and firmly bound unto the State of Texas in the penal sum of : _____ Dollars (\$_____), for the payment, for which indemnity the said Principal and Surety, by this declaration do firmly bind themselves, their heirs, executors, administrators, successors, and assigns jointly and individually.

The conditions of this obligation are such that whereas the **PRINCIPAL** entered into a certain contract dated _____, 20__, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:

Project Name, Facility Name, City, County, Texas

NOW THEREFORE, the conditions of this obligation are such that, if the **PRINCIPAL** shall promptly make payment to all claimants as defined in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended, supplying labor and materials in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the **SURETY(IES)** being hereby waived, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all claimants supplying labor and materials in the prosecution of the work provided for in said contract, and all such claimants shall have a direct right to action under the bond as provided in TITLE 10, *TEXAS GOVERNMENT CODE*, CHAPTER 2253, as amended.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this ____ day of _____, 20__, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

BY _____

SURETY

BY _____

Address of Attorney-In-Fact

Email Address



PERFORMANCE BOND

STATE OF TEXAS

Project Number _____

COUNTY OF _____

Contract Number _____
Bond Identification No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as **PRINCIPAL**,
and _____, as **SURETY(IES)**,
duly authorized to do business in this State, as Surety(ies), are this date held and firmly bound unto the state of Texas in the penal sum of:

_____ Dollars (\$ _____)
for the payment, of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administration, successors and assigns, jointly and individually.

The conditions of this obligation are such that whereas the **PRINCIPAL** entered into a certain contract dated _____, 20____, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:
_____.

NOW THEREFORE, the conditions of this obligation are such that, if the **PRINCIPAL** shall faithfully perform the contract in accordance with the plans, specifications, and contract documents, and as provided in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253, as amended, shall fully indemnify and save harmless the State of Texas from all cost and damage which the State of Texas may suffer by reason of the **PRINCIPAL'S** default or failure to do so and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that if any legal action be filed upon this bond, venue shall lie in Travis County, Texas and that the said surety(ies) for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alternation or addition, to the items of the Contract or to the work or to the Specifications.

In the event **PRINCIPAL** is in default under the contract as defined herein, **SURETY(IES)** will within fifteen (15) days of determination of such default take over and assume completion of said contract and become entitled to the payment of the balance of the contract price.

IN WITNESS TO THIS DECLARATION, the above bound parties have executed this instrument under their several seals this ____ day of _____, 20____, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

SURETY

BY _____

BY _____

Address of Attorney-In-Fact

Email Address

ATTACHMENT 2 – HUB SUBCONTRACTING PLAN (HSP) FORMS

Selected Contractor shall complete and return an HSP as required for specific Job Orders.



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

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

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

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



HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

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

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

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

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

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

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

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

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

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

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

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

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

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

ATTACHMENT 3 – REMOTE VIRTUAL INSPECTIONS (RV I) AGREEMENT

Selected Contractor shall complete and return the Remote Virtual Inspections Agreement as requested by TPWD.

REMOTE VIRTUAL INSPECTION AGREEMENT

Project Number: _____ Project Name: _____

Remote Virtual Inspections (RVIs) are recognized by the International Code Council (ICC) as a form of visual inspection which uses visual or electronic aids to allow an inspector or team of inspectors to observe products and/or materials from a distance.¹ The Infrastructure Division of the Texas Parks and Wildlife Department (TPWD) recognizes that the use of RVIs is an accepted practice that promotes efficiency by allowing TPWD Inspectors to remotely observe products, materials, and building practices while promoting cost savings.

The use of RVIs will be at the sole discretion of TPWD. When the general contractor (GC) requests an inspection, TPWD will determine whether a RVI or onsite inspection shall be utilized. Onsite inspections are required for Substantial Completion and Final Completion inspections. RVIs require reliable Internet connection (Wi-Fi or cellular).

RVIs shall be conducted by the GC sharing live video footage of the project site through a web-enabled device (smartphone, tablet, laptop, etc.) using a virtual meeting application designed by TPWD (e.g. Microsoft Teams). The TPWD Inspector shall attend the virtual meeting and conduct the inspection by viewing the live video footage provided by the GC of the relevant materials and/or areas of work that is the subject of the inspection. TPWD will capture images and/or video of the project site provided by the GC for archiving and inspection reporting. The TPWD Inspector will act as the witness to the inspection and sign the applicable documentation confirming the inspection has taken place. TPWD staff other than the TPWD Inspector may attend the RVI virtual meeting to observe the inspection.

The GC shall comply with the following requirements for RVIs:

- Ensure that the project site is safe at all times for the individual(s) using the device during the RVI.
- The device with a camera and microphone shall be fully charged and has a charged additional power supply (e.g. battery pack) prior to the RVI.
- The GC shall grant TPWD access to the device's camera, microphone, and device location at all times during the RVI.
- The project site must have high-speed Wi-Fi connectivity or minimum 4G cellular service with a strong signal.
- Site plans must be onsite and in a place that can be easily accessed by the GC during the RVI.
- The tools necessary to gain access to, provide ample visibility of, and/or are necessary for the RVI, must be available to the GC during the RVI including, but not limited to:
 - Tape measure, flashlight, level, step ladder, PPE, extending pole for the device, or
 - Any other tools or devices that are necessary for the RVI (e.g. GFCI tester).

¹ See http://media.iccsafe.org/2020_MarComm/Remote_Video_Insp_FINAL_w_Covers.pdf

The GC acknowledges that this Remote Visual Inspection Agreement (Agreement) is in addition to any other applicable contract documents for the above-referenced project name and number and that the terms and conditions of any other applicable contract documents are not modified by this Agreement and continue to apply.

The GC agrees to indemnify and hold harmless TPWD and its employees, officers, and directors for any liability associated with any RVI conducted pursuant to this Agreement.

The terms and conditions of this Agreement are agreed to and accepted by:

General Contractor

Date

TPWD Designated Representative

Date