



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

ALL PROPOSALS MUST BE SUBMITTED VIA COURIER OR MAIL SERVICE

REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER-AT-RISK

**PROJECT NO. 1111827
CULTURAL CENTER AND PARK HEADQUARTERS
AT HUECO TANKS STATE PARK & HISTORIC SITE
EL PASO COUNTY, TEXAS**

<i>RFP Issue Date:</i>	<i>May 12, 2025</i>
<i>Pre-Proposal On-Line Video Conference (Optional):</i>	<i>1:00 PM, May 23, 2025</i>
<i>Pre-Proposal Site Visit (Optional):</i>	<i>By Appointment, May 27 - May 30, 2025</i>
<i>Questions Due:</i>	<i>5:00 PM, June 6, 2025</i>
<i>Date of Issuance of Agency's Written Answers:</i>	<i>(est.) June 10, 2025</i>
<i>Proposal Due Date:</i>	<i>2:00 PM, June 16, 2025**</i>

*** Proposals will be received and recorded in the A-100 Conference Room, Infrastructure Division. No Pricing information will be publicly released until a contract has been executed between TPWD and the successful Offeror.*

Contract Manager: JoAnn Hernandez CTCD, CTCM
Contract Manager
Email: joann.hernandez@tpwd.texas.gov

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EXHIBITS

Documents incorporated by reference:

- Exhibit A Pro-Forma Construction Manager at Risk Agreement
- Exhibit B Conditions of the Contract include:
 - Uniform General Conditions*
 - 2018 Supplementary General Conditions*
 - Special Conditions*
 - Essential Clauses, Affirmations & Additional Contract Requirements*

SECTION 1 – GENERAL INFORMATION AND SUBMITTAL REQUIREMENTS

1.1 STATUTORY AUTHORITY. In accordance with the provisions of Texas Government Code, Chapter 2269, Subchapter F, Construction Manager-at-Risk Method, and Rules and Procedures adopted by Texas Parks and Wildlife Department (TPWD or Owner), TPWD is requesting Proposals for a Construction Manager-at-Risk (CMR) to provide preconstruction and construction services for the Cultural Center and Park Headquarters located at Hueco Tanks State Park & Historic Site 6900 Hueco Tanks Road No 1 El Paso, Texas, hereinafter described as TPWD Project No. 1111827 Cultural Center and Park Headquarters (the Project). This Project will be administered by TPWD. This procurement will be a two-step award process with a two-part work requirement.

1.1.1. This solicitation will include a submittal of company experience and qualifications focusing on projects of similar size and type. Offerors will be evaluated on the criteria detailed in Section 4, Required Submittals. The CMR Contract will be awarded following a two-step process using qualifications statements, response to additional information and lastly, Interviews.

Step 1, Request for Proposals (RFP), will result in Owner qualifying a maximum of five (5) Offerors who will be invited to participate in **Step 2**.

Step 2 will consist of Request for Additional Information as determined by Owner and interviews. Although this *Request for Proposals (RFP)* generally describes the criteria in Step 2, only short-listed Offerors shall submit a response to **Step 2** criteria.

Oral interviews will be held after Step 2, to allow offerors the opportunity to highlight the strengths and unique aspects of their responses and provide answers to clarification questions TPWD may have regarding the responses and ask additional questions. The Offeror's Project Manager designated in their response as being the primary "lead" individual coordinating the day-to-day project management during design and construction of the Project will facilitate and conduct the presentation made by the firm during the interview. Scoring from the evaluation criteria, Interviews and reference results will be the final determining factors in the Owner's ranking of Offerors in order to determine the most qualified Offeror. The Owner will then rank the remaining "most" qualified Offerors and then begin negotiations with the highest-ranked Offeror.

1.1.2. Solicitation Documents and all addenda are obtained through the Comptroller's website under *Electronic State Business Daily (ESBD)* at <http://www.txsmartbuy.com/sp>.

1.2 COST OF WORK. Offerors to the RFP should consider the "Cost of Work" as estimated to be **sixteen point one million (\$16,100,000.00)** not including any Preconstruction Management fees, Construction Management fees, and Construction General Conditions, as part of the construction budget or the Guaranteed Maximum Price (GMP).

1.3 CONTRACT TERM. For planning purposes, the preconstruction performance period is estimated to be **three hundred sixty-five (365) calendar days**. The construction performance period is projected for a term of **seven hundred thirty (730) calendar days** except as may be otherwise amended or negotiated. **The total contract performance period estimated to be one thousand ninety-five (1,095) calendar days after Notice to Proceed.**

1.3.1 This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article in the CONSTRUCTION MANAGER AT RISK Contract shall apply.

1.4 DELIVERY OF PROPOSALS. Proposals will be accepted prior to the time and date specified herein by courier or mail service. Information for delivery is as follows:

U. S. Postal Services	Overnight/Express Mail
Texas Parks & Wildlife Dept. Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours – 8:00 AM to 5:00 PM (CT)	Texas Parks & Wildlife Dept. Mail Room Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours – 8:00 AM to 5:00 PM (CT)

Proposals must be received at the above location prior to the date and time set forth below.

DUE DATE:	June 16, 2025
NO LATER THAN:	2:00 PM (CT)

TPWD reserves the right to accept late responses, however no response will be considered after the opening has begun, notwithstanding shipper fault and/or that the proposal was under agency control at the time of the opening. Offerors are advised that TPWD's Headquarters Complex does not open until 8:00 A.M. Offerors should plan their delivery method accordingly.

1.5 SEALED CONTAINER. Proposals may be mailed or delivered (during normal business hours 8:00AM CST – 5:00PM CST) in person or by FedEx, Express Mail or other delivery service) to the address referenced above. It is the sole responsibility of the Offeror to ensure timely delivery of its Proposal. Owner will not be responsible for failure of service on the part of the U.S. Postal Service, courier services, or any other form of delivery service. Electronic or facsimile Proposals will not be accepted. Proposals must include all specified items detailed in the Solicitation Documents.

Proposals must be submitted in a tamper resistant sealed container marked on the outside with the Offeror's name and address, project number, and due date and time. Proposals that are not submitted in a sealed container will not be considered. Electronic or facsimile Proposals will not be accepted. The container shall be clearly labeled as follows:

PROPOSAL FOR
Texas Parks and Wildlife Department
Infrastructure Division – Attn: JoAnn Hernandez Contract Manager
CMR Proposal, Project No. 1111827
Hueco Tanks State Park & Historic Site

1.6 SUBMISSION OF PROPOSALS. The Offeror must submit the following:

1. **one (1) original signature copy** of their Response, stamped "**ORIGINAL**",
2. **one (1) identical digital/electronic version** in digital format in a sealed container.

Responses should be direct, succinct, and contain only pertinent information relevant to the response requirements listed in this RFP and should not include extemporaneous or ancillary information.

1.7 AUTHORIZED CONTACT PERSON. The Owner designates the following person, as its representative and Point-of-Contact for this RFP. Offerors shall restrict all contact with the Owner and direct all questions regarding this RFP, including questions regarding technical drawings and specifications and terms and conditions, to the Point-Of-Contact person.

JoAnn Hernandez, CTCD, CTCM, Contract Manager,
Texas Parks & Wildlife Department | Infrastructure Division
4200 Smith School Road
Austin, Texas 78744
Phone: 512-389-
Email: joann.hernandez@tpwd.texas.gov
Copy: INFCContracting@tpwd.texas.gov

For HUB and HSP inquiries only, contact HUB@tpwd.texas.gov.

1.8 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 Offeror or their representatives(s), except for the written inquiries described in Article 1.7. Attempts to ask questions by phone or in person will not be allowed or recognized as valid.

Failure to observe this restriction may disqualify Offeror. Offeror 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.

1.9 INQUIRIES AND INTERPRETATIONS. The Owner will issue any or all addenda no later than seven (7) calendar days prior to the Proposal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Proposals. Inquiries regarding this RFP must be submitted via e-mail to the Point of Contact identified in Article 1.7 of this section and shall be submitted to TPWD **no later than 5:00PM CST on June 6, 2025**. All inquiries must include contact person, phone number and email address.

1.9.1 All inquiries will result in written responses with copies posted to the ESBD at: <http://www.txsmartbuy.com/sp>. If Offerors do not have internet access, copies may be obtained through the point of contact listed above.

1.9.2 Any Offerors finding discrepancies between the provided documents, or in doubt as to their exact meaning, shall notify TPWD at once. TPWD may then, as an option, issue addenda clarifying the same. TPWD is not responsible for oral instructions or for misinterpretation of the drawings and specifications.

Inquiries submitted by email shall be in an editable format, i.e. Microsoft Word, or standard email, as opposed to an un-editable format such as Adobe Acrobat.pdf files.

1.10 ADDENDA. Any inquiries/clarifications or interpretations of this RFP that materially affect or change its requirements will be issued by the Owner as an addendum on the Electronic State Business Daily (ESBD) website at <http://www.txsmartbuy.com/sp>. All such addenda issued by the Owner before the proposals are due are considered part of the RFP, and Offerors shall acknowledge receipt of and incorporate each addendum in its Proposal. **OFFEROR'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF PROPOSAL.**

Offerors shall consider only those clarifications and interpretations to the Drawings and Specifications that the Point-Of-Contact issues by Addendum. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Proposals.

1.11 TYPE OF CONTRACT. The Owner intends to award a single contract to a single offeror. Any contract resulting from this solicitation will be in the form of the *Construction Manager at Risk Contract*, a copy of which is included in the RFP Documents.

1.12 PUBLIC INFORMATION. Information the Offeror provides to Texas Parks & Wildlife in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act. 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 Offeror believes that his response to this solicitation contains confidential information in those categories, the Offeror must specifically document this at the top or bottom of each page that contains the information the Offeror considers confidential. The Offeror'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 Offeror believes applies to this information, i.e., copyrighted, trade secret, proprietary, financial etc. A general disclaimer that the Offeror's response contains confidential information will not be sufficient to meet this requirement. **If such documentation is not provided, Texas Parks and Wildlife Department will assume that all information provided in the response to this solicitation is releasable under the Act.**

TPWD will submit a request for an opinion from the Office of the Attorney General prior to disclosing any document designated as "Confidential". The Offeror shall then have the opportunity to assert its basis for non-disclosure to the Office of the Attorney General; however, it is the sole responsibility of the Offeror to monitor such proceedings and make timely filings. TPWD strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of proposal information. TPWD or its employees shall not in any way be liable or responsible for the disclosure of any such records, or any part thereof, if disclosure is required under the Public Information Act or otherwise by law.

1.13 OFFER PERIOD. Proposals submitted shall constitute an offer for a period of ninety (90) days or until selection is made by Owner, whichever occurs earlier. Once submitted, Proposals are irrevocable without withholding the bid security.

1.14 AWARD AND EXECUTION OF CONTRACT

The CMR's contract will be awarded following a two-step procedure using qualifications statements, request for additional information, and interviews. **Step 1** will result in Owner

qualifying (short-listing) a maximum of five (5) Offerors to respond to Step 2. **Step 2** will consist of request for additional information and interviews.

The Evaluation Team will submit a recommendation to the Owner's Source Selection Authority (SSA) to authorize negotiation and execution of a contract with the top-ranked firm. If Owner is unable to negotiate a satisfactory contract with the top-ranked firm within 45 calendar days, Owner will formally end negotiations with that Offeror. The Owner will then proceed to negotiate a satisfactory contract with the next Offeror in the order of the selection ranking, until a contract is reached or all negotiations end, provided that Owner, in its complete discretion, may elect to extend the time for negotiations with any Offeror for an additional period of time.

After award of contract is made, the successful Offeror will be required to enter into a fixed price contract. ***Exhibit B – Pro-Forma Construction Manager at Risk Agreement is included for reference.*** The entire content of the Offeror's Response will become a part of the CMR's executed Contract Documents. Failure of the successful Offeror to accept this obligation may result in cancellation of any award. Any damages accruing to Owner as a result of the successful Offeror's failure to contract may be recovered from the selected Offeror.

The Owner will sign the Contract after award and execution of required Contract Documents by the selected Offeror. Contract will not be binding upon Owner until both parties have executed it.

1.15 HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN (HSP)

In accordance with Texas Government Code, Sections 2161.181-182 and Title 34, Chapter 20, Subchapter B., 20.285 of the Texas Administrative Code (TAC), state agencies must make good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, professional and consulting services and commodities contracts with an expected value of \$100,000.00 or more.

In accordance with Texas Government Code §2161.252 and 34 Texas Administrative Code §20.14, the Owner has determined that subcontracting opportunities are probable under this contract, and that the contract value may exceed \$100,000. This probability is based on HUB availability, HUB utilization, geographic location of the Project, the contractual scope of work or other factors.

Due to the nature of this Project Delivery Method, the HSP requirement will be split into two (2) phases requiring one HSP. The first phase HSP will only cover the Part One Preconstruction portion of the project. However, prior to the bidding and award phase, and before construction services are authorized to commence, the CMR will be required to submit an **HSP Change Request** and applicable Good Faith Effort (GFE) to cover the Part Two Construction phase of the project. Upon approval, the **second phase HSP Change Request** will be combined with the originally approved HSP and incorporated into the contract.

HSP Phase 1: TPWD will issue an initial HSP goal for the Preconstruction Phase of this Project and the Offeror shall submit **with their Step 2 documents**, an HSP meeting GFE requirements. If the Preconstruction Phase HSP is not submitted with the Offeror's documents, or the Offeror's HSP does not pass GFE review, the Offeror's Response will not be accepted for consideration.

HSP Change Request Phase 2: Additionally, TPWD has determined that subcontracting opportunities will arise during the Construction Phase of this project; however, the specific scopes and the magnitude of the Work for the Construction Phase cannot be determined until

the Design has been sufficiently completed. Prior to entering into the Construction Phase, TPWD will establish an appropriate HSP goal and subcontracting opportunities, and the CMR shall submit an HSP Change Request detailing their GFE.

1.16 BONDS AND INSURANCE REQUIREMENT

1.16.1 Bonds. As a part of Attachment B, Offeror is required to submit a letter from Offeror's surety stating Offeror's ability to acquire bonding as required in the full amount of the contract, either directly or through reinsurance, and ensuring the commitment from its surety to provide such bonding. Refer to 1.2 – Cost of the Work.

The specific bond coverage requirements applicable to this Project are set forth in Article 5 of the Uniform General Conditions and the Supplementary General Conditions, incorporated herein. CMR shall provide a security bond or other financial security acceptable to the Owner in the amount of Twenty-five thousand dollars and no cents (\$25,000.00). Security Bonds must be submitted within ten (10) calendar days of signing the CMR Contract. In this situation, the CMR shall provide the performance and payment bonds at the time of the execution of executed GMP for Construction Phase services.

All bonds required by the Contract Documents shall be obtained from solvent surety companies that are duly licensed by the state of Texas and authorized to issue bond policies for the limits and coverages required by the Contract Documents. Payment and Performance bonds shall be in a form provided by the Owner. Owner reserves the right to reject a bond if the surety is not acceptable to TPWD.

1.16.2 Insurance. Minimum insurance requirements are specified in Article 5, section 5.2 of the Uniform General Conditions, and Supplementary General Conditions, incorporated herein.

1.17 REJECTION OF PROPOSALS

Owner reserves the right to reject any or all Proposals. The following will be cause to reject a Proposal:

- a. Proposal which are not signed by an individual empowered to bind the Offeror.
- b. Proposal which are not accompanied by acceptable proposal guaranty, with Power of Attorney attached, or a letter certifying the Offeror's ability to be bonded, from a surety company, if required.
- c. More than one proposal for same Work from an individual, firm or corporation.
- d. Evidence of collusion among Offerors.
- e. Sworn testimony or discovery in pending litigation with Owner which discloses misconduct or willful refusal by contractor to comply with subject contract or instructions of Owner.
- f. Failure to submit HSP at required phases.
- g. Proposal received from an Offeror when its principals are currently debarred or suspended by Federal, State or other governmental agencies.
- h. Proposals that are received late will be returned to the Offeror un-reviewed (Note: It is the security policy of TPWD central mail room to open all packages delivered to the Agency unless they are clearly marked on the outside as a proposal to the RFP).
- i. The Owner will not acknowledge or receive Proposals that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
- j. TPWD reserves the right to accept late responses, however no response will be considered after the opening has begun, notwithstanding shipper fault and/or that the proposal was under agency control at the time of the opening.

1.18 WITHDRAWAL OF PROPOSAL PRIOR TO THE DEADLINE FOR RECEIPT OF PROPOSALS. A Proposal may be withdrawn in writing by Offeror, provided an authorized individual of the Offeror submits a written request to withdraw the Proposal prior to the time set for receipt of Proposals. Withdrawn Proposals may be resubmitted, with or without modifications, prior to the due date and time.

1.19 REQUESTS FOR WITHDRAWAL OF PROPOSAL AFTER THE DEADLINE FOR RECEIPT OF PROPOSALS: Upon the expiration of the proposal submission deadline, all submitted proposals shall become the property of the Owner and constitute a binding offer, remaining valid for ninety (90) days or until the Owner selects a proposal, whichever occurs first. After submission, any request for withdrawal following the proposal deadline may result in forfeiture of any associated bid security.

1.20 PROPOSAL DURATION: If TPWD has not made an award ninety (90) calendar days after proposals are opened Offerors may withdraw their proposals without prejudice; however, Offerors have the option to extend the time in which their proposals will be honored after this ninety (90) day period.

1.21 COSTS OF PREPARING THE PROPOSAL. All cost directly or indirectly related to preparation of a Proposal to this Solicitation or any oral presentation required to supplement and/or clarify a Proposal, which may be required by Owner, shall be the sole responsibility of the Offeror.

1.22 MINOR INFORMALITIES. Owner reserves the right to waive any minor informality in any proposal or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Proposal).

1.23 TERMS AND CONDITIONS ATTACHED TO PROPOSAL. Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in the Proposal.

1.24 FUNDING. This project will be funded by State funds and as such is subject to meet all requirements associated with state jurisdiction as stipulated herein.

1.25 ACCEPTANCE OF EVALUATION METHODOLOGY. By submitting the statement of qualification in proposal to this RFP, the offeror accepts the evaluation process and acknowledge and accept that determination of the "best value" firm will require subjective judgements by the Owner.

1.26 OWNER'S RESERVATION OF RIGHTS. The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposal or proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any offeror to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

1.27 ELIGIBLE OFFERORS. The Offerors must be a sole proprietorship, partnership, corporation or other legal entity or team 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 TPWD regarding construction during and after the design of the facility. (This does not preclude an Offeror from using consultants.) The Owner will contract only with the individual firm or formal organization that submits a Proposal.

1.28 LEGAL STATUS OF OFFEROR. The Proposal and any subsequent supporting documents and the Contract must be executed in the Offeror's full name and legal entity

status by an authorized representative of the Offeror and accompanied by sufficient documentation. Sufficient documentation must clearly indicate not only the legal name and entity status of Offeror, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement, a corporation must file its articles and bylaws, a limited liability company must file its certificate of organization and article of organization and regulations, and a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner, and any Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority. Such documentation shall be submitted with the Proposal.

1.29 INSPECTION, CONSTRUCTION MATERIALS TESTING AND BUILDING COMMISSIONING. Owner will provide or contract for, independently of the CMR, the inspection services, the testing of construction materials engineering, building commissioning and the verification testing services necessary for acceptance of the facility by Owner. Awarded CMR will be required to provide coordination of these services, as required by the Owner-approved Quality Assurance Plan.

1.30 TEXAS ETHICS COMMISSION INTERESTED PARTIES DISCLOSURE FORM

In accordance with 2252.908 of the Government Code, the awarded CMR Contractor must use the Texas Ethics Commissions Application to enter the required information on Form 1295. Awarded CMR Contractor shall print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form.

The completed Form 1295 with the certification of filing must be submitted **within ten (10) calendar days following notice of selection**. Failure to timely meet this requirement may result in disqualification of the proposal. In such circumstances, TPWD shall be authorized to proceed with award to the next highest ranked Offeror. Additional information can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

1.31 ACKNOWLEDGEMENTS. Each Offeror, in submitting a proposal to this RFP, understands and agrees that this RFP is predicated on the Owner's anticipated requirements for this Project, and that the Owner has made no representation, written or oral, that any such requirements be furnished under a contract arising in connection with this RFP. Furthermore, each Offeror, in submitting a response to this RFP, understands and agrees that all costs incurred by the Offeror in connection with the entire selection process hereunder shall be at the sole risk and responsibility of the Offeror.

1.32 PROTEST PROCEDURES. Any Actual or prospective Offeror who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in TPWD's rules at [TAC, Title 31, Part 2, Chapter 51, Subchapter L, Rule 51.350](#).

1.33 ORDER OF PRECEDENCE. In the event of conflicts or inconsistencies between this contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract, Attachments to the Contract, Request for Proposals, and Offeror's Proposal to Request for Proposals.

1.34 VENDOR PERFORMANCE TRACKING SYSTEM. In evaluating proposals, the Owner will consider information related to past contract performance of a Offeror including, but not limited to CPA's Vendor Performance Tracking System (VPTS) available at: <http://www.txsmartbuy.com/vpts>.

Prior work performance with the Owner and other state agencies or governmental entities which are familiar with an Offeror's performance, depending on problems encountered, may be grounds for disqualification. In addition, Offeror's pre-proposal involved in litigation with the Owner or another state agency may be disqualified.

1.35 REMOTE VIRTUAL INSPECTIONS. Offeror may be required to facilitate Remote Virtual Inspections (RVI). The awarded Offeror will be required to sign TPWD's Remote Virtual Inspection Agreement, a draft of which may be found at the link in 1.37 of this RFP.

1.36 CONSTRUCTION CONTRACTING FORMS. The awarded offeror shall be required to utilize TPWD's Construction Contracting Forms. These forms include but are not limited to the following

- Application for Payment FAQs
- Application for Payment voucher
- BABA Certification
- Consent of Surety
- Contractor's Change Proposal
- Contractor's Construction Admin Forms
- Contractor's Change Proposal Checklist
- Final Payment Affidavit
- Non-Use Asbestos
- OM Manual TOC
- Payment Bond
- Performance Bond
- Progress Payment Affidavit
- Request for Information
- Remote Virtual Inspection Agreement
- Substantial Completion or Final Inspection Prep List
- Uniform General Conditions including Supplementary General Conditions

Forms are available at:

https://tpwd.texas.gov/business/bidops/current_bid_opportunities/construction/contracting-forms/

End of Section One

SECTION TWO – SCHEDULE AND PRE-PROPOSAL ON-LINE VIDEO MEETING

2.1 ANTICIPATED SOLITATION SCHEDULE. TPWD reserves the right to change the dates in the Schedule of Events set forth below, upon written notification to prospective Offerors through a posting of an addendum on the ESBD.

The solicitation process for this RFP will proceed according to the following proposed schedule. The schedule listed is for planning purposes only and subject to change (if there is a conflict between the dates below and the Proposal Form, the duration shown on the Proposal Form shall govern).

<i>TPWD issues RFP</i>	<i>May 12, 2025</i>
Pre-Proposal On-Line Video Meeting	<i>1:00 PM CST May 23, 2025</i>
Site Visit	<i>May 27 – May 30 , 2025</i>
Deadline to submit Questions	<i>5:00 PM CST June 6, 2025</i>
TPWD to issue response to Questions by Addenda	<i>(est.) June 10, 2025</i>
PROPOSAL DUE TO STEP 1:	<i>2:00 PM CST June 16, 2025</i>
<i>TPWD evaluates and short lists firms</i>	<i>Week of June 22, 2025</i>
Step 2 (short -listed firms)	
<i>TPWD issues Step 2 - Request for Additional Information to Short-Listed Firms</i>	<i>Week of June 29, 2025</i>
<i>TPWD receives responses to Step 2 - Request for Additional Information</i>	<i>Week of July 13, 2025</i>
<i>TPWD evaluates Step 2 submissions</i>	<i>Week of July 13, 2025</i>
<i>TPWD issues invitation to Short-listed firms to attend oral interviews</i>	<i>Week of July 13, 2025</i>
<i>TPWD interviews short listed firms</i>	<i>Week of July 20, 2025</i>
<i>Notification to selected CMR Firm</i>	<i>Week of July 20, 2025</i>
<i>TPWD awards CMR Contract</i>	<i>Week of August 10, 2025</i>

2.2 ON-LINE VIDEO PRE-PROPOSAL MEETING. An on-line pre-proposal meeting will be held on **May 23, 2025, 1:00PM (CT)**. Although the pre-proposal meeting is not mandatory, Offerors are strongly encouraged to attend as important information regarding proposal submittal requirements and an overview of the Project will be discussed.

The on-line video meeting will be conducted using Microsoft® Teams. Offerors may use their browser to access the meeting or a Microsoft® Teams application. Prior to the on-line video meeting, TPWD will send an email calendar invitation containing information about joining the on-line video meeting to each requestor.

Important Note: In order to receive the Teams™ calendar invitation to the on-line pre-submittal video meeting Offerors must pre-register. See below link to register:

Register in advance using this link:

<https://events.gcc.teams.microsoft.com/event/bd6ab209-80f8-49b7-83d6-3451070180db@7864fda7-62ad-47ec-81ec-323266e3a35f>

Following the on-line video meeting, the PowerPoint™ presentation will be posted to the Electronic State Business Daily

2.3 SITE VISIT. All Offerors will be given the opportunity to participate in a site visit to view the conditions of the site outlined in this solicitation. **The Site Visit will be held by appointment May 27 – May 30, 2025. Contact Site Superintendent Cassie Cox at 915-472-7062.** Attendees are reminded that questions will not be answered during this meeting. Failure to give proper consideration to site conditions when preparing the proposal will not constitute grounds for additional compensation.

2.4 SELECTION PROCESS OVERVIEW. The intent of TPWD is to award a contract to the offeror whose qualifications and pricing are considered to be 'best value' to the state based on the published selection criteria and on its ranking evaluation. When considering 'best value' and award, the Owner reserves the right to set a minimum requirement regarding the criteria listed below.

An evaluation committee will be established to evaluate proposals. The committee will include employees of TPWD and may include other impartial individuals who are not TPWD employees. By submitting a Proposal in response to this RFP, Offeror accepts the solicitation and evaluation process and acknowledges and accepts that scoring of the Proposal may involve some subjective judgments by the evaluation committee. The evaluation committee will evaluate and score each proposal based on the following criteria:

Item No.	Description	Max Points
Criteria for STEP 1		
Attachment A	Execution of Proposal	Pass/Fail
Attachment B - Item 1.1	Acceptable Documentation	Pass/Fail
Attachment B - Item 1.2	Offeror's Financial Capability & Bonding Information	Pass/Fail
Attachment B - Item 1.3	Work History and References	50 pts
Attachment B - Item 1.4	Pre-Construction Services	20 pts
Attachment B - Item 1.5	Construction Project Management Services	20 pts
Attachment B - Item 1.6	Offeror's Ability to Perform Project per Owner's Schedule	10 pts
Total Max Points for STEP 1		100 pts
Criteria for STEP 2 (short-listed firms)		
Attachment C	Construction Manager at Risk Proposal Form	20 pts
Provide	Ability to Meet Project Schedule	5 pts
Provide	Ability to Meet Project Budget	5 pts
Provide	Constructability Program	5 pts
Attachment D	HUB Subcontracting Plan Documents	Pass/Fail
TOTAL Max Points for STEP 1 and STEP 2		135 pts
<i>Oral Interviews, (if deemed necessary by the owner)</i>		<i>20 Pts</i>

2.5 INTERVIEWS. Evaluation committee may conduct an interview with the short-listed firms to make a determination for award recommendation. The following will be expected during an interview:

1. One hour is allocated for the interview.
2. Attendance by team members assigned to the Project to represent themselves as to their relevant experience and proposed involvement in the Project. Representation by the Project Manager and the Superintendent is a critical component of the interview.
3. Agenda questions for the interview will be provided by TPWD requiring an elaboration of company relevant experience and qualifications, proposed methodology, and quality assurance and control programs, and request for additional information.

2.6 NEGOTIATIONS AND AWARD. Giving priority in order of the ranking determined by the scores, TPWD will undertake to negotiate an agreement with the Offeror, which is evaluated as the highest scoring, deemed the best value to the State. The Evaluation Committee will determine if price negotiations are necessary and may negotiate final pricing per TGC, Chapter 2269, Subchapter D, §2269.254 (b), (c). If an agreement cannot be negotiated, the negotiations will be formally terminated and TPWD will attempt to negotiate an agreement with the next Offeror in order of scoring until an agreement is reached or the list is exhausted, upon which the solicitation will be cancelled and may be re-issued.

End of Section Two

SECTION THREE – EXECUTIVE SUMMARY

3.1 PROJECT HISTORY

Document Purpose

This document is intended to define the specific scope of design services for the above-referenced Project.

Mission Statement

State Parks Division: To manage state parks and historic sites to conserve natural and cultural resources, provide recreational and educational opportunities, and foster an understanding of the diversity of Texas' lands and heritage for all generations.

Project Background

Hueco Tanks State Park and Historic Site, located in the Chihuahuan Desert, has a human history spanning over 10,000 years. This site has served as a vital resource for indigenous peoples and travelers, offering water, food, and shelter. It holds significant cultural value, evident through the rock imagery left by early hunter-gatherers and other indigenous peoples, depicting human and animal-like figures, geometric designs and "mask-like" pictographs.

Around A.D. 650, the Jornada Mogollon people began agricultural practices at the base of the rock hills, utilizing the water sources for their crops. Their presence is evidenced by the remains of pithouse structures, pottery sherds, stone tools, and water control features. Notably, the park boasts the largest collection of "mask-like" pictographs in North America, with more than 200 identified. Throughout history, Hueco Tanks has continued to attract various indigenous peoples, such as the Kiowa, Mescalero Apache, Comanche, the Tiwa of Isleta Pueblo, and the Tigua of Ysleta del Sur Pueblo, who consider the site integral to their heritage. Their rock images portray handprints, dancing figures, horses, weapons, and encounters with European settlers.

The park also has evidence of the passage of travelers, including military scouts, gold-seekers, local El Pasoans and cattle drovers, who left their marks on the rocks. This site played a pivotal role as a relay station for the Butterfield Overland Mail in the late 1800s.

In terms of geology, Hueco Tanks showcases unique formations shaped over millions of years by wind and water erosion. These igneous rock formations effectively capture rainwater, creating a rich oasis in the arid desert. The park is home to a diverse range of plant and animal species, with carnivores, rabbits, rodents, reptiles, bats, amphibians, and over 200 bird species inhabiting the area.

Preservation efforts have been made to safeguard the park's historical and natural significance. It holds designations as a National Historic Landmark, State Antiquities Landmark, and is listed on the National Register of Historic Places.

Considering the park's cultural, historical, and ecological significance, it is imperative to preserve and maintain the park's resources while also being respectful of the indigenous community connections and the varying park user groups. The project's scope should address visitor experiences, connecting trails, education, and interpretation programs, while ensuring compliance with preservation guidelines and regulations. By carefully planning and executing

the scope of work, we can contribute to the long-term preservation and enjoyment of Hueco Tanks State Park and Historic Site for future generations.

Project Site Location

Hueco Tanks State Park and Historic Site is located within El Paso County, approximately thirty-two miles east of the city of El Paso, Texas on U.S. Highway 62/180, north on Ranch Road 2775, on Park Road 68. The mailing address is 6900 Hueco Tanks Road No. 1, El Paso, TX 79938. The existing park Headquarters is located at: Latitude: 31.926453 Longitude: -106.042437 The Interpretive Center aka Escontrias ranch house is just off 68 Road. The new Cultural Center and Park Headquarters will be sited in the northeast side of the State Park.

[Hueco Tanks State Park & Historic Site — Texas Parks & Wildlife Department](#)

Project Summary

Planning and Design of a new Cultural Center and Park Headquarters replacement, with outdoor Community Grounds gathering area, new roadway and parking, and interpretive exhibits. Essential renovations/repairs to the existing HQ and to the existing Interpretive Center aka Escontrias ranch house with parking relocation, and new connecting trails.

Project Overview

The current Interpretive Center does not meet staff and visitors' needs. The new Cultural Center and Park Headquarters will provide a modern, serviceable, and sustainably built facility that is culturally appropriate and respectful to associated indigenous communities. The existing Headquarters needs essential repairs to continue to serve as the first point of visitors' contact. The Escontrias needs essential repairs, parking relocation, and new connecting trails.

Project Objectives

- Honor site history and natural resources with a new Cultural Center that improves orientation, interpretation, and education of the site's importance to all visitors.
- Sustain continuity of site usage and accommodate visitation. In particular, the ability to convey through design and orientation the delicate balance between recreation and cultural preservation that has historically been a challenge at the site.
- Enhance visitor experience and improve site orientation. The new Cultural Center and Park Headquarters will be the primary point for visitor orientation and interpretation for Hueco Tanks State Park and Historic Site.
- Allow the Park to be experienced even if the interior of the State Park is at capacity. The Cultural Center would allow visitors to appreciate Hueco Tanks while waiting for the opportunity to enter the Park or should they not be able to go in.
- Accommodate State Park staff needs.

Program Assumptions

New Building / Site Construction:

1. Provide a new Cultural Center (visitors' center) that will function as interpretive space and new Park Headquarters (10,800 sf),
2. Provide an Amphitheater/Outdoor Community Grounds gathering area to be associated with Cultural Center (5,600 sf).
3. Provide Landscape (for areas affected by minimal disturbance and/or interpretive areas)
4. Provide a new roadway (2,625 lf) to the Cultural Center
5. Provide a new parking lot (130 spaces) to serve the Cultural Center.
6. Provide a new connecting trail (600 lf) to/from the Cultural Center

Major Repair / Alterations:

7. Relocate/replace parking (9 parking spaces for Escontrias) to allow for direct viewscape from existing HQ and create an opportunity for a future landscape setting to reflect the era of inhabitation.
8. Essential repairs of existing Headquarters (900 sf), replace roof, and upgrade restroom.
9. Upgrade the existing connecting trail (900 lf) to/from Escontrias.

Historic Building Site Repair / Alterations:

10. Essential repairs to Escontrias ranch house (1,675 sf) to include a security system and stabilization repairs.

Note: Square Footages, Linear Feet, number of parking spaces and other quantities here are approximate. The Design Professional will evaluate and confirm program needs and requirements for each facility and its site.

3.2 PROJECT SCOPE

PART ONE - PRECONSTRUCTION: Collaborate with TPWD and its Architects and Engineers (A/E) during the completion of construction documents including Schematic Design, 50% and 100% Design Development, 50% Construction Documents, 95% Construction Documents review and comments at 100% completion of Construction Documents. The Offeror's expertise will be used to affect value engineering, constructability, construction phasing, establish a project schedule and ultimately determine the Guaranteed Maximum Price (GMP), within the limits established by the contract. The services include attending meetings, plan reviews, constructability reviews, and cost estimating.

PART TWO - CONSTRUCTION: In accordance with the approved schedule and GMP, Contractor shall facilitate bidding and selection of subcontractors in accordance with HUB requirements, and provide and/or secure and install all materials, labor, coordination, management and supervisory activities necessary to complete construction of the Project in accordance with the drawings, specifications and other contract documents that will be prepared by the A/E & TPWD.

End of Section Three

SECTION FOUR –REQUIRED SUBMITTALS AND EVALUATION CRITERIA

All submissions received for **STEP 1** will be reviewed, evaluated and ranked. The Owner will qualify (short-list) no more than five (5) Offerors to be eligible to proceed to **STEP 2** of the evaluation and selection process. Offerors shall provide responses to **STEP 1 ONLY**, by the Response due date and time stated herein.

Responses for **STEP 1** must be received in a sealed container and labeled on the outside with the Offeror's name, address, solicitation number, and Response due date and time. Responses that are not submitted in sealed containers will not be considered. Each Container shall include the required information listed below.

4.1 Required Submittal (Step 1) must include the following:

- **Attachment A - Execution of Proposal:** *Failure to sign and return the Execution of Proposal shall result in proposal being considered non-responsive.*
- **Attachment B - Acceptable Documentation and Contract Qualification Form:** *Failure to complete and return this form shall result in proposal being consider non-responsive.*

Evaluation Criteria can be found in Attachment B and is summarized below. Offeror shall carefully read and respond to all criteria found in the attachment. *Offeror can provide additional pages to Attachment B, if needed.*

Item 1.1: Acceptable Documentation

Item 1.2: Offeror's Financial Capability and Bonding Information

- Letter from Surety – Ability to acquire required Bonding

Item 1.3: Offeror's Qualifications: Work History and References

Item 1.4: Offeror's Qualifications: Pre-Construction Services

Item 1.5: Offeror's Qualifications: Construction Project Management Services

Item 1.6: Offeror's Ability to Perform Project Per Owner's Schedule

Failure to submit all required documents (including information found in Evaluation Criteria- Attachment B) with acceptable proposals may cause Offeror to be deemed "non-responsive" and disqualified. Offeror shall also comply with page number limitations requested in the Proposal Requirements of the solicitation.

The Offeror must submit one **(1) original signature copy of their Response**, stamped "ORIGINAL", one **(1) duplicate copy**, stamped "COPY", and one **(1) digital/electronic version** on a Flash Drive in a sealed container.



The following pages describe the criteria that will be used in Step 2 of this solicitation.
OFFERORS SHOULD NOT INCLUDE RESPONSES TO STEP 2.

**SHORT-LISTED FIRMS WILL BE INVITED TO SUBMIT RESPONSES TO STEP 2
CRITERIA**

STEP 2

Five or fewer firms will be short-listed based on evaluations of written responses to Step 1, Items 1 through 5 and will be eligible for Step 2. Step 2 includes request for additional information.

Criteria for Step 2 is generally described below. OFFERORS SHOULD NOT INCLUDE RESPONSES TO STEP 2 IN RESPONSE TO THIS REQUEST FOR QUALIFICATIONS.

SHORT-LISTED FIRMS WILL BE INVITED TO SUBMIT RESPONSES TO STEP 2 CRITERIA

Responses for **STEP 2** (Items 1 through Item 5 and Phase 1 HUB Subcontracting Plan documents) shall be submitted in a sealed container. The container shall include a label which identifies the Offeror's name, project number, and due date and time.

RESPONSE TO STEP 2 – REQUEST FOR ADDITIONAL INFORMATION must include:

- | | |
|--|-----------|
| ○ Item 1: Construction Manager at Risk Proposal Form | 20 pts |
| ○ Item 2: Ability to Meet Project Schedule | 5 pts |
| ○ Item 3: Ability to Meet Project Budget | 5 pts |
| ○ Item 4: Constructability Program | 5 pts |
| ○ Item 5: Phase 1 HUB Subcontracting Plan Documents | Pass/Fail |

Item 1: Construction Manager at Risk Proposal Form *20 points*

1.1 The Offer: The offer (as more fully set forth in the **Attachment C, Construction Manager at Risk Proposal Form**,) shall be comprised of three components listed below:

- a. A Preconstruction Management Not-to-Exceed fee for collaboration with TPWD and its A/E during the preconstruction phase described in Section 3.
- b. A Construction Management Fee as a percentage of the estimated Cost of Work. Such fee shall represent overhead and profit.
- c. A Not-to-Exceed fee for Construction General Conditions shall include the following for the duration of the project:
 1. Bonds and Insurance
 2. Project Management/Supervisory/Quality Control/Support/Administrative Personnel (both office and field)
 3. Temporary Field Offices/Facilities/Storage (including equipment, materials, temporary utilities, and security)
 4. Safety program
 5. Construction Documentation and Surveying
 6. Transportation and parking
 7. Temporary Barriers, Signage and Controls
 8. Cleaning and Waste Disposal

- Item 2: Ability to Meet Project Schedule *5 points***
- 2.1 Provide a critical path schedule with any proposed phasing and milestones for this project, including both the Preconstruction and Construction phases. Schedule can be on 11x17 format.
- 2.2 Describe how you will manage the critical path schedule given potential supply chain issues and labor shortages.
- Item 3: Ability to Meet Project Budget *5 points***
- 3.1 With the project budget provided, describe how your CMR will protect the Owner from total project cost overrun exposure. Describe your methodology and process for working with the Design team to maintain the project budget throughout the Preconstruction and Construction phases.
- 3.2 Describe your cost control methods during construction and how you procure qualified subcontracts, confirm scope, amount, and ensure proper payment. *Be specific in your response.*
- Item 4: Constructability Program *5 points***
- 4.1 Describe your Constructability Program on CMR projects, including but not limited, design review, value engineering, procurement strategies, and quality control.
- 4.2 Describe your methods for problem-solving, issue tracking, and change control during the Preconstruction Phase and Construction Phase.
- Item 5: Hub Subcontracting Plan (HSP) Documents *Pass/Fail***
- 5.1 Each Offeror must complete and return one (1) original and one (1) electronic/digital version of **Attachment E, Phase One (1) - HUB Subcontracting Plan (HSP)**, following the policy and utilizing the forms contained with the CMR included herein. FAILURE TO COMPLETE AND RETURN WILL BE CAUSE FOR REJECTION. THE CONTRACTOR RECEIVING AN AWARD MUST COMPLY WITH THE SPECIAL REQUIREMENTS SPECIFIED HEREIN. For questions, email HUB Staff at HUB@tpwd.texas.gov.
- HSP Phase 1:** TPWD will issue an initial HSP goal for the Preconstruction Phase of this Project and the Offeror shall submit **with their Step 2 documents**, an HSP meeting the Good Faith Effort requirements. If the Preconstruction Phase HSP is not submitted with the Offeror's documents, or the Offeror's HSP does not pass Good Faith Effort review, the Offeror's Response will not be accepted for consideration.
- HSP Change Request Phase 2:** Additionally, TPWD has determined that subcontracting opportunities will arise during the Construction Phase of this project; however, the specific scopes and the magnitude of the Work for the Construction Phase cannot be determined until the Design has been sufficiently completed. Prior to entering into the Construction Phase, TPWD will establish an appropriate HSP goal and subcontracting opportunities, and the CMR shall submit an HSP Change Request detailing their Good Faith Effort.

End of Section Four

**ATTACHMENT A
EXECUTION OF PROPOSAL**

Project No.: 1111827

Project Location: Hueco Tanks

Project Title: Cultural Center and Park Headquarters

NOTE: OFFERORS SHALL COMPLETE AND RETURN THIS ATTACHMENT WITH THEIR PROPOSAL. FAILURE TO DO SO SHALL RESULT IN DISQUALIFICATION OF THE PROPOSAL.

By signature hereon, the Offeror certifies that:

1. All statements and information prepared and submitted in the response to this RFP are current, complete and accurate.
2. He/she has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to sign the Execution of Proposal or signing it with a false statement shall void the submitted offer or any resulting contracts.
3. Neither the Offeror or the firm, corporation, partnership, or institution represented by the Offeror or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.
4. By signing this proposal, Offeror certifies that if a Texas address is shown as the address of the Offeror, Offeror qualifies as a Texas Resident Bidder as defined in TAC, Title 34, Part 1, Chapter 20.
5. Under Section 2155.004, TGC, the offeror certifies that the individual or business entity named in this proposal 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.
6. The individual or business entity named in this 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 pursuant to the Texas Government Code, Section 2155.004(b).
7. Pursuant to TGC, Title 10, Subtitle D, Section 2155.004(a), the offeror has not received compensation for participation in the preparation of specifications for this solicitation.
8. Under Section 669.003 of the *Texas Government Code*, Offeror certifies that it does not employ, or has disclosed its employment of, any former executive head of the agency. Offeror must provide the following information in the proposal.

Name of former executive: _____

Name of State agency: _____

Date of separation from State agency: _____

Position with Offeror: _____

Date of employment with Offeror: _____

9. Offeror agrees that any payments due under any contract arising from this proposal will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
10. Under Section 2155.0061 of the Texas Government Code, the Offeror 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.

11. HB1295 of the 84th Legislature mandates that you must comply with the following:

TGC Section 2252.908, and new rules promulgated by the Texas Ethics Commission ("TEC") pursuant to Section 2252.908, require a disclosure of interested parties by contractors that enter into certain types of government contracts.

To comply with the law and new rules, contractors must file a Disclosure of Interested Parties Form 1295 ("Form 1295") with the TEC and TPWD.

As of January 1, 2016, the TEC has made available on its website the new filing application that must be used to file Form 1295.

Go to: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Information on using the new filing application is also posted on the TEC's website as of January 1, 2016.

Questions concerning the Form 1295 may be directed to TPWD Legal Division, Todd George at todd.george@tpwd.texas.gov.

12. System for Award Management (SAM): Prior to awarding state funds for goods and/or services rendered, the State of Texas will conduct a required search of your firm using the Federal System for Award Management (SAM). This is a Federal government maintained database that record and track organizations either known to or suspected of contributing to terrorist organizations. No state funds may be paid to an individual or firm whose name appears on this list.

Offeror 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 <http://www.sam.gov>.

13. Texas Family Code Compliance Requirement: Under Section 231.006 of the Family Code, the offeror certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan or 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).

14. Entities that Boycott Israel. If Offeror is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Offeror certifies that Offeror does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Offeror does not make that certification, Offeror must indicate that in its Proposal and state why the certification is not required.

Section 2252.152 of the Texas Government Code prohibits TPWD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Offeror certifies that it is not ineligible to receive the contract.

15. By signature hereon, the Offeror acknowledges that *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this proposal, Offeror certifies that its proposal price represents full compensation for compliance with the requirements of *Texas Government Code*, Title 10, Subchapter F, §§ 2252.201-2252.205.
16. By signing this proposal, Offeror acknowledges and understands that the acceptance of funds by the Offeror or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor's Office, Comptroller or other agency of the State of Texas, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. The Offeror further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. The Offeror shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through the Offeror and the requirement to cooperate is included in any subcontract it awards.
17. **FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.
18. **Disaster Relief Contract Violation.** Under Sections 2155.006 and 2261.053 of the Texas Government Code, CMR certifies that the individual or business entity named in the 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.
19. **Excluded Parties.** CMR 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.
20. **Suspension and Debarment.** CMR certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
21. **No Conflicts.** CMR represents and warrants that CMR has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that CMR's provision of services under this Contract would not reasonably create an appearance of impropriety.
22. **Deceptive Trade Practices Act; Unfair Business Practices Disclosures.** CMR represents and warrants that it has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. CMR further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either CMR or any of CMR's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any

court, then CMR has disclosed all such matters to TPWD and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

23. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. CMR certifies that it has not employed and will not employ a former TPWD or state officer who participated in a procurement or contract negotiation for TPWD involving CMR within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.
24. Financial Interests/Gifts. Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, CMR has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract. In addition, pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, CMR certifies that CMR knows of no officer or employee of TPWD, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TPWD, that has a financial interest in CMR's company or corporation. CMR further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which CMR will be dealing on behalf of TPWD.
25. By signature hereon, the Offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code. Making a false statement as to corporate tax status is a material breach of contract.
26. Offeror represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended .
27. Offeror agrees to comply with Texas Government Code, Title 10, Subtitle D, §2155.4441, relating to use of service contracts and the purchase of products and materials produced in the State of Texas.
28. Offeror certifies that if a Texas address is shown as the address of the Offeror on this proposal, Offeror qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
29. Offeror agrees that any terms and conditions attached to a Proposal will not be considered.

REST OF THE PAGE INTENTIONALLY LEFT BLANK

APPLY SIGNATURES ON THE NEXT PAGE

Offeror shall include all signed and dated addendum(s) with their response. Oral changes in the work made during the solicitation period are not binding. **OFFEROR'S FAILURE TO SUBMIT EACH SIGNED AND DATED ADDENDUM(S) WITH THEIR RESPONSE MAY RESULT IN REJECTION OF RESPONSE.**

TPWD ADDENDA ARE POSTED AT: <https://www.txsmartbuy.com/esbd>

The Offeror must complete, sign and return this Execution of Proposal as part of their response. The Offeror's company official(s) who are authorized to commit to such a response must sign response. Failure to sign and return this form will subject the response to disqualification.

Business Name: _____

State of Texas Tax Account No: _____
(This 11-digit number is mandatory)

If a Corporation:

Offeror's State of Incorporation: _____

Offeror's Charter No: _____

Submitted and Certified By:

(Offeror's Name)

(Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Email Address)

(Authorized Signature)

(Date)

TEXAS PARKS AND WILDLIFE

Attachment B
ACCEPTABLE DOCUMENTATION AND CONTRACTOR'S QUALIFICATION FORM

ALL FORM FIELDS REQUIRED. MARK N/A, IF NOT APPLICABLE
(Additional pages can be added to comply with the requirements of the document)

Criteria Item 1.1: Acceptable Documentation

Pass/Fail

<p>Legal Name of the Company. Provide sufficient documentation of Offeror's legal name and entity status signed by an authorized representative of the Offeror which clearly indicates not only the legal name and entity status, but also the capacity and authority of the person signing on behalf of Offeror. Accordingly, a partnership/joint venture must file its partnership/joint venture agreement; a corporation must file its articles and bylaws; a limited liability company must file its certificate of organization and article of organization and regulations; and, a limited partnership must file not only limited partnership agreement and the certificate of limited partnership, but also the documentation for its general partner. Offeror must file a copy of any assumed name certificate, or such limited portion of such documents reasonably establishing signature authority, as applicable.</p>	
Legal Name of the Company	
Company Description:	
Principal place of business (<i>Corporate Headquarters</i>):	
Address:	
City, State, Zip:	
Physical Address of the office that will be providing services:	
Address:	
City, State, Zip:	
Ownership, firm organization, key personnel and stability of firm (attach additional sheets if necessary)	

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Personnel who will be responsible for management and day-to-day operation of services described in this solicitation.	
Name & Title:	
Phone & Email	
Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within the last five years. ___ Yes ___ No If yes, explain.	
Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances and prospects for resolution.	
Provide details of any past or pending litigation within the past ten years, or claims filed, against your firm that may affect your performance under a Contract with the Owner.	

Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances, and prospects for resolution.

Identify if your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity? ____ Yes ____ No. If so, please explain the impact both in organization and company direction.

Indicate if your company or any of its subsidiaries has been involved in litigation within the last five years.

☐ Yes ☐ No If yes, explain.

Number years in business:

Number of employees:

PRINCIPALS IN FIRM AND YEARS EXPERIENCE IN CONSTRUCTION

NAME	TITLE	PHONE	NO. OF YEARS

Has firm, under its current or former name(s) ever failed to complete a project, defaulted on a contract, or been engaged in litigation over a contract? ☐ YES ☐ NO. If so, state particulars of most recent occurrence on separate sheet(s) and attach to this form.

FIRM HISTORY: List firm history below including any other business names used:

From		to		Firm Name	
From		to		Firm Name	
From		to		Firm Name	
From		to		Firm Name	

CONSTRUCTION CAPABILITIES

Firms Average Annual Construction Volume	\$
--	----

END OF CRITERIA 1.1

Criteria Item 1.2: Offeror's Financial Capability and Bonding Information

Pass/Fail

BONDING INFORMATION: Indicate agency/surety through which bonding will be obtained.

Agency:	
Agent's Name:	
Address:	
Address:	
Email Address:	
Agent's Phone No.:	
BONDING COMPANY (UNDERWRITER)	
Bonding Company Name:	
Bonding Agent's Address:	
Bonding Agent's Email:	
Bonding Agent's Phone:	

The Offeror must provide evidence of financial capability and stability. Offeror's financial capability must be appropriate to the size and scope of the project.

The following factors may be considered but are not limited to: Current Assets/Current Liabilities Ratio; Cash + Short term investments; Income from Operations/Interest Expense; Opinion from Offeror's Auditor; Bonding capacity; and Notes to the Financial Statements.

OFFEROR MUST SUBMIT:

- ☐ Attach a letter of intent from a surety company indicating your firm's ability to bond for the entire construction cost of the project. The surety shall acknowledge that the firm may be bonded for each stage/ phase of the project, **with a potential maximum construction cost of \$16.1 Million.** Bonding requirements are set forth in the Agreement and the Uniform General and Supplementary Conditions, incorporated herein. Letter should also include total bonding capacity, available bond capacity and current backlog.

END OF CRITERIA 1.2

1.3 Submit five (5) projects completed, or at least 80% complete, within the past ten (10) years by your organization. Out of the five projects, submit a minimum of two (2) CM@R projects. At least one of the CM@R project examples should be in the last 5 years. The projects submitted must be relevant to the type of project and scope of our current project. List the projects in order of priority, with the most relevant project first. Submit the following information for each project (4-page limit per project, including photographs with descriptions).

[illegible]

1.3.4.3 Describe if the project had any historical repair or historical restoration. How did you ensure the right subcontractor was hired and how did you ensure quality and expertise in their work to address the project's historic needs. Describe if the project included collaboration with project reviewers such as archeologists, biologists, and planners, and describe the review process with them.

1.3.4.4 Describe new construction and/or addition renovation components.

1.3.4.5 Describe experience working with indigenous people and multiple stakeholders. How did you ensure project communication was effective. Mention some of your processes and communication plan.

1.3.4.6 Describe your experience or planned approach in managing and implementing design changes throughout the project? Specifically, please highlight the methods you utilized or intend to use for accepting and addressing these changes, and elaborate on your contributions and expertise in adapting to evolving project requirements..

1.3.4.7 Provide details on whether this project incorporated versatile spaces, such as exhibit halls, adaptable meeting rooms, or similar facilities? Additionally, please elaborate on your involvement and the expertise you brought to designing or managing these flexible-use areas.

1.3.4.8 Describe if this project included flexible electric and audio visual, telecom, IT, and other electronic utilities into a building so that the utilities and AV equipment can be used in multiple spaces.

1.3.4.9 Demonstrate experience implementing sustainability initiatives and incorporating sustainable methods or design elements in past projects. Provide specific examples that highlight strategies such as energy-efficient systems, renewable materials, waste reduction techniques, or environmentally conscious construction practices that were successfully employed.

1.3.4.10 Demonstrate experience in collaborating with Architects/Engineers of record within a Construction Manager at Risk (CM@R) project delivery framework. Include examples that highlight effective communication, alignment of project goals, and successful resolution of challenges to ensure project success.

1.3.5 Name of Owner, Owner's representative, and team members who were familiar with the project, including address, telephone, and email address. The Committee seeks evidence demonstrating the inclusion of the following types of representatives/team members:

1.3.5.1 Demonstrated past experience with governmental clients or public entities, such as public universities, or a local, state or federal entity.

1.3.5.2 Demonstrated experience with at least three (3) projects of comparable in cost, complexity, type, and size as this project described in the Executive Summary.

1.3.6 Name of Architect of Record AND Civil Engineering consultant who served during the design and construction of the project, including address, telephone, and email address. Add names of other significant design consultants associated with the project, such as MEP Engineers, FP, Landscape Architect, Exhibit Designs, Audio Visual, etc.

1.3.7 Key Personnel, including Project Superintendent and major subcontractors.

1.3.8 Describe your experience working with the local community (Las Cruces, El Paso area) How many projects have you worked on? Are you familiar with the local subcontractors?

1.3.9 Original and Final Construction Performance periods in months.

Initial Construction Performance Period:

Final Construction Performance Period:

1.3.9.1 Provide an explanation for any differences between the two.

1.3.10 Original and Final Construction Contract amounts.

Initial Contract Amount:

Final Contract Amount:

1.3.10.1 Provide an explanation for any differences between the two.

1.3.11 If Project is still under construction, provide percentage complete and date for final completion.

1.3.12 Attach Photographs of completed construction, or construction in progress with descriptions.

END OF CRITERIA 1.3

Criteria Item No. 1.4: Offeror's Qualifications: Pre-Construction Services *20 points max*

1.4 The Offeror shall provide a description of preconstruction services provided during the design phase of the Construction Manager at Risk project delivery method.

1.4.1 Describe the extent of review, processes, and formats your firm utilized during pre-construction services to effectively minimize change orders during the construction phase.

1.4.1.1 Elaborate on specific strategies or methods employed to ensure accuracy, streamline workflows, and anticipate potential adjustments, highlighting your experience and approach in this area.?

1.4.2 Describe your procedure for performing design reviews during the pre-construction phase. In previous projects.

1.4.3 Provide a sample change tracking log that was furnished as part of the constructability reports during the pre-construction phase. In previous projects.

1.4.4 Provide examples of Cost estimates that your company used as part of Pre-Construction services in previous projects. Provide a description of the process used for cost estimating, budgeting, data tools used, including materials and labor/subcontractor costs.

1.4.5 Describe your process for reviewing the A&E firm's designs/proposed materials/or processes and how you are able to provide alternatives that might better suit the project needs or help with the cost. Describe your methodology.

END OF CRITERIA 1.4

Criteria Item No. 1.5: Offeror's Qualifications: Construction Project Management Services
20 points max

1.5 The Offeror shall provide project management services for safe, orderly, expeditious and quality construction. Provide detailed supporting information to include the following.

1.5.1 Proposed Key Personnel, including job description for the Project. Additional consideration will be given to Key Personnel listed in Project Examples.

1.5.1.1 Add percentage of availability to this project for each.

1.5.1.2 Past experience with governmental clients or public entity, such as public universities, or a local, state or federal entity.

1.5.1.3 Experience with at least three (1) projects of similar cost, complexity, type, and size as this project identified and described in the Executive Summary

1.5.2.1 City of Residence

1.5.2.2 Job description for current employment

1.5.2.3 Previous work experience as it related to this Project, including representative project descriptions

1.5.2.4 Length of tenure for current employment

1.5.3 Proposed Organizational Chart for this Project

1.5.4 Describe your quality management approach for ensuring quality construction on this Project. (1 page limit)

END OF CRITERIA 1.5

Criteria Item No. 1.6: Offeror's Ability to Perform Project Per Owner's Schedule *10 points max*

1.6.1 Given a Construction Performance Period of **one thousand ninety-five (1,095) calendar days**, provide a high-level Critical Path Method (CPM) milestone schedule for this project, identifying critical processes, any proposed phasing, milestones, approvals and procurements anticipated. Schedule can be on 11x17 format.

1.6.2 Describe your approach to ensure timeline completion of the Project, including methods for schedule recovery.

END OF CRITERIA 1.6

Offeror's HUB Information

Is your firm a Texas Certified Historically Underutilized Business? (HUB): YES ☐, NO ☐

If yes, please indicate gender and ethnicity:

Gender: Male ☐, Female ☐

Ethnicity: Asian Pacific Islander ☐, Black American ☐, Hispanic American ☐, Native American ☐.

Service-Disabled Veteran: ☐ Yes, ☐ No

<i>Complete All Sections of this Form and all Attachments and Submit With Response</i>

ATTACHMENT C

CONSTRUCTION MANAGER AT RISK PRICE PROPOSAL FORM (Submitted at Step 2 by Selected Respondents Only)

1	Proposing Firm's Name	
	Address	
	City, State, Zip	
2	Project Number	1111827
3	Project Title	Cultural Center and Park Headquarters
4	Using Agency	Texas Parks and Wildlife Department
5	Projection Location	Hueco Tanks State Park and Historic Site

The Owner has established a Construction Cost Limitation of **\$16,100,000.00**. The Contract Amount will consist of the Preconstruction Management Fee, the Construction Management Fee, a General Conditions Stipulated Sum, and the Cost of the Work, with the Cost of the Work and a Guaranteed Maximum Price (GMP) to be established through an Amendment, or if applicable Amendments.

Respondents are required to submit this Exhibit within the specified CCL amount. However, if a Respondent identifies any concerns or challenges in meeting the CCL due to the scope, assumptions, site conditions or any other reason, the Respondent must include a narrative detailing their concerns. The narrative should include a detailed explanation of the potential challenges, recommendations for potential solutions or adjustments and evidence that substantiates the issues raised.

Any proposal that exceeds the CCL will not be considered unless the Respondent provides a detailed breakdown and justification for the increased costs

Having carefully examined the Request for Proposal (RFP) and solicitation documents, proposal, attachments, exhibits as well as the premises and conditions affecting the work, as prepared by TPWD, we hereby propose the following:

Pre-Construction Phase Fee (Refer to Article 6 of the CMR Agreement)	
Lump Sum Pre-Construction Phase Fee	\$
Lump Sum Pre-Construction Phase Fee written in words	

Construction Phase Fee (Refer to Article 13 of the CMR Agreement)	
For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to ____ percent of the Guaranteed Maximum Price for the Project.	\$
Lump Sum Construction Phase Fee written in words	

Construction General Conditions (Refer to Article 12, 12.1 of the CMR Agreement and Exhibit C of the CMR Agreement)	
Fixed, Lump Sum fee for Construction General Conditions shall be for the duration of the Project	\$
Construction General Conditions written in words	

Performance Period: The preconstruction performance period is estimated to be **three hundred sixty-five (365) calendar days**. The construction performance period is projected for a term of **seven hundred thirty (730) calendar days** except as may be otherwise amended or negotiated. **The total contract performance period estimated to be one thousand ninety-five (1,095) calendar days.**

Company Legal Name

Company's State of Texas Tax Account No.

Company's State of Incorporation

Company's Charter No.

SUBMITTED AND CERTIFIED BY:

(Offeror's Name)

(Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Mobile Number)

(Email)

(Authorized Signature)

(Date)

If a Corporation, attach a corporation resolution or other official corporate documentation, which states that person signing this proposal is an authorized person to sign for and legally bind the corporation.

END OF ATTACHMENT



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 <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	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
(mm/dd/yyyy)

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.

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IMPORTANT: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

Item Number: Description:

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

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/tpasscmbldsearch/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 (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	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 (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

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.



HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

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

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

Bid Open Date: _____

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(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.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable

INSTRUCTIONS TO ALL RESPONDENTS FOR TPWD PROJECT NO. 1111827

CONSTRUCTION MANAGER AT RISK AGREEMENT

1. Respondents are required to review this Attachment prior to submission of qualifications.
2. Other than for typographical or scrivener errors, all exceptions to, and/or requests for modification of, this Attachment must be submitted with Respondent's qualifications/proposals and on time.
3. TPWD will not consider any exceptions and/or requests for modification submitted after the date and time for submission of qualifications/proposals.
4. The following Articles, Sections, Attachments and Exhibits of this Attachment are not negotiable:

Article 2	Contract Documents
Article 10	Time
Article 11	Payments
Article 16	Dispute Resolution
Article 17	Project Termination and Suspension
Article 21	Compensation

Attachment 1: Essential Clauses, Contract Affirmations & Additional Contract Requirements

Exhibit A	Uniform General Conditions, including Supplementary General Conditions for Projects Administered by the Texas Parks and Wildlife Department
Exhibit B	Owner's Special Conditions

5. The Construction Manager at Risk Agreement shall be fully negotiated between TPWD and the Successful Respondent PRIOR TO award.



CONSTRUCTION MANAGER-AT-RISK AGREEMENT

**PROJECT NO. 1111827
CULTURAL CENTER AND PARK HEADQUARTERS
AT HUECO TANKS STATE PARK & HISTORIC SITE
EL PASO COUNTY, TEXAS**

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List of Attachments incorporated herein by reference

Attachment 1 –Essential Clauses, Affirmations & Additional Contract Requirements

List of Exhibits

Exhibit A	Uniform General Conditions, including Supplementary General Conditions for Projects Administered by the Texas Parks and Wildlife Department
Exhibit B	Owner's Special Conditions
Exhibit C	Allowable General Conditions Line Items
Exhibit D	Guaranteed Maximum Price Proposal Form
Exhibit E	Security Bond
Exhibit F	Construction Manager's Personnel and Monthly Salary Rate
Exhibit G	Constructability Implementation Program
Exhibit H	Approved HUB Subcontracting Plan for Pre-Construction Phase Services

**TEXAS PARKS AND WILDLIFE DEPARTMENT
AND**

TPWD PROCUREMENT CONTRACT NO. [INSERT]

TPWD PURCHASE ORDER NO. [INSERT]

The Texas Parks and Wildlife Department, a state agency located at 4200 Smith School Road, Austin, Texas 78744 (hereinafter referred to as "OWNER"), as Owner (as defined in UGC, Section 1.29) and [Insert CMR Name], a [Insert CMR Information], located at [Insert CMR Address] (hereinafter referred to as "Construction Manager," or "CM"), enter into the following contract for Construction Management Services pursuant to Tex. Gov't Code Ann. §§ 2169.251 (hereinafter referred to as the "Contract") as defined in Article I of this Contract, and generally described and as hereinafter referred to as the "Project".

Project No. 1111827

Project Title: Cultural Center and Park Headquarters

Project Location: Hueco Tanks State Park & Historic Site, El Paso County, Texas

1 SCOPE OF WORK

The Construction Manager has overall responsibility for and shall provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

2 CONTRACT DOCUMENTS

The Contract Documents consist of:

- 2.1 This Agreement and all exhibits and attachments listed, contained, or referenced in this Agreement;
- 2.2 The Uniform General Conditions for The State of Texas Construction Contracts (UGC);
- 2.3 Special Conditions;
- 2.4 All Addenda issued prior to the Effective Date of this Agreement;

- 2.5 The Guaranteed Maximum Price Proposal when accepted by the Owner and executed by the parties;
- 2.6 All Change Orders issued after the Effective Date of this Agreement;
- 2.7 The Drawings, Specifications, details, and other documents developed by Project Designer to describe the Project and accepted by Owner;
- 2.8 The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
- 2.9 The HUB Subcontracting plan submitted by the Construction Manager in response to the Request for Proposals issued by the Owner for this Project.
- 2.10 The Contract Documents form the entire and integrated Contract between Owner and Construction Manager and supersede all prior negotiations, representations, or agreements, written or oral.
- 2.11 The term "Construction Manager" shall be interchangeable with the terms "Contractor" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

3 DEFINITIONS

- 3.1 **"Construction Cost Limitation"** (CCL) means the maximum monetary amount payable to the Construction Manager for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Contract Documents. The CCL includes, without limitation, the General Conditions Costs, the Cost of the Work, the Construction Phase Fee and the Construction Manager's Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include the Construction Manager's Pre-Construction Phase Fee, or Owner's Construction Contingency or Owner's Special Cash Allowance.
- 3.2 **"Construction Documents"** means, collectively, the UGCs, Owner's Special Conditions, the Drawings, Specifications, details, Change Orders, and other documents prepared by the Project Designer, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems, and other elements that are required for construction of the Project that are accepted by the Owner.
- 3.3 **"Construction Phase Services"** means the coordination, implementation and execution of the Work required by the Contract Documents.
- 3.4 **"Contingency Consumption Report"** means information submitted by the Construction Manager to the Owner on a monthly basis describing the amounts charged against the contingency portion of the GMP, the reason for the charge and the efforts to mitigate or reduce that charge, and the plan to restore the contingency amount.
- 3.5 **"Contract Sum"** means the total amount of all compensation payable to the Construction Manager for the Project and shall not exceed the sum of the Pre-Construction Phase Fee amount plus the Guaranteed Maximum Price Proposal amount accepted by the parties, subject to

adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Construction Manager without reimbursement by Owner.

3.6 **“Direct Construction Cost”** means the sum of the amounts that the Construction Manager actually and necessarily incurs for General Conditions Costs, Cost of the Work and Construction Manager’s Contingency during the Construction Phase as allowed by this Agreement. Direct Construction Cost does not include Pre-Construction Phase Fees or Construction Phase Fees.

3.7 **“Estimated Construction Cost” (ECC)** means the amount calculated by the Construction Manager for the total cost of all elements of the Work based on the Contract Documents available at the time(s) that the ECC is prepared. The ECC shall be based on current market rates with reasonable allowance for overhead, profit and price escalation and shall include and consider, without limitation, all alternates, allowances, and contingencies, designed and specified by the Project Designer and the cost of labor and materials necessary for installation of Owner furnished equipment. The ECC shall not include Construction Manager’s Pre-Construction Phase Fee, Project Designer Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

3.8 **“General Conditions Fee”** means the fixed, lump sum fee that comprises part of the Contract Sum, as defined in UGC Section 1.15, and which shall constitute the entire amount of compensation to be paid to Construction Manager for General Conditions. General Conditions are costs incurred by the Construction Manager for the necessary administrative supervisory and logistical support required for completing the Work and minor work performed by the Construction Manager without the need for competitive bids/proposals. The allowable General Conditions items are further described and limited by attached exhibit.

3.9 **“Guaranteed Maximum Price” or “GMP”** means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager’s Construction Phase Fee, the General Conditions Costs, the Cost of the Work, Construction Manager’s Construction Contingency amount, and the Owner’s Construction Contingency amount and Owner’s Special Cash Allowance.

3.10 **“Life Cycle Cost Analysis (LCCA)”** means approach used to assess the total cost of owning a facility or running a project. It considers all costs associated with obtaining, owning, and disposing of an investment.

3.11 **“Monthly Salary Rate”** means the amount agreed to by the Owner that can be used on Applications for Payment throughout the Construction Phase to account for the services of Construction Manager’s salaried personnel assigned to the Project. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by the Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Construction Manager’s personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.12 **“Overhead”** means (1) payroll costs and other compensation of the Construction Manager’s employees in the Construction Manager’s principal and branch offices; (2) general and administrative expenses of the Construction Manager’s principal and branch offices including deductibles paid on any insurance policy, charges against the Construction Manager for

delinquent payments, and costs related to the correction of defective work; and (3) the Construction Manager's capital expenses, including interest on capital used for the Work.

3.13 **“Pre-Construction Phase Services”** means the participation, documentation and execution of the Construction Manager's Pre-Construction Phase deliverables as required by the Contract Documents.

3.14 **“Preliminary Project Cost” (PPC)** means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by the Owner prior to the commencement of design.

3.15 **“Project Designer”** means the professional architect or engineer employed by the Owner as architect or engineer of record for the Project and its consultants.

3.16 **“Project Team”** means the Owner, Construction Manager, Project Designer and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.

3.16.1 **“Design-Assist Subcontractor”** means a person or entity who has an agreement with the Construction Manager to provide services to perform any portion of Pre-Construction Phase Services and or any portion of the construction Work. The term Design-Assist Subcontractor does not include the Project Designer, or any person or entity hired directly by the Owner.

3.17 **“Self-Performed Work”** means any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity.

3.18 **“Special Conditions”** means the construction and contract administration requirements and standards detailed in the Owner's Specifications exhibit attached to this Agreement.

3.19 **“Total Project Cost” (TPC)** means the total budget established for the Project by Owner at the end of the design development phase (subject to subsequent modification by Owner). The TPC includes, but is not limited to, Construction Manager's Pre-Construction Fee, Guaranteed Maximum Price Proposal(s), Project Designer and other professional service fees, and other miscellaneous Project costs.

3.20 **“Value Engineering” (VE)** means a discipline of engineering that studies the relative monetary values of various materials and construction techniques, including the initial cost, maintenance cost, energy usage, replacement cost, and life expectancy of the materials, equipment or systems under consideration.

3.21 **“Value Engineering Plus” (VE Plus)** means a proprietary software program and the process used by the Project Designer on this project to track, tally and report the baseline facility and related systems as compared to all other major alternative components and systems considered during design for possible inclusion in this project indicating potential for savings in initial cost, total cost of ownership or reduced schedule impacts.

3.22 **“Worker Wage Rate”** means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions as established on the Worker Wage

Rate Form required by the Construction Documents. The Worker Wage Rate for individual persons must be reasonable and customary for their industry and must be approved in writing by the Owner in advance of any Application for Payment for that person. Any payments made for Construction Manager's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

3.23 **"UGC"** means the Uniform General Conditions for State of Texas Construction Contracts, including Supplementary General Conditions for Projects Administered by the Texas Parks and Wildlife Department.

4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

4.1 Construction Manager shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. The Construction Manager agrees to perform these services using the highest professional standards, skills, judgment, and abilities, and shall exert commercially reasonable efforts to meet the Owner's objectives, timelines, and budget.

4.2 Construction Manager shall actively collaborate with the Project Designer, other consultants, and stakeholders to ensure the Owner's interests and the successful delivery of the Project are prioritized throughout the life of the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

4.3 Construction Manager shall designate a representative authorized to act on the Construction Manager's behalf with respect to the Project.

4.4 Construction Manager shall develop and implement a comprehensive communication and coordination plan, which includes clear channels for all Project Team members, Subcontractors, and separate contractors. This plan should address regular updates, decision-making processes, and escalation procedures for potential issues.

4.5 Construction Manager shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's meeting and when requested.

4.5.1 In a format acceptable to the Owner, the Construction Manager shall provide monthly reports showing the status of the Cost of the Work, Schedule of the Work, Subcontracts awarded, allowances and contingencies in this contract, allowances and contingencies in Subcontracts, Contingency Consumption report, payments made by the Owner to the Construction Manager, RFI, ASI and submittals logs, and Proposed Change Orders log. The Construction Manager shall also keep, and make available to the Owner and Design Professional, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. Alternatively, the Construction Manager may use a cloud-based project management application that provides the Owner, Design Professional and other interested parties access to similar Project information, provided all data is submitted to Owner as a condition precedent to final payment and online access to Project

information for the Owner and Design Professional is not terminated until after the one-year correction period has expired.

4.6 **Fast Track/Multiple Completion Times.** If the Owner elects to implement a 'fast-track' or multi-phased approach for the Project, each stage of the Project may have a unique schedule for completion and a specific Construction Cost Limitation, at Owner's discretion. Construction Manager shall promptly notify the Owner of any potential delays or cost impacts arising from the implementation of this approach and cooperate with the Owner to mitigate such impacts.

4.7 Construction Manager shall identify to the Owner the employees and other personnel that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not add, remove, or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update and resubmit Exhibit F, Construction Manager's Personnel and Monthly Salary Rates form, indicating the list of persons by name and title and consultants if they change during the Project. Construction Manager's employees and other personnel that it assigns to the project shall be identified on the Schedule of Values by name and title.

4.8 Construction Manager shall permit only fit and qualified persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unqualified for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

4.9 Construction Manager, as a provision of the Agreement, must comply with the requirements of and adhere to the HUB Subcontracting Plans submitted for Pre-Construction Phase and subsequent Amendment to the HSP for Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by the Construction Manager without the written approval of Owner.

4.10 Construction Manager shall engage all available resources to foster innovative design concepts, adopt advanced construction technologies, and suggest operational/maintenance improvements aimed at reducing costs in both the short term (initial costs) and long-term (Total Cost of Ownership), ultimately maximizing value for the Owner.

5 PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. To help optimize project planning, cost control, and scheduling, the Construction Manager shall be required to perform the following Pre-Construction Phase Services.

5.1 General Conditions

5.1.1 The Construction Manager's Pre-construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Designer at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

5.1.1.1 For projects where the Owner has elected to allow the Construction Manager to implement Design-Assist Subcontractor services, while recognizing the responsibility for the Project design resides solely with the Project Designer, the Construction Manager shall:

5.1.1.1.1 In consultation with the Project Designer and its consultants make written recommendations to the Owner for review and concurrence regarding which Design-Assist Subcontractors should be procured and at what phase of the project, the active level of involvement anticipated from each Design-Assist Subcontractor in percent of time and for achieving project milestones, and the advantages to the Owner in terms of cost savings, quality, constructability improvement, and schedule enhancements. Trades proposed shall focus on major and or complex project scopes including, but not limited to structural, building envelope, mechanical, electrical, plumbing, fire / life safety, and building automation systems. Recommend to the Owner strategies and methodologies for achieving competition in the solicitation based on the proposed scope of Work and for assuring accountability in maintaining the proposed budget throughout the duration of the project.

5.1.1.1.2 Require Design Assist Subcontractors to work collaboratively with the project team and focus their efforts on achieving a market-driven, cost and schedule-effective design. Require Design Assist Subcontractors to provide recommendations and presentations for consideration of the Project Team regarding systems, components, assemblies, products, suppliers, and manufacturers. Require Design Assist Subcontractors to participate fully with the requirements of this Agreement.

5.1.2 Provide a preliminary evaluation of the Owner's Design Requirements and the Construction Cost Limitation, each in terms of the other. Construction Manager shall promptly communicate any discrepancies or concerns to the Owner.

5.1.3 Review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

5.1.4 Construction Manager shall consult with staff of the Owner, and A/E as may be directed by the Owner and become thoroughly familiar with: (i) the Site; and (ii) any and all relevant and existing Site and facilities studies. Construction Manager shall visit the site and inspect the existing facilities, systems, and conditions to ensure an accurate understanding of the existing conditions as required.

5.1.5 Participate as a member of the Project Team in the development of the Project Facility Program if such program has not been developed prior to the Effective Date of this Agreement.

5.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate

contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule (as defined below) and the CCL.

5.1.7 Assist the Owner in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants hired by the Owner to develop additional information for the design or construction of the Project.

5.1.8 At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project.

5.1.9 Actively participate and assist as required in performing up to fifteen (15) formal Life Cycle Cost Analysis (LCCA) comparative analyses from several building system categories to be led by the Project Designer. The intent of Construction Manager's involvement is to add constructability expertise, current first cost and life cycle cost sensitivity and operational realism to the equation.

5.1.10 Actively participate and assist Project Designer as required in developing a robust and accurate VE Plus database reflecting the baseline facility and related systems as compared to all other major alternative components and systems considered during design for possible inclusion in this project indicating potential for savings in initial cost, total cost of ownership and schedule impact. The intent of Construction Manager's involvement is to add constructability expertise, current first cost and life cycle cost sensitivity and operational realism to the database and subsequent analysis and design decisions.

5.2 Constructability Program

5.2.1 implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be in accordance with the requirements of the attached exhibit. Whenever the term "value engineering" is used in conjunction with this Agreement or the Project, it has its the meaning defined herein and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas.

5.2.2 Prepare a "Constructability Report" that identifies items that, in the Construction Manager's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Pre-Construction Phase.

5.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions, and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Owner and updated at least monthly during the Pre-Construction Phase.

5.2.4 Initiate creative alternative solutions and propose cost effective options which meet or exceed the performance requirements and intent established by the Owner standards and

specifications for construction yet will reduce the total cost of ownership without sacrificing essential functionality.

5.3 Scheduling

5.3.1 Develop a Critical Path Method (CPM) Schedule ("CPM Schedule") for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Designer's design services, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors. The CPM Schedule must identify all major milestones through Project Final Completion and shall include appropriate float for each activity, where applicable, to accommodate potential delays, as required by the UGC. The CPM Schedule shall be created and maintained in accordance with the Owner's Specifications using the Owner specified format and software. The schedule shall be designed to ensure that all activities, dependencies, and deliverables are clearly represented to enable effective tracking and management.

5.3.2 Within 30 days of execution of this agreement, the Construction Manager shall prepare a preliminary Master Schedule of the Work for the Design Professional's review and the Owner's acceptance. The Preliminary Schedule shall be developed with sufficient detail to allow the Owner to assess the Project timeline and identify potential scheduling risks.

5.3.3 The Construction Manager shall update the CPM Schedule throughout the Pre-Construction and Construction Phases as described in the Owner's Specifications.

5.3.4 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

5.3.5 The CPM Schedule shall also identify any potential risks or constraints that may affect the timely completion of the Project. Construction Manager shall propose mitigation strategies for identified risks and promptly notify the Owner of potential impacts to the schedule.

5.4 Budget and Cost Consultation

5.4.1 The Construction Manager will provide continuous cost estimating throughout the project, with the ability to provide the Owner the current anticipated project cost at any point during the design phases of the project, not just at the end of each phase. The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

5.4.2 Detailed estimates of construction costs and Project Costs shall be prepared by the Construction Manager employing experienced and skilled construction estimators exercising reasonable care and diligence and shall be prepared in accord with generally accepted estimated techniques and standards. The Construction Manager may involve trade contractors in estimating the cost of the evolving design, but without the Owner's approval, shall not initiate any relationship with any trade contractor during the pre-construction phase that will inhibit the competitiveness of pricing on any bid package. Estimates should be coded and grouped in a summary work breakdown structure that is similar to the work breakdown structure of which the project is planned to be tracked during the execution phase. All estimates should be accompanied with an estimated

level of accuracy for each of their estimates. Accuracy shall be stated as a $\pm X\%$ and the Construction Manager shall provide a basis of their accuracy.

5.4.3 Provide Estimated Construction Cost (ECC) reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project as required in Article 23, 23.8. The Estimated Construction Cost reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the Work.

5.4.4 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that the most current ECC will exceed the Construction Cost Limitation (CCL) or not meet Schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the Schedule.

5.4.5 Construction Manager shall promptly identify all variances between estimated costs and actual costs during the Construction Phase and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than two (2) business days after acquiring such information.

5.4.6 Should any ECC exceed the approved CCL, the Construction Manager, without assuming any design liability, shall make recommendations to reduce scope or quality, use alternate construction means or methods or modify the design to achieve an ECC that is within the CCL. Each recommendation shall be accompanied with an estimate of the savings it would produce should the Owner accept it. If directed by Owner, the Construction Manager shall participate in a formal value engineering exercise to generate additional cost-reduction ideas. The ECC shall be updated to reflect all cost-reduction ideas accepted by the Owner and shall be submitted to the Owner for approval.

5.5 Coordination of Design and Construction Contract Documents

5.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Designer during the schematic design, design development, and construction documents design phases of the Project.

5.5.2 Consult with Owner and Project Designer on the selection of materials, equipment, component systems, and types of construction used on the Project. Advise Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

5.5.3 Construction Manager shall provide comments on any design documents that are ambiguous, incomplete or in conflict with each other in such a manner that could result in significant differences in bid prices due to the interpretation of the documents.

5.5.4 Promptly notify the Owner in writing any time the Construction Manager determines that the design is likely to adversely affect the CCL or schedule. The Construction Manager will develop and recommend cost savings and sequencing necessary to offset such impacts, while contributing to meeting Owner's expressed vision, program, budget, quality, schedule and overall

project goals. Whenever directed, the Construction Manager shall submit to the Owner an updated ECC.

5.5.5 Review the Construction Documents for compliance with all applicable laws, rules, and regulations. Construction Manager shall inform the Owner of any non-compliance issues or risks associated with the documents.

5.6 Construction Planning and Bid Package Strategy

5.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner and Project Designer on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

5.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB contractor participation, and other constraints.

5.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or Owner's separate contractors.

5.6.4 Develop a bid/proposal package strategy in coordination with the Project Designer that addresses the entire scope of Work and individually each phase and stage of the Project. In developing the bid/proposal package strategy, the Construction Manager shall identify all bid/proposal packages on which the Construction Manager intends to submit a self-performed work bid/proposal. The bid/proposal package strategy shall be reviewed with the Owner on a regular basis and revised throughout the buyout of the Project to best promote the interests of the Project and the Owner.

5.6.5 In no event shall the O/H&P, insurances, bonds or taxes be calculated to include themselves. Specific line items in the estimates shall not be considered contractually binding for insurance rates, bond rates, labor burden or subsistence unless specifically required by this Contract.

5.6.6 Prior to release of the first bid package, the Construction Manager shall submit to the Owner a bid package estimate broken down by trade contractor that itemizes all bid packages to be bid and awarded and which includes the Construction Manager's estimate of the cost of each bid package by trade. If permitted by Owner, the bid package estimate shall include line items for work self-performed by the Construction Manager. Construction Manager general conditions, overhead and profit and contingencies for Construction Manager, Owner and design shall be identified as separate line items. The total of the bid package estimate shall equal the Cost of the Work on the Construction Manager's most recent estimate.

5.6.7 Assist the Owner, the Project Designer, Owner's other consultants, and the Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the Texas Department of Licensing and Regulation, the State Fire Marshal, the local fire department, and the Owner's insurance provider.

5.6.8 Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids. The Construction Manager shall notify the Owner of all subcontractors, vendors, suppliers, consultants or other companies that may provide services to this project where a shared ownership, family relationship or other similar professional or personal relationship exists with the Construction Manager's organization.

5.6.9 Refine, implement, and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to the Owner for the Project.

5.6.10 Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

5.6.11 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all the job site facilities necessary to manage, inspect, and supervise construction of the Work.

5.6.12 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations that minimize adverse effects of labor shortages.

5.6.13 Each review by the Construction Manager shall identify issues which may result in change orders during construction, reduce requests for information during construction and improve the quality and constructability of the work.

5.6.14 Furniture, Fixtures and Equipment. Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Owner as may be required to meet the Schedule.

5.7 Obtaining Bids/Proposals for the Work

5.7.1 No less than one week prior to release of bidding documents for any Bid Package, Construction Manager shall provide a complete copy of all bidding documents to Owner for review and comment. No subcontract shall include contingencies or allowances in the subcontract amount unless specifically authorized by Owner.

5.7.2 The Construction Manager shall publicly advertise and solicit competitive lump sum bids/proposals or other delivery terms required by the Owner from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in General Conditions. Criteria for determining the bid/proposal that

provides the best value to the Owner shall be established by the Project Team and included in the request for bids/proposals. The Construction Manager shall notify the Owner in advance in writing of the date it will receive the bids/proposals.

5.7.2.1 When the Owner has elected to allow the Construction Manager to implement Design-Assist Subcontractor services the Construction Manager shall:

5.7.2.1.1 Obtain Owner's written approval to proceed with any Design-Assist public advertisement and solicitation.

5.7.2.1.2 Develop Request for Proposals (RFP) which clearly differentiate fees/costs as Part One (1) Pre-Construction Phase Services and Part Two (2) Construction Phase Services.

5.7.2.1.3 Ensure that Design-Assist Proposals will be based on various levels of completeness of Schematic Phase, Design Development Phase, or Construction Documents and be incorporated into and coordinated with the Construction Manager's bid-package strategy.

5.7.2.1.4 Upon receiving and evaluating Design-Assist Proposals, recommend in writing to the Owner the most qualified respondents to be considered to interview for the Project. Provide to the Owner all Design-Assist Proposals received and supporting analysis and evaluations for review in advance of any interviews. When requested by the Owner, develop, organize, schedule, and lead the Design-Assist interviews to which the Project Team may participate as determined by the Owner for determination of most qualified respondent. Prepare Recommendation for Award for Pre-Construction Services memos including all supporting documentation from all respondents and submit to the Owner for record, and written acceptance, or rejection.

5.7.2.1.5 Ensure that an award of Design-Assist Subcontractor Pre-Construction Phase Service does not guarantee or imply any potential award of Design-Assist Subcontractor Construction Phase Services.

5.7.2.1.6 Terminate or suspend Design-Assist Subcontractor services if such services are determined by the Owner or Construction Manager to no longer be advantageous to the Project.

5.7.3 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences.

5.7.4 Construction Manager and Owner shall review all trade contractor or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Based on the selection criteria included in the request for proposals, Construction Manager shall recommend to the Owner the bid/proposal that provides the best value for the Project. Upon Owner's concurrence in the recommendation, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer.

5.7.5 All subcontracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by Owner's Associate Vice President of Real Estate, Construction, and Planning or his/her designees. Upon Owner's concurrence in the final terms of the subcontract, Construction Manager shall enter a written subcontract for the subcontract work and provide a copy to the Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

5.7.5.1 When Design-Assist Subcontractor Construction Phase Services are implemented on a Project those services shall be proposed to the Construction Manager as a Guaranteed Maximum Price, Lump Sum or Unit Cost or other delivery terms as determined by the Owner.

5.7.6 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

5.7.7 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. The Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. The Owner will determine whether the Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, the Construction Manager shall account for self-performed work in the same manner as it does all other subcontract costs.

5.7.8 For scope of work bid packages typically performed by subcontractors, the Construction Manager may propose to self-perform such work which the Construction Manager identifies and documents their intention in their bid/proposal strategy and for which Construction Manager submits a self-performed work proposal directly to the Owner at least twenty-four (24) hours prior to receiving similar proposals from other parties for that exact same scope of work. The Owner will determine whether the Construction Manager's proposal provides the best value for the Owner and Owner's decision shall be final and not subject to appeal.

5.7.8.1 If the Construction Manager provides at least three (3) additional proposals from other qualified trade contractors for the exact same scope of work the Owner at its discretion may award the self-performed work as lump sum to the Construction Manager. In the absence of sufficient competition for the exact same scope of work the Owner at its discretion may award the self-performed work to the Construction Manager based on cost-plus fee (Not to Exceed 7.5%) subject to an agreed upon guaranteed maximum price for the self-performed work.

5.7.8.2 Any subcontract for self-performed work will provide for payment relative to the progress of the work up to a total amount equal to the lump sum proposal if three (3) or more additional proposals are provided as indicated above, or relative to the progress of the work up to the actual Cost of the Work (as defined in this agreement) plus fee in the event the self-performed work is awarded as a not-to-exceed cost-plus fee maximum amount.

5.7.8.3 All terms and provisions of any subcontract for self-performed work will be consistent with the terms and conditions of this agreement. All savings under any such subcontract for "self-performed work" awarded as a not-to-exceed cost-plus fee or lump sum under this contract provision shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement.

5.7.9 Construction Manager shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering any subcontract. Construction Manager shall not use any Subcontractor to which Owner has a reasonable objection. Construction Manager shall not be required to

subcontract with any Subcontractor to which it has reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

5.7.10 If a selected trade contractor or subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, the Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor to do so.

5.8 Safety

5.8.1 In accordance with the UGC, Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state, and local laws and regulations and with the requirements of Owner's project safety specification.

5.8.2 Construction Manager shall provide recommendations and information to Owner and Project Designer regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner insurance program in connection with the Work shall not lessen or reduce the Construction Manager's safety responsibilities.

6 PRE-CONSTRUCTION PHASE FEE

6.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services as defined in this Agreement, which excludes Additional Pre-Construction Phase Services approved in advance and in writing by the Owner.

6.1.1 When Design-Assist Pre-Construction Phase Subcontractor services are implemented on a Project those shall be proposed as a Lump Sum, Hourly Not to Exceed, other delivery terms as determined by the Owner.

6.2 Except as specifically allowed in paragraph 6.4, the Construction Manager shall not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities, or other obligations arising from the performance of Pre-Construction Phase Services.

6.3 Costs associated with the following items, including but not limited to, are specifically considered in the establishment of the Pre-Construction Phase Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling, and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards.

6.4 If the scope of the Pre-Construction Phase Services is changed materially, the Pre-Construction Phase Fee may be adjusted by mutual agreement of the parties, based on a

documented increase in costs directly attributable to such changes. Any adjustment to the Pre-Construction Phase Fee must be approved in writing by the Owner.

6.5 If the CCL is materially changed before or after the acceptance of the GMP Proposal, the Pre-Construction Phase Fee may be adjusted in direct proportion to the change in the CCL, based on a mutually agreed-upon formula or methodology.

6.6 For Additional Pre-Construction Phase Services that are approved in advance and in writing by the Owner, the Construction Manager shall be entitled to additional compensation, which shall be determined in advance by the Owner, using one of the following methods:

6.6.1 Pre-Construction Management Fee will be a fixed, lump sum fee for pre-construction services to be performed by Construction Manager.

6.6.2 The hourly cost of Construction Manager's employees or consultants who perform the Additional Services based on the employee's timesheets for the specific tasks performed and Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services plus an overhead and profit markup of ten percent (10%) of the total cost; or

6.6.3 As otherwise agreed by the parties in advance of performing the Additional Pre-Construction Phase Services.

7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 When directed by the Owner, the Construction Manager shall prepare and submit to the Owner, in writing, a Guaranteed Maximum Price ("GMP") to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner in the attached exhibits. Owner, at its sole option and discretion, may specify different requirements for the GMP Proposal. Construction Manager shall not withdraw its Guaranteed Maximum Price Proposal for ninety (90) days following submission to the Owner.

7.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Designer to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.3 Upon execution of Amendment No. 1, the Construction Manager guarantees that the Cost of the Work shall not exceed the GMP for the Work identified in Amendment No. 1. All costs or expenses that would cause the Cost of the Work to exceed the GMP for the Work shall be borne by the Construction Manager unless adjusted by Change Order.

7.4 Upon execution of Amendment No. 1, the Construction Manager guarantees that the cost of self-performed work charged to the Project shall not exceed the Self-Performed Work GMP shown in Amendment No. 1. No contingency shall be allowed to supplement the Self-Performed Work GMP in Amendment No. 1. All costs or expenses that would cause the actual cost of self-performed work to exceed the Self-Performed Work GMP shall be borne by the Construction Manager unless adjusted by Change Order.

7.5 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's estimated General Conditions Costs and estimated Costs of the Work organized by trade; contingency amounts; the Construction Phase Fee; and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion.

7.6 Basis of Guaranteed Maximum Price: Construction Manager shall include with the GMP proposal a written statement of its basis which shall include the following:

7.6.1 A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

7.6.2 A list of allowances and a statement of their basis as well as identification of where they are within the GMP estimate;

7.6.3 A list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

7.6.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

7.6.5 a schedule of applicable alternate prices;

7.6.6 a statement of any work to be self-performed by Construction Manager or by any subcontractor, vendor, supplier or consultant that has shared ownership or offices with the Construction Manager or any relatives of the Construction Manager's executives or owners;

7.6.7 and a list of all purchase orders and bid packages, broken down by trade, that the Construction Manager anticipates awarding.

7.7 The Guaranteed Maximum Price Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.

7.8 The GMP Proposal may include a Construction Manager's Contingency amount as allowed under Cost of the Work.

7.9 The Construction Manager's contingency will be no more than [TBD] % of the GMP, as may be proposed in the Construction Manager's GMP proposal. The amount carried as Contingency is to be identified in each preliminary estimate as justified by the Construction Manager at the different pricing phases. The actual Construction Manager's contingency amount included in the GMP is to be identified separately from other costs and approved by the Owner. The Construction Manager may use the Construction Manager's contingency to cover any unanticipated costs, such as estimating errors; market changes; weather effects; late deliveries; manpower shortages; general conditions costs; cost of punchlist work not covered by Subcontractors; and, other costs that the Owner and Construction Manager mutually agreed upon; provided however, the Construction Manager's contingency may only be used to the extent

that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers. The Construction Manager's contingency shall not be used for costs caused in whole or in part by the Construction Manager's negligence or by the negligence of any Subcontractor or other party for whom the Construction Manager is responsible. The Construction Manager's contingency will be a separate line on the Schedule of Values and the Construction Manager will provide a contingency log monthly to track the use of the contingency funds. The Construction Manager shall submit all cost detail and back up as may be requested by Owner for the Owner's approval of the Construction Manager's proper use of the Construction Manager's contingency.

7.10 Upon execution of Amendment No. 1, the Construction Manager guarantees that the General Conditions cost charged to the Project shall not exceed the General Conditions GMP shown in Amendment No. 1. No contingency shall be allowed to supplement the General Conditions GMP in Amendment No. 1. All costs or expenses that would cause actual General Conditions costs to exceed the General Conditions GMP shall be borne by the Construction Manager unless adjusted by Change Order.

7.11 Upon execution of Amendment No. 1, the Construction Manager guarantees that the Construction Manager's Fee shall not exceed the Fee line item shown in Amendment No. 1. No contingency shall be allowed to supplement the Fee line item in Amendment No. 1. All costs or expenses that would cause the Construction Manager's Fee to exceed the Fee line item shall be borne by the Construction Manager unless adjusted by Change Order.

7.12 Upon execution of Amendment No. 1, the Owner agrees that the amount set forth in Amendment No. 1 as Construction Manager Contingency shall be used at the Construction Manager's discretion to pay for only the following additional costs: (i) schedule acceleration or overtime directed by the Construction Manager to ensure the Date of Substantial Completion is achieved; (ii) omissions of scope from the subcontracts awarded by the Construction Manager; and, (iii) a subcontract award amount exceeding its estimated amount.

7.13 Included with its GMP Proposal, Construction Manager shall provide a complete, digital set of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The supporting documents shall be referenced in and incorporated into the GMP Proposal.

7.14 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules, and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

7.15 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown, or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excluded by the Owner. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required to

complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.

7.16 The GMP Proposal shall adopt and incorporate all terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

7.17 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price and the supporting documents, shall become part of the Contract between the Owner and the Construction Manager. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement.

7.18 Following Owner acceptance of the GMP Proposal, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions, and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Designer shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

7.19 The Construction Manager shall be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after acceptance of the GMP Proposal. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.20 The equitable adjustment shall be based on the actual increase in the tax burden incurred by the Construction Manager, with supporting documentation required.

7.21 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work. In proposing a lump sum amount, the Construction Manager shall consider the buyout savings, any unused contingency amounts and the trade package contracts that have not been finalized. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

7.21.1 The stage of completion of the Project.

7.21.2 The trade packages that have been completely bought out.

7.21.3 The trade packages remaining that have not been bought out.

7.21.4 A complete line-item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values.

7.21.5 An accounting of all savings amounts that are to be returned to the Owner as part of the lump sum calculation; and

7.21.6 Any other Project information requested by the Owner.

7.22 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price proposal and shall report this information to the Owner at least monthly and with Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package.

8 CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services.

8.1 Construct the Work in strict accordance with the Construction Documents and as required by the UGC and Owner's Specifications within the time required by the Project Schedule approved by Owner.

8.2 Organize and maintain competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

8.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be the Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Construction Manager in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.

8.4 Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality, and changes.

8.5 In addition to attending Owner's regularly scheduled Project progress meetings, Construction Manager shall schedule, direct, and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Construction Manager shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.

8.6 Coordinate delivery and installation of Owner-procured material and equipment.

8.7 In accordance with the UGC, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

8.8 Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents. Assist Owner or Project Designer in obtaining all approvals required from authorities having jurisdiction over the Project.

8.9 Coordinate, monitor and inspect the performance, constructability, schedules and costs of all Subcontractors and suppliers to ensure conformance with the Construction Documents.

8.10 Be responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. The Construction Manager shall keep the Owner informed of the progress and quality of the Work.

8.11 Construction Manager shall promptly correct any defective Work at its sole expense unless the Owner, in consultation with the Project Designer, specifically agrees to accept the defective Work. If there is a dispute regarding the acceptability of the Work, the Owner and the Construction Manager shall jointly review the matter and agree on the appropriate course of action.

8.12 Contractor's Warranty and Guarantee: Refer to the Uniform General Conditions, Article 13, 13.1.

9 OWNER'S RESPONSIBILITIES

9.1 The Owner will designate a Project Designer for the Project.

9.2 The Owner will provide the Preliminary Project Cost and general schedule for the Project. The PPC will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

9.3 The Owner will identify a person as its Owner Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. The Owner's Designated Representative shall examine the documents submitted by the Construction Manager and shall render decisions on behalf of the Owner.

9.4 The Owner will identify a person as its Owner Designated Representative authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the Construction Manager and equitable back charges against the Construction Manager.

9.5 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys, or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

9.6 The Owner shall arrange and pay for materials, structural, mechanical, chemical, and other laboratory tests as required by the Construction Documents.

9.7 The Owner shall furnish all legal, accounting, auditing, and insurance counseling services for itself as may be necessary for the Project.

9.8 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Construction Manager's services and of the Work.

9.9 The Owner may designate one or more construction inspectors to access the Work at any reasonable time for the purpose of inspection. The Owner's provision of inspection services shall not relieve the Construction Manager of its full responsibility for quality control, the performance of the Work, or compliance with the Construction Documents. The Construction Manager remains fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

9.10 Owner shall have the right to reject any defective Work on the Project. Should the Construction Manager fail to correct any such Work within ten (10) business days after receiving written notice from the Owner, the Owner may have the Work corrected by others and recover all expenses incurred from the Construction Manager. In case of dispute, the parties will engage in good faith discussions to resolve the matter prior to the Owner exercising this right.

10 TIME

10.1 **Time Is of the Essence.** Time is of the essence with respect to this Contract; provided however, in the event that any of the deadlines set forth herein end on a Saturday, Sunday, or legal state or federal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or legal state or federal holiday.

10.2 Unless otherwise approved, the Owner and the Construction Manager shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

11 PAYMENTS

11.1 General Requirements

11.1.1 Each schedule of values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. The format and tracking method of the original schedule of values and of all updates shall be subject to approval by the Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Construction Manager's overhead and profit, shall not exceed the unpaid balance of the Guaranteed Maximum Price, less retainage on Work previously completed.

11.1.2 Retainage as specified in the UGC will be withheld from the entire amount approved in an Application for Payment including the Cost of the Work, General Conditions, and the Construction Manager's Construction Phase Fee. Retainage will not be withheld from payments for Pre-Construction Phase Services.

11.1.3 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Construction Manager

is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

11.1.4 This Agreement is subject to the assessment of liquidated damages against Construction Manager. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Construction Manager.

11.1.5 Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or any Subcontractor or failure of Construction Manager or any Subcontractor to perform their obligations under this Agreement.

11.1.6 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment, to Construction Manager under any of the following circumstances:

11.1.6.1 Construction Manager persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement.

11.1.6.2 The payment request includes services that are not performed in accordance with the Construction Documents; provided, however, Owner shall pay for those services performed in accordance with the Construction Documents.

11.1.6.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation.

11.1.6.4 Construction Manager is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Construction Manager.

11.1.6.5 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents.

11.1.6.6 Construction Manager has persistently failed to complete the Work in accordance with the CPM Schedule requirements or if Owner, in its good faith judgment, determines that the remaining Work will not be completed within the contract time.

11.1.6.7. Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

11.1.6.8 Construction Manager fails to obtain, maintain, or renew insurance coverage as required by the Agreement.

11.1.7 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner

shall constitute, or be construed to constitute, a release of Construction Manager from any of its obligations or liabilities with respect to the Work.

11.1.8 Owner shall have the right to verify and audit the details of Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager's employees; (4) visiting the Project site; and (5) any other reasonable action. Construction Manager's records shall be kept based on generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board and organized by each Application for Payment period.

11.2 Pre-Construction Phase Payments

11.2.1 Payments for Pre-Construction Phase Services shall be made monthly based on the verified percentage completion of the Construction Manager's required services for each stage of development of the Construction Documents and the procurement of Subcontractor bids/proposals in accordance with the following schedule:

Pre-Design Phase (Program)	5%
Schematic Design Stage	10%
Design Development Stage	20%
GMP Development Stage	20%
Construction Documents Stage	40%
Subcontractor Bid/Proposal Stage	5%

11.2.2 All payment requests for Pre-Construction Phase Services shall be submitted on an Application for Payment and Schedule of Values approved by the Owner and includes all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors.

11.3 Construction Phase Payments

11.3.1 Payments for Construction Phase Services shall be made as provided for in the UGC and the Owner's Specifications. All payment requests shall be submitted on an Application for Payment with a schedule of values approved by the Owner and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of the Construction Manager's Application for Payment. Failure to submit "HUB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment Application will cause rejection of the application by the Owner and its return to the Construction Manager.

11.3.2 The Construction Manager's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of the Construction Manager's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.

11.3.3 For General Conditions Costs, Construction Manager's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and

payment for these costs is dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for General Conditions Costs in any Application for Payment if the Owner, in its good faith judgment, determines that the unpaid balance of the General Conditions line item in the schedule of values is not sufficient to fund necessary General Conditions Costs for the remainder of the Project.

11.3.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective schedule of values work classification which has been completed and shall not exceed the total value of the subcontract amount.

11.3.5 Construction Manager's Request for Final Payment: Refer to the Uniform General Conditions Article 12, 12.3.

11.3.6 Owner shall have no obligation to make Final Payment until a complete and final accounting of the Direct Construction Cost has been submitted by Construction Manager and has been audited and verified by Owner or Owner's representatives.

11.3.7 Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager. The total amount of all Construction Phase payments to the Construction Manager shall not exceed the actual verified Direct Construction Cost for the Project plus the Construction Manager's Construction Phase Fee.

11.3.8 The acceptance by Construction Manager or Construction Manager's successors of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the Request for Final Payment.

12 DIRECT CONSTRUCTION COST

References in the UGC to adjustments in "cost" or "costs" mean the Direct Construction Cost.

12.1 General Conditions Costs

12.1.1 Construction Manager is entitled to receive payment for the allowable General Conditions items incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project plus thirty (30) calendar days. Construction Manager is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner.

12.1.2 Allowable General Conditions items are identified below. These items shall be included in the General Conditions cost amount shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the schedule of values. Items not specifically included below will not be allowed as a General Condition costs.

12.1.3 Personnel Costs. The actual Worker Wage Rate for Construction Manager's hourly employees and the Monthly Salary Rate of Construction Manager's salaried personnel who are identified to the Owner in advance and in writing but only for the time stationed at the Project site with the Owner's prior consent. The Project Manager's Monthly Salary Rate may be included in the General Conditions Costs only when the Project Manager is directly managing the Project. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

12.1.4 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Project site and directly and solely in support of the Work.

12.1.5 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

12.1.6 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, provided they are included in the list of allowable General Condition Line Items and Owner has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

12.1.7 The aggregate rental cost of any item charged to Owner shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to Owner upon final completion of the Work or, at Owner's option, credit the Owner with the fair market resale value of the item.

12.1.8 Permit and inspection fees that are not subject to exemption.

12.1.9 Premiums for Construction Manager's insurance and bonds to the extent directly attributable to this Project. Premiums for bonds and/or subcontractor default insurance purchased for subcontractor work are excluded from General Conditions costs.

12.1.10 Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by Owner as Direct Construction Costs.

12.1.11 The Construction Manager is responsible for providing appropriate documentation to demonstrate tax exemption eligibility.

12.2 Cost of the Work

Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization. Cost of the Work includes the following:

12.2.1 Costs of materials and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Payment for stored materials is subject to the UGC.

12.2.2 Costs of site debris removal and disposal in accordance with all applicable laws and regulations if not otherwise included in General Conditions.

12.2.3 Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors, or suppliers, however, the cost of subcontractor payment and performance bonds, if any, are specifically excluded from the Cost of the Work.

12.2.4 Payments earned by Construction Manager for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner.

12.2.5 Testing fees pursuant to the UGC.

12.2.6 Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

12.2.7 Costs associated with any subcontractor default insurance program (sometimes referred to as SUBGUARD) provided or required by the Construction Manager ARE EXPLICITLY EXCLUDED from the Cost of the Work.

12.3 Construction Manager's Contingency

12.3.1 The Guaranteed Maximum Price Proposal may include a Construction Manager's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

12.3.2 Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Cost must be approved by the Owner in advance and by written GMP Amendment and, such approval not to be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

12.3.3 The Construction Manager's Contingency is specifically not to be used for Contractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with the Project Designer or trade Subcontractors, or to correct errors or omissions in the Construction Documents.

12.3.4 As the Construction Documents are finalized and the Buyout of the Work progresses the Construction Manager's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in the Construction Manager's Contingency fund remaining at the end of the Project shall be returned to the Owner as savings.

12.3.5 The Construction Manager's Contingency shall be limited to a maximum of ____ % of the Construction Cost Limitation or other value as agreed to by the Owner.

12.3.5.1 When Design Assist Subcontractor services are utilized in both the Pre-Construction and Construction Phases, and the cumulative value of their work equals or exceeds 50% of the Construction Cost Limitation as indicated in the Construction Manager's Guaranteed Maximum Price, the Construction Manager's Contingency shall be limited to a maximum of 2% of the Construction Cost Limitation, or such other percentage as mutually agreed upon by the Owner and the Construction Manager.

13 CONSTRUCTION PHASE FEE

The Construction Phase Fee is the maximum amount payable to the Construction Manager for costs and profits associated with the performance of the Work, excluding any amounts specifically reimbursed by the Owner elsewhere in this Agreement. Any references in the UGC to the Construction Manager's "overhead" and "profit" shall be understood as referring to the Construction Manager's Construction Phase Fee. The Construction Phase Fee includes, but is not limited to, the following items.

13.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager.

13.2 Salaries of Construction Manager's officers, project manager(s), estimators, schedulers, and all other employees not stationed at the Project site and performing services directly related to the Project.

13.3 All overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions.

13.4 If the Construction Manager elects to provide or require participation in a subcontractor default insurance program (sometimes referred to as SUBGUARD), the entire cost of the insurance program and all costs related to the administration of the program shall be included in the Construction Phase Fee. However, any such program must be approved in advance by Owner.

13.5 All costs associated with payment and performance bonds obtained from trade contractors or subcontractors, including bonds for change orders to subcontracts and the cost of any bonds for minor work that might be included in the general conditions.

13.6 Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

13.7 Any legal, accounting, professional, or similar costs incurred by the Construction Manager, including but not limited to costs related to the prosecution or defense of any dispute, mediation, arbitration, litigation, or other proceedings arising directly from the Project.

13.8 Any Federal and/or State income and franchise taxes paid by Construction Manager. Any fines, penalties, sanctions, or other levies assessed by any governmental body against Construction Manager.

13.9 Any cost arising out of a breach of this Contract or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM Schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

13.10 The cost of all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

13.11 Any costs that exceed the Guaranteed Maximum Price, except those directly attributable to Owner-approved change orders that result in an increase to the GMP.

13.12 Any costs not specifically identified as Direct Construction Costs or otherwise explicitly agreed upon in this Agreement.

14 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

14.1 If the approved amount of the cost of Cost of Work and Construction Manager's Contingency is less than the amount established for each of those line items in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the contract amount shall be adjusted accordingly, including associated Construction Phase Fees. When buyout of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

14.2 Items to be provided for through Owner's Special Cash Allowances shall be clearly identified in the Construction Documents and the Guaranteed Maximum Price proposal. The Cost of the Work included in the Allowances shall be determined in accordance with the UGC. Any claim by the Construction Manager for an adjustment to an Allowance amount included in the Guaranteed Maximum Price based on the cost of Allowance work shall be made within a

reasonable time after the issuance of the Construction Documents for the Allowance items. The Construction Manager shall not be entitled to any increase in its Construction Phase Fee for increases to Allowance amounts that were initially based on estimates provided by the Construction Manager. Owner shall be entitled to retain 100% of the balance of any unused or unspent Allowance amount.

14.3 The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the Construction Manager:

14.3.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, Construction Manager shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the Construction Manager or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the Owner's account.

14.3.2 Discounts earned by the Construction Manager through advance or prompt payments funded by the Owner. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished and shall pay bills within the highest discount periods. The Construction Manager shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

14.3.3 Rebates, discounts, commissions, refunds, returns, or credits obtained by the Construction Manager from material suppliers, Subcontractors, or any third parties, including but not limited to savings from materials, bond premiums, insurance, and sales taxes, must be credited to the Owner.

14.3.4 Deposits made by Owner and forfeited due to the fault of the Construction Manager.

14.3.5 Balances remaining on any Allowances, the Construction Manager's Contingency, or any other identified contract savings.

14.4 Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

14.5 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

15 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

15.1 The Construction Manager acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has conducted a thorough investigation, including, but not limited to, site visits, review of existing records and testing of those conditions. This investigation was instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. The Construction Manager shall not make, and shall not be entitled to make, any claim for adjustment to the Contract Time or Contract Sum for Pre-

Construction or Construction Phase Services arising from Project conditions that were discovered or, in the exercise of reasonable care, should have been discovered during the Construction Manager's investigation prior to executing the Contract.

15.2 The Construction Manager acknowledges that as part of its Pre-Construction Phase Services, it shall participate in the development and review of the Construction Documents. The Construction Manager's active participation in the design development process is essential in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Construction Manager shall thoroughly review the drawings, specifications, and other Construction Documents, and promptly notify the Owner of any errors, omissions, or discrepancies that it becomes aware of. The Construction Manager shall not make, and shall not be entitled to make, any claim for adjustment to the Contract Time or Contract Sum for errors or omissions in the Construction Documents that the Construction Manager discovered, or, in the exercise of reasonable care, should have discovered, during its Pre-Construction Phase design review process, provided such issues were brought to the attention of the Owner and the Project Designer within 7 days of the Construction Manager's discovery.

16 DISPUTE RESOLUTION

All disputes against the Owner that arise from this Agreement, or the Project shall be resolved in accordance with the procedures and limitations of Texas Government Code Chapter 2260 and Article 15 of the UGC.

17 PROJECT TERMINATION AND SUSPENSION

17.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

17.2 This Agreement may be terminated by the Owner during the Pre-Construction Phase upon at least three (3) days written notice to the Construction Manager if the Project is to be temporarily or permanently abandoned.

17.3 This Agreement may be terminated by the Owner at the GMP Proposal stage upon at least three (3) days written notice to the Construction Manager if the parties are unable or unwilling to agree on a GMP Proposal.

17.4 In the event of termination that is not the fault of the Construction Manager, the Construction Manager shall be entitled to compensation for all services performed to the termination date provided, however, Construction Manager has delivered to Owner such statements, accounts, reports, and other materials as required together with all reports, documents and other materials prepared by Construction Manager prior to termination. Upon such payment, Owner shall have no further obligation to the Construction Manager.

17.5 Termination of this Agreement shall not relieve Construction Manager or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Construction Manager related to the Project. In the event of a termination, Construction Manager hereby consents to employment by Owner of a substitute Construction Manager to complete the services under this Agreement.

17.6 In the event of termination, Owner shall have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

18 INDEMNITY

18.1 Refer to UGC Article 3

19 SPECIAL WARRANTIES

19.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

19.2 The Construction Manager represents and agrees that it will perform its services in accordance with the usual and customary standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Construction Manager agrees to bear the full cost of correcting Construction Manager's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

19.3 The Construction Manager's duties shall not be diminished by any approval by Owner, nor shall the Construction Manager be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Construction Manager's skill and knowledge in performing the services required hereunder.

19.4 The Construction Manager represents and agrees that all persons connected with the Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

19.5 The Construction Manager represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Construction Manager (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

19.6 The Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

19.7 Construction Manager represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

19.8 Construction Manager represents and agrees that the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and to bind Construction Manager to its terms.

19.9 Except for the obligation of Owner to pay Construction Manager certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Construction Manager, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or anyone claiming under Owner has or shall have any personal liability to Construction Manager or to anyone claiming through or under Construction Manager by reason of the execution or performance of this Agreement.

20 ASBESTOS HEALTH PROTECTION

20.1 In accordance with the UGC the Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

20.2 The Contractor shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

20.3 The Contractor shall ensure compliance with the following acts from its employees, suppliers, fabricators, material men, subcontractors, or their assigns:

20.3.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7))

20.3.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos.

20.3.3 Texas Asbestos Health Protection Rules (TAHRP) Texas Administration Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection.

20.4 The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

20.5 From Notice to Proceed with Construction until Final Completion the contractor shall maintain an always accessible, real time, stand alone, indexed and word searchable portable document format (PDF) for all safety data sheets (SDS) for all materials used in the construction of the project and shall provide access to and copies of the documents when requested by the Owner.

20.6 At Substantial Completion the Contractor shall provide a notarized statement from all subcontractors that no asbestos containing building materials (ACBM) has been used, provided, installed, furnished, added to, or left on the Project.

20.7 The contractor shall retain an appropriately licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer in accordance with Texas Administration Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility. 296.191 (d) (6) (A) to perform an AHERA sample survey of the project or (B) to compile and review any on-site surveys and or all safety data sheets (SDS) of all materials used in the construction or renovation of the Project and finding no asbestos in any of those materials, prepare a signed written certification that states the following:

20.8 For renovation: I, [Name], Licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer) (license #*****TX),

- a) have personally conducted the on-site survey
- b) have reviewed the previously produced on-site surveys (dated and produced by)
- c) have reviewed all the Safety Data Sheets (SDS) of all the materials permanently installed in the current renovation and none of the products indicate that they include Asbestos-Containing Materials (ACBM) and therefore in my professional opinion, the building materials used in this renovation do not contain asbestos. This certification, together with copies of the SDSs, may be used as an asbestos survey as described in Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility.

20.9 For new construction: I, [Name], Licensed asbestos consultant, Texas-registered architect, or Texas-licensed professional engineer) (license #*****TX),

- a) have personally conducted the on-site survey
- b) have reviewed the previously produced on-site surveys (dated and produced by)
- c) have reviewed all the Safety Data Sheets (SDS) of all the materials permanently installed in the new construction project and none of the products included in the construction indicate that they include Asbestos-Containing Materials (ACBM) and therefore in my professional opinion all parts of the building do not contain asbestos. This certification, together with copies of the SDSs, may be used as an asbestos survey as described in Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 296 Texas Asbestos Health Protection, Subchapter K Asbestos Management in a Public Building, Commercial Building or Facility.

20.10 The submission of this 3rd party certification to the Owner of non-asbestos containing materials is a requirement to achieve substantial completion. The Contractor may not hire the architect or engineer of record responsible for the design of the project to provide this certification service.

21 COMPENSATION

21.1 Guaranteed Maximum Price

21.1.1 The anticipated Guaranteed Maximum Price for the Project at the time this Agreement was executed is:_____.

21.2 Pre-Construction Phase Fee

21.2.1 For Pre-Construction Phase Services, Owner shall pay Construction Manager a Pre-Construction Phase Fee in the total stipulated amount of _____.

21.2.2 Refer to Article 11.2 of this Agreement for the percentages of each stage of work within the Pre-Construction Phase Fee for payment purposes.

21.3 Construction Phase Fee

21.3.1 For Construction Phase Services, Owner shall pay Construction Manager a stipulated Construction Phase Fee equal to _____ percent (between 8% - 10%) of the Guaranteed Maximum Price for the Project.

21.3.2 Based on the anticipated GMP established at the time of this Agreement, the Construction Phase Fee would be the total stipulated amount of: _____.

21.3.3 If the Owner agrees to an increase in the Guaranteed Maximum Price during the Construction Phase, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in paragraph 21.3.1 of this Agreement to the amount of the increase in the GMP. For change orders that do not increase the Guaranteed Maximum Price, overhead and profit costs for subcontractors shall be determined in accordance with the "Changes" section of the UGC but the Construction Manager will not be entitled to any fee increase for such work. For change order work which increases the Guaranteed Maximum Price, overhead and profit costs for subcontractors shall be determined in accordance with the "Changes" section of the UGC but the Construction Manager's fee for such work will be calculated by applying the percentage established in paragraph 21.3.1 of this Agreement to the amount of the increase. For change order work which decreases the Guaranteed Maximum Price for work not preformed, the Construction Manager's fee will be calculated by applying the percentage established in paragraph 21.3.1 of this Agreement to the amount of the revised Guaranteed Maximum Price.

21.3.4 The percentage rate established in paragraph 21.3.1 of this Agreement for calculation of the Construction Phase Fee cannot be increased except with the express written approval of the Owner.

21.4 Limitation on General Condition Costs

21.4.1 For allowable General Conditions Costs incurred during the Construction Phase of the Project, Owner shall pay Construction Manager a maximum of \$_____.

21.4.2 If the Owner agrees to an extension of the duration of the Construction Phase, the maximum allowable amount of General Conditions Costs shall be equitably adjusted. The Construction Manager shall submit a detailed justification and supporting documentation in writing to the Owner at least 7 days prior to the proposed adjustment.

21.4.3 The percentage rate established in paragraph 21.4.1 of this Agreement for calculation of the General Conditions Costs cannot be increased except with the express written approval of the Owner. Any request for an increase in the General Conditions percentage rate must be accompanied by a detailed justification which includes documentation of the circumstances necessitating the increase.

22 OTHER TERMS AND CONDITIONS: Refer to Attachment 1 – Contract Affirmations and Essential Clauses

23 TIME OF COMPLETION

23.1 The anticipated date for achieving Substantial Completion of the Project at the time this Agreement was executed _____.

23.2 The Construction Phase shall be deemed to commence on the date specified in a Notice to Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal.

23.3 The Construction Manager shall achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates agreed to in the Guaranteed Maximum Price Proposal, subject to time extensions granted by Change Order.

23.4 The times set forth for completion of the work in the Notice to Proceed with Construction and the Guaranteed Maximum Price Proposal are an essential element of the Agreement. The Owner may elect, at its option, to stage or "fast-track" portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate substantial completion date and a separate liquidated damages amount.

23.5 Liquidated Damages

23.5.1 For each consecutive calendar day after the Substantial Completion Date that the Work is not substantially completed, the Owner may deduct the amount of \$969.20 per calendar day.

23.5.2 The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

23.6 Estimated Construction Cost Reports

23.6.1 Construction Manager shall prepare and update, as part of Pre-Construction Services, an Estimated Construction Cost report in accordance with Article 5, 5.4.3 of this Agreement as follows:

100% completion of schematic design
100% completion of design development
50% completion construction documents phase
75% completion construction documents phase

23.7 Notices

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to the Owner: JoAnn Hernandez, CTCD, CTCM
Contract Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78711
joann.hernandez@tpwd.texas.gov

With Copies to: Lloyd Hamilton
Construction Project Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78711
lloyd.hamilton@tpwd.texas.gov

Todd George, Attorney
Assistant General Counsel, Legal Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
Todd.george@tpwd.texas.gov

If to Construction Manager:

Name	_____
Company Name	_____
Address	_____
Address	_____
Email	_____
Phone No.	_____

23.8 Party Representatives

23.8.1 The Construction Manager's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Name	_____
Company Name	_____
Address	_____
Address	_____
Email	_____
Phone No.	_____

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

23.8.2 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Lloyd Hamilton
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78711
lloyd.hamilton@tpwd.texas.gov

24 CONSTRUCTION DOCUMENT SETS

24.1 Interim As-Built Drawings and Specifications

As a requirement for acceptance of Substantial Completion, Construction Manager shall provide two (2) copies of the current As-Built Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled "Interim Record Drawings and Specifications" and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final As-Built Drawings and Specifications are provided to the Project Designer to prepare the final "Record Drawings" and "Record Specifications".

24.2 As-built Telecommunication Drawings and Telecommunication Port Log

The Construction Manager shall provide the Owner, at between one month and three months prior to Substantial Completion, with a complete set of the as-built Telecommunication Drawings and Telecommunication Port Log for the Owner's use in coordinating selection and procurement of telephone/data equipment.

25 LIST OF EXHIBITS

The following exhibits are fully incorporated into this Agreement by reference:

Exhibit A	Uniform General Conditions, including Supplementary General Conditions for Projects Administered by the Texas Parks and Wildlife Department
Exhibit B	Owner's Special Conditions
Exhibit C	Allowable General Conditions Line Items
Exhibit D	Guaranteed Maximum Price Proposal Form
Exhibit E	Security Bond
Exhibit F	Construction Manager's Personnel and Monthly Salary Rate
Exhibit G	Constructability Implementation Program
Exhibit H	Approved HUB Subcontracting Plan for Pre-Construction Phase Services

SIGNATURES ON THE NEXT PAGE

TEXAS PARKS AND WILDLIFE DEPARTMENT

Signature

Name

David Yoskowitz, Ph.D.

Title

Executive Director

Date of Execution

CONSTRUCTION MANAGER AT RISK

Signature

Printed Name

Title

Date of Execution

PRO-FORMA CONTRACT

ATTACHMENT 1

ESSENTIAL CLAUSES, AFFIRMATIONS & ADDITIONAL CONTRACT REQUIREMENTS

INCORPORATED HEREIN BY REFERENCE TO THE CONTRACT

ANTIQUITIES

Offeror 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 Offeror 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, Offeror shall cooperate in salvage work attendant to preservation.

CYBERSECURITY TRAINING

Offeror shall ensure that any Offeror 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. Offeror shall provide Owner with verification of the completion of the requisite training.

DAMAGE TO GOVERNMENT PROPERTY

In the event of loss, destruction or damage to any Owner or State of Texas government-owned, leased, or occupied property and equipment by Offeror or Offeror's employees, agents, subcontractors, suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract, Offeror shall be liable to Owner and the State of Texas the full cost of repair, reconstruction, or replacement of the lost, destroyed or damaged property. Offeror shall notify the Owner in writing of any such damage within one (1) calendar day. Offeror is responsible for the removal of all debris resulting from work performed under the contract. Offeror will reimburse Owner and the State of Texas for such property damage within ten (10) calendar days after Offeror's receipt of Agency's notice of amount due.

ENERGY POLICY AND CONSERVATION ACT

Offeror acknowledges and agrees to comply with the mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89

Stat.871).

MANUFACTURED IRON OR STEEL PRODUCTS

Offeror acknowledges that TGC, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this proposal, Offeror certifies that its proposal price represents full compensation for compliance with the requirements of TGC, Title 10, Subchapter F, §§ 2252.201-2252.205.

NAME CHANGES AND SALES

If the Offeror changes its name or is sold to another entity, it must provide written notification to Owner. The Offeror, 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 Offeror, the Offeror shall identify the new personnel and provide resumes to Owner, if resumes were originally required by the Solicitation. Owner may request other information about the change and its impact on the Contract and the Offeror shall supply the requested information within five (5) working days of receipt of the request. Owner may terminate the Contract due to a sale of or change to the Offeror that materially alters the Offeror's ability to perform under the Contract. The Owner has the sole discretion to determine if termination is appropriate.

NON-DISCRIMINATION

Offeror acknowledges it 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. Offeror shall ensure that this clause is included in all subcontracts.

PATENTS, TRADEMARKS OR COPYRIGHTS

Offeror 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 Offeror as a result of this solicitation.

PROPOSAL ACCEPTANCE

Offeror agrees that when written notice of proposal acceptance is furnished by the Owner within ninety (90) calendar days after the bid opening date, the undersigned will, within the stipulated time, execute and deliver the contract and all required bonds, certificates of insurance, submittals, and Form 1295 to the Owner. Failure to timely provide the insurance certificate, bonds, and submittals shall be grounds for disqualification of proposal and forfeiture of bid security. In such circumstances, TPWD shall be authorized

to proceed with award to the next highest ranked, responsive, and responsible offeror.

RESERVATION OF RIGHTS

Proposals will be evaluated, and determination of the award will be based on the highest ranked offeror. OWNER RESERVES THE RIGHT TO AWARD TO THE HIGHEST RANKED OFFEROR ANY COMBINATION OF PROPOSAL ITEMS OR TO REJECT ALL PROPOSALS.

STATE AND FEDERAL LABOR LAWS

Offeror acknowledges and agrees that it shall comply with all labor laws established by State and Federal statutes in accordance with Uniform General Conditions, Article 2.

STATE TAXATION, TEX TAX CODE, CHAPTER 171

Offeror represents and warrants that, the offeror is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code. Making a false statement as to corporate tax status is a material breach of contract.

ANTITRUST AFFIRMATION, TEX GOVT CODE § 2155.005

Offeror represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the offeror, nor the firm, corporation, partnership, or institution represented by the offeror, 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 bidder.

ASSIGNMENT, TEX GOVT CODE § 2262.056(B)

Offeror 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.

BUY TEXAS AFFIRMATION, TEX GOVT CODE § 2155.4441

In accordance with Section _____ of the Texas Government Code, Offeror 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.

CHILD SUPPORT OBLIGATION AFFIRMATION, TEX FAM CODE § 231.006, 231.302

Under Section 231.006 of the Family Code, the Offeror certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that the 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).

CONTRACTING INFORMATION RESPONSIBILITIES, TEX GOVT CODE § 552.372

Offeror represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Offeror 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 Offeror 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 Offeror 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 of the Government Code, may apply to the contract and the Offeror agrees that the contract can be terminated if the Offeror knowingly or intentionally fails to comply with a requirement of that subchapter.

COVID-19 VACCINE PASSPORT PROHIBITION, TEX HEALTH & SAFETY CODE § 161.0085

Offeror certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Offeror's business. Offeror acknowledges that such a vaccine or recovery requirement would make Offeror ineligible for a state-funded contract.

CRITICAL INFRASTRUCTURE AFFIRMATION, TEX GOVT CODE § 2275.0102

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.

DEALINGS WITH PUBLIC SERVANTS AFFIRMATION, TEX GOVT CODE § 572.051(A)(1), 2155.003, 34 TAC § 20.157

Pursuant to Section 2155.003 of the Texas Government Code, Offeror represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

DEBTS AND DELINQUENCIES AFFIRMATION, TEX GOVT CODE § 2252.903

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.

DISASTER RECOVERY PLAN, TEX GOVT CODE § 441.190, 13 TAC § 6.94(A)(9)

Upon request of Owner, Offeror shall provide the descriptions of its business continuity and disaster recovery plans.

DISCLOSURE OF PRIOR STATE EMPLOYMENT, TEX GOVT CODE § 2254.033

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Offeror certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Proposal or, in the alternative, Offeror has disclosed in its Proposal the

following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

DISPUTE RESOLUTION, TEX. CIV. PRAC. & REM. CODE CH 114

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 contract. 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 Offeror's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Offeror may make a claim against Owner for breach of contract and the Owner may assert a counterclaim against the Offeror as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Offeror must provide written notice to Owner 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 Offeror seeks as damages; and (3) the legal theory of recovery.

(b) The chief administrative officer, or if designated in the contract, another officer of the Owner, shall examine the claim and any counterclaim and negotiate with the Offeror 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 contract 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 Owner, 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 Offeror's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Owner if the parties are unable to resolve their disputes as described in this section.

(e) Nothing in the contract shall be construed as a waiver of the State's or the Owner's sovereign immunity. This contract 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 contract 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 contract or by its conduct, or by the conduct of any representative of Owner, prior to or subsequent to entering into this contract.

(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 Offeror: (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.

ENERGY COMPANY BOYCOTTS, TEX GOVT CODE § 2276.002

Offeror 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 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, Offeror shall promptly notify Owner.

ENTITIES THAT BOYCOTT ISRAEL, TEX GOVT CODE § 2271.002

If Offeror is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Offeror certifies that Offeror does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Offeror does not make that certification, Offeror must indicate that in its proposal and state why the certification is not required.

E-VERIFY PROGRAM, EXECUTIVE ORDER NO. RP-80, TEX. ATT'Y GEN. OP. NO. KP-70 (2016)

Offeror certifies that for contracts for services, Offeror shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by Offeror to perform duties within Texas; and 2. all persons, including subcontractors, assigned by Offeror to perform work pursuant the contract within the United States of America. Offeror shall provide, upon request of Texas Parks and Wildlife Department, an electronic copy 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 Offeror, and Offeror's subcontractors, as proof that this provision is being followed. If it is determined that Offeror has violated the certifications set forth in this Section, then (1) Offeror 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, Offeror shall be responsible for all costs incurred by TPWD to obtain substitute services to replace the terminated Contract.

EXCESS OBLIGATIONS PROHIBITED, TEX CONST ART III § 49A, TEX CONST ART VIII § 6

Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to Owner, either in whole or in part, subject to the availability of state funds. Owner is a state Owner whose authority and appropriations are subject to actions of the Texas Legislature. If Owner becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either Owner's or Offeror'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, Owner will not be liable to Offeror for any

damages, that are caused or associated with such termination, or cancellation, and Owner will not be required to give prior notice.

EXCLUDED PARTIES, EXECUTIVE ORDER NO. 13224

Offeror 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.

EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION, TEX GOVT CODE § 669.003

Under Section 669.003 of the *Texas Government Code*, Offeror certifies that it does not employ, or has disclosed its employment of, any former executive head of the Owner. Offeror must provide the following information in the proposal.

Name of Former Executive
Position with Offeror
Date of Employment with Offeror
Name of State Owner
Date of Separation from State Owner

FALSE STATEMENTS, TEX GOVT CODE § 2155.007(A)(2)

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION, TEX GOVT CODE § 2155.004

Pursuant to Section 2155.004(a) of the Texas Government Code, Offeror certifies that neither Offeror nor any person or entity represented by Offeror has received compensation from Owner to participate in the preparation of the specifications or solicitation on which this proposal or contract is based. Under §2155.004(b) of the Texas Government Code, Offeror certifies that the individual or business entity named in this proposal 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.

FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION, TEX GOVT CODE § 2274

Offeror 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, Offeror shall promptly notify Owner.

FOREIGN TERRORIST ORGANIZATIONS, TEX GOVT CODE § 2252.152

Section 2252.152 of the Texas Government Code prohibits Owner from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Offeror certifies that it is not ineligible to receive the contract.

GOVERNING LAW AND VENUE, TEX GOVT CODE § 2155.0012

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

HUMAN TRAFFICKING PROHIBITION, TEX GOVT CODE § 2155.0061

Under Section 2155.0061 of the Texas Government Code, the Offeror certifies that the individual or business entity named in this Proposal 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.

INDEMNIFICATION (GENERAL), TEX CONST ART VIII § 6

OFFEROR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND OWNER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVE, 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 RESPONDENT 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 OFFEROR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OFFEROR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. OFFEROR AND AGENCY AGREED TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

NO CONFLICTS OF INTEREST, TEX GOVT CODE §§ 2252.908, 2254.032, 2261.252(B)

Offeror 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.

PRIOR DISASTER RELIEF CONTRACT VIOLATION, TEX GOVT CODE §§ 2155.006, 2261.053

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Offeror certifies that the individual or business entity named in this proposal 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.

PUBLIC INFORMATION ACT, TEX GOVT CODE CHAPTER 552, TEX GOVT CODE § 2252.907

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 "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Offeror is required to make any information created or exchanged with the State pursuant to the 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 additional charge to the State.

SIGNATURE AUTHORITY, TEX GOVT CODE § 2155.0012

By submitting the Proposal, Offeror represents and warrants that the individual submitting this document and the documents made part of this Offer is authorized to sign such documents on behalf of the Offeror and to bind the Offeror under any contract that may result from the submission of this Proposal.

STATE AUDITOR'S RIGHT TO AUDIT, TEX GOVT CODE § 2262.154

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

SUSPENSION AND DEBARMENT, TEX GOVT CODE § 2155.077

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

TELEVISION EQUIPMENT RECYCLING PROGRAM, TEX HEALTH & SAFETY CODE § 361.991(C)

If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

TERMS AND CONDITIONS ATTACHED TO RESPONSE, TEX GOVT CODE § 2155.0012

Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in the Proposal.

TEXAS BIDDER AFFIRMATION, TEX GOVT CODE § 2155.444(C)

Offeror certifies that if a Texas address is shown as the address of the Offeror on this Proposal, Offeror qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

TEXAS GOVERNOR EXECUTIVE ORDER GA-48

Respondent certifies that neither it, nor its holding companies or subsidiaries, is:

- (a) Listed in Section 889 of the 2019 National Defense Authorization Act;
- (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
- (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4; or
- (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4.

ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED

Offeror 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 Owner to Offeror and Offeror's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

AGENCY'S RIGHT TO AUDIT

Offeror will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Offeror pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Owner and the State of Texas. Offeror understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, Owner, or any successor agency, to conduct an audit or investigation in connection with those funds. Offeror further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Offeror or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Offeror or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Offeror shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractor through Offeror and the requirement to cooperate is included in any subcontract it awards. Offeror shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor.

Offeror shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Offeror shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Offeror and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Offeror must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by OWNER and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Offeror shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Offeror's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize OWNER and the State of Texas to immediately assess appropriate damages for such failure.

AMERICANS WITH DISABILITIES ACT

Offeror represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

BINDING EFFECT

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

CHANGE IN LAW AND COMPLIANCE WITH LAWS

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.

DISCLOSURE OF INTERESTED PARTIES

Offeror represents and warrants that if selected for award of a contract as a result of the Solicitation, Offeror will submit to Owner a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code. Additional information can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

ELECTRICAL ITEMS

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

EQUAL EMPLOYMENT OPPORTUNITY

Offeror represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW

Offeror 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).

FEDERAL, STATE AND LOCAL REQUIREMENTS

Offeror 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. Offeror is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Offeror shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Offeror or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. Offeror shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Offeror's omission or breach of this Section.

FORCE MAJEURE

Neither Offeror 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 Offeror is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Offeror. To obtain release based on force majeure, the Offeror shall file a written request with the Owner.

IMMIGRATION

Offeror 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.

IMMIGRATION REFORM

The Offeror 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.

INDEPENDENT CONTRACTOR

Offeror acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Offeror, and its personnel are not employees of the Owner or the State of Texas. Neither Offeror nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should

Offeror subcontract any of the services required in the contract, Offeror expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Offeror. In no event shall this provision relieve Offeror of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Offeror 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 Offeror and Owner.

LEGAL AND REGULATORY ACTIONS

Offeror represents and warrants that it is not aware of and has received no notice of any court or governmental Owner actions, proceedings or investigations, etc., pending or threatened against Offeror 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 Offeror's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Owner's consideration of the Response. If Offeror is unable to make the preceding representation and warranty, then Offeror instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental Owner actions, proceedings or investigations, etc. that would or could impair Offeror's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Owner's consideration of the Response. In addition, Offeror represents and warrants that it shall notify Owner 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 Owner shall constitute breach of contract and may result in immediate termination of the contract.

LIMITATION ON AUTHORITY

Offeror shall have no authority to act for or on behalf of Owner or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Offeror may not incur any debt, obligation, expense, or liability of any kind on behalf of Owner or the State of Texas.

LOBBYING PROHIBITION

Offeror represents and warrants that Owner's payments to Offeror and Offeror'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.

MEDIA RELEASES

Offeror shall not use Owner's name, logo, or other likeness in any press release, marketing material, or other announcement without Owner's prior written approval. Owner does not endorse any vendor, commodity, or service. Offeror is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, or the services to which they relate without Owner's prior written consent, and then only in accordance with explicit written instructions from Owner.

NO FELONY CRIMINAL CONVICTIONS

Offeror represents that neither Offeror 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 Offeror has fully advised Owner in writing of the facts and circumstances surrounding the convictions.

NO IMPLIED WAIVER

The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

NO THIRD-PARTY BENEFICIARIES

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

PERMITS, CERTIFICATIONS, AND LICENSES

Offeror 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.

RECORDS RETENTION

Offeror shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Offeror for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

REFUND

Offeror will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Owner which are not expressly authorized under the contract.

RESTRICTED EMPLOYMENT FOR CERTAIN STATE PERSONNEL

Pursuant to Section 572.069 of the Texas Government Code, Offeror 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 Owner involving Offeror 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.

SECURE ERASURE OF HARD DISK CAPABILITY

All equipment provided to Owner by Offeror that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end

of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

SEVERABILITY

If any provision of the 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 continue in full force and effect.

SOVEREIGN IMMUNITY

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Owner or the State of Texas of any immunities from suit or from liability that the Owner or the State of Texas may have by operation of law. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Owner or 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 Owner or the State of Texas under this Contract 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. The Owner does not waive any privileges, rights, defenses, or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

SUBCONTRACTORS

Offeror may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Owner. Subcontracts, if any, entered into by the Offeror shall be in writing and be subject to the requirements of the contract. Should Offeror subcontract any of the services required in the contract, Offeror expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Offeror. In no event shall this provision relieve Offeror of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

SURVIVAL

Expiration or termination of the contract for any reason does not release Offeror 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.

TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Owner will furnish Tax Exemption Certificates upon request. Offeror represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Offeror or its employees. Owner shall not be liable for any taxes resulting from the contract.

UNFAIR BUSINESS PRACTICES

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

PRO-FORMA CONTRACT

EXHIBIT A

Uniform General Conditions, including Supplementary General Conditions for Projects
Administered by the Texas Parks and Wildlife Department

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT B

OWNER'S SPECIAL CONDITIONS

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT C

ALLOWABLE GENERAL CONDITIONS LINE ITEMS

Bonds and Insurance

Project Management/Supervisory/Quality Control/Support/Administrative Personnel
(both office and field)

Temporary Field Offices/Facilities/Storage (including equipment, materials, temporary
utilities and security).

Health and Safety

Construction Documentation and Surveying

Transportation

Temporary Barriers, Signage and Controls

Cleaning and Waste Disposal

EXHIBIT D

GUARANTEED MAXIMUM PRICE PROPOSAL

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT E

SECURITY BOND

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT F

CONSTRUCTION MANAGER'S PERSONNEL AND MONTHLY SALARY RATE

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT G

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT H

**CONSTRUCTION MANAGER'S APPROVED HUB SUBCONTRACTING PLAN FOR PRE-
CONSTRUCTION PHASE SERVICES**

(TO BE INCLUDED IN FINAL CONTRACT)

PRO-FORMA CONTRACT

EXHIBIT B

PROJECT MANUAL

Project Manual which includes the following:

- Uniform General Conditions
- 2018 Supplementary General Conditions
- Special Conditions
- Prevailing Wage Rates
- Essential Clauses, Affirmations & Additional Contract Requirements

Uniform General Conditions for
State of Texas Construction Contracts

Including

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



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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 ***As-Built Drawings and Specifications* means the drawing 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."**
- 1.6 *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.
- 1.7 *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.
- 1.8 ***Certificate of Final Completion* means the certificate issued by TPWD that includes certification by the 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-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 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that documents 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.
 - 1.10 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor, and A/E.
 - 1.11 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, ~~record~~ ***As-Built*** documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
 - 1.12 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
 - 1.13 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
 - 1.14 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
 - 1.15 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
 - 1.16 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
 - 1.17 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
 - 1.18 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
 - 1.19 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, 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.
 - 1.20 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
 - 1.21 *Day* means a calendar day unless otherwise specifically stipulated.
-

- 1.22 *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.
- 1.23 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.24 *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.
- 1.25 *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.
- 1.26 *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.
- 1.27 *Notice to Proceed (NTP)* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.28 *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.
- 1.29 *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. ***Owner herein shall mean the Texas Parks and Wildlife Department.***
- 1.30 *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.
- 1.31 *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.
- 1.32 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.33 *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.
- 1.34 *Punchlist* means a list of *minor* items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate *minor* 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.
- 1.35 *Record Documents* mean the drawing set, Specifications, and other materials ***maintained***
-

produced by the A/E of Record 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. ***The Record Documents are produced using the As-Built Drawings and Specifications as provided by the Contractor, and any As-Built documents produced by the A/E of Record during the course of the construction.***

- 1.36 *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.
- 1.37 *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.
- 1.38 *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.
- 1.39 *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.
- 1.40 *Site* means the geographical area of the location of the Work.
- 1.41 *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.
- 1.42 *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.
- 1.43 *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.
- 1.44 *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.
- 1.45 *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.
- 1.46 *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 Parks and Wildlife Department has adopted Uniform Supplementary General Conditions that apply to all TPWD construction projects. TPWD Uniform Supplementary General Conditions are indicated by the bold and italicized typeface shown here.***
- 1.47 ***Unit Price Work*** means the Work, or a portion of the Work, paid for based on

incremental units of measurement.

- 1.48 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.49 *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.
- 1.50 *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 ***through the submittal process stated in Owner's Special Conditions***. 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. ***Unless stated otherwise in the contract documents, the HUB subcontracting plan shall be submitted with the bid or response on or before the specified due date and time for the bid or response.***
- 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. ***TPWD requires submission of a copy of the compliance report with the Application for Payment for work performed.***
- 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 at 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>).
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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.

- 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, ***unless stated otherwise in the contract documents.***
- 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.

5.2.2.1 Insurance Coverage Required.

- 5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation 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.

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

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$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.

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

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

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

Employer's liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$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.

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

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

- 5.2.2.1.5 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:

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

- 5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.
 - 5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.
 - 5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.
 - 5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
 - 5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
 - 5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.
 - 5.2.2.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.
- 5.2.2.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.
- 5.2.3 Policies must include the following clauses, as applicable:
- 5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.
 - 5.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with Owner.
 - 5.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner.

The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

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

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

5.2.5 Workers' compensation insurance coverage must 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. ***Unless otherwise called for in the Special Conditions, four (4) sets of drawings and specifications will be furnished to the Contractor free of charge upon justification of need.***
- 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 ***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.
- 6.1.3 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. ***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 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~~ **As-Builts** 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~~ **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 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up ~~Record Documents~~ **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 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~~ **As-Built documents** unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the ~~Record~~ **As-Built** 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~~ **As-Built Documents** ~~for~~ **with any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner. A/E shall be responsible for compiling all As-Built documentation (as produced both by the Contractor and by the A/E) into the Record Documents.**

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. **Contractor shall give Owner a minimum of five (5) working days advance notice prior to testing.**

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 *is fully executed* 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 manufacturer 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 **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.

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, *staff training, if required*, 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. *The referenced affidavit is the Contractor's Progress 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. *The Owner shall withhold as retainage 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 of execution to cost \$400,000 or more.*
- 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.

10.3.3.8 ***Failure to maintain or allow Owner's inspection of payroll records.***

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 § 2255.022.
 - 10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date 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, **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 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. **Procedures for administration of Change Orders will be provided at the Pre-Construction Conference.**
- 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 established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change 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.
- 11.8.5 *If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.*
- 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 **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 Prior to the Substantial Completion inspection and as specified in the Special Conditions, Contractor shall furnish a copy of its marked-up ~~Record~~ **As-Built** 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~~ *As-Built* 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~~ *As-Built* 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. *The Affidavit referred to above is the Contractor's Final Payment Affidavit.*

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 *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.
- 13.3 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, ***and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative*** 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

2018 SUPPLEMENTARY GENERAL CONDITIONS TO THE STATE OF TEXAS 2015 EDITION OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The following Supplementary General Conditions amend and/or supplement the 2015 edition of the Uniform General Conditions for Construction Contracts.

Article 5. Bonds and Insurance

5.2 Insurance Requirements.

Subsection 5.2.4 is supplemented to add the following new paragraphs:

- 5.2.4.1 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 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 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 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.

Article 2. Wage Rates and Other Laws Governing Construction

End of Supplementary General Conditions

TEXAS PARKS AND WILDLIFE

PREVAILING WAGE RATE DETERMINATION INFORMATION

Chapter 2258, Texas Government Code, Title 10 requires that state agencies, (including universities), cities, counties, independent school districts, and all other political subdivisions that engage in public works construction projects produce and include prevailing wage rate determinations in the project bidding and contract documents.

Chapter 2258 requires that the contractor who is awarded a contract by a public body and a contractor's subcontractor shall pay not less than the rates determined by such state agencies to workers employed for the execution of such work. Pursuant to Chapter 2258, Texas Parks and Wildlife has ascertained the following wages to be paid for the various classifications of workers, in the locality of this project. In determining these wages, TPWD has utilized the Prevailing Wage Rates as determined by the U.S. DOL in accordance with the Davis-Bacon Act.

"General Decision Number: TX20250245 01/03/2025

Superseded General Decision Number: **TX20240245**

State: **Texas**

Construction Type: **Building**

County: **El Paso County in Texas.**

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract.	
	. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.	
If the contract was awarded on or between January 1, 2015 and	. Executive Order 13658 generally applies to the	

January 29, 2022, and the	contract.
contract is not renewed or	. The contractor must pay all
extended on or after January	covered workers at least
30, 2022:	\$13.30 per hour (or the
	applicable wage rate listed
	on this wage determination,
	if it is higher) for all
	hours spent performing on
	that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

ELEC0583-001 01/01/2024

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms/HVAC Temperature Controls).....	\$ 25.50	5.25%+7.92

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 28.26	8.13

PLUM0412-001 01/02/2024

	Rates	Fringes
PLUMBER (Including HVAC Pipe Installation).....	\$ 40.74	15.35

SFTX0669-002 04/01/2024		
	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 36.15	23.88

SUTX2014-021 07/21/2014		
	Rates	Fringes
BRICKLAYER.....	\$ 16.17 **	0.00
CARPENTER (Drywall Finishing/Taping Only).....	\$ 12.81 **	0.00
CARPENTER, Excludes Drywall Finishing/Taping, Drywall Hanging, Form Work and Metal Stud Installation.....	\$ 13.51 **	3.29
CEMENT MASON/CONCRETE FINISHER...	\$ 13.02 **	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 12.81 **	0.00
ELECTRICIAN (Alarm Installation Only).....	\$ 15.38 **	2.92
ELECTRICIAN (HVAC/Temperature Controls Installation Only).....	\$ 19.09	6.45
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 15.38 **	2.92
FENCE ERECTOR.....	\$ 9.93 **	1.83
FLOOR LAYER: Carpet.....	\$ 12.81 **	0.00
FLOOR LAYER: Vinyl Flooring.....	\$ 12.87 **	0.00
FORM WORKER.....	\$ 12.57 **	1.03
GLAZIER.....	\$ 15.86 **	1.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 16.91 **	0.00
IRONWORKER, REINFORCING.....	\$ 15.60 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 15.37 **	4.34

LABORER: Common or General.....\$ 9.30 **	0.00
LABORER: Driller.....\$ 14.12 **	1.01
LABORER: Mason Tender - Brick...\$ 12.50 **	2.30
LABORER: Mason Tender - Cement/Concrete.....\$ 10.82 **	0.96
LABORER: Pipelayer.....\$ 11.00 **	3.47
LABORER: Roof Tearoff.....\$ 10.06 **	0.00
LABORER: Landscape and Irrigation.....\$ 10.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....\$ 14.43 **	0.74
OPERATOR: Bobcat/Skid Steer/Skid Loader.....\$ 13.93 **	0.00
OPERATOR: Bulldozer.....\$ 18.29	1.31
OPERATOR: Drill.....\$ 16.22 **	0.34
OPERATOR: Forklift.....\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....\$ 19.50	1.05
OPERATOR: Loader.....\$ 12.87 **	0.70
OPERATOR: Mechanic.....\$ 17.00 **	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....\$ 16.03 **	0.00
OPERATOR: Roller.....\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....\$ 12.50 **	0.00
PIPEFITTER, Excludes HVAC Pipe Installation.....\$ 18.15	0.98
ROOFER.....\$ 11.42 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....\$ 23.56	3.60
SHEET METAL WORKER, Excludes HVAC Duct Installation.....\$ 21.13	6.53
TILE FINISHER.....\$ 11.22 **	0.00
TILE SETTER.....\$ 12.02 **	0.00
TRUCK DRIVER: Dump Truck.....\$ 12.39 **	1.18

TRUCK DRIVER: Flatbed Truck.....\$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer
Truck.....\$ 12.50 ** 0.00

TRUCK DRIVER: Water Truck.....\$ 12.00 ** 4.11

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01 00 20 – SPECIAL CONDITIONS – CONSTRUCTION MANAGER AT RISK - CONSTRUCTION PHASE

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 these Request for Qualifications for Construction Manager at Risk and Contract Documents.

Project No.	1111827
Project Location	Hueco Tanks State Park & Historic Site
Project Title	Cultural Center and Park Headquarters

1.03 INTENT OF THE CONTRACT DOCUMENTS: (See also UGC, Article 6)

- A. 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.
- B. It is the intention of the Contract Documents to call for finished work, tested, and ready for operation.
 - 1. 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.
 - 2. 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.

- C. All work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.
- D. 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.
- E. 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.
- F. 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 instruction from Owner prior to proceeding with the work.
- G. 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.
- H. The drawings consist of all project drawings and any drawings issued by addenda.

1.04 AGENCY PROJECT MANAGEMENT SYSTEM

TPWD utilizes a Project Management Information System called Trimble Unity Construct® to manage its construction projects. Trimble Unity Construct® is a cloud-based system that is accessible anywhere there is a web connection. Trimble Unity Construct® will 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 Trimble Unity Construct® website is: (<https://gov.e-builder.net>)

1.05 SUBMITTAL REVIEW AND PROCESSING: (Refer also to UGC, Article 8)

A. GENERAL

Any and all costs, 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 for the work in accordance with the Uniform General Conditions, Article 10, 10.3.3.

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 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 eBuilder and the Contractor may begin the submittal process. Training will be provided by the Owner to the Contractor.

1.06 CONTRACT COMPLETION: (**See also UGC, Article 9**)

- A. 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.
- B. **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 **\$969.20** 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.
- C. 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.
- D. Expiration or termination of the contract for any reason does not release Contractor 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.

1.07 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 Request for Qualifications for Construction Manager at Risk and Contract Documents.
- B. **Windstorm Coverage:** For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided limits shall be equal to 100 percent of the Contract Sum.
- C. **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).

1.08. REFERENCES AND STANDARDS:

All contractors, including sub-contractors shall ensure all personnel follow the adopted Standardized Building Codes in all design and construction work.

1.21 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.

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: TPWD water service is not available for Contractor.
 2. Electric: TPWD Electrical power is available for Contractor to connect to at no charge to the Contractor.
 3. Internet / data: 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: There shall be no project signs of any size or type allowed on the project site or surrounding Texas Parks and Wildlife Department property at any time.
- 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 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.

2.03 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.

END OF SECTION

ESSENTIAL CLAUSES, AFFIRMATIONS & ADDITIONAL CONTRACT REQUIREMENTS

INCORPORATED HEREIN BY REFERENCE TO THE CONTRACT

ANTIQUITIES

Offeror 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 Offeror 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, Offeror shall cooperate in salvage work attendant to preservation.

CYBERSECURITY TRAINING

Offeror shall ensure that any Offeror 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. Offeror shall provide Owner with verification of the completion of the requisite training.

DAMAGE TO GOVERNMENT PROPERTY

In the event of loss, destruction or damage to any Owner or State of Texas government-owned, leased, or occupied property and equipment by Offeror or Offeror's employees, agents, subcontractors, suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract, Offeror shall be liable to Owner and the State of Texas the full cost of repair, reconstruction, or replacement of the lost, destroyed or damaged property. Offeror shall notify the Owner in writing of any such damage within one (1) calendar day. Offeror is responsible for the removal of all debris resulting from work performed under the contract. Offeror will reimburse Owner and the State of Texas for such property damage within ten (10) calendar days after Offeror's receipt of Agency's notice of amount due.

ENERGY POLICY AND CONSERVATION ACT

Offeror acknowledges and agrees to comply with the mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat.871).

MANUFACTURED IRON OR STEEL PRODUCTS

Offeror acknowledges that TGC, Title 10, Subchapter F, §§ 2252.201-2252.205 requires that all iron or steel products produced through a manufacturing process used in this project must be produced in the United States. By signing this proposal, Offeror certifies that its proposal price represents full compensation for compliance with the requirements of TGC, Title 10, Subchapter F, §§ 2252.201-2252.205.

NAME CHANGES AND SALES

If the Offeror changes its name or is sold to another entity, it must provide written notification to Owner. The Offeror, 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 Offeror, the Offeror shall identify the new personnel and provide resumes to Owner, if resumes were originally required by the Solicitation. Owner may request other information about the change and its impact on the Contract and the Offeror shall supply the requested information within five (5) working days of receipt of the request. Owner may terminate the Contract due to a sale of or change to the Offeror that materially alters the Offeror's ability to perform under the Contract. The Owner has the sole discretion to determine if termination is appropriate.

NON-DISCRIMINATION

Offeror acknowledges it is subject to Title VI of the Civil Rights Act of 1964, Section 504 of 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. Offeror shall ensure that this clause is included in all subcontracts.

PATENTS, TRADEMARKS OR COPYRIGHTS

Offeror 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 Offeror as a result of this solicitation.

PROPOSAL ACCEPTANCE

Offeror agrees that when written notice of proposal acceptance is furnished by the Owner within ninety (90) calendar days after the bid opening date, the undersigned will, within the stipulated time, execute and deliver the contract and all required bonds, certificates of insurance, submittals, and Form 1295 to the Owner. Failure to timely provide the insurance certificate, bonds, and submittals shall be grounds for disqualification of proposal and forfeiture of bid security. In such circumstances, TPWD shall be authorized to proceed with award to the next highest ranked, responsive, and responsible offeror.

RESERVATION OF RIGHTS

Proposals will be evaluated, and determination of the award will be based on the highest ranked offeror. OWNER RESERVES THE RIGHT TO AWARD TO THE HIGHEST RANKED OFFEROR ANY COMBINATION OF PROPOSAL ITEMS OR TO REJECT ALL PROPOSALS.

STATE AND FEDERAL LABOR LAWS

Offeror acknowledges and agrees that it shall comply with all labor laws established by State and Federal statutes in accordance with Uniform General Conditions, Article 2.

STATE TAXATION, TEX TAX CODE, CHAPTER 171

Offeror represents and warrants that, the offeror is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code. Making a false statement as to corporate tax status is a material breach of contract.

ANTITRUST AFFIRMATION, TEX GOVT CODE § 2155.005

Offeror represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the offeror, nor the firm, corporation, partnership, or institution represented by the offeror, 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 bidder.

ASSIGNMENT, TEX GOVT CODE § 2262.056(B)

Offeror 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.

BUY TEXAS AFFIRMATION, TEX GOVT CODE § 2155.4441

In accordance with Section of the Texas Government Code, Offeror 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.

CHILD SUPPORT OBLIGATION AFFIRMATION, TEX FAM CODE § 231.006, 231.302

Under Section 231.006 of the Family Code, the Offeror certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that the 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).

CONTRACTING INFORMATION RESPONSIBILITIES, TEX GOVT CODE § 552.372

Offeror represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Offeror 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 Offeror 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 Offeror 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 of the Government Code, may apply to the contract and the Offeror agrees that the contract can be terminated if the Offeror knowingly or intentionally fails to comply with a requirement of that subchapter.

COVID-19 VACCINE PASSPORT PROHIBITION, TEX HEALTH & SAFETY CODE § 161.0085

Offeror certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Offeror's business. Offeror acknowledges that such a vaccine or recovery requirement would make Offeror ineligible for a state-funded contract.

CRITICAL INFRASTRUCTURE AFFIRMATION, TEX GOVT CODE § 2275.0102

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.

DEALINGS WITH PUBLIC SERVANTS AFFIRMATION, TEX GOVT CODE § 572.051(A)(1), 2155.003, 34 TAC § 20.157

Pursuant to Section 2155.003 of the Texas Government Code, Offeror represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

DEBTS AND DELINQUENCIES AFFIRMATION, TEX GOVT CODE § 2252.903

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.

DISASTER RECOVERY PLAN, TEX GOVT CODE § 441.190, 13 TAC § 6.94(A)(9)

Upon request of Owner, Offeror shall provide the descriptions of its business continuity and disaster recovery plans.

DISCLOSURE OF PRIOR STATE EMPLOYMENT, TEX GOVT CODE § 2254.033

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Offeror certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Proposal or, in the alternative, Offeror has disclosed in its Proposal the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

DISPUTE RESOLUTION, TEX. CIV. PRAC. & REM. CODE CH 114

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 contract. 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 Offeror's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Offeror may make a claim against Owner for breach of contract and the Owner may assert a counterclaim against the Offeror as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Offeror must provide written notice to Owner 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 Offeror seeks as damages; and (3) the legal theory of recovery.

(b) The chief administrative officer, or if designated in the contract, another officer of the Owner, shall examine the claim and any counterclaim and negotiate with the Offeror 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 contract 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 Owner, 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 Offeror's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Owner if the parties are unable to resolve their disputes as described in this section.

(e) Nothing in the contract shall be construed as a waiver of the State's or the Owner's sovereign immunity. This contract 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 contract 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 contract or by its conduct, or by the conduct of any representative of Owner, prior to or subsequent to entering into this contract.

(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 Offeror: (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.

ENERGY COMPANY BOYCOTTS, TEX GOVT CODE § 2276.002

Offeror 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 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, Offeror shall promptly notify Owner.

ENTITIES THAT BOYCOTT ISRAEL, TEX GOVT CODE § 2271.002

If Offeror is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Offeror certifies that Offeror does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Offeror does not make that certification, Offeror must indicate that in its proposal and state why the certification is not required.

E-VERIFY PROGRAM, EXECUTIVE ORDER NO. RP-80, TEX. ATT'Y GEN. OP. NO. KP-70 (2016)

Offeror certifies that for contracts for services, Offeror shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by Offeror to perform duties within Texas; and 2. all persons, including subcontractors, assigned by Offeror to perform work pursuant the contract within the United States of America. Offeror shall provide, upon request of Texas Parks and Wildlife Department, an electronic copy 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 Offeror, and Offeror's subcontractors, as proof that this provision is being followed. If it is determined that Offeror has violated the certifications set forth in this Section, then (1) Offeror 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, Offeror shall be responsible for all costs incurred by TPWD to obtain substitute services to replace the terminated Contract.

EXCESS OBLIGATIONS PROHIBITED, TEX CONST ART III § 49A, TEX CONST ART VIII § 6

Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to Owner, either in whole or in part, subject to the availability of state funds. Owner is a state Owner whose authority and appropriations are subject to actions of the Texas Legislature. If Owner becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either Owner's or Offeror'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, Owner will not be liable to Offeror for any damages, that are caused or associated with such termination, or cancellation, and Owner will not be required to give prior notice.

EXCLUDED PARTIES, EXECUTIVE ORDER NO. 13224

Offeror 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.

EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION, TEX GOVT CODE § 669.003

Under Section 669.003 of the *Texas Government Code*, Offeror certifies that it does not employ, or has disclosed its employment of, any former executive head of the Owner. Offeror must provide the following information in the proposal.

Name of Former Executive
Position with Offeror
Date of Employment with Offeror

Name of State Owner
Date of Separation from State Owner

FALSE STATEMENTS, TEX GOVT CODE § 2155.007(A)(2)

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION, TEX GOVT CODE § 2155.004

Pursuant to Section 2155.004(a) of the Texas Government Code, Offeror certifies that neither Offeror nor any person or entity represented by Offeror has received compensation from Owner to participate in the preparation of the specifications or solicitation on which this proposal or contract is based. Under §2155.004(b) of the Texas Government Code, Offeror certifies that the individual or business entity named in this proposal 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.

FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION, TEX GOVT CODE § 2274

Offeror 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, Offeror shall promptly notify Owner.

FOREIGN TERRORIST ORGANIZATIONS, TEX GOVT CODE § 2252.152

Section 2252.152 of the Texas Government Code prohibits Owner from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Offeror certifies that it is not ineligible to receive the contract.

GOVERNING LAW AND VENUE, TEX GOVT CODE § 2155.0012

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

HUMAN TRAFFICKING PROHIBITION, TEX GOVT CODE § 2155.0061

Under Section 2155.0061 of the Texas Government Code, the Offeror certifies that the individual or business entity named in this Proposal 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.

INDEMNIFICATION (GENERAL), TEX CONST ART VIII § 6

OFFEROR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND OWNER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVE, 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 RESPONDENT 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 OFFEROR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND OFFEROR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM

THE OFFICE OF THE ATTORNEY GENERAL. OFFEROR AND AGENCY AGREED TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

NO CONFLICTS OF INTEREST, TEX GOVT CODE §§ 2252.908, 2254.032, 2261.252(B)

Offeror 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.

PRIOR DISASTER RELIEF CONTRACT VIOLATION, TEX GOVT CODE §§ 2155.006, 2261.053

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Offeror certifies that the individual or business entity named in this proposal 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.

PUBLIC INFORMATION ACT, TEX GOVT CODE CHAPTER 552, TEX GOVT CODE § 2252.907

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 "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Offeror is required to make any information created or exchanged with the State pursuant to the 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 additional charge to the State.

SIGNATURE AUTHORITY, TEX GOVT CODE § 2155.0012

By submitting the Proposal, Offeror represents and warrants that the individual submitting this document and the documents made part of this Offer is authorized to sign such documents on behalf of the Offeror and to bind the Offeror under any contract that may result from the submission of this Proposal.

STATE AUDITOR'S RIGHT TO AUDIT, TEX GOVT CODE § 2262.154

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

SUSPENSION AND DEBARMENT, TEX GOVT CODE § 2155.077

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

TELEVISION EQUIPMENT RECYCLING PROGRAM, TEX HEALTH & SAFETY CODE § 361.991(C)

If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

TERMS AND CONDITIONS ATTACHED TO RESPONSE, TEX GOVT CODE § 2155.0012

Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in the Proposal.

TEXAS BIDDER AFFIRMATION, TEX GOVT CODE § 2155.444(C)

Offeror certifies that if a Texas address is shown as the address of the Offeror on this Proposal, Offeror qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

TEXAS GOVERNOR EXECUTIVE ORDER GA-48

Respondent certifies that neither it, nor its holding companies or subsidiaries, is:

- (a) Listed in Section 889 of the 2019 National Defense Authorization Act;
- (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
- (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4; or
- (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4.

ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED

Offeror 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 Owner to Offeror and Offeror's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

AGENCY'S RIGHT TO AUDIT

Offeror will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Offeror pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Owner and the State of Texas. Offeror understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, Owner, or any successor agency, to conduct an audit or investigation in connection with those funds. Offeror further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Offeror or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Offeror or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Offeror shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractor through Offeror and the requirement to cooperate is included in any subcontract it awards. Offeror shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Offeror shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Offeror shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the work of this Contract. Offeror and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Offeror must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by OWNER and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Offeror shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Offeror's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize OWNER

and the State of Texas to immediately assess appropriate damages for such failure.

AMERICANS WITH DISABILITIES ACT

Offeror represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

BINDING EFFECT

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

CHANGE IN LAW AND COMPLIANCE WITH LAWS

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.

DISCLOSURE OF INTERESTED PARTIES

Offeror represents and warrants that if selected for award of a contract as a result of the Solicitation, Offeror will submit to Owner a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code. Additional information can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

ELECTRICAL ITEMS

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

EQUAL EMPLOYMENT OPPORTUNITY

Offeror represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW

Offeror 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).

FEDERAL, STATE AND LOCAL REQUIREMENTS

Offeror 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. Offeror is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Offeror shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Offeror or its employees for any Unemployment or Worker's Compensation coverage or federal or State withholding requirements. Offeror shall indemnify the State of Texas and shall pay all costs, penalties or losses resulting from Offeror's omission or breach of this Section.

FORCE MAJEURE

Neither Offeror 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 Offeror is prevented from performance by such an act. The burden of proof for the need of such relief shall rest upon the Offeror. To obtain release based on force majeure, the Offeror shall file a written request with the Owner.

IMMIGRATION

Offeror 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.

IMMIGRATION REFORM

The Offeror 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.

INDEPENDENT CONTRACTOR

Offeror acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Offeror, and its personnel are not employees of the Owner or the State of Texas. Neither Offeror nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should Offeror subcontract any of the services required in the contract, Offeror expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Offeror. In no event shall this provision relieve Offeror of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Offeror 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 Offeror and Owner.

LEGAL AND REGULATORY ACTIONS

Offeror represents and warrants that it is not aware of and has received no notice of any court or governmental Owner actions, proceedings or investigations, etc., pending or threatened against Offeror 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 Offeror's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Owner's consideration of the Response. If Offeror is unable to make the preceding representation and warranty, then Offeror instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental Owner actions, proceedings or investigations, etc. that would or could impair Offeror's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Owner's consideration of the Response. In addition, Offeror represents and warrants that it shall notify Owner 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 Owner shall constitute breach of contract and may result in immediate termination of the contract.

LIMITATION ON AUTHORITY

Offeror shall have no authority to act for or on behalf of Owner or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Offeror may not incur any debt, obligation, expense, or liability of any kind on behalf of Owner or the State of Texas.

LOBBYING PROHIBITION

Offeror represents and warrants that Owner's payments to Offeror and Offeror'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.

MEDIA RELEASES

Offeror shall not use Owner's name, logo, or other likeness in any press release, marketing material, or other announcement without Owner's prior written approval. Owner does not endorse any vendor, commodity, or service. Offeror is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, or the services to which they relate without Owner's prior written consent, and then only in accordance with explicit written instructions from Owner.

NO FELONY CRIMINAL CONVICTIONS

Offeror represents that neither Offeror 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 Offeror has fully advised Owner in writing of the facts and circumstances surrounding the convictions.

NO IMPLIED WAIVER

The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

NO THIRD-PARTY BENEFICIARIES

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

PERMITS, CERTIFICATIONS, AND LICENSES

Offeror 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.

RECORDS RETENTION

Offeror shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Offeror for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

REFUND

Offeror will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Owner which are not expressly authorized under the contract.

RESTRICTED EMPLOYMENT FOR CERTAIN STATE PERSONNEL

Pursuant to Section 572.069 of the Texas Government Code, Offeror 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 Owner involving Offeror 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.

SECURE ERASURE OF HARD DISK CAPABILITY

All equipment provided to Owner by Offeror that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

SEVERABILITY

If any provision of the 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 continue in full force and effect.

SOVEREIGN IMMUNITY

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Owner or the State of Texas of any immunities from suit or from liability that the Owner or the State of Texas may have by operation of law. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Owner or 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 Owner or the State of Texas under this Contract 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. The Owner does not waive any privileges, rights, defenses, or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

SUBCONTRACTORS

Offeror may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Owner. Subcontracts, if any, entered into by the Offeror shall be in writing and be subject to the requirements of the contract. Should Offeror subcontract any of the services required in the contract, Offeror expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Offeror. In no event shall this provision relieve Offeror of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

SURVIVAL

Expiration or termination of the contract for any reason does not release Offeror 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.

TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Owner will furnish Tax Exemption Certificates upon request. Offeror represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Offeror or its employees. Owner shall not be liable for any taxes resulting from the contract.

UNFAIR BUSINESS PRACTICES

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