INVITATION FOR BIDS AND CONTRACT DOCUMENTS

PROJECT NO. 1210990 / Repairs to Security Fencing and Operable Gates
AT Sea Center Texas
Brazoria COUNTY, TEXAS

IFB Issue Date: May 21, 2021
Site Visit: 2:00 PM, June 2, 2021
Questions Due: 5:00 PM, June 7, 2021
Question/Answers Addendum (Est) June 11, 2021
Bid Due Date: 2:00 PM, June 22, 2021

Contract Manager: Lyndsi Sandoval, CTCD, CTCM
Contract Manager
Email: Lyndsi.sandoval@tpwd.texas.gov
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NOTICE TO BIDDERS

Bids will be received by the Contracting Branch, Infrastructure Division, Texas Parks and Wildlife Department (TPWD), 4200 Smith School Road, Austin, Texas 78744, until 2:00 p.m., June 22, 2021. Bids will be received and recorded in the A-100 Conference Room, Infrastructure Division.

After receipt of bids, Bidders may request a copy of the “unofficial” bid tab through TPWD’s website at: https://tpwd.texas.gov/site/openrecords. The final bid tab will be made available after award of a contract.

TPWD is requesting sealed bids to perform all Work required for the following Project:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Repairs to Security Fencing and Operable Gates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Location</td>
<td>Sea Center Texas</td>
</tr>
<tr>
<td>Project Number</td>
<td>1210990</td>
</tr>
<tr>
<td>Deadline for Receipt of Bids</td>
<td>June 22, 2021 at 2:00 PM (CT)</td>
</tr>
<tr>
<td>Construction Estimate</td>
<td>$30,000 - $40,000</td>
</tr>
</tbody>
</table>

**General Scope of Work:** Replace one powered cantilevered steel fence gate with a powered double swing steel fence gate and replace one damaged swing steel fence gate.

**Project Schedule:** All work shall be completed within one hundred twenty (120) calendar days commencing on the date specified in the Notice to Proceed. This performance period includes completing the various aspects required to complete the Work, including submission of all Submittals, mobilization, procurement, installation, testing, inspection and delivery of documents described in Terms and Conditions.

**Site Visits**

A pre-bid conference will NOT be conducted for this Project. A visit to the project site is not mandatory, however, TPWD strongly encourages potential bidders to view the project site, and offers no guarantee that the project site will be accessible to potential bidders at any time other than the time specified in this solicitation package.

Therefore, failure to take advantage of the site visit time listed herein may result in potential bidders who are unable to visit the project site at all. Failure to give proper consideration to site conditions when preparing the bid will not constitute grounds for additional compensation. Site Visit Dates and Times are listed below.

**June 2, 2021 @ 2:00 PM**

**Sea Center Texas** is located at 300 Medical Drive, Lake Jackson, TX 77566.
Contact Information: For technical information and information regarding administration of the contract, contact Contract Manager, Lyndsi Sandoval at 512-389-8777.

Solicitation Documents and all addenda may be obtained at the Comptroller’s website under Electronic State Business Daily (ESBD) at http://www.txsmartbuy.com/sp.
INSTRUCTIONS TO BIDDERS

1. **BID SUBMISSION:**

   1.1 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. Each bid shall be submitted on the Contractor's Bid form provided.

   1.2 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 1210990
   Project Description Repairs to Security Fencing and Operable Gates
   Project Location Sea Center Texas
   Bid Opening Date and Time June 22, 2021 no later than 2:00 PM (CT)

   1.3 Corrections, deletions, or additions to bids may be made by email provided such emails 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 email. No telephonic instructions will be accepted. **Corrections, deletions or additions to bids shall be sent by email at lyndsi.sandoval@tpwd.texas.gov.** This is the only address that will be used for receipt of corrections, deletions, or additions. TPWD shall NOT be responsible for failure of electronic equipment or operator error.

   1.4 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.

   1.5 **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.

   1.6 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.

1.7 **DELIVERY OF BIDS**

<table>
<thead>
<tr>
<th>U. S. Postal Services</th>
<th>Overnight/Express Mail</th>
<th>Hand-Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas Parks &amp; Wildlife Dept. Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)</td>
<td>Texas Parks &amp; Wildlife Dept. Mail Room Infrastructure Division 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)</td>
<td>Texas Parks &amp; Wildlife Dept. Security Desk 4200 Smith School Road Austin, Texas 78744 Hours: 8:00 AM to 5:00 PM (CT)</td>
</tr>
</tbody>
</table>
This is the only address that will be used for receipt of bids. TPWD shall NOT be responsible for failure of electronic equipment or operator error.

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.

Prices will also be reviewed for balance prior to award, and obvious imbalance in favor of work scheduled for early completion or subject to significant expansion after award may be grounds for rejection of the bid.

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 Terms and 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 Terms and 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. 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 **June 7, 2021** to the attention of **Lyndsi Sandoval, Contract Manager** at the address stated in these Invitation for Bids and Contract Documents or via email to **lyndsi.sandoval@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 representatives(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.
MINIMUM EXPERIENCE REQUIREMENTS FOR THIS PROJECT:

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.

13. **VENDOR PERFORMANCE TRACKING SYSTEM:** In evaluating responses, the Owner will consider information related to past contract performance of a Bidder including, but not limited to CPA’s Vendor Performance Tracking System (VPTS) available at [http://www.txsmartbuy.com/vpts](http://www.txsmartbuy.com/vpts). Prior work performance with the Owner and other state agencies or governmental entities which are familiar with a Bidder’s performance, depending on problems encountered, may be grounds for disqualification. In addition, Bidders involved in litigation with the Owner or another state agency may be disqualified.

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](http://www.txsmartbuy.com/vpts).

15. **TERMS AND CONDITIONS ATTACHED TO RESPONSE:** Any terms and conditions attached to a response will not be considered unless specifically referred to in the bid.

16. **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.
CONTRACTOR'S BID SUBMITTALS
CONTRACTOR'S BID

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

Having carefully examined the Invitation for Bids and Contract Documents. Project No. 1210990, Sea Center Texas, Lake Jackson, Brazoria 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:

PROJECT BID SCHEDULE

<table>
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<th>BASE BID ITEMS</th>
<th>LUMP SUM PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>BB1</td>
<td>Furnish all labor, equipment, materials, and incidentals necessary to replace one powered cantilevered steel fence gate with a powered double swing steel fence gate and replace one damaged swing steel fence gate in accordance with the Invitation for Bids and Contract Documents.</td>
</tr>
<tr>
<td></td>
<td>Total Lump Sum Base Bid Item</td>
</tr>
</tbody>
</table>

(Total Lump Sum Base Bid Item 1 (one) written in words)
BASE BID will be evaluated and determination of the low bidder will be based on responsiveness and responsibility of the bidder and on the Base Bid Item. 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 12 OF INSTRUCTIONS TO BIDDERS 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 twenty (120) calendar days commencing on the date specified in the Notice to Proceed. This performance period includes completing the various aspects required to complete the Work, including submittal of all required Submittals, mobilization, procurement, installation, testing, inspection and delivery of documents described in the Contract Documents.

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, 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 Instructions to Bidders. 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.

Bidder represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the bidder, nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the Federal antitrust laws, or (2) communicated directly or indirectly the contents of this bid to any competitor or any other person engaged in the same line of business as the bidder.
Pursuant to *Texas Government Code*, Title 10, Subchapter A, §2155.004 (a), Bidder certifies that neither bidder nor any person or entity represented by bidder has received compensation from TPWD to participate in the preparation of the specifications or solicitation on which this bid or contract is based. Under §2155.004 (b) of the Texas Government Code, Bidder certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.

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 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. Entities ineligible for federal procurement are listed at [http://www.sam.gov](http://www.sam.gov).

Bidder certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.

Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

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

Bidder agrees that any payments due under this contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

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

Bidder agrees to comply with *Texas Government Code*, Title 10, Subtitle D, §2155.4441, relating to use of service contracts and the purchase of products and materials produced in the State of Texas.

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.

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

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

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.

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Bidder shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

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.

Under Section 231.006(d) of the Texas Family Code, 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 the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Bidder subject to Section 231.006 of the Texas Family Code, must include, in the spaces(s) below, the names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid.
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.

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

Name of former executive: ____________________________
Name of State agency: ____________________________
Date of separation from State agency: ________________
Position with Bidder: _____________________________
Date of employment with Bidder: ________________

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK
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 _____

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 OR MATERIAL MISREPRESENTATIONS MADE DURING THE PERFORMANCE OF A CONTRACT IS A MATERIAL BREACH OF CONTRACT AND SHALL VOID THE SUBMITTED BID OR ANY RESULTING CONTRACTS.

The undersigned certifies that I am duly authorized to submit this bid and execute a contract on my own behalf or on behalf of the bidder listed below.

________________________________________________________________________
Name of Contracting Firm

________________________________________________________________________
Address

________________________________________________________________________
City       State       Zip

________________________________________________________________________
(Area Code) Phone Number

________________________________________________________________________
(Area Code) Phone Number

________________________________________________________________________
Email address

________________________________________________________________________
Texas Identification Number

________________________________________________________________________
(Area Code) Cell Number

________________________________________________________________________
(Area Code) FAX Number

________________________________________________________________________
Printed Name

________________________________________________________________________
Title

________________________________________________________________________
Date

By____________________________________
Authorized Signature

Contractor’s Bid – Bid Schedule (under $100k) 2021_0506
Bidder shall use this form to clearly demonstrate how they meet the requirements set forth in this solicitation. **Failure to return this form may result in the response submission being considered non-responsive.**

**ALL FORM FIELDS REQUIRED. MARK N/A IF NOT APPLICABLE**

### Section One: Company Profile

<table>
<thead>
<tr>
<th>Legal Name of the Company:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Description:</td>
<td></td>
</tr>
<tr>
<td>Principal place of business (<em>Corporate Headquarters</em>):</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>City, State, Zip:</td>
<td></td>
</tr>
<tr>
<td>Facility responsible for servicing the contract:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>City, State, Zip:</td>
<td></td>
</tr>
<tr>
<td>Contact Person regarding company’s submission to the solicitation, authorized to render binding decisions on contract matters:</td>
<td></td>
</tr>
<tr>
<td>Name &amp; Title:</td>
<td></td>
</tr>
<tr>
<td>Phone &amp; Email:</td>
<td></td>
</tr>
<tr>
<td>Personnel who will be responsible for management and day-to-day operation of services described in this solicitation.</td>
<td></td>
</tr>
<tr>
<td>Name &amp; Title:</td>
<td></td>
</tr>
<tr>
<td>Phone &amp; Email:</td>
<td></td>
</tr>
</tbody>
</table>

Indicate if your company or any of its subsidiaries filed or met criteria for bankruptcy within the last five years.

__ Yes  __ No  If yes, explain.

Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances and prospects for resolution.
Identify if your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity? If so, please explain the impact both in organization and company direction.

Company’s average annual construction volume $ 

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

☐ Yes  ☐ No  If yes, explain.

Number years in business:  Number of employees: 

PRINCIPALS IN FIRM AND YEARS EXPERIENCE IN CONSTRUCTION

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

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

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

<table>
<thead>
<tr>
<th>From</th>
<th>to</th>
<th>Firm Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tr>
</tbody>
</table>

CONSTRUCTION CAPABILITIES

<table>
<thead>
<tr>
<th>Building</th>
<th>%</th>
<th>Mech.-HVAC</th>
<th>%</th>
<th>Hwy/Roads</th>
<th>%</th>
<th>Other</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical</td>
<td>%</td>
<td>Utility Lines</td>
<td>%</td>
<td>Earthwork</td>
<td>%</td>
<td>Other</td>
<td>%</td>
</tr>
<tr>
<td>Plumbing</td>
<td>%</td>
<td>Utility Plants</td>
<td>%</td>
<td>Site Work</td>
<td>%</td>
<td>Other</td>
<td>%</td>
</tr>
</tbody>
</table>
**Section Two: Contractor’s Financial Information**

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

<table>
<thead>
<tr>
<th>Agency:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent’s Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Email Address:</td>
<td></td>
</tr>
<tr>
<td>Agent’s Phone No.:</td>
<td></td>
</tr>
</tbody>
</table>

**BONDING COMPANY (UNDERWRITER)**

<table>
<thead>
<tr>
<th>Bonding Company Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonding Agent’s Address:</td>
<td></td>
</tr>
<tr>
<td>Bonding Agent’s Email:</td>
<td></td>
</tr>
<tr>
<td>Bonding Agent’s Phone:</td>
<td></td>
</tr>
</tbody>
</table>

**Section Three: Company 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 five (5) years and that demonstrate similar experience. Refer to Instructions to Bidders – Article 12.

**PROJECT 1:**

<table>
<thead>
<tr>
<th>Project Name/Location</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Owner’s Name</td>
<td></td>
</tr>
<tr>
<td>Project Owner’s Address</td>
<td></td>
</tr>
<tr>
<td>Owner’s Representative for this Project</td>
<td></td>
</tr>
<tr>
<td>Owner’s Representative Phone/Email Address</td>
<td></td>
</tr>
<tr>
<td>Performance Period of this Project (no. of calendar days)</td>
<td></td>
</tr>
<tr>
<td>Contract Start Date</td>
<td></td>
</tr>
<tr>
<td>Contract Completion Date</td>
<td></td>
</tr>
<tr>
<td>Provide a brief explanation for time extensions granted on this Project</td>
<td></td>
</tr>
</tbody>
</table>
Sea Center Texas
Repairs to Security Fencing and Operable Gate

<table>
<thead>
<tr>
<th>Original Contract Amount</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Contract Amount</td>
<td>$</td>
</tr>
<tr>
<td>If Project is still under construction, then provide percentage complete</td>
<td></td>
</tr>
<tr>
<td>Offeror’s key personnel, including Project Superintendent &amp; major subcontractors, including address, telephone and email address</td>
<td></td>
</tr>
<tr>
<td>Brief Description of the Work</td>
<td></td>
</tr>
<tr>
<td>Describe how this Project is comparable to the Work required for this Project</td>
<td></td>
</tr>
<tr>
<td>If applicable, Project A/E Name, phone number and email address</td>
<td></td>
</tr>
</tbody>
</table>
**Project 2:**

<table>
<thead>
<tr>
<th>Project Name/Location</th>
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<tbody>
<tr>
<td>Project Owner’s Name</td>
<td></td>
</tr>
<tr>
<td>Project Owner’s Address</td>
<td></td>
</tr>
<tr>
<td>Owner’s Representative for this Project</td>
<td></td>
</tr>
<tr>
<td>Owner’s Representative Phone/Email Address</td>
<td></td>
</tr>
<tr>
<td>Performance Period of this Project (no. of calendar days)</td>
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<tr>
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<td>$</td>
</tr>
<tr>
<td>If Project is still under construction, then provide percentage complete</td>
<td></td>
</tr>
</tbody>
</table>

Offeror’s key personnel, including Project Superintendent & major subcontractors, including address, telephone and email address

Brief Description of the Work

Describe how this Project is comparable to the Work required for this Project
If applicable, Project A/E Name, phone number and email address

Project 3

<table>
<thead>
<tr>
<th>Project Name/Location</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Project Owner’s Name</td>
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<tr>
<td>If Project is still under construction, then provide percentage complete</td>
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</tr>
<tr>
<td>Offeror’s key personnel, including Project Superintendent &amp; major subcontractors, including address, telephone and email address</td>
<td></td>
</tr>
</tbody>
</table>

Brief Description of the Work

Describe how this Project is comparable to the Work required for this Project
### Project 4

<table>
<thead>
<tr>
<th>Project Name/Location</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Owner’s Name</td>
<td></td>
</tr>
<tr>
<td>Project Owner’s Address</td>
<td></td>
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<tr>
<td>Owner’s Representative for this Project</td>
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</tr>
<tr>
<td>Original Contract Amount</td>
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</tr>
<tr>
<td>Final Contract Amount</td>
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<tr>
<td>If Project is still under construction, then provide percentage complete</td>
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</tr>
<tr>
<td>Offeror’s key personnel, including Project Superintendent &amp; major subcontractors, including address, telephone and email address</td>
<td></td>
</tr>
</tbody>
</table>

**Brief Description of the Work**
Describe how this Project is comparable to the Work required for this Project

If applicable, Project A/E Name, phone number and email address

| Project 5 |
|------------------|------------------|
| Project Name/Location |  |
| Project Owner’s Name |  |
| Project Owner’s Address |  |
| Owner’s Representative for this Project |  |
| Owner’s Representative Phone/Email Address |  |
| Performance Period of this Project (no. of calendar days) |  |
| Contract Start Date |  |
| Contract Completion Date |  |
| Provide a brief explanation for time extensions granted on this Project |  |
| Original Contract Amount | $ |
| Final Contract Amount | $ |
| If Project is still under construction, then provide percentage complete |  |
| Offeror’s key personnel, including Project Superintendent & major subcontractors, including address, telephone and email address |  |

Brief Description of the Work
Describe how this Project is comparable to the Work required for this Project

If applicable, Project A/E Name, phone number and email address

Section Four: HUB Information

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

If yes, please indicate gender and ethnicity:

**Gender**: Male ☐, Female ☐

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

**Service-Disabled Veteran**: ☐ Yes, ☐ No

Section Five: TPWD Contracting Experience

Has firm ever done business with TPWD? If yes, list the most recent project Information:

<table>
<thead>
<tr>
<th>TPWD Project No.:</th>
</tr>
</thead>
<tbody>
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</table>

<table>
<thead>
<tr>
<th>Project Title and Location:</th>
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<tbody>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Offeror’s key personnel, including Project Superintendent &amp; major subcontractors, including address, telephone and email address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
</tbody>
</table>
Sea Center Texas  Project Number 1210990

Repairs to Security Fencing and Operable Gate

Brief Description of the Work:

Describe how this Project is comparable to the Work required for this Project:

Additional TPWD Projects, if any

<table>
<thead>
<tr>
<th>Project No/Contract No</th>
<th>Project Location</th>
<th>Project Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Section Six: Certifications and Signature

I hereby certify that all information provided above and attached is true and correct. Furthermore, I hereby authorize Texas Parks and Wildlife Department to contact the references listed above and authorize release of information from such references to Texas Parks and Wildlife Department. I 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

COMPLETE ALL SECTIONS OF THIS FORM AND SUBMIT WITH BID
CONDITIONS OF THE CONTRACT
TERMS AND CONDITIONS

(Construction)

PART ONE - GENERAL

1.01 DEFINITIONS:

As used throughout this contract, the following terms have the meaning set forth below:

A. **Contract** means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.

B. **Contract Documents** means those documents identified as a component of the agreement (contract) between the Owner and the Contractor. These may include, but are not limited to, Drawings, Specifications, Terms and Conditions, and all pre-bid addenda.

C. **Contractor** means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to furnish the materials and to perform all Work under the contract with the Owner.

D. **Owner** means the Texas Parks and Wildlife Department (TPWD) acting on behalf of the State of Texas.

E. **Owner’s Designated Representative (ODR)** means the individual assigned by the Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the contract. For the purposes of this contract, the ODR shall be Owner’s, Project Manager, Doug Sauve.

F. **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.

G. **Schedule of Values** means the detailed breakdown of the cost of materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and the Designer of Record.

H. **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.
I. **Submittal Register/Schedule** means a list provided by Contractor of all items to be furnished for review and approval by Designer of Record and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.

J. **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.

1.02 **VENUE:** Venue is hereby fixed in Travis County, Texas.

1.03 **INTENT OF THE CONTRACT DOCUMENTS**

   A. The intent of the Invitation for Bids and Contract Documents is to include all of the Work for the contract price and within the contract time. All Invitation for Bids and 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 Invitation for Bids and Contract Documents to call for finished Work, tested, and ready for operation. Any apparatus, material or Work described in the Invitation for Bids and 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. Minor details not usually shown or specified but necessary for proper installation and operation are included in the Work just as if therein specified or shown.

   C. The Drawings depict the location and quantity of elements of the Work. The specifications indicate quality. All documents are intended to be complementary to produce the Work. **Requirements of the specifications not included in the drawings or schedules or shown on the drawings and/or schedules and not included in the specifications shall be of like effect as if shown or mentioned in both.** 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.

D. In the event of conflict between Drawings and Specifications, the Specifications shall prevail. In the event of conflict among provisions of Specifications, using the CSI format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere.

E. In the event of conflict among the drawings, the large-scale drawings prevail over the small-scale drawings. Figures given on drawings shall govern over scaled measurements from drawings.

F. Prior to commencing the Work, in order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the 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.

G. 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. The Contractor shall promptly report in writing to the Owner the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. If, however, the Contractor fails to perform the examination and reporting obligations of these provisions, the Contractor shall be responsible for any avoidable costs or direct damages.

H. All Work shall be performed and furnished by the Contractor in accordance with accepted construction industry practices.

I. A duplication of Work is not intended by the Contract Documents and any duplication shall not become a basis for extra cost to the Owner.

1.04 LABOR, LAWS AND WAGES

In the execution of this contract, the Contractor must comply with all applicable State and Federal laws, regulations and rules including but not limited to those concerned with labor, equal employment opportunity, safety and minimum
wages. The Contractor shall obtain and pay for all permits required in connection with the execution of Contractor’s Work. The Owner shall be furnished with certified copies of these permits if the Owner so requests. If such laws, regulations or rules conflict with the Invitation for Bids and Contract Documents, then the laws, regulations or rules, shall govern instead of the Invitation for Bids and Contract Documents, except in such cases where the Invitation for Bids and Contract Documents exceed them in quality of materials or labor, then the Invitation for Bids and Contract Documents shall be followed.

A. **Duty to Pay Prevailing Wage Rates.** The 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.

B. **Notification to Workers.**

1. 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. 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.

3. 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.

4. 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.

5. 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.

6. 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.

C. 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.

D. Complaints of Violations.

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. 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.

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.

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.

### 1.05 COMPLIANCE WITH LAWS AND SAFETY PRECAUTIONS AND PROGRAMS

**A.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and it shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. Secs. 651, et seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.

**B.** It shall be the duty and responsibility of the Contractor and all of its subcontractors to comply with any and all state and federal statutes, rules, and regulations, including but not limited to those relating to hazardous materials.

**C.** In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatening damage, injury or loss provide Owner with prompt notice if Contractor believes that any significant changes in the Work or variations from Contract Documents have been caused by Contractor’s emergency response. Any additional compensation or extension of time claimed by the Contractor resulting from emergency Work shall be considered in accordance with paragraph entitled “Changes and Changed Conditions”.

### 1.06 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

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.

### 1.07 PERMITS AND LAWS

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 PERFORMANCE AND PAYMENT BONDS

Contractor shall deliver to Owner true and complete copies of required bonds no later than ten (10) calendar days from issuance of Owner’s Notice Proceed.

If the total contract price exceeds $25,000, the Contractor shall execute a Payment Bond to the Owner in the amount of the total contract price. If the total contract price exceeds $100,000, the Contractor shall execute a Payment Bond and a Performance Bond to the Owner in the amount of the total contract price. The performance bond is payable to the State in the full amount of the Contract and is solely for the protection of the State and is conditioned on the faithful performance of the Work in accordance with the Contract Documents. The payment bond is payable to the State in the full amount of the Contract and is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a supplier of required materials or labor. Each bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Texas and on forms provided by the Owner and approved by the Attorney General of Texas. Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code. All Performance and Payment Bonds shall be executed by sureties which are licensed to do business in the State of Texas and which are included in the list of companies in the current U.S. Department of the Treasury Circular 570, “Companies holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies”, Sections 9304 through 9308 of Title 31 of the U.S. Code Annotated. The Contractor shall submit the executed performance and payment bonds to the Owner within the time stipulated within these documents. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason a statutory payment or performance bond is not honored by the surety, the Contractor shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result. Owner shall furnish a copy of the payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code. Claims on payment bonds must be sent directly to the Contractor and his/her surety in accordance with § 2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance
on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee. When the value of the Contract between the Owner and the Contractor is less than $25,000.00, claimants and their rights are governed by Texas Property Code, §§ 53.231 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims. If the Contractor fails to submit such bond within the time stipulated herein, Owner may disqualify the bid. In such circumstances, TPWD shall be authorized to proceed with award to the next lowest, responsive and responsible bidder.

1.09 INSURANCE REQUIREMENTS

A. Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements no later than ten (10) calendar days from issuance of Owner’s Notice of Selection.

B. 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.

C. 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 these Terms and Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause.

D. 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.

E. 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.
F. 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.

G. 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.

H. **Insurance Coverage Required.**

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.

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.

3. **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.

4. **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:

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

   b) 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.

   c) 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.

   d) For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Paragraph 62 of these Terms and Conditions for possible additional builder’s risk insurance requirements.
e) For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

f) For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided limits shall be equal to 100 percent of the Contract Sum.

g) For those properties located in flood prone areas, flood insurance coverage must be provided with limits shall be equal to 100 percent of the Contract Sum.

h) Builder’s risk insurance policy shall remain in effect until Substantial Completion.

5. Policies must include the following clauses, as applicable:

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

b) 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.

c) 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.

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

I. 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.

J. 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.

1.10 LABOR, MATERIALS, AND WORKMANSHIP

A. Unless otherwise specified herein, the Contractor shall furnish and pay for all labor, materials, equipment, tools, construction equipment, and machinery, water, heat, utilities (unless otherwise specified in the Invitation for Bids and Contract Documents), transportation, and other facilities and services necessary for the proper execution and completion of this contract. All materials incorporated in the Work shall be new and of the quality specified, and all Work shall be performed in a skillful and workmanlike manner. Where manufacturer’s names are mentioned in these contract documents, 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.

B. Unless otherwise indicated in the Contract Documents, equipment and material shall be installed in accordance with recommendations of the manufacturer to include such tests as manufacturer recommends. Both materials and workmanship shall be subject to the inspection of the Owner or its representative, who will require the Contractor to correct defective workmanship or material without cost to the Owner.

1.11 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.

1.12 RESERVED.
1.13 AGENCY PROJECT MANAGEMENT SYSTEM

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

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

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

The eBuilder™ website is: (https://gov.e-builder.net)

PART TWO - EXECUTION OF THE WORK

2.01 SUBMITTAL REVIEW AND PROCESSING

A. GENERAL

1. Contractor will be provided, in Owner’s Notice to Proceed, an Excel spreadsheet of the list of expected submittals from the Architect / Engineer of Record for their use in creating a submittal register per the requirements of the Uniform General conditions, Article 8.3.1.

2. Once received from the Contractor, TPWD will upload the Contractor's submittal register into eBuilder™ and the Contractor may begin the submittal process. Training will be provided by the Owner to the Contractor.

3. Contractor’s failure to obtain approval of submittals will not constitute grounds for additional time. Owner will provide more specific clarification regarding the requirements for each Submittal.
B. ADMINISTRATIVE SUBMITTALS

The following Administrative Submittals shall be submitted by the Contractor for the Owner's review and approval.

1. Contractor’s Personnel and Subcontractor Information:

   The following items shall be submitted by the Contractor for the Owner’s review and approval within twenty-one (21) calendar days from receipt of Notice to Proceed.

   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 Craftsperson: List of names, qualifications and licenses of all licensed crafts required by the contract documents.

2. Schedule of Values:

   Schedule of Values shall itemize material and labor for each classification of Work. To be submitted by the Contractor for the Owner’s review and approval no less than twenty-one (21) calendar days prior to 1st request for payment.

   a) 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.

   b) 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.

3. **Contractor’s Proposed Work Progress Schedule:**

   Contractor’s Proposed Construction Schedule using a critical path method (CPM) for Work tasks in relation to the entire project. **To be submitted by the Contractor for the Owner’s review and approval no less than twenty-one (21) calendar days from issuance of Notice to Proceed.**

4. **Submittal Register/Schedule:**

   **Submittal Register/Schedule to be submitted by the Contractor for the Owner’s review and approval no less than twenty-one (21) calendar days from issuance of Notice to Proceed.** 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.

   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.

   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.

C. **MATERIAL SUBMITTALS**

   **Material Submittals shall 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 resubmittal, if required. Material substitutions will not be allowed following this 10-day period.

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

D. SUMMARY OF ADMINISTRATIVE SUBMITTALS DELIVERY REQUIREMENTS:

1. Contractor’s Personnel and Subcontractor Information: Within 21 days of effective date of this Notice to Proceed

2. Submittal Schedule/Register: Within 21 days of effective date of this Notice to Proceed

3. Work Progress Schedule: Within 21 days of effective date of this Notice to Proceed

4. Project Schedule of Values: no less than twenty-one (21) days prior to the first request for payment.

2.02 PRECONSTRUCTION CONFERENCE

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. The Contractor's jobsite Superintendent is required to attend. At that time the Contractor shall be furnished additional sets of Contract Documents.

2.03 CONSTRUCTION MATERIALS

A. Materials: All materials shall be new and of the quality specified. Materials shall be free from defects.

Unless otherwise indicated in the specifications, 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: The Contractor is responsible for all damages to Work performed and material delivered until completion and final acceptance of Work. All materials shall be suitably stored to be protected from damage. Watertight 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 that 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.

If applicable, 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.

2.04 EXECUTION OF THE WORK/CONSTRUCTION SITE AND JOB CONDITIONS:

A. **Superintendence:** Contractor shall employ a competent person or persons who will be present at all times 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 Item 30. 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.

B. **Jobsite:** The Contractor will be provided with designated space in the immediate vicinity of the job site for 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 take precautions necessary to protect persons and property against injury or damage and shall be responsible for any such injury or damage. The Contractor shall not allow any unsafe or unsanitary conditions to develop as a result of Contractor’s operations for the duration of construction.

2.05 CONSTRUCTION SITE AND JOB CONDITIONS

Any temporary connections, appurtenances or extensions for any utilities shall be provided by the Contractor at no cost to the Owner and removed from the premises at the conclusion of the contract. Contractor shall provide cellular telephone service at all times and shall keep Owner informed of telephone number.

A. **Utilities:**

1. **Water:**
   
   TPWD water service is not available for Contractor use.

2. **Electric:**
   
   TPWD Electrical power is not available for Contractor to connect to.
3. **Internet / data:**

Due to TPWD IT security requirements, Contractor cannot access the internet through the facility’s private network. Contractor will be responsible for obtaining internet service for their use during the project.

**B. Project Identification:** There shall be no project signs of any size or type allowed on the project site or surrounding Texas Parks and Wildlife Department property at any time.

**C. Fire Protection:** The Contractor shall take stringent precautions against fire. Open fires are not allowed unless approved in writing by Owner. Any fires that start or encroach on the Contractor’s limits of construction must be immediately reported to the Site Manager.

**D. Trash and Debris:** The Contractor shall not allow trash or debris to accumulate on the site. At the end of primary segments (installation and removal) of the project, Contractor shall clean the entire area of any litter resulting from Contractor’s efforts and shall leave the area “broom clean”. The Contractor shall maintain the premises as clean and presentable as good construction practices will allow at all times.

**E. Project Identification:** If Contractor desires to erect project signs of any size or type, Contractor must submit a proposed design to and obtain approval from TPWD prior to installation of any project signs. Project sign(s) may not include any references to TPWD or use TPWD’s name, logo or other likeness.

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

**G. Other Activities:** The Contractor shall perform the Work without interfering with other contractors’ Work or Owner’s activities to the extent possible and with as little delay.

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

2.06 **PROTECTION OF SITE**

The Contractor shall protect all trees and shrubs adjacent to construction site, and if Contractor finds that the Work will require removal of trees the Contractor shall obtain approval of Owner prior to removal. The Contractor shall be held liable for removal of trees without prior approval of Owner.

2.07 **SITE OPERATIONS:**
During construction of this project the site will remain open to public visitation. It is the responsibility of the Contractor to maintain convenient access and egress to park facilities in a manner to be approved by the Owner. The Contractor shall also be responsible for public safety at the construction site. All temporary fencing, barricades, warning lights, signs, and flagmen shall be provided and maintained by Contractor as needed. The Contractor shall maintain security of construction sites.

2.08 LAYOUT OF WORK AND SURVEYS

A. The Contractor, at Contractor’s expense, shall be responsible for establishing base lines, and benchmarks 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.

B. Contractor shall engage the services of a Registered Public Surveyor, at Contractor’s expense, to provide such stakes, templates, platforms, equipment, tools and materials, and all labor as may be required in laying out any part of the Work. It is Contractor’s responsibility to maintain and preserve all stakes and other marks until authorized by Owner to remove them, and if such marks are destroyed by Contractor through Contractor’s negligence prior to their authorized removal, Contractor may be required by Owner to replace the same at Contractor’s expense. Owner may require that Work be suspended at any time when location and limit marks established by Contractor are not reasonably adequate to permit checking of the Work.

2.09 PAYMENTS TO CONTRACTOR

A. If the contract time (or valid extension thereof) exceeds thirty (30) calendar days then upon presentation of a properly executed voucher, progress payments equal to 90% of the value of Work performed may be made monthly on estimates approved by the Owner. Such voucher shall be accompanied by Contractor’s Progress Payment Affidavit form furnished by Owner. Upon payment therefore, title to the property shall vest in the Owner. This provision shall not be construed as relieving the Contractor from sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work, or as waiving the right of the Owner to require the fulfillment of all of the terms of the contract. Final payment will be made after all Work is completed and accepted.
B. Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:

1. Faulty or defective Work appearing after Substantial Completion (latent defects); and/or

2. Failure of the Work to comply with the requirements of the Contract Documents; and/or

3. Terms of any warranties required by the Contract, or implied by law; and/or

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

C. The final payment shall not become due until the Contractor submits to the Owner the following:

1. A fully executed Contractor’s Final Payment Affidavit form furnished by Owner. Also, if required by Owner, the Contractor shall submit other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such claim;

2. One (1) hard copy and one (1) electronic set of approved project submittals and all equipment and materials warranties/guarantees as provided by suppliers and/or manufacturers;

3. One (1) set of “as-built” drawings and specifications showing all changes to the original construction documents. Drawings also shall show routing of underground outside utilities and conduits with actual dimensions from buildings or other known landmarks.

4. If contract exceeds $25,000, Consent of Surety to Final Payment form provided by Owner.

D. The Owner may reduce any Construction Voucher prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor, including, but not limited to:

1. Defective Work not remedied;

2. Damage to Work of a separate contractor;
3. Failure to maintain scheduled progress;

4. Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law); or

5. For Contracts with a value of less than $25,000 for which no payment bond is posted, receipt of written notice by the Owner of unpaid bills, filed in conformance with § 53.232, Texas Property Code. Any funds so withheld shall be released to the Contractor if he furnishes a bond or release of lien as provided in § 53.236, Texas Property Code;

6. Failure to maintain a current record set of "As-Built" documents on site; and/or

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

E. Submission of an Application for Final Payment by the Contractor constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.

F. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed out until the expiration of all warranty periods.

2.10 CHANGES AND CHANGED CONDITIONS

A. The Owner may, in writing, order changes in the Contract Documents within the general scope of the contract.

B. The Contractor shall promptly notify the Owner in writing of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site, before proceeding further with the Work.

C. If changes pursuant to this section increase or decrease the cost of, or time required for, performing the Work, then upon assertion of a claim in writing by the Contractor prior to the making of final payment under the contract, a written equitable adjustment by change order may be made. However, no adjustment shall be made unless the written notice required therein was given timely, or unless the Owner waives the requirement, therefore. If the adjustment cannot be agreed upon, the dispute shall be decided pursuant to the paragraph entitled “Disputes”.
D. 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, Chapter 2260.

E. 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 agreed to by the parties and incorporated into a Change Order.

F. 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 authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not to exceed estimate of costs 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.

G. 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.

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.

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.

3. 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.

2.11 DELAYS AND EXTENSION OF TIME

A. The Contractor may be granted an extension of time because of changes ordered in the Work or because of unforeseeable delays not within the control of or arising from the fault of either the Contractor or Owner caused by the following:

1. Unusual delay in the delivery of materials, components or equipment to be incorporated into the Work. Strikes and labor disputes (but not the availability of adequately skilled labor, unless such impact is caused solely by the conduct of the Owner);

2. Physical damage to the Work caused by circumstances beyond the control of the Contractor;

3. War, civil unrest or insurrection;
4. Other unforeseeable causes beyond the control of either the Contractor or the Owner, including inclement weather, but not for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the project completion date.

B. Claims or extensions of time must be made in writing within thirty (30) calendar days after the onset of the event or circumstance giving rise to the delay, except in the case of inclement weather, claims for which shall be submitted in writing within 30 calendar days after cessation of the cause of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one claim is necessary. Claims for extensions of time shall be stated in numbers of whole calendar days. In case of claims for extension of time because of inclement weather, such extension of time shall be granted only because such inclement weather prevented the execution of major or critical path items of Work.

2.12 NO DAMAGES FOR DELAY

THE 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.

2.13 OWNER'S INSPECTION – QUALITY ASSURANCE

A. The Owner will employ a Project Inspector who will periodically inspect and observe the construction progress, procedures, and materials of the Contractor for the purpose of providing quality assurance for the Owner. Such observations by 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. The Contractor shall offer full cooperation to facilitate these observations and shall be responsive to questions from the Owner's Inspector regarding methods, equipment, materials, and intentions in pursuing the Work or any particulars thereof.

B. Contractor shall notify Inspector when Work is ready for inspection or testing. It shall be Contractor's responsibility to 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. Failure to do so shall cause any certifications of testing to be void and require the Contractor to re-test at the Owner's request. All expenses for re-testing shall be borne by the Contractor.

C. Tests cannot be conducted, and Work cannot be covered up until the Inspector 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.

D. 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.

E. If applicable, 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.

F. If the Owner rejects materials that have been incorporated into the project, any testing performed to prove compliance will be at the expense of the Contractor.

G. No Work shall be performed on weekends or State-designated holidays unless approved by the inspector.

2.14 UNDERGROUND OBSTACLES

The approximate location of existing underground improvements and utilities is shown on the drawings according to the best information available to the Owner; in addition, the Contractor will make every effort to establish the exact location of such underground improvement or utility by contacting owners of same and by prospecting in advance of all trenching and subsurface excavations.

2.15 CUTTING AND PATCHING

Where indicated in the construction 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.

A. Utilities:

1. Do not cut and patch utilities until all necessary approvals and coordination requirements are accomplished.

2. Before cutting services, which are to remain permanently or temporarily in service, provide by-pass system as necessary to maintain service.
3. After by-pass and cutting, cap, valve or plug and tightly seal remaining portion of service piping or conduit to prevent entrance of moisture and foreign matter.

B. Structural Work:

Do not cut and patch structural Work in a manner that would result in a reduction of load-carrying capacity or of load-deflection ratio.

C. Inspection:

Before cutting, 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, take corrective action before proceeding with the Work. Meet at the Work site with all trades involved in cutting and patching. Review areas of potential interference and conflict between the various trades. Coordinate layout of the Work and resolve potential conflicts before proceeding with the Work.

2.16 CLEAN-UP

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

2.17 CONTRACT COMPLETION

A. Unless specifically stated as “working day,” the term “day” or “calendar day” shall mean every day of the calendar year. Along with the Work Progress Schedule, the Contractor shall submit his schedule for normal working days.

B. Liquidated Damages: The Owner has determined that the completion of the work in this contract is critical to the proper operation of the facility, and the Contractor’s failure to complete the work within such time will cause damage to the Owner. Since exact damages are difficult to determine or forecast, the sum of $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.

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

### 2.18 AS-BUILT DOCUMENTS

The Contractor shall set aside one set of construction drawings and specifications to be used for keeping a record of all changes made during construction. The Contractor shall be responsible for keeping these drawings and specifications current and neatly noting with colored pencil or ink the actual conditions of the Work and show and reference all changes made during construction. These drawings will be checked once each month by the Owner and partial payments will not be made to the Contractor until the Owner verifies that the records are being properly kept. Such inspections shall not constitute review or approval of the as-built documents for accuracy or completeness. These construction drawings shall be turned over to the Owner at the completion of the project. Final payment will not be made until these documents have been received and approved by the Owner.

### 2.19 TERMINATION FOR DEFAULT

A. The Owner may, without prejudice to any right or remedy terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under the following circumstances:

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

2. Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including Owner;
3. Persistent failure to prosecute the Work in accordance with the Contract Documents, and to ensure its completion within the time, or any extension thereof, specified in this contract;

4. Failure to remedy defective Work condemned by the Owner;

5. Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Texas Government Code Chapter 2251;

6. Persistent endangerment, by the Contractor or its Subcontractors or other vendors, of the safety of labor or of the Work itself;

7. Failure to maintain statutory bonds, if applicable and required herein, or failure to maintain insurance as required herein; or

8. Any other material breach of the Contract.

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

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

C. The Owner shall give the Contractor and its Surety (if applicable) fifteen (15) days’ prior written notice of its intent to terminate for any of the above reasons. If the Contractor or the Surety demonstrates, to the satisfaction of the Owner, that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, then the Owner shall rescind the notice and the Contract shall continue unmodified, and the Contractor shall not be entitled an extension of time. Should the Contractor or the surety fail to so demonstrate within thirty days following receipt of such notice, or fail to satisfy the Owner that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract sum remaining, including the cost of additional Architect/Engineer services made necessary by such default or neglect, in which event no further payment shall then be made to the Contractor, by the Owner until all costs of completing the Work shall have been paid. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect/Engineer's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the
Contract. The Owner reserves the right, where the Contract is terminated for cause, to take assignment of any and all contracts between the Contractor and its Subcontractors, vendors and suppliers, and the ODR shall promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to affect such assignment.

2.20 TERMINATION FOR CONVENIENCE OF OWNER

Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes not limited to court orders, loss of funding, acts of the federal government to discontinue the Work, etc., that may occur and render the Owner's continued performance of the Contract impossible or illegal. Upon such an occurrence, the following procedures will be adhered to:

A. The Owner will immediately notify the Contractor in writing, specifying the reason for and the effective termination date of the Contract. Such notice shall also contain any instructions necessary for the protection, storage or decommissioning of incomplete Work or systems, and for safety;

B. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the contract and shall:

1. Stop all Work;

2. Place no further subcontracts or orders for materials or services;

3. Terminate all subcontracts for convenience;

4. Cancel all material and equipment orders as applicable;

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

C. Within 30 days of the notice of termination, the Contractor shall submit the final termination settlement proposal to the Owner based upon costs up to the date of termination, any provable loss (excluding anticipated profits and the cost for preparation of the final termination settlement proposal). If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.
D. If the Contractor and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute through administrative procedures as established in paragraph entitled “Disputes” of these Terms and Conditions (Construction).

2.21 WARRANTY OF CONSTRUCTION

A. Contractor warrants to the Owner that all Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract Documents, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, except as provided in §19, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

B. Except as otherwise specified, the Contractor shall repair all defects in materials, equipment or workmanship appearing within one year from the date of Substantial Completion of the Work as a whole. Upon receipt of written notice from the Owner of the discovery of any defects, the Contractor shall promptly and at its own cost remedy the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor, after notice, fails to proceed promptly and remedy within fifteen (15) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

C. Where a particular piece of equipment or component of the Work for which a separate warranty is required under the Contract Documents is placed in continuous service before Substantial Completion, the date of service commencement shall be certified by the Architect/Engineer and the Warranty Period for that equipment or component shall run from the date so certified. In addition to the Contractor's warranty and duty to repair, as set forth in herein, the Contractor expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment. The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or subcontractor.
Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract Documents, the Contractor shall remain liable to the Owner on all elements of the required warranty that are not provided by the assigned warranty.

PART THREE – CONTRACT CLAUSES

3.01 INDEMNIFICATION AND HOLD HARMLESS

A. Indemnification of Owner

The Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor’s activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, officers or employees, separate Contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

2. Promptly advise the Owner in writing of any claim or demand against the Owner or the Contractor known to the Contractor related to or arising out of the Contractor’s activities under this Contract.

3.02 NON-APPROPRIATION OF FUNDS

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

3.03 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.

3.04 PROPRIETARY OR CONFIDENTIAL INFORMATION; TEXAS PUBLIC INFORMATION ACT

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

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

3.05 CONTRACTING INFORMATION RESPONSIBILITIES

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

3.06 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. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. 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.

3.07 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.

3.08 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.”

3.09 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.**

3.10 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.

3.11 SOVEREIGN IMMUNITY

Nothing in this Contract shall be construed as a waiver of the Owner’s or 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 Owner or the State of Texas. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities available to the Owner or the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. The Owner does not waive any privileges, rights, defenses or immunities available to the Owner by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

3.12 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.

3.13 FELONY CRIMINAL CONVICTIONS

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

3.14 ASSIGNMENTS

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

3.15 INDEPENDENT CONTRACTOR

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

3.16 PATENTS, TRADEMARKS OR COPYRIGHTS

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

3.17 FORCE MAJEURE

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

3.18 DISASTER RECOVERY PLAN:

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

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

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

A. All persons employed to perform duties within Texas, during the term of the Contract; and

B. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

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

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

3.20 NAME CHANGES AND SALES

If the Contractor changes its name or is sold to another entity, it must provide written notification to TPWD. The Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Contractor, the Contractor
shall identify the new personnel and provide resumes to TPWD, if resumes were originally required by the Solicitation. TPWD may request other information about the change and its impact on the Contract and the Contractor shall supply the requested information within five (5) working days of receipt of the request.

TPWD may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The TPWD has the sole discretion to determine if termination is appropriate.

3.21 CYBERSECURITY TRAINING

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

3.22 DAMAGE TO GOVERNMENT PROPERTY

In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent’s employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent’s receipt of Agency’s notice of amount due.
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: TX20210233 03/12/2021

Superseded General Decision Number: TX20200233

State: Texas

Construction Type: Building

County: Brazoria County 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 $10.95 for calendar year 2021 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 $10.95 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 2021. 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.

<table>
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<tr>
<th>Modification Number</th>
<th>Publication Date</th>
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<tr>
<td>0</td>
<td>01/01/2021</td>
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<tr>
<td>1</td>
<td>03/12/2021</td>
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ASBE0022-009 06/01/2019

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
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<tbody>
<tr>
<td>ASBESTOS WORKER/HEAT &amp; FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)</td>
<td>$ 24.28</td>
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</table>

BOIL0074-003 01/01/2017

<table>
<thead>
<tr>
<th>Rates</th>
<th>Fringes</th>
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</table>
BOILERMAKER.........................$ 28.00 22.35

CARP0551-009 04/01/2016

CARPENTER (Excludes Drywall Hanging, Form Work, and Metal Stud Installation)...............$ 23.05 8.78

ELEC0716-005 08/24/2020

ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms)...........$ 32.55 10.35

* ELEV0031-003 01/01/2021

ELEVATOR MECHANIC......................$ 45.48 36.365

FOOTNOTES:
A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.
<table>
<thead>
<tr>
<th>Job Code</th>
<th>Date</th>
<th>Rates</th>
<th>Fringes</th>
</tr>
</thead>
<tbody>
<tr>
<td>POWER EQUIPMENT OPERATOR</td>
<td>Cranes</td>
<td>$ 34.85</td>
<td>9.85</td>
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<tr>
<td>IRON0084-011 06/01/2020</td>
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<tr>
<td>IRONWORKER, ORNAMENTAL</td>
<td>$ 25.26</td>
<td>7.13</td>
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<td>IRON0135-002 09/01/2018</td>
<td>Rates</td>
<td>Fringes</td>
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<td>IRONWORKER, STRUCTURAL</td>
<td>$ 31.85</td>
<td>12.14</td>
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<td>PLAS0079-004 01/01/2015</td>
<td>Rates</td>
<td>Fringes</td>
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<tr>
<td>PLASTERER</td>
<td>$ 19.92</td>
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<tr>
<td>* PLUM0068-002 10/01/2020</td>
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<td>PLUMBER</td>
<td>$ 36.15</td>
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<td>PLUM0211-010 10/01/2018</td>
<td>Rates</td>
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<td>PIPEFITTER (Including HVAC Pipe Installation)</td>
<td>$ 33.30</td>
<td>12.26</td>
<td></td>
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<tr>
<td>SHEE0054-003 04/01/2020</td>
<td>Rates</td>
<td>Fringes</td>
<td></td>
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<tr>
<td>SHEET METAL WORKER (Excludes</td>
<td></td>
<td></td>
<td></td>
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</table>
HVAC Duct and Unit Installation) .................... $ 29.70  13.85

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SUTX2014-008  07/21/2014

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<tr>
<th></th>
<th>Rates</th>
<th>Fringes</th>
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<tbody>
<tr>
<td>ACOUSTICAL CEILING MECHANIC</td>
<td>$ 16.41</td>
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<tr>
<td>BRICKLAYER</td>
<td>$ 19.86</td>
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</tr>
<tr>
<td>CAULKER</td>
<td>$ 15.36</td>
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<tr>
<td>CEMENT MASON/CONCRETE FINISHER</td>
<td>$ 13.33</td>
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<tr>
<td>DRYWALL FINISHER/TAPER</td>
<td>$ 16.30</td>
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<tr>
<td>DRYWALL HANGER AND METAL STUD INSTALLER</td>
<td>$ 17.45</td>
<td>3.96</td>
</tr>
<tr>
<td>ELECTRICIAN (Alarm Installation Only)</td>
<td>$ 17.97</td>
<td>3.37</td>
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<tr>
<td>ELECTRICIAN (Low Voltage Wiring Only)</td>
<td>$ 18.00</td>
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<tr>
<td>FLOOR LAYER: Carpet</td>
<td>$ 20.00</td>
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<tr>
<td>FORM WORKER</td>
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<tr>
<td>GLAZIER</td>
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<tr>
<td>INSULATOR - BATT</td>
<td>$ 14.87</td>
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<tr>
<td>IRONWORKER, REINFORCING</td>
<td>$ 12.10</td>
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<tr>
<td>LABORER: Common or General</td>
<td>$ 10.55</td>
<td>0.00</td>
</tr>
<tr>
<td>LABORER: Mason Tender - Brick</td>
<td>$ 13.37</td>
<td>0.00</td>
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<tr>
<td>LABORER: Mason Tender - Cement/Concrete</td>
<td>$ 10.86</td>
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<tr>
<td>LABORER: Pipelayer</td>
<td>$ 12.94</td>
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</tr>
<tr>
<td>Occupation</td>
<td>Rate</td>
<td>Hours</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Laborer: Roof Tearoff</td>
<td>$11.28</td>
<td>0.00</td>
</tr>
<tr>
<td>Laborer: Landscape and Irrigation</td>
<td>$9.49</td>
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<tr>
<td>Lather</td>
<td>$19.73</td>
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<tr>
<td>Operator: Backhoe/Excavator/Trackhoe</td>
<td>$15.56</td>
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<tr>
<td>Operator: Bobcat/Skid Steer/Skid Loader</td>
<td>$13.93</td>
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</tr>
<tr>
<td>Operator: Bulldozer</td>
<td>$20.77</td>
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<tr>
<td>Operator: Drill</td>
<td>$16.22</td>
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<tr>
<td>Operator: Forklift</td>
<td>$15.64</td>
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<tr>
<td>Operator: Grader/Blade</td>
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</tr>
<tr>
<td>Operator: Loader</td>
<td>$13.55</td>
<td>0.94</td>
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<tr>
<td>Operator: Mechanic</td>
<td>$17.52</td>
<td>3.33</td>
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<tr>
<td>Operator: Paver (Asphalt, Aggregate, and Concrete)</td>
<td>$16.03</td>
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<tr>
<td>Operator: Roller</td>
<td>$16.00</td>
<td>0.00</td>
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<tr>
<td>Painter (Brush, Roller and Spray), Excludes Drywall Finishing/Taping</td>
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<tr>
<td>Roofer</td>
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<td>Sheet Metal Worker (HVAC Duct Installation Only)</td>
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<td>Sheet Metal Worker (HVAC Unit Installation Only)</td>
<td>$19.67</td>
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<td>Position</td>
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<tr>
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<tr>
<td>TILE FINISHER</td>
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<td>TILE SETTER</td>
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<td>TRUCK DRIVER: 1/Single Axle Truck</td>
<td>$14.95</td>
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<td>TRUCK DRIVER: Dump Truck</td>
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<td>TRUCK DRIVER: Flatbed Truck</td>
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<td>TRUCK DRIVER: Semi-Trailer Truck</td>
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<td>TRUCK DRIVER: Water Truck</td>
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</tr>
<tr>
<td>WATERPROOFER</td>
<td>$14.39</td>
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</tbody>
</table>

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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

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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) (l) (ii)).

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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.

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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
STATE OF TEXAS
COUNTY OF ___________________

Project Number _1210990
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,
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. 1210990, Repairs to Security Fencing and Operable Gate at Sea Center Texas, 
Lake Jackson, Brazoria 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_________________________________
STATE OF TEXAS
COUNTY OF TRAVIS

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 No. 1210990, Repairs to Security Fencing and Operable Gates, Lake Jackson, Brazoria 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, Terms and Conditions for Project Number 1210229 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 Terms and 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).

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.

The CONTRACTOR hereby agrees to complete all work within one hundred twenty (120) calendar days, commencing on the date specified in OWNER’S written "Notice to Proceed." Time is of the essence with 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.
Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

(a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Respondent’s claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Respondent may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against the Respondent as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Respondent must provide written notice to Agency of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim.

The notice must state with particularity:

(1) the nature of the alleged breach;
(2) the amount the Respondent seeks as damages; and
(3) the legal theory of recovery.

(b) The chief administrative officer, or if designated in the contract, another officer of the Agency, shall examine the claim and any counterclaim and negotiate with the Respondent in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.

(c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party’s rights under this contract as to the parts of the claim that are not resolved.

(d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with Agency, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Respondent’s sole and exclusive process for seeking a remedy for an alleged breach of contract by the Agency if the parties are unable to resolve their disputes as described in this section.

(e) Nothing in the contract shall be construed as a waiver of the state’s or the Agency’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.
Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into this contract or by its conduct, or by the conduct of any representative of Agency, prior to or subsequent to entering into this contract.

(f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the 
Respondent:

(1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or
(2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

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

If to Owner:
Lyndis Sandoval, Contract Manager, CTCD, CTCM
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas, 78744

With Copies to:
Doug Sauve, Project Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Todd George, Attorney, Legal Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

If to Contractor:

<table>
<thead>
<tr>
<th>Name</th>
<th>Company Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

**Party Representatives.** The Owner’s Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Doug Sauve, Project Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin Texas, 78744
Email: [doug.sauve@tpwd.texas.gov](mailto:doug.sauve@tpwd.texas.gov)
The Contractor’s designated representative authorized to act on the Contractor’s behalf and bind the Contractor with respect to the Project is:

Name

Company Name

Address

Address

Email

Phone No.

The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

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

Signatures follow on the next page
Contractor:

By: ________________________________  Date: ________________________________

Title: ________________________________

Owner: Texas Parks and Wildlife Department

By: ________________________________  Date: ________________________________

Title: ________________________________
CONTRACTOR’S PROGRESS PAYMENT AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____________

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared the Affiant named below who being duly sworn, on oath, says that he/she is a duly authorized representative of the company named below; and that all terms of the Contract for the completion of certain public works described as Project No. 1210990, Repairs to Security Fencing and Operable Gate at Sea Center Texas, Lake Jackson, Brazoria 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.

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<th>Affiant</th>
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<th>Company</th>
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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:

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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.

Affiant Signature

Sworn to and subscribed before this _____ day of __________________, 20______

(SEAL)  _________________________________________
Notary Public in and for ____________ County, TX

Progress Pay Affidavit_OF_039 (2020_0408)
C CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS
COUNTY OF _____________

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Affiant Signature

Sworn to and subscribed before this _____ day of __________________, 20_____
CONSENT OF SURETY COMPANY TO FINAL PAYMENT

PROJECT NO: 1210990

TITLE OF PROJECT: Repairs to Security Fencing and Operable Gate

PROJECT LOCATION: Sea Center Texas

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

CONTRACTOR:

SURETY COMPANY:
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 ______________________________