CONTRACT
FOR
COMMERCIAL REMODELING AND CONSTRUCTION SERVICES
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
TRIMBUILT CONSTRUCTION, INC.

The Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Trimbuilt Construction, Inc. (hereinafter referred to as "Contractor"), located at 12800 North Lamar, Austin, Texas 78753 enter into the following contract for commercial remodeling and construction services (hereinafter referred to as the "Contract") pursuant to Tex. Gov't Code Ann. Ch. 2165 (Vernon 2012 & Supp. 2014).

I. STATEMENT OF WORK.

1.01. **SERVICE REQUIREMENTS.** (a.) Contractor shall provide commercial remodeling and construction services for TFC at various State-owned facilities located throughout Texas. Contractor shall provide all, labor, materials, equipment, tools, and transportation required to perform these services.

(b.) No work is guaranteed under this Contract. For each proposed project under this Contract, the Contract Administrator, as defined in Section 1.02 below, will contact Contractor for an estimate. Contractor will proceed with the work under the project only after the estimate is approved by the Contract Administrator through the issuance of a "Delivery Release." Work performed without a Delivery Release will not be paid.

(c.) Each Delivery Release will constitute an amendment to this Contract, subject to the terms and conditions set forth in this Contract, and shall include a description of the project assignment, scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release.

(d.) Upon notification under Subsection (b.) above of a proposed project, Contractor shall contact the Contract Administrator within twenty-four (24) hours to schedule a site visit and shall provide the project estimate within ten (10) business days.

(e.) Work performed will be conducted by Contractor only in areas identified as asbestos free through due diligence sampling and testing. If work or part of a project is to be performed in an unabated area, the abatement work will be performed by others as determined by TFC, or negotiated with the Contractor to abate. Coordination of work to be performed in unabated areas will be discussed in the initial stages of a project.

(f.) Travel time to and from the job site is not reimbursable under this Contract for Austin area projects. Mobilization fees may be negotiated for remote projects. Contractor shall check in and out with the Contract Administrator to ensure that the Contract Administrator logs the start and completion times on the service ticket for the services performed. Contractor shall provide the following information on the service ticket: building name, floor, TFC work order number, name of personnel performing the work, trade category of person performing work,

number of personnel, and hours worked. Contractor to match approved delivery releases. Contactor material invoices shall be attached to final invoice.

(g.) Contractor shall be responsible for examining all facilities in which the work will take place and to be familiar with the conditions under which the work will be accomplished. Contractor shall inspect existing conditions prior to commencing work, including elements subject to damage or movement during the project.

1.02. **CONTRACT ADMINISTRATOR.** TFC shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between TFC and Contractor. The instructions of the Contract Administrator and/or the Contract Administrator's designated representative (hereinafter collectively the "Contract Administrator") are to be strictly and promptly followed by Contractor at all times. TFC's Contract Administrator is to have free access to Contractor's supplies, equipment, and work product at all times for inspection and audit. Contractor is to afford the Contract Administrator all necessary assistance during those inspections and/or audits. The Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed, and as to the manner of performance and rate of progress of the work. The Contract Administrator will determine the amount of work performed and materials furnished which are to be paid under this Contract. Failure of the Contract Administrator during the progress of the Contract, to: (i.) discover or reject unacceptable work; (ii.) discover work not in accordance with the Contract; or, (iii.) failure to exercise any remedies in connection therewith, shall not be deemed an acceptance thereof, nor a waiver, of TFC's right to full performance of the contract.

1.03. **PROJECT COMPLETION TIME.** Contractor must perform work within the timeframe agreed upon by Contractor and TFC prior to beginning work. If Contractor cannot perform work within the timeframe stated, Contractor may be subject to liquidated damages up to twenty percent (20%) of total cost of the project.

1.04. **MODIFICATIONS TO SPECIFICATIONS OR DRAWINGS.** Modifications to specifications or drawings must receive written approval from the Contract Administrator prior to construction. Contractor must notify the Contract Administrator of any discrepancies in the drawings. Contractor shall provide a marked-up set of specifications and drawings, marked in red, with any in-place installations differing from those originally shown. Any material or installation method proposed by Contractor not included in these specifications shall be specified in the proposal, including manufacturer's product data.

1.05. **DRAWINGS.** If required, as-built drawings shall be furnished to the Contract Administrator within five (5) business days of completion of each project. On a lengthy project as built drawings will be furnished at logical intervals as the project progresses. CAD is preferred, but hand-drawn red-line is the minimum standard for drawings. Final payment will be withheld pending delivery of complete and accurate as-built drawings.

1.06. **INSTALLATION AND REPAIRS.** All work shall be in strict accordance with federal, state, and local codes and ordinances and comply with the Occupational Safety and Health Administration (hereinafter referred to as "OSHA") and accessibility requirements.

1.07. **MATERIALS.** (a.) All fixtures installed as a result of remodeling or new construction shall match existing fixtures within the building.

(b.) All equipment installed as a result of renovation on replaced or repaired equipment must match existing equipment within the building.

(c.) All commercial remodeling equipment and materials installed by the Contractor must match and be comparable with existing equipment and materials.

(d.) Equipment and materials utilized by Contractor must be of equal or better quality than existing equipment and materials.

(e.) Contractor shall provide any and all parts and operating manuals for equipment installed.

(f.) All materials and equipment furnished shall be new and in good working condition unless stated otherwise in writing by TFC.

1.08. **EXISTING UTILITIES AND STRUCTURES.** Contractor shall adequately protect the work, TFC's property, adjacent property and the public. In the event of damage to facilities as a result of Contractors operations, Contractor shall take immediate steps to notify the Contract Administrator and subsequently repair or restore all services and facilities to the satisfactory approval of the Contract Administrator. Further, Contractor shall engage any additional outside services which may be necessary to facilitate repairs until services and facilities are restored. All costs involved in making repairs and restoring disrupted services and facilities shall be borne by Contractor, and Contractor shall be fully responsible for any and all claims resulting from the damage. The Contract Administrator may elect to perform such repairs and deduct the cost of such repairs, replacements, and outside services from amounts due to Contractor.

1.09. **STORAGE/WASTE REMOVAL.** Contractor will be allowed to temporarily store materials and equipment in performance of this Contract during the project time period only if space is available in each building. Storage space will be arranged through the Contract Administrator. Contractor shall keep premises clean on a continual basis and no trash or debris will be permitted to accumulate in work areas. Use of a dust barrier may be required and will be communicated to Contractor by the Contract Administrator on a per project basis. Contractor shall be responsible for removal and disposal of all waste packaging material and excess materials purchased by Contractor associated with this project which may include, if applicable, the rental of a waste receptacle. If needed, site placement of the waste receptacle shall be approved by the Contract Administrator. TFC is not responsible for the security of stored materials and equipment. TFC encourages the use of gang boxes for tool storage and securing the site when unoccupied by Contractor. Contractor shall maintain at all times clear access to fire lanes, and emergency and utility control facilities such as fire hydrants, fire alarm boxes, utility valves, manholes, junction boxes, fire extinguishers and emergency exits.

1.10. **SECURITY AND IDENTIFICATION.** Contractor shall abide by all procedures and rules as conveyed by the Contract Administrator regarding security requirements of the building where work is to be performed. All Contractor's and subcontractor's personnel must wear uniform clothing to identify the company for which they work.

1.11. **SMOKING.** All facilities where work is to be performed are nonsmoking buildings. Contractor employees are prohibited from smoking in all areas except in areas designated for smoking.

1.12. **DISPOSAL OF SALVAGEABLE ITEMS.** The Contract Administrator shall mark and/or otherwise inform Contractor of any material that will be salvaged by TFC. Disposal may include depositing in a central location for salvage by TFC or delivery to TFC's warehouse, located at 6506 Bolm Road, Austin, Texas, or other locations as determined by the Contract Administrator.

1.13. **CHEMICALS.** Contractors and subcontractors shall provide TFC Risk Management and the Contract Administrator a legible Material Safety Data Sheet (hereinafter referred to as "MSDS") for all chemicals to be used or brought onto TFC controlled property for each project. MSDS's shall be submitted prior to the start of work.

1.14. **DAMAGES.** Contractor shall be responsible for all damages to existing building or previously completed work incurred by his/her staff or subcontractors. Contractor is to protect adjacent areas from damage and debris. It is the intent of this Contract that any item affected by the work be restored to a state equal to or better than its original condition.

1.15. **CALLBACK.** (a.) For the purpose of evaluating performance under this Contract, a "Callback" is defined as a service call that requires Contractor to return to complete or repair a previously performed service due to Contractor's inability, negligence, or lack of knowledge to perform services. Contractor is to perform Callback Service at no additional cost to TFC, regardless of whether the work is performed during normal working hours or premium hours. Contractor shall maintain a complete, orderly written report of all Callbacks. These "Callback Reports" shall indicate the time, date, name of personnel, problems reported and corrective measures taken to complete or repair all problems. A consolidated Callback Report is to be furnished to TFC as soon as the service is provided.

(b.) All requested Callback's shall be answered on-site within twenty-four (24) hours. If a call is not answered in the specified time, TFC may engage a third party to answer the call and charge the cost of the repairs to Contractor.

II. TERM.

2.01. **CONTRACT AWARD.** (a.) This Contract shall be effective as of the date of the last party to sign and shall expire on August 31, 2017, unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.03 below. This Contract may be renewed for one (1) additional two (2) year period, provided that renewal is executed by written amendment to this Contract prior to expiration of the current contract term. Any renewals shall be at the same terms and conditions, plus any approved changes.

(b.) Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract.

2.02. **WORKING HOURS.** Contract work shall be performed primarily during normal working hours of 7:00 AM to 6:00 PM, Monday through Friday. Contract work may also be performed at hours other than normal business hours at the direction of the Contract Administrator in order to meet required schedules. No additional pay for premium hours without the prior written approval of the Contract Administrator.

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

(b.) Termination without Default. TFC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (hereinafter referred to as "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by TFC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.03(c.)

(c.) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary as determined by the Contract Administrator to preserve the work in progress and to protect materials, properties, and equipment. TFC shall pay Contractor for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work in accordance with the prices included in the scope of work.

(d.) Termination by Contractor. Contractor may terminate the Contract upon providing sixty (60) days' written notice to TFC. In the event of termination by Contractor, Contractor shall be governed by the terms and conditions of this Contract, and shall perform the acts outlined in Section 2.03(c.) above. Contractor will be held responsible for additional cost incurred from the termination of this Contract.

2.04. **UNSATISFACTORY PERFORMANCE.** TFC may consider the following as unsatisfactory performance:

(a.) an excess of one (1) "callback" per project to correct a problem within thirty (30) calendar days;

(b.) an excess of one (1) instance within one (1) calendar year of Contractor personnel assigned to a project not having the skill or knowledge to perform the service;

(c.) an excess of two (2) instances, within one (1) calendar year, of exceeding the response time to a proposed project as defined in Section 1.01.(d.) of this Contract;

(d.) an excess of two (2) instances, within one (1) calendar year, of not arriving at job site at agreed upon schedule;

(e.) failure to provide proper or adequate supervision;

(f.) an excess of one (1) complaint of inappropriate language or behavior within one (1) month; and

(g.) an excess of two (2) instances within one (1) calendar year of a project not being completed within agreed upon schedule.

2.05. **NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION.

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a.) The total amount of this Contract shall not exceed the sum of Seven Hundred Fifty Thousand and No/100 Dollars ($750,000.00). Pricing for each Delivery Release shall be as set forth and specified in the negotiated offer provided by Contractor with pricing and invoicing in accordance with Exhibit A - Compensation and Fees, attached hereto and incorporated herein for all purposes. Any changes to the not-to-exceed amount of this Contract or pricing fees set forth in Exhibit A - Compensation and Fees shall be submitted to TFC for review and shall be approved by amendment to this Contract.

(b.) If, at any time during the term of this Contract, Contractor reduces the comparable price of any article or service covered by the Contract to customers other than TFC, the prices charged to TFC for such articles or services shall also be reduced proportionately. Such reduction shall be effective at the same time and in the same manner as the reduction in price to customers other than TFC. In addition to invoicing at the reduced prices, Contractor shall furnish promptly to TFC complete information regarding the reduction.

3.02. **PAYMENTS TO CONTRACTOR.** (a.) Payments to Contractor will be made at the completion of a project under a Delivery Release and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TFC. Contractor will be paid for completion of work accepted and approved by the Contract Administrator.

(b.) For large projects, Contractor will be paid for work performed to the end of the preceding month, provided that the work required to be performed under the Contract shall have been fully and satisfactorily completed, accepted, and approved by the Contract Administrator.

(c.) Contractor shall invoice TFC for work performed by vendor identification number, building, purchase order number and delivery release number. Invoices must include the purchase order number, the number of employees that worked on the job, the number of hours, and a copy of the project service ticket. Additionally, invoices for any materials purchased for each project must be provided. Address for submission is: Texas Facilities

Commission, Fiscal Department, P.O. Box 13047, Austin, Texas 78711-3047 or accountspayable@tfc.state.tx.us.

3.03. **ADDITIONAL SERVICES AND ADJUSTMENTS.** (a.) "Additional Services" are those services not included in Article I of this Contract which may be requested by TFC at any time for the duration of this Contract. Upon request by TFC for Additional Services, Contractor shall prepare and submit to TFC a proposal for such services requested. Additional Services will be charged at the hourly rates set forth in Exhibit A – Compensation and Fees and shall be documented by a Delivery Release.

(b.) At any time, TFC may adjust the Contract, in whole or in part, with thirty (30) days notice to Contractor. Adjustments shall be in accordance with the unit prices quoted in Exhibit A – Compensation and Fees and shall be documented by amendment to this Contract.

IV. CONTRACTOR PERSONNEL.

4.01. **REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the necessary qualified personnel, contractors, organization and facility to properly fulfill all the terms and conditions of this Contract.

4.02. **GENERAL AND CRIMINAL BACKGROUND CHECKS.** (a.) Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TFC as to the facts and circumstances surrounding the conviction.

(b.) Contractor's employees and subcontractors that will complete any work on-site at a state-owned property will be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor. A complete criminal background check shall be completed before any employee performs services at the site, and may be requested at any time thereafter. Criminal background checks must be accomplished by the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or subcontractors, DPS or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in Exhibit B - Criminal Background Checks and Application Guidelines attached hereto and incorporated herein for all purposes.

4.03. **CONTRACTOR ACCESS.** Access routes, entrance gates or doors, parking and storage areas and any imposed time limitations shall be designated by the Contract Administrator. Contractor shall conduct operations in strict observation of the access routes and other areas established as described above. Under no circumstances shall any of Contractor's personnel, vehicles, or equipment enter or move upon any area not authorized by the Contract Administrator for access by Contractor. Upon the approval of the Contract Administrator, Contractor shall have the right to utilize air, water, gas, steam, electricity, and similar items of expense from existing outlets at TFC property.

4.04. **CONTRACTOR PARKING.** Parking, for Contractor vehicles when performing work, must be coordinated through the Contract Administrator. Contract Administrator will arrange parking according to parking availability at the job site. Parking in close proximity to the project may not be possible. Subcontractors may be required to utilize remote parking & carpooling when space is not available.

4.05. **CONTRACTOR SAFETY.** (a.) All Contractors and subcontractors conducting work for TFC shall abide by all Occupational Safety and Health Administration (hereinafter referred to as "OSHA") rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of Contractor and subcontractors shall be trained in accordance with Chapter 29, OSHA Regulations.

(b.) Contractor and subcontractors shall inform the Contract Administrator of their hazardous electrical energy control, lockout/tag-out procedure. Contractor's procedure must meet or exceed TFC's procedure as determined by the Contract Administrator.

(c.) Work shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption Contractor must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

4.06. **CONTRACTOR COOPERATION.** (a.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the Contract Administrator. No work, installation or other services shall be undertaken by Contractor except with the prior written direction of the Contract Administrator.

(b.) Contractor understands and agrees that work, installation or any other service performed without the prior written direction of the Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk.

(c.) Contractor agrees to employ competent personnel meeting the requirements outlined in the specifications, who shall be satisfactory to TFC. Personnel assigned to perform services under this Contract may not be reassigned without the prior written approval by the Contract Administrator. TFC may request that Contractor replace unsatisfactory personnel, which request shall not be unreasonably denied.

(d.) Contractor agrees to cooperate and coordinate its work with that of other Contractors retained by owner. Upon discovery of an apparent conflict in the sequencing of work with another Contractor, Contractor shall report the concern to the Contract Administrator who will resolve the conflict.

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

(i.) all persons employed to perform duties within the State of Texas, during the term of the Contract; and

(ii.) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

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

V. STATE FUNDING.

5.01. STATE FUNDING. (a.) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. art. III, § 49. In compliance with TEX. CONST. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b.) Furthermore, any damages due under this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach; **provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.**

VI. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

6.01. SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS. (a.) Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract 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 four (4) 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 Contract. Contractor and any 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 TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b.) 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. The acceptance of funds by Contractor 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 to conduct an audit or investigation in connection with those funds. Contractor

acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. 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. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

6.02. **CONFIDENTIALITY.** Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is:

(i.) confidential by law;

(ii.) marked or designated "confidential" (or words to that effect) by TFC; or

(iii.) information that Contractor is otherwise required to keep confidential by this Contract.

6.03. **PUBLIC RECORDS.** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Contractor will cooperate with TFC in the production of documents responsive to the request. Contractor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Contractor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Contractor will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

6.04. **PUBLIC DISCLOSURE.** No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of TFC.

VII. CONTRACTOR'S RESPONSIBILITIES AND WARRANTIES.

7.01. **CONTRACTOR RESPONSIBILITIES.** Contractor shall be responsible for damage to TFC's facilities and all associated systems by its work, its negligence in work, its personnel, or its equipment by Contractor's or subcontractors staff. Contractor shall be responsible and liable for

the safety, injury, and health of its working personnel while its employees are performing work for TFC.

7.02. **PERFORMANCE STANDARDS.** (a.) All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and shall comply with all federal, state, and local laws, rules and codes, including the 2010 Uniform General Conditions, attached hereto and incorporated herein as Exhibit C – Project Manual, and the latest edition of the Uniform Building Code.

(b.) All mechanical, electrical, and plumbing contractors shall be licensed and will be verified through the appropriate agency.

(c.) Appropriate dress is required for all personnel. Prohibited attire includes, but is not limited to, the following:

(i.) athletic clothing and lounge attire of any type;

(ii.) clothing that displays offensive messages (picture or print);

(iii.) clothing that is see-through, low cut, or bares the midriff;

(iv.) shorts; and,

(v.) flip-flop sandals.

(d.) Eating is prohibited on jobsites except in designated cafeterias.

(e.) All facilities where work is to be performed are professional environments. Contractor employees using inappropriate language or behaving in an inappropriate manner will be asked to leave the premises and documented by the Contract Administrator.

(f.) Contractor shall provide temporary restrooms or portable toilets unless otherwise designated. It is recommended that a separate woman's toilet be provided. Use of only these facilities shall be enforced by Contractor. Toilets shall be located with consideration of adjacent property and maintained on a scheduled basis.

(g.) All Contractor employees on jobsite shall:

(i.) wear clean uniforms in good repair daily;

(ii.) keep shirttail tucked in during business hours;

(iii.) bathe daily and be clean at the start of the work day;

(iv.) wash hair daily, comb or brush before starting work and keep trimmed; and,

(v.) be clean shaven or, if facial hair is present, keep trimmed.

7.03. **WARRANTY ON SAFETY AND HEALTH REQUIREMENTS**. Contractor shall procure, at Contractor's expense, all necessary and required licenses and permits necessary for the performance of this Contract. Contractor represents and warrants that the services provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, OSHA, and all Texas health and safety standards.

7.04. **PERFORMANCE WARRANTY.** All work performed under this Contract shall be in accordance with applicable terms and conditions of this Contract and of local codes and ordinances and any other authority having lawful jurisdiction. Work performed under this Contract shall meet all applicable requirements of the latest revision of the Uniform Building and Plumbing codes, National Electric Code, and all other applicable codes. Contractor shall guarantee all work included in the Contract against any defects in workmanship and shall satisfactorily correct, at no cost to TFC, any such defect that may become apparent within a period of one (1) year after completion of work. The warranty period shall commence upon the date of acceptance by TFC.

7.05. **MATERIAL WARRANTY.** All material and equipment furnished under this Contract is guaranteed by Contractor to be in compliance with this Contract, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Contract shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED, OR DISCONTINUED MODELS OR MATERIAL ARE NOT ACCEPTABLE.** The warranty period for Contractor-provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by TFC. Contractor shall provide TFC's Contract Administrator with all manufacturers' warranty documents within five (5) business days of completion of each project.

VIII. BONDS, INSURANCE, INDEMNIFICATION AND LEGAL OBLIGATIONS.

8.01. **BONDS.** (a.) Prior to commencement of work under a Delivery Release issued under this Contract, Contractor is required to tender payment and performance bonds to TFC, as required by Texas Government Code, Chapter 2253, when the following circumstances apply:

(i.) A performance bond is required if the Delivery Release amount is in excess of $100,000.00. The performance bond is solely for the protection of TFC. The performance bond is to be for the sum of the Delivery Release to guarantee the faithful performance of the work in accordance with the Contract. The performance bond shall be effective through Contractor's warranty period. When submitting a proposal for services as requested by the Contract Administrator, Contractor shall provide documentation for the cost of the performance bond.

(ii.) A payment bond is required if the Delivery Release amount is in excess of $25,000.00. The payment bond is to be for the sum of the Delivery Release and is payable to TFC solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with Contractor or a subcontractor. When submitting a proposal for services as requested by the Contract Administrator, Contractor shall provide documentation for the cost of the payment bond.

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

(c.) Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embosses seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

(d.) The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Texas Government Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OF PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**

(e.) TFC shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Texas Government Code, Section 2253.026.

(f.) Claims on payment bonds must be sent directly to Contractor and its surety in accordance with Texas Government Code, Section 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to TFC may result in loss of their rights against Contractor and/or its surety. TFC 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.

(g.) The rights of subcontractors regarding payment are governed by Texas Property Code, Sections 53.231–53.239 when the value of a Delivery Release is less than $25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

(h.) Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on federal bonds and acceptable reinsuring companies (Department Circular 570).

8.02. **INSURANCE.** Prior to the commencement of work under this Contract, Contractor agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract, to furnish certificates of insurance including corresponding policy endorsements, and make available, at no cost to TFC, copies of policy declaration pages as evidence thereof:

(a.) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers' liability of $1,000,000.00 bodily injury per accident, $1,000,000.00 bodily injury disease policy limit and $1,000,000.00 per disease, per employee. Workers'

compensation insurance coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(46). Certification in writing from Contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code, Section 406.096. A Waiver of Transfer Right of Recovery Against Others in favor of TFC shall be included.

(b.) Commercial General Liability with a combined single limit of $1,000,000.00 per occurrence for coverage A and B including products/completed operations, where appropriate, with a separate aggregate of $2,000,000.00 for bodily injury and for property damages. The general aggregate limit shall apply on a per Project basis. The policy shall contain the following provisions:

(i.) blanket contractual liability coverage for liability assumed under the Contract;

(ii.) independent contractors' coverage;

(iii.) State of Texas, TFC, its officials, directors, employees, representatives and volunteers must be listed as additional insureds;

(iv.) thirty (30) day Notice of Cancellation in favor of TFC; and

(v.) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c.) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of $1,000,000.00 per accident for bodily injury and property damage. Alternate acceptable limits are $1,000,000.00 bodily injury per person, $1,000,000.00 bodily injury per occurrence and at least $500,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

(i.) Waiver of Subrogation endorsement;

(ii.) Thirty (30) day Notice of Cancellation endorsement; and

(iii.) Additional Insured endorsement.

(d.) Umbrella Liability Insurance for an amount of not less than $1,000,000.00 that provides coverage at least as broad as and applies in excess and follows the form of the primary liability coverage's required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

(e.) Special Form Builder's Risk Insurance. Special Risk Builder's Risk Insurance, or installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

(i.) Coverage shall include, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm.

(ii.) For those properties located within a Tier 1 or Tier 2 windstorm area, named storm coverage must be provided with the same policy limits as required below.

(iii.) For those properties located in flood prone areas, flood insurance coverage must be provided with the same policy limits as required below.

(iv.) Builder's risk and installation floater limits shall be equal to one hundred percent (100%) of the Contract Sum.

(f.) For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include Existing Property coverage in an amount equivalent to the Total Contract Sum. For purposes herein, "Existing Property" means existing buildings or structures as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by Contractor or any Subcontractors.

(g.) For TFC furnished equipment or materials that will be in care, custody or control of contractor, contractor shall be responsible for any and all damages and losses thereto.

(h.) The policy must be written jointly in the names of TFC and contractor. Subcontractors must be named as additional insureds. The policy shall have endorsements as follows:

(i.) this insurance shall be specific as to coverage and not contributing insurance with any insurance or self-insurance carried by TFC, if any;

(ii.) 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; and

(iii.) loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds as their interests may appear. TFC shall be named as loss payee.

(i.) Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

(j.) Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

8.03. **GENERAL REQUIREMENTS FOR INSURANCE.** (a.) Contractor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b.) Contractor shall maintain coverage for the duration of this Contract. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Contract. Contractor shall, on at least an annual basis, provide TFC with an insurance

certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Contractor.

(c.) Contractor shall not commence work under this Contract until they have obtained the required insurance and until such insurance has been reviewed by TFC. Contractor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Contractor hereunder.

(d.) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(e). TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.

(f.) Contractor shall produce endorsements upon TFC's request to each affected policy:

(i.) Naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);

(ii.) That obligates the insurance company to notify the TFC Contract Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,

(iii.) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Contract, covering both TFC and Contractor, shall be considered primary coverage as applicable.

(g.) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h.) Contractor shall not cause any insurance required under this Contract to cancel nor permit any insurance to lapse during the term of this Contract.

(i.) TFC reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Contractor (such adjustments shall be commercially available to Contractor).

(j.) Contractor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(k.) Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

(l.) Contractor's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

8.04. INDEMNIFICATION. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS AND EMPLOYEES, FROM ALL LIABILITY AND DAMAGES ACTIONS, CLAIMS, DEMANDS OR SUITS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 101), OR ANY OTHER SUCH LAWS. CONTRACTOR SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ALL DAMAGES OR INJURY TO PROPERTY OF ANY CHARACTER TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF CONTRACTOR, CONTRACTOR'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE WORK OR MATERIALS; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TFC AND/OR THE STATE OF TEXAS ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

8.05. LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

IX. CONTRACTOR GENERAL AFFIRMATIONS.

9.01. FINANCIAL INTERESTS/GIFTS. (a.) Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

(b.) Pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, Contractor certifies that Contractor knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Contractor's company or corporation. Contractor further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts

with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of TFC.

9.02. **PRIOR EMPLOYMENT.** Contractor certifies that Contractor shall comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees including "revolving door" provisions. Furthermore, Contractor certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Purchase Order during the twelve (12) month period immediately following the employee's last date of employment at TFC.

9.03. **ELIGIBILITY.** Pursuant to Texas Government Code Section 2155.004(b), Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

9.04. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Contract prior to its execution. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

9.05. **DEBTS OR DELINQUENCIES TO STATE.** Pursuant to Texas Government Code Section 403.055, Contractor understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

9.06. **BUY TEXAS.** If Contractor is authorized to make purchases under this Contract, Contractor certifies that Contractor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

9.07. **EQUAL OPPORTUNITY.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Contractor shall include the above provisions in all subcontracts pertaining to the work.

9.08. **DECEPTIVE TRADE PRACTICE; UNFAIR BUSINESS PRACTICES.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce 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 those officers have not been found to be liable for such practices in such proceedings.

9.09. **AGENCY EXECUTIVE HEAD.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Contractor represents that no person who, in the past four (4) years, served as an executive of TFC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Contractor. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor shall provide the following information : the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

9.10. **LIABILITY FOR TAXES.** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TFC shall not be liable for any taxes resulting from this Contract.

9.11. **NO CONFLICTS.** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

9.12. **PROHIBITION ON CERTAIN BIDS AND CONTRACTS.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Contractor represents and warrants that during the five (5) year period preceding the date of this Contract, Contractor has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

9.13. **IMMIGRATION REFORM.** The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee's authorization to lawfully work in the United States.

9.14. **MINIMUM WAGE RATE REQUIREMENTS.** Notwithstanding any other provision of this Contract, Contractor hereby represents and warrants that the Contractor shall pay to each of its

employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, Contractor shall produce proof of compliance with this provision by Contractor to TFC. TFC shall withhold payments due to Contractor until Contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, Contractor shall submit Wage Rate Affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

X. MISCELLANEOUS PROVISIONS.

10.01. **ASSIGNMENT AND SUBCONTRACTS.** (a.) Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC.

(b.) Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all of the services to be performed. TFC shall approve all subcontractors. Subcontractors providing service under this Contract shall meet the same requirements and level of experience as required of the Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for the service. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:

(i). contractors planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Exhibit E – HUB Subcontracting Plan, as further described in Section 10.02 below;

(ii.) subcontracting shall be at the Contractor's expense;

(iii.) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors; and

(iv.) Contractor shall be the only contact for TFC and subcontractors. Contractor shall list a designated point of contact for all TFC and subcontractor inquiries.

10.02. **HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with TFC. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in Exhibit D – HUB Subcontracting Plan, attached hereto and incorporated herein for all purposes. In addition to information required by Section 10.01 above, Contractor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on Exhibit D-1 – HSP Progress Assessment Report, attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

10.03. **PREVAILING WAGE RATES.** Contractor shall comply with Texas Government Code, Chapter 2258, regarding prevailing wage rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the Prevailing Wage Schedule. The specified wage rates are minimum rates only. TFC is not bound to pay any claims for additional compensation made by any Contractor because 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. 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 a Subcontractor, Contractor shall promptly inform the Contract Administrator or his/her designated representative of the proposed wage to be paid for the skill along with a justification for same. 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. When requested by TFC, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all affected workers. Penalties and retainage shall be withheld consistent with the provision of Chapter 2258.

10.04. **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 workers' 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.

10.05. **PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS.** Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TFC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

10.06. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.**(a.) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information

resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b.) If applicable, A/E shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (*http://www.buyaccessible.gov*). A/Es not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at *http://www.section508.gov/*.

10.07. **RELATIONSHIP OF THE PARTIES.** Contractor is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor. Subject only to the terms of this Contract, Contractor shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and TFC shall have no obligation with respect to:

(i.) withholding of income taxes, FICA or any other taxes or fees;

(ii.) industrial or workers compensation insurance coverage;

(iii.) participation in any group insurance plans available to employees of the State of Texas;

(iv.) participation or contributions by the State of Texas to the State Employees Retirement System;

(v.) accumulation of vacation leave or sick leave; or

(vi.) unemployment compensation coverage provided by the State.

10.08. **DRUG FREE WORK PLACE.** Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and A/E, A/E's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10.09. **COMPLIANCE WITH OTHER LAWS.** In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

10.10. **NOTICES.** Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TFC or Contractor, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission
1711 San Jacinto Blvd., Room 400
Austin, TX 78701
Attention: Legal Services Division
Phone: (512) 463-3446
Fax: (512) 236-6171

For Contractor: Trimbuilt Construction, Inc.
12800 North Lamar
Austin, TX 78753
Attn: Larry Puckett
Phone: (512) 832-1979
Email: lpuckett@trimbuilt.com

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

10.11. **NAME AND ORGANIZATIONAL CHANGES.** (a.) Contractor must provide TFC with written notification of all name changes and organizational changes relating to Contractor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

(b.) TFC may terminate the Contract due to any change to Contractor that materially alters Contractor's ability to perform under the Contract.

10.12. **GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas,

exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

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

10.14. **PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

10.15. **FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor.

10.16. **LABOR ACTIVITY.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at TFC's facility, which results in the curtailment or discontinuation of services performed herein, TFC shall have the right during said period to employ any means legally permissible to have the work performed.

10.17. **DISPUTE RESOLUTION.** Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code 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 following dispute resolution process.

(a.) Claims for Breach of Contract and Counterclaims. CMR may make a claim against TFC for breach of a contract between TFC and CMR. TFC may assert a counterclaim against CMR.

(i.) Notice. CMR must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the claim. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount CMR seeks as damages; and (iii) the legal theory of recovery.

(ii.) TFC must assert, in a writing delivered to CMR, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 12.11.1.1 above.

(b.) Damages. The total amount of money recoverable on a claim for breach of contract under this Section 12.11 may not, after deducting the amount specified below, exceed an amount equal to the sum of: (i) the balance due and owing on the Contract price; (ii) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and (iii) any delay or labor-related expense incurred by the CMR as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(i.) Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 12.11.2 above.

(ii.) Any award of damages under this Contract may not include: (i) consequential or similar damages, except delays or labor-related expenses described by Section 12.11.2 above; (ii) exemplary damages; (iii) any damages based on an unjust enrichment theory; (iv) attorney's fees; or (v) home office overhead.

(c.) Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with CMR in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the negotiation of any dispute arising from this Contract. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

(d.) Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Contract. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the mediation of any dispute arising from this Contract.

(e.) Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, CMR may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260.

(f.) Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under this Section 12.11 only from

money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant except that the applicable rate of interest may not exceed six percent (6%). Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

(g.) Representation of TFC. The Office of the Attorney General of Texas shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 12.11.

10.18. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

10.19. **NO WAIVER**. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Texas. 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. TFC does not waive any privileges, rights, defenses, or immunities available to TFC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

10.20. **FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

10.21. **SURVIVAL OF TERMS.** Termination of the Purchase Order for any reason shall not release Vendor from any liability of obligation set forth in the Purchase Order that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

10.22. **ENTIRE CONTRACT & MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be

construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION

Harvey Hildenbran

Executive Director

Date of execution: 3-4-16

DIR. CAW

DED

G.C.

TRIMBUILT CONSTRUCTION, INC.

Printed Name: Larry Puckett

Title: President

Date of execution: 3-3-16

EXHIBIT A

TFC CONTRACT NO. 16-039-000

COMPENSATION AND FEES

COMPENSATION AND FEES

Labor rates include all profit and overhead for Austin.

TIER 1 - AUSTIN RATES – Projects under $25,000:

ITEM	LABOR	HOURLY RATE STANDARD HOURS	HOURLY RATE PREMIUM HOURS
1	Journeyman Carpenter	$	$
2	Carpenter Apprentice	$	$
3	Journeyman Painter	$	$
4	Painter Apprentice	$	$
5	Lead/Supervisor	$	$
6	Subcontracting Mark-up	_____%	
ITEM	MATERIALS		
7	Percentage over Vendor Cost	_____%	

TIER 2 - AUSTIN RATES – Projects $25,000 - $100,000:

ITEM	LABOR	HOURLY RATE STANDARD HOURS	HOURLY RATE PREMIUM HOURS
1	Journeyman Carpenter	$35.00	$52.50
2	Carpenter Apprentice	$25.00	$37.50
3	Journeyman Painter	$30.00	$45.00
4	Painter Apprentice	$28.00	$42.50
5	Lead/Supervisor	$50.00	$75.00
6	Subcontracting Mark-up	5%	
ITEM	MATERIALS		
	Percentage over Vendor Cost	10%	

TIER 3 - AUSTIN RATES – Projects $100,000.01 and above:

ITEM	LABOR	HOURLY RATE STANDARD HOURS	HOURLY RATE PREMIUM HOURS
1	Journeyman Carpenter	$35.00	$52.50
2	Carpenter Apprentice	$25.00	$37.50
3	Journeyman Painter	$30.00	$45.00
4	Painter Apprentice	$28.00	$42.50
5	Lead/Supervisor	$50.00	$75.00
6	Subcontracting Mark-up	5%	
ITEM	MATERIALS		
	Percentage over Vendor Cost	10%	

For materials purchased at local retail outlets by Contractor field staff, contractor shall invoice at cost (sales receipt/invoiced price).

Payment and Performance Bonds (if required): Contractor shall invoice at cost (sales receipt/invoiced price).

**Normal Hours* is defined as 7:00 AM – 6:00 PM Monday through Friday
** ***Premium Hours*** are defined as any hours that fall outside of Normal Hours, or on Weekends
***MSRP/List - TFC reserves the right to request from awarded vendor any published or printed catalog that reflects MSRP/List price for verification purposes.

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EXHIBIT B

TFC CONTRACT NO. 16-039-000

CRIMINAL BACKGROUND CHECKS AND APPLICATION GUIDELINES

Texas Facilities Commission

Criminal Background Checks and Application Guidelines

TABLE OF CONTENTS

Page

Introduction 1

Criminal History Criteria 2

Employer Guidelines 3

The Verification Process 4

Procedures for Fingerprint Rejections 6

Criminal History Error Resolution 7

Contact Information 8

Forms

L-1 Account Application A-1

Fingerprint Instructions B-1

FAST Pass Fingerprint Application C-1

Introduction

Texas Facilities Commission (TFC) has implemented new security procedures. Personnel and TFC contractors & subcontractors, who work in case-sensitive areas, may be required to submit to a criminal history background check. In addition, U.S Law requires companies to employ only individuals who may legally work in the United States; therefore employers must verify and show proof that employees are authorized to work. This package will begin the process for employers to authorize its employees to work for TFC.

Criminal History Criteria

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification.

Contractor Screening Criteria

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

1) any act causing death as defined in Texas Penal Code;

2) any felony or misdemeanor involving Arson, Burglary, Breach of Computer Security, Credit Card Abuse, Counterfeiting, Forgery, Kidnapping, Robbery, Stalking, Terroristic Threat, Theft, and any sexual offense designated as a felony in Texas Penal Code;

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the Texas Facilities Commission

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the Texas Facilities Commission

Employer Guidelines

FINGERPRINT APPLICANT SERVICES OF TEXAS, F.A.S.T.

The Department of Public Safety has entered into an exclusive contract with L-1 Enrollment Services to provide statewide electronic fingerprinting. The goal of the Fingerprint Applicant Services of Texas (F.A.S.T.) Program is to provide convenient applicant fingerprinting services throughout the state of Texas. L-1 Enrollment Services is committed to a 98% classifiable rate which means quality prints, less rejections, and quick responses. Appointments are available by scheduling on-line at **www.L1enrollment.com** or by calling **1-888-467-2080**.The cost of this service is $9.95 plus a $34.25 fee for the State and National Criminal History Record Information. You may pay for F.A.S.T. services online with a credit card or onsite with a check or money order made payable to L-1 Enrollment Services only. Cash is not accepted!

Here is how to get started:

1. You must obtain a FAST Pass from Texas Facilities Commission (located in forms C-1). This pass will contain all necessary instructions and information to schedule your fingerprint appointment.

2. You will need to schedule an appointment by logging on to the L-1 Enrollment Services website, **www.L1enrollment.com** or by calling **1-888-467-2080**. If you are scheduling by phone, please request an "**Electronic Fingerprint Submission**" appointment.

When scheduling an appointment you will be prompted by L-1 Enrollment Services for the following additional personal data: Date of Birth, Sex, Race, Ethnicity, Skin Tone, Height, Weight, Eye Color, Hair Color, Place of Birth and Home Address. Requested data is required by the Texas Department of Public Safety to process your background check.

3. Please complete the necessary fields on the FAST Pass, bring your completed pass and valid State Issued Identification. During your Fingerprint appointment you will be prompted for Social Security Number and Driver License Number. You are also required to have your photograph taken at the time of your appointment. Requested data is required by the Texas Department of Public Safety to process your background check.

4. Once you have completed your appointment you will be provided with a signed receipt which includes your Tracking Control Number (TCN), please retain this receipt for your records.

Your fingerprints, demographic information, and photograph will be sent to the Department of Public Safety and the Federal Bureau of Investigation for process. Criminal History Record Information based upon your submission will be provided to the requesting agency.

If you have any questions regarding the F.A.S.T. processes, please feel free to contact the Fingerprint Services Unit at fingerprint.service@dps.texas.gov or (512) 424 – 2365, Option 6.

A TFC representative will view criminal history information from DPS to determine if employee's clearance is accepted or denied. TFC will notify employer about the status of employee. The employee can submit a request to DPS to view their criminal history.

Employers must ensure that all employees are legally able to work in the United States. Employees must be a U.S. citizen or a foreign citizen who have the necessary authorization. Employers shall use E-Verify to check the status of employees. E-Verify is fast, free and easy to use. Employer will set up an account and go through the process. Employer must provide TFC with documentation the employee is authorized to work.

The Verification Process

Overview of the Verification Process

Using E-Verify to verify the employment eligibility of employees is a three-step process.

Create a Case

Before an employer can create a case in E-Verify, both the employer and employee must complete the Employment Eligibility Verification form (Form I-9). All U.S. employers, regardless of whether they participate in E-Verify must complete Form I-9 no later than 3 business days after the employee begins work for pay. Information about the employee from Form I-9 then serves as the foundation for an E-Verify case, which must be created also no later than 3 business days after the employee begins work for pay.

E-Verify guides the employer through a series of questions, which follow Form I-9, beginning with the employee's citizenship attestation, document type(s), then biographical information including name, date of birth, Social Security number and Alien or I-94 number (if a noncitizen). In some cases, the document number and expiration date are also required.

If E-Verify cannot initially match the information, the employer will be prompted to review and correct the information if necessary. Otherwise, E-Verify will display an initial response within three to five seconds.

Get Results

In most cases, E-Verify will instantly verify the employee's work authorization. If E-Verify returns an "Employment Authorized" response, the employer can continue to the last step in the verification process and close the case

Sometimes, E-Verify cannot immediately confirm the employee's work authorization and may require the employer or the employee to take action. In these cases, the employer will see one of the following responses on the employee's verification results screen:

- **DHS Verification in Process:** Sometimes, E-Verify's automated search of government records cannot immediately verify employment authorization, and a manual search is required. In this case, E-Verify will return a "DHS Verification in Process" response. The employer must check E-Verify until the employee's case is updated, which usually happens within 24 hours, though it may take as long as three business days. When the employee's case is updated, E-Verify will return either an "Employment Authorized" or "Tentative Nonconfirmation" response.
- **Tentative Nonconfirmation:** If the employee information does not match government records, the employer will see a tentative nonconfirmation (TNC) response. Visit the "Tentative Nonconfirmation" page in this section for more information.

To prevent unnecessary TNCs, the employer must carefully review all entered information for accuracy. Should the employer have made a typographical error or entered incorrect data, the employer should close the case and create a new case for the employee with the correct information.

- **Note: Employer will need to print verification and submit to TFC Representative.**

Close the Case

All E-Verify cases must be closed by the user in E-Verify when a final verification result is received, regardless of the result. Closing cases is very important because it helps E-Verify maintain statistics on program usage and outcomes.

E-Verify will ask if the employee is still working for the employer and will then instruct the employer to choose the reason why the case is being closed. Once the case is closed, the employer must either record the case verification number on the employee's Form I-9 or print the case details and keep it on file with the employee's Form I-9.

PROCEDURES FOR FINGERPRINT REJECTIONS
ELECTRONIC FINGERPRINT SUBMISSIONS

The Department of Public Safety will notify L-1 Enrollment Services when an applicant"s fingerprints are rejected by either DPS or the FBI, regardless of the purpose and/or agency the fingerprints were submitted for. L-1 Enrollment Services will contact the applicant by telephone and by letter to notify the applicant of the rejected prints and schedule an appointment to have the fingerprints re-taken. There is no additional cost for having their fingerprints rolled again; often the applicant will disregard contact attempts from L-1 Enrollment Services because they are not DPS or the requesting agency.

DPS REJECTS

When an applicant"s fingerprints are rejected for the first time on the DPS level their fingerprints are not submitted to the FBI. The requesting agency is notified of the rejection through Consolidated Response. Upon the second submission of fingerprints, whether the prints are rejected or deemed classifiable by DPS, they are sent to the FBI for process. The applicant has one year from the date of the last rejected fingerprint submission to complete the fingerprint based criminal history process. After one year, a new set of fingerprints and all fees must be resubmitted.

FBI REJECTS

The requesting agency is notified of the FBI rejection through Consolidated Response. Upon the second FBI rejection, it is the responsibility of the agency to request criminal history information based upon the applicant"s name and date of birth from the FBI directly. The requesting agency has 90 days from the date of the last rejected fingerprint submission to request the results from the FBI. After the 90th day, a new set of fingerprints and all fees must be resubmitted.

QUESTIONS

If you have any questions regarding the electronic fingerprint rejection process please contact the Fingerprint Services Unit at fingerprint.service@dps.texas.gov or (512) 424-2365, option 6.

CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit (ER) is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

Requests Made by Applicants:

If an **applicant** needs to request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the Error Resolution Unit. Required forms and additional information to assist your applicant in retrieving the proper documentation to submit their requests to the Error Resolution Unit can be found at:

http://www.txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm and through the links below.

Help us Help You (PDF)

Error Resolution Form (PDF)

CHRI Tips (PDF

Contact Information

L-1 Identity Solutions

Finance Department

15 Century Blvd., Suite 510

Nashville, TN 37214

Phone: (877) 512-6962

Fax: (615) 871-0845

Department of Public Safety

Access and Dissemination Bureau

Crime Records Service

Phone: 512-424-2000

Marlena Schoenfeld
Risk Management Specialist

Texas Facilities Commission

1711 San Jacinto

Austin, Texas 78701

Office: 512-463-7148

Cell: 512-828-1996

Fax: 512-236-6170

Email: marlena.schoenfeld@tfc.state.tx.us

Mark Gil
Director of Risk Management

Texas Facilities Commission

1711 San Jacinto

Austin, Texas 78701

Office: 512-463-1668

Cell: 512-563-4093

Fax: 512-236-6170

Email: mark.gil@tfc.state.tx.us

FAST
Fingerprint Applicant Services of Texas

L-1 IDENTITY SOLUTIONS™
ENROLLMENT SERVICES DIVISION

Account Application

Firm Name: _____

Agency ID/ORI: _____

Address: _____

City/State/Zip: _____

Contact Person: _____

Email Address: _____

Telephone: _____ Fax: _____

Average Monthly Volume Estimate (# of applicants): _____

Deposit Amount: _____

_____ _____
Authorized signature Date

Please remit draw account payments to:

L-1 Enrollment Services Division
Finance Department
15 Century Blvd., Suite 510
Nashville, TN 37214

Phone: (877) 512-6962
Fax: (615) 871-0845

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N. LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001
512/424-2000

www.txdps.state.tx.us

Fingerprint Applicant Services of Texas *(FAST)*

The Department of Public Safety (DPS) entered into a contract with L1 Enrollment Services in 2005 to offer electronic fingerprinting services to our criminal and non-criminal justice customers. Since 2005, over 1.8 million customers have taken advantage of the *FAST* Program to satisfy criminal and non-criminal justice criminal history background check requirements. Currently, DPS and L1 Enrollment Services have 81 *FAST* locations strategically located around the state for customers to use. In addition to the statewide service, the DPS Denson Lobby at 108 Denson Drive provides walk-up fingerprinting services on a first come first serve basis

FAST Process:

1. *Obtain a FAST Fingerprint Pass.* This document is available from your contact at the Texas Facilities Commission.

2. *Schedule a FAST Fingerprinting Appointment.* Please utilize the statewide FAST service by scheduling an appointment at www.L1enrollment.com or by calling 1-888-467-2080. If you are located in the Austin area you may visit the DPS Denson Lobby at 108 Denson Drive. The Denson Lobby location provides *FAST* services on a first come first serve basis. It is very important that you follow the instructions on your FAST Fingerprint Pass.

3. *Attend Your Scheduled Fingerprint Appointment.* Attend the fingerprinting appointment selected during the scheduling process. At the fingerprinting location you ***must*** present a valid driver's license or state identification card to establish your identity. After your identity has been established, you will be electronically fingerprinted, digitally photographed, and additional biographical information will be requested.

4. *Keep Your Receipt.* At the end of the fingerprinting appointment the technician will provide you a receipt. If your fingerprints reject (<2% of the time) due to fingerprint abnormalities, you will need the TCN that is on the receipt to get fingerprinted again at no charge.

If you have any questions or need assistance please contact the Fingerprint Services Unit at fingerprint.service@txdps.state.tx.us or at (512) 424 – 2365, option 6.

IN STATE APPLICANT

Texas Facilities Commission

This document is your *FAST Fingerprint Pass* for a state and national criminal history record check. Please schedule a fingerprint appointment by visiting http://www.identogo.com or by calling 1-888-467-2080. **When scheduling an appointment you will be prompted by IdentoGO for the following additional personal data: Date of Birth, Sex, Race, Ethnicity, Skin Tone, Height, Weight, Eye Color, Hair Color, Place of Birth and Home Address. During your Fingerprint appointment you will also be prompted for Social Security Number and Driver License Number. Requested data is required by the Texas Department of Public Safety to process your background check.** These data elements have been omitted from this document in order to better protect the security of your personal information.

You may pay for *FAST* services online with a credit card or onsite with a check or money order only. Your fingerprints will be submitted to the Texas Department of Public Safety and the Federal Bureau of Investigation

1. Logon to http://www.identogo.com
2. Select: ***Texas***
3. Select: ***Online Scheduling***
4. Select: ***English or Espanol***
5. Enter: ***First and Last Name***
6. Select: ***All Others***
7. Select: ***Option A – Electronic Submission***
8. Select: ***Yes, I have a FAST Fingerprint Pass***
9. Enter: ***TX923605Z***
10. Follow the prompts to enter requested information
11. Bring this completed form with you to your appointment

Section One: Qualified Entity Information

ORI#: TX923605Z

Original TCN: _____
(If resubmission for rejected fingerprints)

Agency/Entity/Organization Name: Texas Facilities Commission

Section Two: Applicant Name (To be completed by applicant)

Last: _____ (Please print) First: _____ (Please print) Middle _____ (Please print)

Section Three: Waiver Information (To be completed and signed by applicant)

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Federal Privacy Act (5USC 552a(b)). I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed.

Signature: _____ Date: _____

Section Four: Service Center Information (To be completed by *FAST* Enrollment Agent)

Date Prints Taken _____ Amount Charged For Service: $41.45

Paid by: ☐ Check ☐ Money Order ☐ Visa ☐ MasterCard ☐ Billing Acct _____

TCN: _____

☐ I HAVE COMPARED THE GOVERNMENT-ISSUED IDENTIFICATION PRESENTED BY THE APPLICANT AND ATTEST THAT TO MY BEST DETERMINATION, I HAVE FINGERPRINTED THE SAME PERSON.

E.A. Name _____ (Please print) E.A. Signature: _____

Revised10/13

EXHIBIT C

TFC CONTRACT NO. 16-039-000

PROJECT MANUAL

PROJECT MANUAL
VOLUME 1 OF 1

FOR

Construction Requirements Contract

Order of Documents for Project Manual

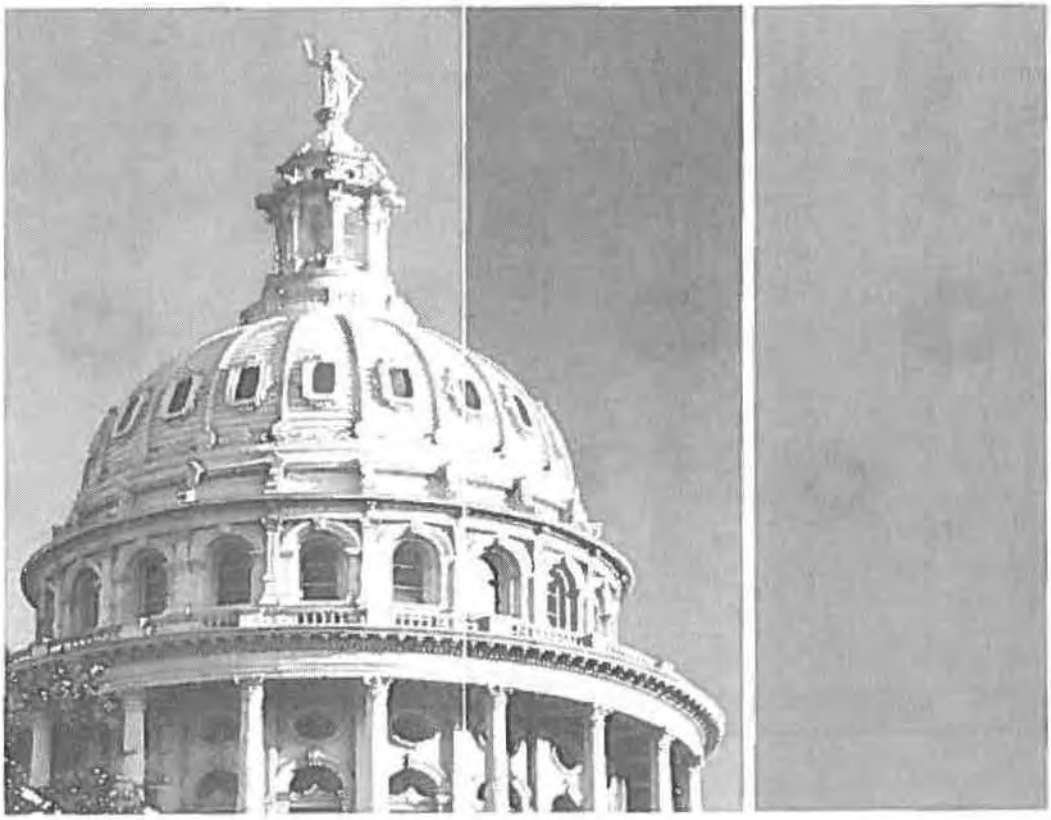
Note: Request for Competitive Sealed Proposal (RFP) and HUB Plan Documents are NOT IN SPECS – Edited and posted to ESBD by Internal Procurement

1.	*Cover Sheet (provided by TFC)	1 page
2.	*Seals Page (provided by TFC)(NA if AE is not selected)	various
3.	*Table of Contents (as provided by A/E)	various
4.	UGC 2010 edition (website: 6C)	68 pages
5.	Supplementary Conditions of the 2010 UGC(website: 6D)	3 pages
6.	Special Conditions (provided by TFC)	
7.	Criminal Background Checks and Application Guidelines (by TFC)	xx pages
8.	E-Verify Process	xx pages
9.	Wage Rates (Building, Highway, Heavy) (www.wdol.gov/dba.aspx)	varies
10.	Wage Rate Complaint Information (provided by TFC)	1 page
11.	Construction Payment Voucher (website: 10)	2 pages
12.	Construction Payment Affidavit (website: 11)	1 page
13.	HUB Progress Assessment Report – HUBPAR (website: 12)	1 page
14.	Direct Deposit Form and Instructions (website: 9)	2 pages
15.	Transmittal Letter (website: 13)	1 page
16.	Submittal Form (website: 14)	1 page
17.	Change Order Form A, B, & C – print all three forms (website: 15)	3 pages
18.	Time Extension Change Order (website: 16)	1 page
19.	Final Payment Checklist (website: 17)	1 page
20.	Warranty Transmittal Letter (website: 18)	1 page
21.	ACM Non-use Affidavit – Construction (website: 8A)	1 page
22.	Roofing Guarantee – if applicable (website: 5)	1 page
23.	PCC Flow Charts (provided by TFC)	2 pages
24.	*Warranty and Training Matrix Sample (provided by TFC)	varies

Technical Specifications (Div 1 through 48) as provided by A/E using TFC Specifications Format

* Forms that should be edited by the A/E Design Professional. All other forms should be printed as provided.

Website forms available at (should also be printed in the Project Manual):
http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/



2010
Uniform General Conditions

Uniform General Conditions
for
Construction Contracts

Table of Contents

Article 1. Definitions 1

Article 2. Wage Rates and Other Laws Governing Construction 6

Article 3. General Responsibilities of Owner and Contractor 9

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan 16

Article 5. Bonds and Insurance 18

Article 6. Construction Documents, Coordination Documents, and Record Documents 25

Article 7. Construction Safety 28

Article 8. Quality Control 30

Article 9. Construction Schedules 36

Article 10. Payments 42

Article 11. Changes 47

Article 12. Project Completion and Acceptance 52

Article 13. Warranty and Guarantee 57

Article 14. Suspension and Termination 59

Article 15. Dispute Resolution 63

Article 16. Miscellaneous 64

Article 1. Definitions

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

1.1 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.

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

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

1.4 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.

1.5 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.

1.6 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.

1.7 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.

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

1.9 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.

1.10 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.

1.11 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.

1.12 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.

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

1.14 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

1.15 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Chapter 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.

1.16 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.

1.17 *Day* means a calendar day unless otherwise specifically stipulated.

1.18 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.

1.19 *Drawings* mean that product of A/E which graphically depicts the Work.

1.20 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.

1.21 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.

1.22 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.

1.23 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.

1.24 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.

1.25 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.

1.26 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

1.27 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.

1.28 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).

1.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.

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

1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.

1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.

1.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.

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

1.35 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.

1.36 *Site* means the geographical area of the location of the Work.

1.37 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.

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

1.39 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.

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

1.41 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.

1.42 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.

1.43 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.

1.44 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.

1.45 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.

1.46 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.

2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site and shall notify each worker, in writing, of the following as they commence work on the Contract: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

2.2.1.1 Contractor shall submit a copy of each worker's wage-rate notification to ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.

2.2.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 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.

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

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars ($60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 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, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise be designated in the Supplementary General Conditions.

2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent,

Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.

3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.

3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.

3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.

3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.

3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.

3.1.3 Owner Supplied Materials and Information.

3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.

3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.

3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 Limitation on Owner's Duties.

3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.

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

3.2.1 Site Visits.

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

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

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

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

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

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

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

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

3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the pre-construction conference.

3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.

3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.

3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.

3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.

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

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

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

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

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

3.3.11 Indemnification of Owner. **Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of 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 or property damage, made upon 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, or 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, its 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.

3.3.11.1 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.

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

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

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

3.3.12.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.

3.3.12.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.

3.3.12.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

3.3.13 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.

3.3.14 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.

3.3.15 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.

3.3.16 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Chapter 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).

4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.

4.1.2 A Contractor who contracts with the State in an amount of $100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.

4.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:

4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.

4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.

4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.

4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.

4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.

4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at **http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls**).

4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).

4.3 Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

Article 5. Bonds and Insurance

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

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

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

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

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

5.1.3 When Bonds Are Due

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

5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build

project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.

5.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.

5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than $25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

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

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

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

5.2.2.1 Insurance Coverage Required.

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

$100,000 each accident;

$100,000 disease each employee ; and

$500,000 disease policy limit.

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

$1,000,000 per occurrence;

$2,000,000 general aggregate;

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

Coverage shall be on an "occurrence" basis.

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

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

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

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

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

Employer's liability limits for asbestos abatement will be:

$500,000 each accident;

$500,000 disease each employee; and

$500,000 disease policy limit.

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

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

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

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

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

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

5.2.2.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.

5.2.2.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.3 Policies must include the following clauses, as applicable:

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

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

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

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

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

5.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

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

6.1 Drawings and Specifications.

6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.

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

6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.

6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.

6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.

6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.

6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.

6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.

6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

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

6.2.2 Maintain this record set of Drawings and Specifications which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.

6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.

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

6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.

6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.

6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 7. Construction Safety

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

7.2 Notices. Contractor shall provide notices as follows:

7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.

7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.

7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.

7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.

7.3.2 Give ODR and A/E prompt notice of all such events.

7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.

7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.

7.4 Injuries. In the event of an incident or accident involving outside medical care for an

individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.

7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.

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

7.5.1 Bind all Subcontractors to the same duty.

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

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

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

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

Article 8. Quality Control

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

8.2 Testing.

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

8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.

8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.3.2 Acceptance by Owner of the quality and nature of tests.

8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.

8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.

8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.

8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.

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

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

8.3 Submittals.

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

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

8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item

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

8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner

on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

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

8.3.5.1 The Contract Documents do not require extensive revisions; and

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

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

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

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

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

Contract Documents;

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

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

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

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

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

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

8.4 Field Mock-up.

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

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

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are

freestanding, they shall remain in place until otherwise directed by Owner.

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

8.5 Inspection During Construction.

8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.

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

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

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

Article 9. Construction Schedules

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

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

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

9.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

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

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

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

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

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

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

9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

9.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

9.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contactor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.

9.6 Modification of the Contract Time.

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at

the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

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

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

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

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

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

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

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

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

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

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

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

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

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

9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.

9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.

9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.

9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.

9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.

9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

Article 10. Payments

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

10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.

10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.

10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

10.2. Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.

10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:

10.2.1.1 Contractor's estimate of the amount of Work performed, labor

furnished and materials incorporated into the Work, using the established Schedule of Values;

10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;

10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;

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

10.2.1.5 Construction payment affidavit.

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

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

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

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

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

10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.

10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.

10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.

10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:

10.3.3.1 Defective or incomplete Work not remedied;

10.3.3.2 Damage to Work of a separate Contractor;

10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;

10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;

10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;

10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or

10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

10.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.

10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

10.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.

10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.

10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.

10.5 Off-Site Storage. With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.

10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.

10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.

10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

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

10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.

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

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

Article 11. Changes

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

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

11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Chapter 2260.

11.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.

11.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

11.1.5 Contractor agrees that Owner or any of its duly authorized representatives

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

11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.

11.3 Claims for Additional Costs.

11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.

11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.

11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case,

Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

11.4 Minor Changes. A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.

11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.

11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.

11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.

11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established

Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.

11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.

11.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.

11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.

11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined.

Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first $10,000 of value for self-performed work or portion thereof, ten (10) percent for the second $10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds $20,000.

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost

Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first $10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second $10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding $20,000.

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

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

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

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

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

Article 12. Project Completion and Acceptance

12.1 Closing Inspections.

12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

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

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

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

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

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

12.1.5 Additional Inspections.

12.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of

incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.

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

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

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

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

12.3 Acceptance and Payment

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

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

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

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

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

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

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

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

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

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

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

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

Article 13. Warranty and Guarantee

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

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

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

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

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

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

13.4.1 Observations by Owner and/or A/E;

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

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

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

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

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

13.4.7 Any inspection, test or approval by others.

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

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

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

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

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

Article 14. Suspension and Termination

14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

14.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 Termination by Owner for Cause.

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

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

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

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

14.3.1.4 Failure to remedy defective work condemned by ODR;

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

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

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

14.3.1.8 Any material breach of the Contract; or

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

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

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

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

14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.

14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.

14.3.5.3 This obligation for payment survives the termination of the Contract.

14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.

14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.

14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:

14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

14.5.2.1 Stop all work.

14.5.2.2 Place no further subcontracts or orders for materials or services.

14.5.2.3 Terminate all subcontracts for convenience.

14.5.2.4 Cancel all materials and equipment orders as applicable.

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

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

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

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

Article 15. Dispute Resolution

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

15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.

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

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

Article 16. Miscellaneous

16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:

16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.

16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.

16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statue, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.

16.3.1 Accessibility and Administration.

16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.

16.3.1.2 Owner shall administer the software.

16.3.2 Training. When used, Owner shall provide training to the Project team members.

End of Uniform General Conditions

SUPPLEMENTARY GENERAL CONDITIONS TO THE STATE OF TEXAS 2010 EDITION OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The following Supplementary General Conditions amend and/or supplement the 2010 Edition of the Uniform General Conditions for Construction Contracts.

Article 1. Definitions

Article 1 is supplemented to add the following new subsection:

1.44.1 *Wage Rate Notification* means the written notification described in Subsection 2.2.1.

Article 2. Wage Rates and Other Laws Governing Construction

2.2 Wage Rates.

2.2.3 Complaints of Violations.

Subsection 2.2.3 is supplemented to add the following new paragraphs:

2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; copies of Wage Rate Notifications; and copies of any and all Contract Documents between Contractor and any Subcontractors.

2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

Article 3. General Responsibilities of Owner and Contractor

3.2 Role of Architect/Engineer.

Section 3.2 is supplemented to add the following new subsection:

3.2.4 Progress Meetings and Minutes. A/E shall prepare the agenda and conduct meetings with Owner and Contractor to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work on a regular basis as determined by Owner. Contractor shall cooperate with A/E whose responsibility is the preparation

of meeting minutes for distribution to Contractor and Owner. In the absence of A/E at such meetings, Contractor shall be responsible for preparing and distributing minutes to Owner and A/E. If, in the opinion of Owner, it is feasible for A/E to conduct the meeting via telecommunication, A/E shall conduct the meeting and prepare and distribute the minutes to Owner and Contractor. A/E shall solicit input for the meeting agenda from Contractor and Owner a minimum of forty-eight (48) hours before a meeting and distribute the agenda a minimum of thirty-six (36) hours before a meeting and distribute the minutes, reports, and other similar documentation within one week of the respective work or event, unless directed otherwise by Owner.

3.3 Contractor's General Responsibilities.

3.3.2 Contractor's Management Personnel.

Subsection 3.3.2 is supplemented to add the following new paragraph:

3.3.2.1 Contractor shall implement its existing quality control and safety plan for the Project, and shall use such standard of care as a contractor of ordinary prudence would exercise in the same or similar circumstances.

Article 5. Bonds and Insurance

5.2 Insurance Requirements.

Subsection 5.2.4 is supplemented to add the following new paragraphs:

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

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

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

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

Article 9. Construction Schedules

9.3 Work Progress Schedule.

Paragraph 9.3.1.1 is supplemented to add the following sentence at the end of the paragraph:

> In the event the Baseline Schedule, or any revisions thereto, reflect a Substantial Completion date that will occur sooner than the Final Completion date as set forth in the Contract Documents, or other similar agreement, the period of time between the Substantial Completion date and the Final Completion date shall be considered the "float."

9.6 Modification of the Contract Time.

Subsection 9.6.2 is supplemented to add the following sentence at the end of the paragraph:

Provided, however, all float must be consumed by approved excusable delays to the critical path before any extension of time can be granted.

End of Supplementary General Conditions

SPECIAL CONDITIONS
TO THE STATE OF TEXAS 2010 EDITION OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

The following Special Conditions amend and/or supplement the 2010 Edition of the Uniform General Conditions for Construction Contracts, and any Supplementary General Conditions, as follows:

Article 3. General Responsibilities of Owner and Contractor

Subsection 3.3.3. [Labor] is supplemented so as to add the following Paragraph:

3.3.3.1. General and Criminal Background Checks.

3.3.3.1.1. By submitting a response to an RFQ or an RFP, Contractor thereby represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, Contractor has fully advised Owner as to the facts and circumstances surrounding the conviction(s).

3.3.3.1.2. All of Contractor's employees and Subcontractors that will perform any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by Contractor.

3.3.3.1.2.1. All criminal background check forms for all of Contractor's employees and Subcontractors that will initially commence any work on-site must be fully completed and submitted to Owner within fifteen (15) days of the date of the Notice of Award, and the process thereafter must be diligently pursued by Contractor.

3.3.3.1.2.2. The process must be satisfactorily completed for every employee and Subcontractor before they perform services at the Site.

3.3.3.1.2.3. All criminal background checks must be accomplished through the Texas Department of Public Safety ("DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of Contractor's employees and/or Subcontractors, DPS, or Owner, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the Criminal Background Check Criteria and Information packet that will be provided to Contractor. Contractor' or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the project schedule.

Article 5. Bonds and Insurance

Section 5.2 Insurance Requirements is amended to read as follows:

5.2. Insurance Requirements. Contractor shall timely obtain and maintain insurance in the following types and amounts for the duration of the Contract (unless specifically provided otherwise herein) and must timely comply with the additional insurance requirements set forth below.

5.3. Required Method of Proof. In order to obtain adequate assurances of the Contract's satisfaction of the insurance requirements for this Project, Owner requires that the Contractor take the following actions:

5.3.1. Notification of Award. Within ten (10) days of receipt of a notice of award, Contractor must obtain and maintain, at no expense to Owner, the following insurance coverages in the types and amounts specified in the Insurance Requirements:

5.3.1.1. the Workers' Compensation and Employers' Liability Insurance;

5.3.1.2. the Commercial General Liability Insurance;

5.3.1.3. the Business Automobile Liability Insurance; and

5.3.1.4. the Umbrella Liability Insurance.

5.3.1.5 the Asbestos Abatement Liability Insurance (if applicable); and

5.3.1.6 the Builder's Risk Insurance.

5.3.2 THE CONTRACT SHALL NOT BE EXECUTED UNLESS AND UNTIL THE FOREGOING REQUIREMENTS ARE TIMELY SATISFIED AND FAILURE TO TIMELY SATISFY THE FOREGOING REQUIREMENTS MAY RESULT IN THE FORFEITURE OF THE BID BOND.

5.3.3 FAILURE TO TIMELY SATISFY THE FOREGOING REQUIREMENTS SHALL CONSTITUTE A BREACH OF CONTRACT.

Article 9. Construction Schedules

9.3 Work Progress Schedule.

Paragraph 9.3.1.1, as supplemented by the Supplementary General Conditions, is amended so as to delete the last sentence at the end of the paragraph.

9.4 Ownership of Float.

Paragraph 9.4 is supplemented so as to add the following sentence:

> "Float" means "total float", *i.e.* the time an activity identified on the Baseline Schedule, or any revisions thereto, can be delayed without impacting Substantial Completion.

9.6 Modification of the Contract Time.

Subsection 9.6.2, as supplemented by the Supplementary General Conditions, is amended so as to delete the above-described supplementation and substitute the following sentence at the end of the paragraph:

> Provided, however, all float must be consumed by delays to the critical path before any extension of time can be granted.

9.11 Liquidated Damages.

Section 9.11 is renumbered and supplemented to read as follows:

9.11.1 Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. If Contractor fails to complete substantially, or cause the Substantial Completion of any portion of the Work within the Contract Time, Owner will sustain actual damages as a result of such failure. The exact amount of such damages may be difficult to ascertain. If Contractor neglects, fails, and/or refuses to achieve Substantial Completion of the Work by the Substantial Completion Date, subject to any proper extension granted by Owner, Contractor shall pay liquidated damages to Owner for each day in which such Work is not completed, not as a penalty, but as liquidated damages for the damages that would be suffered by Owner as a result of delay for each calendar day that Contractor fails to complete the Work as required herein.

9.11.2 [renumbered] Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

9.11.3 Contractor may be subject to liquidated damages up to 20% of total cost of the project.

General Decision Number: TX150323 06/12/2015 TX323

Superseded General Decision Number: TX20140323

State: Texas

Construction Type: Building

County: Travis County in Texas.

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

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is 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 $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	01/30/2015
2	03/06/2015
3	04/24/2015
4	06/12/2015

ASBE0087-014 01/01/2014

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	$ 21.17	8.77

BOIL0074-003 01/01/2014

	Rates	Fringes
BOILERMAKER.....	$ 23.14	21.55

CARP1266-002 04/01/2014

	Rates	Fringes
CARPENTER (Excludes Acoustical Ceiling		

Installation, Drywall
Hanging, Form Work, and Metal
Stud Installation).....$ 20.75 7.30

---

* ELEC0520-005 06/01/2015

Rates Fringes

ELECTRICIAN
Excludes Installation of
Sound and Communication
Systems.....$ 27.15 8%+5.71
Low Voltage Wiring Only.....$ 27.15 8%+5.71

ELEV0133-002 01/01/2015

Rates Fringes

ELEVATOR MECHANIC.....$ 37.09 28.385

Footnote: 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.

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0450-002 04/01/2014

Rates Fringes

POWER EQUIPMENT OPERATOR
Cranes.....$ 34.85 9.85

IRON0084-011 06/15/2014

Rates Fringes

IRONWORKER, ORNAMENTAL.....$ 22.02 6.35

PLUM0286-010 06/01/2013

Rates Fringes

PIPEFITTER (Including HVAC
Pipe Installation).....$ 27.03 10.40

SFTX0669-002 07/31/2014

Rates Fringes

SPRINKLER FITTER (Fire

Sprinklers).....$ 26.36 16.52

SHEE0067-007 07/07/2014

Rates Fringes

SHEET METAL WORKER
Excludes HVAC Duct
Installation.....$ 24.38 13.05
HVAC Duct Installation Only.$ 24.38 13.05

SUTX2014-049 07/21/2014

Rates Fringes

BRICKLAYER.....$ 20.07 0.00

CARPENTER (Acoustical Ceiling
Installation Only).....$ 14.00 0.00

CARPENTER (Form Work Only).....$ 15.62 0.05

CEMENT MASON/CONCRETE FINISHER...$ 15.71 0.00

DRYWALL FINISHER/TAPER.....$ 17.06 4.43

DRYWALL HANGER AND METAL STUD
INSTALLER.....$ 17.47 3.45

ELECTRICAL INSTALLER (Sound
and Communication Systems)
(Excludes Wiring).....$ 18.00 2.30

FLOOR LAYER: Carpet.....$ 21.88 0.00

GLAZIER.....$ 12.83 0.00

HVAC MECHANIC (HVAC Unit
Installation Only).....$ 23.78 6.89

IRONWORKER, REINFORCING.....$ 12.27 0.00

IRONWORKER, STRUCTURAL.....$ 20.73 5.24

LABORER: Common or General.....$ 11.44 0.00

LABORER: Mason Tender - Brick...$ 12.22 0.00

LABORER: Mason Tender -
Cement/Concrete.....$ 11.85 0.00

LABORER: Pipelayer.....$ 12.45 0.00

LABORER: Roof Tearoff.....$ 11.28 0.00

OPERATOR:
Backhoe/Excavator/Trackhoe.....$ 19.43 3.49

OPERATOR: Bobcat/Skid
Steer/Skid Loader.....$ 13.00 0.00

OPERATOR: Bulldozer.....$ 14.00 0.00

OPERATOR: Drill.....$ 14.50 0.00

OPERATOR: Forklift.....$ 16.64 6.26

OPERATOR: Grader/Blade.....$ 19.30 0.00

OPERATOR: Loader.....$ 14.00 0.00

OPERATOR: Mechanic.....$ 18.75 5.12

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

OPERATOR: Roller.....$ 11.25 0.00

PAINTER (Brush, Roller and
Spray), Excludes Drywall
Finishing/Taping.....$ 18.76 6.35

PLUMBER, Excludes HVAC Pipe
Installation.....$ 23.57 6.37

ROOFER.....$ 12.00 0.00

TILE FINISHER.....$ 11.32 0.00

TILE SETTER.....$ 16.35 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

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

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

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

WATERPROOFER.....$ 16.30 0.06

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

==========

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

END OF GENERAL DECISION&#65533;

General Decision Number: TX150016 01/02/2015 TX16

Superseded General Decision Number: TX20140016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is 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 $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures)	$ 12.56	
ELECTRICIAN	$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb	$ 12.94	
Structures	$ 12.87	
LABORER		
Asphalt Raker	$ 12.12	
Flagger	$ 9.45	
Laborer, Common	$ 10.50	

Laborer, Utility.....$ 12.27
Pipelayer.....$ 12.79
Work Zone Barricade
Servicer.....$ 11.85

PAINTER (Structures).....$ 18.34

POWER EQUIPMENT OPERATOR:
Agricultural Tractor.....$ 12.69
Asphalt Distributor.....$ 15.55
Asphalt Paving Machine.....$ 14.36
Boom Truck.....$ 18.36
Broom or Sweeper.....$ 11.04
Concrete Pavement
Finishing Machine.....$ 15.48
Crane, Hydraulic 80 tons
or less.....$ 18.36
Crane, Lattice Boom 80
tons or less.....$ 15.87
Crane, Lattice Boom over
80 tons.....$ 19.38
Crawler Tractor.....$ 15.67
Directional Drilling
Locator.....$ 11.67
Directional Drilling
Operator.....$ 17.24
Excavator 50,000 lbs or
Less.....$ 12.88
Excavator over 50,000 lbs...$ 17.71
Foundation Drill, Truck
Mounted.....$ 16.93
Front End Loader, 3 CY or
Less.....$ 13.04
Front End Loader, Over 3 CY.$ 13.21
Loader/Backhoe.....$ 14.12
Mechanic.....$ 17.10
Milling Machine.....$ 14.18
Motor Grader, Fine Grade....$ 18.51
Motor Grader, Rough.....$ 14.63
Pavement Marking Machine....$ 19.17
Reclaimer/Pulverizer.....$ 12.88
Roller, Asphalt.....$ 12.78
Roller, Other.....$ 10.50
Scraper.....$ 12.27
Spreader Box.....$ 14.04
Trenching Machine, Heavy....$ 18.48

Servicer.....$ 14.51

Steel Worker
Reinforcing.....$ 14.00
Structural.....$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole
Worker.....$ 16.00

TRUCK DRIVER
Lowboy-Float.....$ 15.66
Off Road Hauler.....$ 11.88
Single Axle.....$ 11.79
Single or Tandem Axle Dump
Truck.....$ 11.68
Tandem Axle Tractor w/Semi
Trailer.....$ 12.81

WELDER.....$ 15.97

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

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

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

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

WAGE DETERMINATION APPEALS PROCESS

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

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on

a wage determination matter
* a conformance (additional classification and rate) ruling

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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:

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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
&#65533;

Wage Rate Complaint Information Requirements

The following information is required for determining whether good cause exists to believe that a violation of Article 5159a, Vernon's Texas Civil Statutes, has been committed.

1. **Certified Payroll**

   A copy of the payroll, supported by an affidavit from the Contractor or relevant Subcontractor, certifying that the payroll is accurate and that the amounts shown were paid to the individuals indicated.

2. **Worker's Name**

   The name of each worker shall be printed and easily readable. It shall be located with the hours worked and amounts paid to them.

3. **Classification of Individual Employee**

   The classification of the individual employee shall be as shown on the Wage Rate Determination, located in the project specification.

4. **Hourly Rate to be Paid**

   The minimum amount shown on the Wage Rate Determination, as shown in the project specifications.

5. **Actual Hourly Rate**

   The actual hourly rate paid to the employee.

6. **Hours and Days Worked**

   Indicate the hours and days worked, (i.e., 6 hours, 6-1-99.)

7. **Amounts Paid and Pay Period**

   Indicate the amounts paid during the pay period and identify what the pay period was, (i.e., 6 hours at $10 = $60 for 6-1-99 thru 6-5-99.)

8. **Insurance, Vacation and Retirement**

   a. If insurance, vacation and/or retirement are removed from the employee's pay, this needs to be indicated. A signed statement, from the employee, giving the company permission to remove these moneys from the employee's pay needs to be included.

   b. Show how much removing these moneys from the employee's pay reduced the hourly rate, (i.e., Insurance, Vacation and Retirement = $.25 per hour, $10.00 minus $.25 = $9.75 per hour.)

TFC-FDC-Pay Voucher revised 06/2007

STATE OF TEXAS PURCHASE VOUCHER - CONSTRUCTION

Agency Voucher No.

Comptroller's Vendor No.	Agency No.	Agency Name	TFC Project Number

Pay to: (name, address, city state, ZIP code	Period Covered		Contract Date
	From:	To:	
	Invoice Date	Invoice No.	Voucher Amount

DESCRIPTION	AMOUNTS
ORIGINAL CONTRACT	
EXTRAS ORDERED	
TOTAL	
DEDUCTIONS ORDERED	
TOTAL NET CONTRACT	
TOTAL AMOUNT EARNED TO DATE	
TOTAL RETAINED PERCENTAGE DATE	
TOTAL EARNED LESS RETAINED PERCENTAGE	
TOTAL PREVIOUSLY APPROVED	
AMOUNT DUE THIS STATEMENT	

ARCHITECT/ENGINEER CERTIFICATION

In accordance with the Contract Documents, based on on-site observations and other pertinent data, the Architect/Engineer certifies that, to the best of the Architect/Engineer's knowledge, information and belief, the work has progressed to the point indicated and that this is a true and correct statement of work performed and materials supplied by the Contractor, and that this statement of account and the amount due is correct and that all work and material has been performed in the accordance with the terms and conditions of the Contract Documents and authorized changes thereto

By: _____ Architect/Engineer _____ Date

TFC Contact Name _____ Phone No. _____

AGENCY CERTIFICATION

I certify that the above services were rendered or goods received, that they correspond in every particular with the contract under which they were procured, that the invoice is true and unpaid, and that the claim was presented to the State within the applicable limitations period.

Name _____ Title _____

Name _____ Title _____

PAYMENT

Name _____ Title _____

Name _____ Title _____

CONTRACTOR'S CERTIFICATION

I _____ do hereby certify that I am

_____ (Title of person certifying)

and that I am duly authorized to make this certification for and on behalf of

_____ (Name of payee company/contractor)

I further certify that the attached invoice is correct and that it corresponds in every particular with the supplies and/or services contracted for. I further certify that the account is true, correct and unpaid

_____ Signature _____ Date

PRICES ABOVE ARE APPROVED

By _____

FOR FISCAL USE ONLY

Remittance Vendor ID	DT	Source Code	(circle one) Send to USAS	Batch #
			YES	Entered by
	Amount	PCC	NO	Date

Date Paid

Warrant / Direct Deposit #

Encumbrance No	C	Req #	Order Date	Invoice #	Received Date	AY	Agency Fund	Object Class	Org Code

Amount	Payment Due Date	Request Payment Date	Interest Override	Description (includes vendor account#)

Descriptive / Legal Text

Prepared by: Date: Approved by: Date

Continuation Sheet

Application Number: _____

Period from: _____ to: _____

A	B	C	D	E	F	G		H	I
			Work Completed						
Item No.	Description of Work	Scheduled Value	From Previous Application (D+E)	This Period	Materials Presently Stored (Not in D or E)	Total Completed and Stored to Date	% (C-G)	Balance to Finish (C-G)	Retainage

PROJECT NO.:_____

CONSTRUCTION PAYMENT AFFIDAVIT

State of Texas
County of _____

The undersigned, being duly sworn and having personal knowledge of the matters set forth herein, deposes and say under oath:

1. That he or she _____ (Name), is _____ (Title)

   of _____ (Firm/Corp./Partnership, etc.)

2. That _____ is the contractor of a

   construction project pursuant to a contract, identified as _____

   _____

   _____ (Project No. and Title of Contract)

   ("Contract" herein) in which the State of Texas is defined as the Owner.

3. The Contractor has performed work and labor or furnished materials for use in the construction project defined by the Contract.

4. All payments by the Contractor to its Subcontractors and Material men for work, labor, materials, machinery and equipment furnished to it by said Subcontractors and Material men are timely made or shall be made within the meaning of and in accordance with the requirements of the Uniform General Conditions applicable to the contract and Contractor knows of no other person or entity having a right to assert any lien on account of materials or labor furnished to it for construction pursuant to the Contract.

Signature _____

Title _____

Sworn and subscribed to before me the undersigned authority on this _____ day of

_____, _____

_____
Notary Public State of Texas
My Commission Expires _____

HUB Subcontracting Plan (HSP)
Prime Contractor Progress Assessment Report

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ (mm/dd/yyyy) Object Code: _____ (Agency Use Only)

Contracting Agency/University Name: _____

Contractor (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to $ _____

Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	*Texas Certified HUB? (Yes or No)	Total Contract $ Amount from HSP with Subcontractor	Total $ Amount Paid This Reporting Period to Subcontractor	Total Contract $ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
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Signature: _____ Title: _____ Date: _____

*Note: Prime contractors can verify subcontractor HUB certification status on-line at http://www2.cpa.state.tx.us/cmbl/cmblhub.html