INVITATION FOR BIDS
AND CONTRACT DOCUMENTS

PROJECT NO. 1210062
MAINTENANCE FACILITIES RELOCATION
POOL & BATHHOUSE COMPLEX
AT GOLIAD STATE PARK & HISTORIC SITE
Goliad, Goliad County Texas

IFB Issue Date: April 12, 2019
Pre-Bid Meeting & Site Visit: April 25, 2019
Questions Due: April 29, 2019
Bid Due Date: 2:00 PM (CT) May 16, 2019

Contract Manager: Kim Shelton, CTPM, CTCM
Contracting Program Supervisor
Email: kim.shelton@tpwd.texas.gov

ADDENDA: It is the responsibility of all Bidders to monitor the Electronic State Business Daily (ESBD) website at http://www.txsmartbuy.com/sp to obtain the latest information prior to submitting a response. BIDDER’S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.
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NOTICE TO BIDDERS

Sealed bids will be received by the Contracting Branch, Infrastructure Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, UNTIL 2:00 P.M (CT), MAY 16, 2019 for Project Number 1210062 - Maintenance Facilities Relocation of Pool & Bathhouse Complex at Goliad State Park & Historic Site, Goliad, Goliad County, Texas. The bid opening will be conducted in A-100 Conference Room. The estimated range of construction cost is $170,000 - $220,000.

Performance Period: All work shall be completed within one hundred eighty (180) calendar days commencing on the date specified in the Notice to Proceed.

Minimum Experience Requirements: Bidder must meet minimum qualifications requirements as stipulated in Division 1 – General Requirements, Section 01000 – Special Conditions, paragraph 1.32 to be eligible for contract award.

HUB Subcontracting Plan (HSP): Each bidder must complete and return with the bid an HSP following the policy and utilizing the forms contained with the Invitation for Bids and Contract Documents included herein. FAILURE TO COMPLETE AND RETURN THESE FORMS WITH THE BID WILL BE CAUSE FOR REJECTION OF THE BID. THE CONTRACTOR RECEIVING AN AWARD MUST COMPLY WITH THE SPECIAL REQUIREMENTS SPECIFIED HEREIN. HSP DOCUMENTS ARE ATTACHED TO THE INVITATION FOR BIDS AND CONTRACT DOCUMENTS.


Pre-Bid Conference: A Pre-Bid Conference will be held on April 25, 2019 at 11:00 AM at the Group Dining Hall at Goliad State Park & Historic Site, 108 Park Road 6, Goliad, Texas 77963. Latitude 28.656544 / Longitude: -97.387265. Contractors will check in at the Park Headquarters where they will receive directions on where to proceed.

Although the pre-bid conference is not mandatory, Bidders are strongly encouraged to attend as important information regarding bidding requirements and the Project will be discussed. Failure to give proper consideration to site conditions when preparing the bid will not constitute grounds for additional compensation.
Project No. 1210062  
Goliad State Park & Historic Site, Goliad  
Maintenance Facilities Relocation of Pool & Bathhouse Complex

Contact Information: For technical information and information regarding administration of the contract, contact Contract Manager, Kim Shelton by email at kim.shelton@tpwd.texas.gov (preferred) or by phone at 512-389-4695.

All discrepancies, omissions or questions as to the meaning of Drawings and Specifications shall be communicated in writing to the Contract Manager for interpretation by April 29, 2019 to the attention of Kim Shelton, Contracting Program Supervisor at the address stated in these Invitation for Bids and Contract Documents or via email to kim.shelton@tpwd.texas.gov.

To view and download full Bidding and Contract Documents, visit the TWPD web site using: http://tpwd.texas.gov/business/bidops/current_bid_opportunities/construction/

For upcoming projects, visit the Electronic State Business Daily web site: http://www.txsmartbuy.com/sp
and the TPWD web site: https://tpwd.texas.gov/business/bidops/current_bid_opportunities/construction/.
INSTRUCTIONS TO BIDDERS

1. **BIDS:** Bids must be received in the Infrastructure Division of the Texas Parks and Wildlife Department (TPWD) Austin, Texas NO LATER THAN the date and time specified in the Notice to Bidders. Bids received after this time will not be considered and will be returned unreviewed. **Bidders are advised that TPWD’s Headquarters Complex does not open until 8:00 A.M. Bidders should plan their delivery method accordingly.** Each bid shall be submitted on the Contractor's Bid form provided.

**FAXED AND/OR EMAILED BIDS WILL NOT BE ACCEPTED. BIDS MUST BE ENCLOSED IN A SEALED ENVELOPE, BOX, OR CONTAINER CLEARLY MARKED ON THE OUTSIDE AS AN “OFFICIAL BID” AND SHALL INCLUDE THE FOLLOWING INFORMATION: PROJECT NUMBER, PROJECT DESCRIPTION, PROJECT LOCATION, BID OPENING DATE AND TIME.**

Bids shall have all blanks fully and legibly completed including a price for all alternates and/or unit costs when listed under the base bids on which a bid is submitted. Failure to do so shall result in rejection of the bid. Corrections in the bidder's bid shall be legible and initialed. The bid form shall show no alterations or qualifications of any kind. **Bids must be signed by an individual who has the authority to legally bind the firm.** TPWD reserves the right to require a bidder to furnish documentary evidence of Bidder’s signature authority.

Corrections, deletions, or additions to bids may be made by facsimile (FAX), provided such FAX are received in correct and comprehensive form prior to the opening time of bids and an original reflecting said corrections, deletion, or additions must be submitted to TPWD within two (2) business days of submitted FAX. No telephonic instructions will be accepted. **FAX corrections, deletions or additions to bids shall be sent to FAX number: 512/389-4790, attention: Kim Shelton. This is the only number that will be used for receipt of corrections, deletions, or additions. TPWD shall NOT be responsible for failure of electronic equipment or operator error.**

TPWD reserves the right to reject any or all bids—and to waive any or all informalities in connection therewith. TPWD does not bind itself to accept the lowest bid or any part thereof, and reserves the right to ask for new bids for the whole or parts. The mere opening and reading aloud of a bid shall not constitute TPWD’s acceptance of the suitability of a bidder or a bid. The competency and responsibility of the bidders will be considered in making an award. TPWD reserves the right to award, partially award, or not award a contract if no responses are deemed acceptable; and may re-solicit as determined necessary and in the best of the State of Texas.

2. **BASIS OF AWARD:** Determination of the low bidder will be based on the lowest responsible base bid and/or a combination of the base bid and alternate bids. Alternates accepted will be considered in determining the low bidder, but TPWD does not obligate itself to accept an alternate or to accept alternates in any order listed unless otherwise stipulated elsewhere in the Invitation for Bids and Contract Documents.

3. **UNIT PRICE/ESTIMATED QUANTITY BIDS:** If the Bid furnished with this project requires a bid on a unit price/estimated quantity basis, the Bidder shall enter a unit price in the space provided therefor and a total item price based upon the estimated quantities shown on the bid form. Unit prices entered shall be the full price to TPWD including materials, labor, services, taxes, bonds, rentals, overhead, profit, etc., for the work described. Quantities shown reflect measurements taken from the Drawings and are assumed correct for bidding purposes. Final contract price will be based on actual quantities of work installed as determined by TPWD and Contractor upon completion of the work.

Award of contract shall be based upon the summation of the various unit price bids, but in case of error the unit prices shall govern, and computations will be checked for accuracy before award is made.
4. **BID SECURITY:** Unless otherwise stipulated in the Invitation for Bids and Contract Documents, only projects in which the total contract price exceeds $25,000.00, will require bid security. **Bids exceeding $25,000.00 must be accompanied by a bid bond, certified check or cashier's check drawn to the order of the Texas Parks and Wildlife Department for not less than five percent (5%) of the total amount of the bid (including total of all separate bids for one or more projects bid and multiple base bids and/or alternate bids and/or optional bids and/or allowances).** Therefore, to ensure adequate bid security, bidders should calculate bid security based on the highest possible monetary award. Certified checks and cashier checks must be originals. No other forms of bid security or checks will be accepted. **Bid will be rejected if the appropriate security is not furnished in the form specified above and by the time set for the bid opening.**

Bid security for the three (3) lowest bidders may be retained by TPWD until the successful bidder executes the contract, and if required, furnishes bonds and certificates of insurance. All other bid security will be returned as soon as practical after bid opening.

Bid security for the successful bidder will be returned following execution of the contract and submission of satisfactory bonds and insurance. If the successful bidder fails to return the signed contract (and bonds and certificate of insurance when required) within the time specified, the bid security may be forfeited not as a penalty but as liquidated damages.

5. **INSURANCE REQUIREMENTS:** The successful Contractor must certify the minimum insurance coverages as set forth by the contract, specifically, the Uniform General Conditions, Article 5, 5.2. and Division 1 – General Requirements, Section 01000 – Special Conditions. The required insurance information shall be submitted within ten (10) calendar days from receipt of Notice of Selection. Failure to timely meet this requirement may result in disqualification of the bid and forfeiture of the bid security, if any. In such circumstances, TPWD shall be authorized to proceed with award to the next highest ranking, responsive and responsible bidder.

6. **BONDING REQUIREMENTS:** If the total contract price exceeds $25,000.00, a Payment Bond must be furnished by the successful Contractor. If the total contract price exceeds $100,000.00 a Payment Bond and a Performance Bond must be furnished by the successful Contractor. All bonds submitted shall be the original form bearing original signatures and seal. (See also Article 5, Uniform General Conditions)

7. **DISCREPANCIES:** Should any Bidder find discrepancies between the Invitation for Bids and Contract Documents, or should Bidder be in doubt as to their exact meaning, Bidder should notify TPWD at once. TPWD may then, at its option, issue addenda clarifying same. TPWD will not be responsible for oral instructions or for misinterpretation of Invitation for Bids and Contract Documents.

8. **ADDENDA:** TPWD reserves the right to issue addenda at any time prior to the bid opening. (See also General Requirements – Special Conditions). All addenda shall be acknowledged as received on the Contractor’s Bid Form. Oral changes in the work made during the bidding period are not binding. **BIDDER’S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.**

No oral explanation in regard to the meaning of the Invitation for Bids and Contract Documents will be made and no oral instructions will be given before the award of the contract. TPWD requests that all discrepancies, omissions or questions as to the meaning of Drawings and Specifications shall be
communicated in writing to the Contract Manager for interpretation by **April 29, 2019** to the attention of **Kim Shelton, Contracting Program Supervisor** at the address stated in these Invitation for Bids and Contract Documents or via email to **kim.shelton@tpwd.texas.gov**.

9. **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 Bidder or their representative(s), except for the written inquiries described in the foregoing paragraph. Attempts to ask questions by phone or in person will not be allowed or recognized as valid.

**Failure to observe this restriction may disqualify Bidder.** Bidder 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.

10. **LABOR LAWS:** Contractors must comply with all labor laws established by State and Federal statutes. (See also Article 2, Uniform General Conditions).

11. **STATE SALES TAX:** TPWD qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Tax Code (Title 2, Chapter 151, Subsection 151.309).

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

12. **CONTRACTOR QUALIFICATIONS:** A Contractor's Statement of Qualifications must be submitted with the bid. Failure to properly complete and provide a Contractor's Statement of Qualifications shall be cause for the Contractor's bid being rejected by TPWD. TPWD may make such investigations as necessary to determine the ability of the Contractor to perform the work, and reserves the right to reject any bid if the evidence submitted and/or obtained through investigation fails to satisfy TPWD that the Contractor is properly qualified to carry out the obligations of the Agreement.

13. **HISTORICALLY UNDERUTILIZED BUSINESS REPRESENTATIONS & CERTIFICATIONS:** BIDDERS ARE ADVISED THAT, 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. **Each bidder must complete and return with the bid a HUB Subcontracting Plan (HSP) following the policy and utilizing the forms contained with the Invitation for Bids And Contract Documents included herein. FAILURE TO COMPLETE AND RETURN THESE FORMS WITH THE BID WILL BE CAUSE FOR REJECTION OF THE BID. THE CONTRACTOR RECEIVING AN AWARD MUST COMPLY WITH THE SPECIAL REQUIREMENTS SPECIFIED HEREIN.**


14. **PROTEST PROCEDURES:** Any Actual or prospective Respondent 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**.

15. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Bidder certifies that the responding 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 and the Bidder is in compliance with the State of Texas statutes and rules relating to procurement and that Bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

16. RESERVED

17. RESERVED

18. RESERVED

19. RESERVED

20. RESERVED
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744  

Having carefully examined the Invitation for Bids and Contract Documents for Project No. 1210062 – Maintenance Facilities Relocation of Pool & Bathhouse at Goliad State Park & Historic Site, Goliad County, Texas for the Texas Parks and Wildlife Department, as well as the premises and conditions affecting this work, and all other contract documents, the undersigned proposes to furnish all labor, equipment and materials necessary to complete the work for the sum of:

**BID SCHEDULE**

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<tr>
<th>BASE BID ITEMS</th>
<th>LUMP SUM PRICE</th>
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<tbody>
<tr>
<td>BB-1 Furnish all labor, equipment, materials, and incidentals necessary for <em>interior renovation of existing Bathhouse which includes full demolition of interior partitions and Fixtures</em>. in accordance with the Invitation for Bids and Contract Documents.</td>
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<tr>
<td><strong>TOTAL LUMP SUM BASE BID</strong></td>
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<td><em>(Total Lump Sum Base Bid Price written in words)</em></td>
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**ADDITIVE ALTERNATE BID ITEM NO. 1**

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<tr>
<td>A-1 Furnish all labor, equipment, materials, and incidentals necessary <em>to add Data Drop</em> in accordance with the Bid and Contract Documents.</td>
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**ADDITIVE ALTERNATE BID ITEM NO. 2**

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<tr>
<td>A-2 Furnish all labor, equipment, materials, and incidentals necessary <em>to add an eyewash station</em> in accordance with the Bid and Contract Documents.</td>
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<td><strong>Additive Alternate Bid Item No. 2 written in words</strong></td>
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ADDITIVE ALTERNATE BID ITEM NO. 3

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Furnish all labor, equipment, materials, and incidentals necessary to add through-wall AC Unit in accordance with the Bid and Contract Documents.

$__________________________

Additive Alternate Bid Item No. 3 written in words

TOTAL BASE BID AND ADDITIVE ALTERNATE BID ITEMS 1 - 3

$__________________________

Total Base Bid and Additive Alternate Bid Items 1 - 3 written in words

EACH BID ITEM INCLUDES ANY AND ALL APPURtenant WORK AND ITEMS NECESSARY FOR FULLY FUNCTIONAL AND OPERATIONAL SYSTEMS, COMPLETE AND IN PLACE, IN ACCORDANCE WITH THE INVITATION FOR BIDS AND CONTRACT DOCUMENTS.

BASE BID AND ADDITIVE ALTERNATE BID ITEMS 1 – 3 will be evaluated and determination of the low bidder will be based on responsiveness and responsibility of the bidder and on the BASE BID AND ADDITIVE ALTERNATE BID ITEMS 1 – 3. HOWEVER, THE OWNER RESERVES THE RIGHT TO AWARD TO THE LOW BIDDER ANY COMBINATION OF BID ITEMS OR TO REJECT ALL BIDS.

BIDDER UNDERSTANDS AND ACKNOWLEDGES THAT BIDDER MUST MEET THE MINIMUM QUALIFICATION AND/OR EXPERIENCE REQUIREMENTS SET FORTH IN PARAGRAPH 1.32 OF DIVISION 1, GENERAL REQUIREMENTS, SECTION 01000, SPECIAL CONDITIONS TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT. BIDDER, BY SIGNING THIS BID, AFFIRMS THAT BIDDER MEETS SUCH MINIMUM REQUIREMENTS. FAILURE TO MEET ANY OF THE MINIMUM QUALIFICATIONS SHALL RESULT IN REJECTION OF THE BID.

The undersigned further agrees that, if awarded the Contract, the work will be completed within one hundred eighty (180) calendar days commencing on the date specified in the Notice to Proceed.

The undersigned agrees that when written notice of bid acceptance is furnished by the Owner within sixty (60) 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, and PR-1 and PR-2 submittals to the Owner. Failure to timely provide the insurance certificate, bonds, and submittals shall be grounds for disqualification of bid and forfeiture of bid security. In such circumstances, TPWD shall be authorized to proceed with award to the next lowest, responsive and responsible bidder.

If the above bid amount exceeds $25,000.00, the undersigned shall include herewith security in the form of a bid bond, certified check, or cashier's check for an amount not less than five percent (5%) of the total amount of the bid to be awarded by Owner, unless otherwise stipulated under Special Conditions. To ensure adequate bid security, bidders should calculate bid security based on the total amount of all base bids plus all additive alternate bids (if any). The bid security will be returned to or forfeited by the undersigned in accordance with the Bid Security provision in the Instructions to Bidders. The undersigned further agrees that this bid security is the...
appropriate measure of liquidated damages which the Owner will sustain by the failure of the undersigned to execute and deliver said contract and required documents.

The undersigned agrees that this bid will not be withdrawn for a period of sixty (60) calendar days from the date set for the bid opening, and the undersigned further agrees that the bid security will be forfeited in the event this bid is withdrawn before expiration of said sixty (60) calendar days.

By the signature hereon affixed, the bidder hereby certifies that neither the bidder, nor the firm, corporation, partnership, or institution represented by the bidder, 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 bid made to any competitor or any other person engaged in such line of business.

Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004 (a), Bidder acknowledges that Bidder has not received compensation for participation in the preparation of the specifications for this project.

Pursuant to Texas Government Code, Title 10, Subchapter A, §2155.004 (b), §2155.006 (c), and Subchapter B, §2261.053 (c), Bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

By signing this bid, Bidder certifies that if a Texas address is shown as the address of the Bidder, Bidder qualifies as a Texas Resident bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2 (10).

By signature hereon, the bidder 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.

Bidder 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 and that bidder is in compliance with the State of Texas Statutes and Rules relating to procurement and that bidder is not listed on the Federal Government’s Terrorism Watch List as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.sam.gov.

By signing this bid, a bidder affirms that he 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 bid.

Bidder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, which is owed to the State of Texas.

Bidder agrees to comply with Texas Government Code, Title 10, Subtitle D, §2155.4441, relating to use of services contracts for products produced in the State of Texas.

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

Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, TPWD may not enter into a contract with a company (as defined by Texas Government Code, Title 8, Subchapter A, § 808.001) that
boycotts Israel. By signing this bid, Bidder verifies that in accordance with Texas Government Code, Title 10, Subchapter F, §§ 2270.001-2270.002, Bidder:

1. Does not boycott Israel; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Texas Government Code, Title 10, Subchapter F, §§ 2252.151-2252.154, TPWD may not enter into a contract with a company (as defined by Texas Government Code, Title 8, Subchapter A, § 806.051) that is identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Texas Government Code, §§ 806.001, 807.051 or 2252.153. By signing this bid, Bidder certifies that it is not a company identified on a list as prepared and maintained by the Texas Comptroller of Public Accounts pursuant to Texas Government Code, §§ 806.001, 807.051 or 2252.153.

By signature hereon, the bidder 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 bid, Bidder certifies that its bid price represents full compensation for compliance with the requirements of Texas Government Code, Title 10, Subchapter F, §§ 2252.201-2252.205.

By signing this bid, Bidder acknowledges and understands that the acceptance of funds by the Bidder 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 Bidder 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 Bidder shall ensure that this paragraph concerning the State’s authority to audit funds received indirectly by subcontractors through the Bidder and the requirement to cooperate is included in any subcontract it awards.

Bidder 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.

If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, §231.006(d), regarding child support, the Bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, Bidder must provide, in the spaces(s) below, the name and Social Security number of an individual owner, a sole proprietor and all partners, shareholders, or owners with an ownership interest of at least 25% of the business entity prior to award of contract.

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<tr>
<th>Name</th>
<th>SSN</th>
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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.
Bidder certifies that they are in compliance with Texas Government Code, Title 6, §669.003, relating to contracting with executive head of a State agency. If §669.003 applies, Bidder will complete the following information in order for the bid to be evaluated:

Name of former executive: ________________________________
Name of State agency: ________________________________
Date of separation from State agency: ____________________
Position with Bidder: ________________________________
Date of employment with Bidder: ________________________

RECEIPT IS HEREBY ACKNOWLEDGED OF THE FOLLOWING ADDENDA TO THIS IFB (INITIAL IF APPLICABLE)

No. 01 _____ No. 02 _____ No. 03 _____ No. 04 _____ No. 05 _____ No. 06 _____ No. 07 _____

WARNING: BIDDER’S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.

BIDDER’S AFFIRMATION: SIGNING THIS BID WITH A FALSE STATEMENT IS A MATERIAL BREACH OF CONTRACT AND SHALL VOID THE SUBMITTED BID OR ANY RESULTING CONTRACTS, AND THE BIDDER SHALL BE REMOVED FROM ALL BID LISTS.

Name of Contracting Firm

By________________________________
Authorized Signature Date

Address

Printed Name

City State Zip Title

(Area Code) Phone Number (Area Code) Phone Number

Email address (Area Code) FAX Number

Texas Identification Number (Area Code) Cell Number
CONTRACTOR’S QUALIFICATION STATEMENT

COMPLETE ALL SECTIONS OF THIS FORM AND SUBMIT WITH BID

<table>
<thead>
<tr>
<th>PROJECT NO.</th>
<th>1210062</th>
<th>LOCATION:</th>
<th>Goliad SP &amp; HS</th>
<th>BID DATE:</th>
<th>May 16, 2019</th>
</tr>
</thead>
</table>

**FIRM**

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>PHONE</th>
<th>FAX</th>
<th>E-MAIL</th>
</tr>
</thead>
</table>

Individual _______ Partnership_______ Corporation ________

If incorporated, under the laws of the State of _______________________ with principal place of business in _________________________

**PRINCIPALS IN FIRM AND YEARS EXPERIENCE IN CONSTRUCTION:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
<th>PHONE</th>
<th>NO. OF YEARS</th>
</tr>
</thead>
</table>

**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

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.

**CONSTRUCTION CAPABILITIES:**

FIRM'S AVERAGE ANNUAL CONSTRUCTION VOLUME $ _________________ Percentage of this volume by construction categories:

<table>
<thead>
<tr>
<th>Building_____%</th>
<th>Mech.-HVAC_______%</th>
<th>Hwy/Roads______%</th>
<th>Other_______%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical_____%</td>
<td>Utility Lines_______%</td>
<td>Earthwork_______%</td>
<td>Other________%</td>
</tr>
<tr>
<td>Plumbing_______%</td>
<td>Utility Plants_______%</td>
<td>Site Work_______%</td>
<td>Other________%</td>
</tr>
</tbody>
</table>
**BONDING INFORMATION:** Indicate agency/surety through which bonding will be obtained.

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>City/State/Zip</td>
<td>E-Mail</td>
</tr>
<tr>
<td>Phone</td>
<td>Fax</td>
</tr>
<tr>
<td>Agent’s Name</td>
<td>Agent’s Phone</td>
</tr>
<tr>
<td>Name of Power of Attorney</td>
<td>Expiration Date</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>BONDING COMPANY</th>
<th>Address</th>
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<tbody>
<tr>
<td>City/State/Zip</td>
<td></td>
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<tr>
<td>Phone</td>
<td></td>
</tr>
<tr>
<td>Name of Representative</td>
<td>Phone</td>
</tr>
</tbody>
</table>

**EXPERIENCE RECORD**

List minimum of three (3) projects (attach additional sheets if necessary) that are at least 50% completed (50% completed projects will be counted towards successful projects) or have been completed within the last (5) years and that demonstrate similar experience. Refer to Division 1 General Requirements, Section 01000 – Special Conditions, paragraph 1.32.

1. Project Description

<table>
<thead>
<tr>
<th>Project Location</th>
<th>Contract Amount</th>
<th>Beginning $</th>
<th>Ending: $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Owner (Firm/Agency)</td>
<td>Address</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City</td>
<td>State</td>
<td>Zip</td>
<td></td>
</tr>
<tr>
<td>Project Owner’s Rep familiar with project</td>
<td>Phone</td>
<td>Email</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Start Date (Date of Notice to Proceed)</th>
<th>Contract Duration (Calendar Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Project is still under construction, then provide percentage complete</td>
<td>If completed, date</td>
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</table>

If contract time extensions were added to the contract as a result of Bidder’s responsibilities, provide a short explanation of each.

Project Description and why it is comparable to this contract.

<table>
<thead>
<tr>
<th>Project A/E Name</th>
<th>A/E Phone</th>
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</table>
EXPERIENCE RECORD: (CONTINUED)

2.

<table>
<thead>
<tr>
<th>Project Description</th>
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</tbody>
</table>

HUB AND TPWD CONTRACTING EXPERIENCE:

Please indicate if the firm is 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
If yes, has firm ever done business with TPWD? ______ YES ______ NO
If yes, list the most recent project number(s): ___________________________________________________

Contractor’s Qualification Statement_OF_072 (062918)
I hereby certify that all information provided above and attached is true and correct. Furthermore, I hereby authorize you to contact the references listed above and authorize release of information from such references to Texas Parks and Wildlife Department. I hereby certify that my firm is not debarred or suspended from performing work for the U.S.A. or the State of Texas.

Name of Firm

Signature of Owner or Officer

Title of Person Signing

Date

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,
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
Uniform General Conditions

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
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. 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
5.4 **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.

5.5 **Bond Indemnification.** The process of requiring and accepting bonds and making claims thereunder 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.**

5.6 **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.

5.7 **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.

5.8 **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.

5.9 **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
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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.
The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;

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

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;

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

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.

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

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.

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

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.

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
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
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
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:
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>14.3.1.1</td>
<td>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;</td>
</tr>
<tr>
<td>14.3.1.2</td>
<td>Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;</td>
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<tr>
<td>14.3.1.3</td>
<td>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;</td>
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<td>14.3.1.4</td>
<td>Failure to remedy defective work condemned by ODR;</td>
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<tr>
<td>14.3.1.5</td>
<td>Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov’t Code, Ch. 2251;</td>
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<tr>
<td>14.3.1.6</td>
<td>Persistent endangerment to the safety of labor or of the Work;</td>
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<tr>
<td>14.3.1.7</td>
<td>Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;</td>
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<td>14.3.1.8</td>
<td>Any material breach of the Contract; or</td>
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<tr>
<td>14.3.1.9</td>
<td>Contractor’s insolvency, bankruptcy, or demonstrated financial inability to perform the Work.</td>
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<tr>
<td>14.3.2</td>
<td>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.</td>
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<tr>
<td>14.3.3</td>
<td>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.</td>
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<td>14.3.4</td>
<td>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.</td>
</tr>
<tr>
<td>14.3.5</td>
<td>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.</td>
</tr>
<tr>
<td>14.3.5.1</td>
<td>This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.</td>
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</table>
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 Code or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.

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 statue, 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
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

Add Section 2.7 as follows:

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

End of Supplementary General Conditions
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: TX190277 01/04/2019 TX277

Superseded General Decision Number: TX20180331

State: Texas

Construction Type: Building

Counties: Calhoun, Goliad and Victoria Counties in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.60 for calendar year 2019 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, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.60 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 calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.
Goliad State Park & Historic Site
Maintenance Facilities Relocation of Pool & Bathhouse

01/04/2019

BOIL0074-003 01/01/2017

Rates Fringes
BOILERMAKER ...................... $ 28.00 22.35

ELEC0278-002 08/28/2016

Rates Fringes
ELECTRICIAN ...................... $ 25.20 7.91

ENGI0178-005 06/01/2014

Rates Fringes
POWER EQUIPMENT OPERATOR
(1) Tower Crane .................. $ 29.00 10.60
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic
Cranes 60 tons and above ..... $ 28.75 10.60
(3) Hydraulic cranes 59 Tons and under .......... $ 27.50 10.60

IRON0084-011 06/01/2018

Rates Fringes
IRONWORKER, ORNAMENTAL ......... $ 23.77 7.12

SUTX2014-057 07/21/2014

Rates Fringes
BRICKLAYER ........................ $ 20.04 0.00
CARPENTER ........................ $ 15.21 0.00
CEMENT MASON/CONCRETE Finisher... $ 15.33 0.00
INSULATOR - MECHANICAL
(Duct, Pipe & Mechanical System Insulation) ........ $ 19.77 7.13
IRONWORKER, REINFORCING ........ $ 12.27 0.00
IRONWORKER, STRUCTURAL ......... $ 22.16 5.26
LABORER: Common or General ...... $ 9.68 0.00
LABORER: Mason Tender - Brick .... $ 11.36 0.00
LABORER: Mason Tender - Cement/Concrete .......... $ 10.58 0.00
LABORER: Pipelayer................ $ 12.49 2.13
LABORER: Roof Tearoff ............. $ 11.28 0.00
OPERATOR:
Backhoe/Excavator/Trackhoe........... $ 14.25 0.00

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.............. $ 13.37 0.00

OPERATOR:  Loader.................... $ 13.55 0.94

OPERATOR:  Mechanic.................... $ 17.52 3.33

OPERATOR:  Paver (Asphalt, Aggregate, and Concrete).............. $ 16.03 0.00

OPERATOR:  Roller.................... $ 12.70 0.00

PAINTER (Brush, Roller, and Spray)........................... $ 14.45 0.00

PIPEFITTER........................................ $ 25.80 8.55

PLUMBER........................................ $ 25.64 8.16

ROOFER........................................ $ 13.75 0.00

SHEET METAL WORKER (HVAC Duct Installation Only)................ $ 22.73 7.52

SHEET METAL WORKER, Excludes HVAC Duct Installation........... $ 21.13 6.53

TILE FINISHER................................. $ 11.22 0.00

TILE SETTER................................. $ 14.74 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.

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 www.dol.gov/whd/govcontracts.

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) (ii)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and
non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

----------------------------------------------------------------
WAGE DETERMINATION APPEALS PROCESS

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

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write 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 by 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

4.) All decisions by the Administrative Review Board are final.

================================================================
END OF GENERAL DECISION
AGREEMENT BETWEEN OWNER AND CONTRACTOR

STATE OF TEXAS

COUNTY OF TRAVIS

PROJECT NO. 1210062

CONTRACT NO. __________

THIS AGREEMENT, made this ___ day of __________, 20__ by and between the STATE OF TEXAS, acting through the TEXAS PARKS AND WILDLIFE DEPARTMENT, hereinafter called the OWNER, and INSERT CONTRACTOR COMPANY NAME, hereinafter called the CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter described, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete certain public works described as: Project 1210062, Maintenance Facilities Relocation of Pool & Bathhouse Complex at Goliad State Park & Historic Site, Goliad County, Texas, for the use and benefit of the OWNER as described in the Invitation for Bids and Contract Documents and Contract Documents prepared by TEXAS PARKS AND WILDLIFE DEPARTMENT. Contract Documents include all parts of this Invitation for Bids, including but not limited to, Specifications, Scope of Work, Uniform General and Supplementary General Conditions, and Special Conditions for Project Number 1210062. The Contract Documents are hereby incorporated by reference into this Contract Number __________.

In the event that there is a conflict, this contract and its attachments take priority over all other documents. Following the contract in order of priority are the Special Conditions; Supplementary General Conditions, Uniform General Conditions; Invitation for Bids and Contract Documents, and Contractor's Bid.

The consideration to be paid by the OWNER to the CONTRACTOR for furnishing all the materials, supplies, machinery, equipment, tools, labor, superintendence, insurance, and other accessories and services necessary to complete the said Project in accordance with the Contract Documents is the not to exceed amount of INSERT AMOUNT Dollars and No Cents ($xxx,xxx.xx).

The CONTRACTOR hereby agrees to complete all work within one hundred eighty (180) calendar days, commencing on the date specified in OWNER'S written "Notice to Proceed." Time is of the essence with this contract.

The CONTRACTOR further agrees to comply with applicable statutes governing construction contracts including the provisions of V.T.C.A., Texas Government Code, Title 10, Subtitle F, Chapter 2253 requiring Payment Bonds and Performance Bonds; and to comply with all of the Terms and Conditions of this contract.

Payments by OWNER shall be warrants issued by the Comptroller of Public Accounts out of monies appropriated to the Texas Parks and Wildlife Department for such purpose and shall be made upon OWNER'S acceptance of all portions of work as prescribed in the Specifications.

The dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, and the procedures provided in Title 31, Part 2, Chapter 51, Subchapter J of the Texas Administrative Code shall be used by the Owner and the Contractor to attempt to resolve any claim for breach of contract in an amount less than $250,000.00 made by the Contractor, that is not resolved under procedures described throughout the Terms and Conditions of the Contract. Contract disputes for a claim of $250,000.00 or more shall be governed by Civil Practice and Remedies Code, Chapter 114.
The venue of any suit brought for any breach of this Contract is hereby fixed in any court of competent jurisdiction in Travis County, Texas. All payments under this Contract shall be due and payable in Travis County, Texas.

The Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. SEC. 1 et. seq. (1973).

This Agreement is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise made available to the Texas Parks and Wildlife Department for the specified services under this Agreement.

The said parties for themselves, their heirs, successors, executors, administrators, and assigns, do hereby agree to full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in two (2) counterparts, each of which shall be deemed an original, in the day and year first above written.

Contractor:

By: ___________________________ Date ___________________________

Title: ___________________________

Owner: Texas Parks and Wildlife Department

By: ___________________________ Date ___________________________

Title: ___________________________
STATE OF TEXAS       Project Number 1210062
COUNTY OF _____________          Contract Number _________

KNOW ALL MEN BY THESE PRESENTS:
That we, __________________________________________________________________________, as PRINCIPAL,
and ____________________________________________________________________________, as SURETY(IES),
Surety Address: ___________________________________________________________________________________________
Surety Phone:     __________________________________________ Surety Fax:_______________________________________
are hereby held and firmly bound unto the State of Texas in the penal sum of:
______________________________________________________________________ Dollars ($_________________)
for the payment, whereof, the said PRINCIPAL and SURETY(IES) bind themselves, their heirs, executors,
administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL entered into a certain contract dated
_________________________, 20___, hereto attached, and made a part hereof, with the State of Texas, acting by and
through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:
Project 1210062 – Maintenance Facilities Relocation of Pool & Bathhouse Complex at Goliad State Park &
Historic Site, Goliad County, Texas.

NOW THEREFORE, the conditions of this obligation are such that, if the PRINCIPAL shall faithfully perform the
contract in accordance with the plans, specifications, and contract documents, and as provided in TITLE 10, TEXAS
GOVERNMENT CODE, CHAPTER 2253 shall fully indemnify and save harmless the State of Texas from all cost and
damage which the State of Texas may suffer by reason of the PRINCIPAL’S default or failure to do so and shall fully
reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any
such default, then obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that if any legal action be filed upon this bond, venue shall lie in Travis County, Texas and that
the said surety(ies) for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to
the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in
anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alternation
or addition, to the items of the Contract or to the work or to the Specifications.

In the event PRINCIPAL is in default under the contract as defined herein, SURETY(IES) will within fifteen (15)
days of determination of such default take over and assume completion of said contract and become entitled to the
payment of the balance of the contract price.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this
_____ day of _________________, 20__, the name and corporation seal of each corporate party being hereto affixed
and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL          SURETY

BY ___________________________          BY ___________________________
KNOW ALL MEN BY THESE PRESENTS:

That we, __________________________________________________________________________, as PRINCIPAL,

and _____________________________________________________________________________, as SURETY(IES),

are hereby held and firmly bound unto the State of Texas in the penal sum of: ____________________________________________________________________________ Dollars ($___________)

for the payment, whereof, the said PRINCIPAL and SURETY(IES) bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL entered into a certain contract dated ________________, 20__, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Texas Parks and Wildlife Department, to commence and complete certain public works described as:

Project No. 1210062 – Maintenance Facilities Relocation of Pool & Bathhouse Complex at Golia State Park & Historic Site, Goliad County Texas.

NOW THEREFORE, the conditions of this obligation are such that, if the PRINCIPAL shall promptly make payment to all claimants as defined in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253, as amended, supplying labor and materials in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the SURETY(IES) being hereby waived, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

This bond is made and entered into solely for the protection of all claimants supplying labor and materials in the prosecution of the work provided for in said contract, and all such claimants shall have a direct right to action under the bond as provided in TITLE 10, TEXAS GOVERNMENT CODE, CHAPTER 2253, as amended.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this ___________ day of ________________, 20__, the name and corporation seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

BY______________________________

SURETY

BY______________________________
CONTRACTOR’S PROGRESS PAYMENT AFFIDAVIT

STATE OF TEXAS

COUNTY OF __________

PROJECT NUMBER 1210062

CONTRACT NUMBER __________

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

who being
duly sworn, on oath, says that he/she is a duly authorized representative of ________________, CONTRACTOR, and all
terms of the Contract for the completion of certain public works described as: Project 1210062 – Maintenance Facilities Relocation pool & Bathhouse Complex at Goliad State Park & Historic Site, Goliad County, Texas, have been satisfactorily completed to the extent indicated on the attached voucher and that ALL sums of money due for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which OWNER or its property might in any way be responsible, to the best of his/her knowledge and belief have been paid or will be paid or otherwise satisfied within ten days after receipt of the requested payment from the OWNER, or within the period of time required by Title 10, Texas Government Code, Section 2251.022.

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

<table>
<thead>
<tr>
<th>Individual or Company Name</th>
<th>Mailing Address</th>
<th>Amount Owed</th>
</tr>
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</table>

Instructions: Affidavit must be signed by an individual owner, a partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

Signature

Title

Sworn to and subscribed before me this _____ day of ________ 20__.  
(SEAL)

Notary Public in and for

________________________ County, Texas

11 Contractor's Progress Pay Affidavit_OF_038 (2017_0605)
CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS                                      PROJECT NUMBER 1210062
COUNTY OF ___________                                      CONTRACT NUMBER ___________

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

who being duly sworn, on oath, says that he/she is a duly authorized representative of

CONTRACTOR,

and that all terms of the Contract for the completion of certain public works described as: Project 1210062 – Maintenance Facilities Relocation of Pool & bathhouse Complex at Goliad State Park & Historic site, Goliad County, Texas, have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, to the best of his/her knowledge and belief, have been paid or will be paid or otherwise satisfied within ten days after receipt of final payment from the Owner, or within the period of time required by Title 10, Texas Government Code, Section 2251.022. Payments not made in full at the date of this affidavit are listed below.

Affiant hereby waives all claims against the Owner. (List any exceptions):

Affiant agrees to indemnify and hold Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project. Affiant further agrees to indemnify and hold harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project.

Final payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

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<tr>
<th>Individual or Company Name</th>
<th>Mailing Address</th>
<th>Amount Owed</th>
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INSTRUCTIONS: Affidavit must be signed by an individual owner, or partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership. In the event subcontractors, laborers, or materialmen have not been paid in full, Contractor shall list hereon the amount owed and the name and address of each subcontractor, laborer, or materialman to whom such payment is owed. Add additional pages if required.

Sworn to and subscribed before me this _____ day of ________ 20__

(SEAL)

Notary Public in and for

________________________ County, Texas
CONSENT OF SURETY COMPANY TO FINAL PAYMENT

PROJECT NO. 1210062 CONTRACT NO. ____________________________

TITLE OF PROJECT Maintenance Facilities Relocation of Pool & Bathhouse Complex

PROJECT LOCATION Goliad SP & HS CONTRACT DATE ____________________________

OWNER: Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

CONTRACTOR: ________________________________
(Name)
______________________________
(Address)
______________________________
(City, State, Zip Code)

SURETY COMPANY: ________________________________
(Name)
______________________________
(Address)
______________________________
(City, State, Zip Code)

on bond of ________________________________, Contractor, hereby approves of the final payment by Owner to Contractor on the above Contract, and agrees that final payment to the Contractor shall not relieve Surety Company of any of its obligations to Owner as set forth in said Surety Company's bond.

IN WITNESS WHEREOF, Surety Company has hereunto set its hand this _____ day of ________________, 20__.

SURETY COMPANY:

By: ________________________________
(Signature)

______________________________
(Printed Name)

______________________________
(Title)
NON-USE OF ASBESTOS CONTAINING MATERIALS AFFIDAVIT - CONTRACTOR

STATE OF TEXAS §

COUNTY OF ___________ §

Project Name: Maintenance Facilities Relocation of Pool & Bathhouse Complex

Project Number: 1210062 – Goliad SP & HS

By the signature below, the signatory for the Contractor certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm providing Construction Services for this project, including Subcontractors, have utilized materials, procedures or processes that knowingly or intentionally contain asbestos materials.

Signature:

Printed Name: ____________________________

Title: ____________________________

Company: ____________________________

Date: ____________________________

State of Texas

County of ___________

Sworn to and subscribed before me on the ______ day of ________, 20___ by ________________ (name/signature of signer) the undersigned authority on behalf of said Contractor.

(Personalized Seal)

Notary Public’s Signature

My commission expires: ________

Revised August 2007
DIVISION 1 – GENERAL REQUIREMENTS

SECTION 01000 – SPECIAL CONDITIONS

PART 1 – GENERAL

1.01 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Uniform General and Supplementary General Conditions and other Division 1 specification sections, apply to work of this section.

1.02 DESCRIPTION OF WORK:

Furnish all labor, materials, tools, equipment and incidentals necessary for performance of all work associated with Project Number 1210062 – Maintenance Facilities Relocation of Pool & Bathhouse Complex at Goliad Sate Park & Historic Site, Goliad County, Texas, such work being as more particularly described in these Special Conditions, the drawings, and elsewhere in these Invitation for Bids and Contract Documents.

1.03 INQUIRIES:

All inquiries regarding the Invitation for Bids and Contract Documents, including any apparent discrepancies thereto and administration of the contract, shall be directed to the Texas Parks and Wildlife Department, Infrastructure Division, 4200 Smith School Road, Austin, Texas 78744, Kim Shelton, Contracting Program Supervisor, kim.shelton@tpwd.texas.gov or by phone at 512-389-4695.

1.04 EXAMINATION OF SITE:

Bidders should visit the site and be thoroughly familiar with job conditions such as the location, accessibility, and general character of the site and/or building prior to submitting a bid. Visits shall be scheduled with William Ramos, Construction Manager, 512-627-4179. Failure to give proper consideration to site conditions when preparing bids will not constitute grounds for additional compensation. (See UGC, Article 3).

1.05 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.

1.06 ADDENDA:

Any addenda issued in writing by the Owner during the period of bidding shall be included in the bid and Bidder's receipt of addenda shall be acknowledged in the bid form. Such addenda shall become a part of the contract and shall modify the Contract Documents accordingly. Oral changes in the work made during the period of bidding will not be binding. **BIDDER'S FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA MAY RESULT IN REJECTION OF BID.**

1.07 PERMITS AND LAWS (See also UGC Article 3):

Contractor shall comply with all laws, ordinances, statutes, rules and regulations applicable to the project, including but not limited to those pertaining to the collection, transportation and disposal of trash and refuse and shall obtain such permits, licenses or other authorizations as may be required.

If applicable governmental laws, rules, regulations or ordinances conflict with the Contract Documents, then such laws, rules, regulations, or ordinances shall govern instead of the Contract Documents, except in such cases where the Contract Documents exceed them in quality of materials or labor, then the Contract Documents shall be followed.

1.08 PRECONSTRUCTION CONFERENCE AND PROGRESS MEETINGS: (See also UGC Article 3)

After issuance of the Notice to Proceed letter, approval of Pre-Construction (PR) submittals and prior to start of work, a conference between the Owner and the Contractor will be held to discuss provisions of the Contract Documents and to coordinate the work effort. Attendance by Contractor and Contractor’s superintendent(s) is required, along with major trades if requested by Owner. Construction progress
meetings may be called at any time by the Owner’s Project Manager, On-Site ODR, or the Contractor to review job progress or problems.

1.09 SUBMITTALS:

A. GENERAL (See also UGC Article 8):

1. A TPWD standard Submittal Cover Sheet must accompany each numbered submittal set. **One Submittal per Submittal Cover Sheet.**

2. The number of copies of submittals required for each item shall be not less than one (1) electronic copy, unless specified otherwise, for Owner’s use, plus the number of additional copies that the Contractor desires for his own use.

3. The Contractor must double-check and sign all submittals before forwarding them to the Owner for review and action.

4. The Architect/Engineer and the Owner will review the submittal data. If there are no exceptions taken to the submittal, the original and three copies will be retained by the Owner. All remaining copies will be returned to the Contractor. The Contractor must keep one copy at the jobsite at all times.

5. If further action is required by the Contractor, Owner will retain three copies of the submittal data for the Owner’s use and return all remaining copies to the Contractor.

6. 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.

7. Owner’s approval of shop drawings and/or any aspects of the work shall not act to transfer Contractor’s responsibility for, nor relieve Contractor from the performance of any of Contractor’s duties set forth in the contract documents.

B. PRE-CONSTRUCTION SUBMITTALS: The following PR Submittals shall be submitted by the Contractor for the Owner’s review and approval. Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time. Owner will provide more specific clarification regarding the requirements for each PR Submittal.

1. Submittal PR-1 – To be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of **Notice to Proceed.** Owner’s Approval of PR 1 submittals is a prerequisite to the scheduling of the pre-construction meeting and start of construction activities. Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time (See also UGC Article 3)

   a. Contractor’s Superintendent: List of name and qualifications of the person designated as project superintendent.

   b. Subcontractors/Materials Suppliers: List of all subcontractors and major material/equipment suppliers that Contractor and Contractor’s major subcontractors propose to use. This list shall include correct names, mailing addresses and phone numbers.

   c. Contractor’s Authorized Representatives: List of names and titles of Contractor’s representatives authorized to sign contractual documents and construction vouchers.

   d. Licensed Craftspersons: List of names, qualifications and licenses of all licensed crafts required by the contract documents.
2. Submittal PR-2 – **To be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of Notice to Proceed. Owner’s Approval of PR 2 submittals is required prior to requesting payment.** Contractor’s failure to obtain approval of PR submittals will not constitute grounds for additional time (*See also UGC Article 3*)

   a. **Schedule of Values**, itemizing material and labor for each classification of work. (*See also UGC, Article 10*)

   1. Owner will provide forms entitled “**Schedule of Values**” for the Contractor’s use in preparing the breakdown. After contract award, the Owner will also provide further clarification including an example.

   2. Itemization of material and labor costs is required so the Owner may make progress payments on materials delivered. For each bid item or classification of work to be listed in the “**Type of Work**” column on the **Schedule of Values**, the Contractor shall multiply the unit bid price by the estimated quantity for each bid item to arrive at the “**Contract Cost**” for each such bid item. Contractor shall separately itemize material and labor costs for each such bid item in the “**Type of Work**” column.

   b. **Work Progress Schedule** (in duplicate) of **Contractor’s Proposed Construction Schedule** for work tasks in relation to the entire project. (*See also UGC, Article 9*) Owner will provide a schedule bar chart form to aid the Contractor in preparing a schedule. The Contractor shall follow this format and must indicate all work tasks as well as differentiate critical path work tasks from non-critical path tasks showing the beginning and ending dates for each critical and non-critical path work task.

   c. **Submittal Register**: Submittal Register shall be organized by specification section, listing all items to be furnished for review and approval by the A/E and the Owner, including anticipated sequence and submittal dates. (Refer to Article 8, specifically 8.3.1.3, of the Uniform General Conditions.)

C. **MATERIAL SUBMITTALS**: To be submitted to Owner prior to the installation of any materials. It is the Contractor’s responsibility to incorporate lead time required for review, resubmittal, ordering, manufacturing, fabrication and delivery. Contractor is responsible if a delay in lead time planning affects the critical path.

1. Contractor shall submit manufacturer’s information on all materials and equipment, regardless of whether substitutions are being requested.

2. Substitution requests must be submitted early enough to allow time for evaluation by the Owner and for re-submittal, if required. Contractor’s substitution requests shall address the following factors which will be considered in evaluating the proposed substitution:

   a. Whether the evaluation and acceptance of the proposed substitution will prejudice the Contractor’s achievement of Substantial Completion on time;

   b. Whether acceptance of the substitution for use in the work will require a change in any of the Contract Documents to adapt the design to the proposed substitution.
c. Whether incorporation or use of the substitution in connection with the work is subject to payment of any license fee or royalty.

d. Whether all variations of the proposed substitution from the items originally specified are identified.

e. Whether available maintenance, repair, and replacement service are indicated. The manufacturer shall have a local service agency (within 50 miles of the site) which maintains properly trained personnel and adequate spare parts and is able to respond and complete repairs within 24 hours.

f. Whether an itemized estimate is included of all costs that will result directly or indirectly from acceptance of such substitution, including cost of redesign and claims of other contractors affected by the resulting change.

g. Whether the proposed substitute item meets or exceeds the experience and/or equivalency requirements listed in the appropriate technical specifications.

3. No materials shall be ordered or installed until submittals for such materials have been received and acted upon by the Owner.

1.10 QUALITY ASSURANCE (See also UGC Article 8):

A. The Owner’s On-Site ODR will periodically inspect and observe the construction progress, procedures, and materials of the Contractor. The Contractor shall coordinate all efforts with the On-Site ODR, offer full cooperation to facilitate such observations, and shall be responsive to questions from such On-Site ODR regarding methods, equipment, materials, and intentions in pursuing the work or any particular thereof. Such observation by the Owner shall not be construed as construction supervision nor indication of approval of the manner or location in which the work is being performed as being a safe practice or place.

B. The On-Site ODR’s responsibilities include but are not limited to:

1. Providing quality assurance for the Owner.
2. Submitting written reports concerning the current status of the work.
3. Reviewing, and verifying to the Owner the amounts shown on the Contractor’s monthly Construction Voucher.
4. Requesting and receiving payroll and materials invoice amounts from the Contractor.
5. Witnessing testing and confirming in writing to the Owner the results of all tests.

C. Inspections, Notification, and Scheduling:

1. The Contractor shall notify the On-Site ODR when work is ready for inspection or testing. The Contractor shall give such notifications sufficiently in advance of other work to prevent delays. A minimum of five (5) working days advance notice is required, and Contractor shall include in his work schedule such notice periods for inspections and/or testing.
2. Tests cannot be conducted and work cannot be covered-up until the On-Site ODR observes and authorizes continuation of work. The Contractor shall bear all costs for re-tests and for removal and replacement of construction resulting from unauthorized continuation.
3. 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.

D. All permanent utilities shall be connected before final tests are conducted for equipment and systems. Final operational tests shall be conducted prior to project acceptance by the Owner. The Contractor shall provide the materials, energy, equipment and personnel to conduct the tests required in the contract.

E. Contractor's failure to provide notification to Owner of inspection or testing requirements shall void any certifications of testing and shall require the Contractor to re-test at the Owner’s request. All expenses for re-testing shall be paid by the Contractor.

F. The Owner (including Owner’s On-Site ODR) may reject work not conforming to the contract documents. If the Owner rejects work and/or materials incorporated into the project, Contractor shall bear all expenses associated with testing to prove compliance with the Contract Documents, including but not limited to engineering/architectural expenses associated with such testing. Any and all such expenses that are paid directly by Owner shall be deducted or withheld from subsequent payment(s) to the Contractor.

1.11 INVOICES/PAY REQUESTS AND CHANGE ORDERS:

A. All work items for which Contractor requests payment shall reflect the project number with which those work items are associated. **Change Order pricing for items that are already priced in the contractor’s bid shall be limited to such price(s) set forth in such bid and shall not be entitled to additional mark-up for overhead and profit.**

B. Contractor is required to submit an **original** Progress Assessment Report (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 to the Owner with the application for payment (construction voucher). The PAR is the monthly compliance report verifying Contractor’s compliance with the HUB Subcontracting Plan (HSP) including the expenditures the Contractor has made to Subcontractors during the prior month.

1.12 CONTRACT COMPLETION: (See also UGC, Article 9)

A. Contract Period: This contract must be completed within the specified number of days commencing on the date cited in the Notice to Proceed letter.

1. 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.

2. Claims for extension of time shall be made in accordance with the provisions of Article 9 of the Uniform General Conditions.

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 $339.22 per calendar day is hereby established by the parties as a reasonable estimate of just compensation to the Owner for the failure of the Contractor to complete the work by the time set forth in the contract or authorized extension thereto. Said sum will be deducted from the money due or to become due to the Contractor, not as a penalty but as
liquidated damages from added expense, including administrative and inspection costs, for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the time limit set in the contract or authorized extension.

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.

1.13 CONTRACT CLOSE-OUT: (See also UGC Article 12)

A. Notification: The Contractor shall provide Owner 15-days' written notice requesting final inspection.

B. Final Submittals: At the time of the Contractor’s request for final inspection, Contractor shall provide to Owner the following material (in addition to final payment documents also required by UGC Article 12 and set forth below in subsection D) which the Contractor shall have accumulated and retained during the course of the project:

1. One (1) hard copy and one (1) electronic set of all project submittals and all equipment and material warranties/guarantees as provided by all appropriate suppliers or manufacturers.
2. One set of “as-built documents” showing all revisions to the original Contract Documents. Drawings shall also show routing of underground outside utilities and conduits with actual dimensions from buildings or other known landmarks.
3. Any and all other documents, keys, manuals, etc. required by the Contract Documents.

C. Clean-up: At completion of the job, the Contractor shall remove all waste products, dust, dirt, debris, packaging, trash, fingerprints, grease containers, and other deleterious materials and marks from the site. Refer to individual specification sections for special cleaning required by that section. Contractor is expected to leave the project in spotless, “like new” condition.

D. Final Payment: Submit final construction voucher, Consent of Surety Company to Final Payment, and the Contractor’s Final Payment Affidavit.

1.14 CONTRACTOR’S RESPONSIBILITY DURING THE WARRANTY PERIOD (See also UGC, Article 13):

A. Warranties: The Contractor shall guarantee all work against defects in materials, equipment, or workmanship for a period of one year from the date of final acceptance. The Contractor shall also provide any additional warranties and guarantees of work items and components as hereinafter specified.

B. Service: All necessary service to each electrical and mechanical system and other work requiring specialized training shall be furnished by the Contractor at no cost to the Owner for a period running concurrently with the one year warranty period specified above. Such service shall not include repair of damage due to storm, vandalism or other factors entirely beyond the control of the Contractor.

C. The Contractor will receive no additional compensation for work performed during the one-year warranty period.
1.15 REFERENCES AND STANDARDS:

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

1.16 NON-APPROPRIATION OF FUNDS:

Any contract resulting from this solicitation is subject to termination or cancellation, without penalty to TPWD, either in whole or in part, subject to the availability of state funds. TPWD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TPWD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TPWD’s or contractor’s delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TPWD will not be liable to contractor for any damages, which are caused or associated with such termination, or cancellation and TPWD will not be required to give prior notice.

1.17 ANTIQUITIES:

Contractor shall take precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and the Texas Historical Commission. When such objects are uncovered unexpectedly, the Contractor shall stop all Work in close proximity and notify the ODR and the Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities, as defined in Chapter 191, Texas Natural Resource Code, discovered on the Owner’s property shall remain property of State of Texas, the Texas Historical Commission. It is determined by Owner, in consultation with the Texas Historical Commission that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation.

1.18 PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT:

A. Any proprietary, trade secret or otherwise confidential information Bidder includes in its Bid must be clearly labeled as proprietary or confidential information, and Bidder must identify the specific exception to disclosure in the Public Information Act (PIA). Merely making a blanket claim the entire Bid is protected from disclosure because it contains some proprietary information is not acceptable and shall make the entire Bid subject to release under the PIA. In order for the Owner to initial the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Bid that are considered by the Bidder to be proprietary or confidential must be clearly labeled as described herein. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

B. Information the Bidder provides to the Owner in response to this solicitation will be considered public and subject to disclosure under the Texas Public Information Act.

C. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no charge to the state. Contractor will make sure information not excepted from disclosure available in an electronic format that is accessible to the public unless Contractor receives written approval from Owner to provide information in a different format, and such approval becomes a part of this Contract.
1.19 RIGHT TO AUDIT/RECORDS RETENTION:

Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor’s Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State’s authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Contractor 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. Contractor 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. Contractor 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. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TPWD and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor 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. Contractor’s failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TPWD and the State of Texas to immediately assess appropriate damages for such failure.

1.20 IMMIGRATION REFORM:

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

1.21 CIVIL RIGHTS:

The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contract shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor.”

1.22 FEDERAL, STATE AND LOCAL REQUIREMENTS:

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

1.23 **SEVERABILITY CLAUSE:**

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

1.24 **NO WAIVER:**

Nothing in this Contract shall be construed as a waiver of the state’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. 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.

1.25 **DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:**

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

1.26 **FELONY CRIMINAL CONVICTIONS:**

Contractor represents and warrants that Contractor has not and Contractor’s employees have not been convicted of a felony criminal offense or that if such a conviction has occurred, Contractor has fully advised the Owner as to the facts and circumstances surrounding the conviction.

1.27 **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.

1.28 **INDEPENDENT CONTRACTOR:**

The Contractor shall not render the Contractor to an employee, officer or agent of the Owner for any purpose. The Contractor is and shall remain an independent contractor in relationship to the Owner. The Owner shall not be responsible for withholding taxes from payments made under the Contract. The Contractor shall have no claim against the 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.
1.29 PATENTS, TRADEMARKS OR COPYRIGHTS:

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

1.30 FORCE MAJEURE:

The Owner may grant relief from performance of contract if the Contractor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Contractor. The burden of proof for the need of such relief shall rest upon the Contractor. To obtain release based on force majeure, the Contractor shall file a written request with the Owner.

1.31 U.S. DEPARTMENT OF HOMELAND SECURITY’S E-VERIFY SYSTEM:

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

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

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

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

1.32 MINIMUM EXPERIENCE REQUIREMENTS:

CONTRACTOR MUST SHOW EVIDENCE OF THREE (3) SUCCESSFUL CONSTRUCTION PROJECTS SIMILAR TO THIS PROJECT (AS JUDGED BY OWNER) TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT. THIS EXPERIENCE MUST HAVE OCCURRED WITHIN THE PAST FIVE (5) YEARS, MEASURED BACKWARDS FROM THE ISSUE DATE OF THIS SOLICITATION.

1.33 SPECIAL INSURANCE REQUIREMENTS: (See also UGC, Article 5)

A. Umbrella Liability Insurance: Amount of Insurance. Coverage shall be provided with a limit of not less than $5,000,000. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Contract. The Contractor shall provide written representation to the Owner stating Work completion date.
B. Builder’s Risk (or Installation Floater for Equipment Installation Only): Builder’s Risk is a requirement of this Invitation for Bids and Contract Documents.

1.34 RESERVED

1.35 RESERVED

1.36 RESERVED

1.37 RESERVED

PART 2 – PRODUCTS

2.01 CONSTRUCTION MATERIALS:

A. Materials:

1. All materials shall be new and of the quality specified. Materials shall be free from defects. Where manufacturer’s names are mentioned in the specifications, it has been done in order to establish a standard of quality and construction, not to preclude the use of equal or superior materials or products of other manufacturers. However, substitutions must have Owner’s prior approval.

2. Unless otherwise indicated in the specifications or drawings, equipment and material shall be installed in accordance with the manufacturer’s recommendations and shall include such tests as manufacturer recommends.

B. Storage and Protection of Materials:

1. All materials shall be suitably stored to be protected from damage. Water-tight storage facilities of suitable size with floors raised above the ground shall be provided for all materials subject to damage from exposure to the weather. Other materials shall be stored on blocks off the ground. Materials shall be stored to permit easy access for inspection and identification. Any material which has deteriorated, become damaged or otherwise unfit for use shall not be used in the work (as judged by Owner). Upon completion of all work, or when directed, the Contractor shall remove storage facilities from the site.

2. During construction, open ends of all drains, piping and conduit, and all openings in equipment, shall be closed before leaving the work at any time so as to prevent the entrance of all foreign matter.

PART 3 – EXECUTION

3.01 CONSTRUCTION SITE AND JOB CONDITIONS:

A. The Contractor’s Superintendent shall be on site at all times that work is in progress.

B. The Contractor will be provided with designated space in the immediate vicinity of the job site for his use during construction. Unauthorized damage to any existing utilities, building facilities, structures, or plant life shall be repaired by the Contractor at no expense to the Owner. The Contractor shall not allow any unsafe or unsanitary conditions to develop as a result of Contractor's operations.
C. The Contractor shall not allow trash or debris to accumulate on the site. At the end of the contract, Contractor shall clean the entire area of any litter resulting from Contractor's operations. The Contractor shall maintain the premises as clean and presentable as good construction practices will allow at all times.

D. Utilities: Water and electrical power are available and will be furnished by the Owner at no charge to the Contractor. However, any temporary connections, appurtenances or extensions 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.

E. Field Office: The Owner will provide the Contractor with a site on which the Contractor may place a small, temporary office structure.

F. Temporary Toilets: The Contractor shall provide and maintain in neat, sanitary condition toilets and other necessary accommodations for employees’ use to comply with the regulations of the State Department of Health or other jurisdictions.

G. 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.

H. Fire Protection: The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner.

3.02 OCCUPATIONAL SAFETY AND HEALTH STANDARDS (See also UGC Article 7):

Prior to trenching below a depth of four (4) feet (if applicable), a Contractor must submit separate pay items for: (i) trench safety to be determined by the linear feet of trench excavated, and (ii) special shoring requirements, if any, to be determined by the square feet of shoring used, pursuant to Texas Government Code, Title 10, Chapter 2166, Section 2166.303. Such pay item(s), following calculation as required above, shall be quoted on the basis of a total lump sum price.

3.03 LAYOUT OF WORK AND SURVEYS:

The Contractor, at Contractor’s expense, shall be responsible for establishing base lines, and bench marks if applicable, for the limits of the project. The Contractor shall also be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the drawings, subject to such modifications as the Owner may require to meet changed conditions or as a result of necessary modifications to the work.

3.04 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.
3.05 CUTTING AND PATCHING:

A. Where indicated in the Contract Documents, this project requires cutting into existing construction for the performance of the work and requires subsequent fitting and patching to restore the existing work to original condition.

B. Utilities:

1. Contractor shall not cut or patch utilities until all necessary approvals and coordination requirements are accomplished.
2. Before cutting services that are to remain permanently or temporarily in service, Contractor shall provide by-pass system as necessary to maintain service.
3. After by-pass and cutting, Contractor shall cap, valve or plug and tightly seal remaining portion of service piping or conduit to prevent entrance of moisture and foreign matter.

C. Structural Work: Contractor shall not cut or patch structural work in a manner that would result in a reduction of load-carrying capacity or of load-deflection ratio.

D. Inspection:

1. Before cutting, Contractor shall examine items to be cut and patched and the conditions under which the work is to be performed. If unsafe or otherwise unsatisfactory conditions are encountered, Contractor shall take corrective action before proceeding with the work.
2. Contractor shall meet at the work site with all trades involved in cutting and patching. Contractor shall review areas of potential interference and conflict between the various trades and shall coordinate layout of the work and resolve potential conflicts before proceeding with the work.

3.06 AS-BUILT DOCUMENTS (See also UGC Article 6):

The Contractor shall maintain on a separate set of the Contract Documents a record of all changes made during construction (As-Built Documents). The Contractor shall be responsible for keeping these records and neatly noting with colored pencil or ink all changes. Progress payments will not be made to the Contractor unless such records are maintained. Verification by the On-Site ODR of such records is solely for assurance that the records are being maintained. Such inspections shall not constitute review or approval of the as-built documents for accuracy or completeness.

END OF SECTION