CONSTRUCTION SERVICES CONTRACT BETWEEN THE TEXAS FACILITIES COMMISSION AND STRUCTURE TONE SOUTHWEST

The Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as "TFC"), as Owner (as defined in *2015 Uniform General Conditions*, Section 1.28) and Structure Tone Southwest located at 2724 Executive Center Drive, Building 9, Suite 155, Austin, Texas 78731, (hereinafter referred to as "Contractor"), enter into the following contract for construction services (hereinafter referred to as the "Contract") pursuant Tex. Gov't Code Ann. §§2166.2525 and §2267.151, (West 2016), to be effective as of the Effective Date (as defined below).

I. DEFINITIONS

1.1. Definitions. Unless specifically provided otherwise herein, all words and phrases in this Contract in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the *2015 Uniform General Conditions* (hereinafter referred to as "UGC"), the *2015 Supplementary General Conditions*, and the *Special Conditions*, a digital copy of each of which is incorporated herein by reference for all purposes in portable document format (".pdf") on the recordable digital versatile disk attached hereto and labeled "TFC Contract No. 16-109-000 / Structure Tone Southwest / Exhibits DVD" (hereinafter referred to as the "Exhibits DVD"), and named therein as "Exhibit A," "Exhibit B," and "Exhibit C," respectively, or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Contract, the definitions used in this Contract shall control to the extent of the conflict.

1.1.1. *A/E* means the architect and/or engineer with whom TFC has entered into a professional services agreement for the Project.

1.1.2. *Application for Final Payment* has the same meaning as defined in UGC Section 1.3.

1.1.3. *Baseline Schedule* has the same meaning as defined in UGC Section 1.6.

1.1.4. *CAD* means AutoCAD DWG format unless specifically provided otherwise herein.

1.1.5. *Certificate of Substantial Completion* means the certificate signed by the Contractor, A/E, and TFC establishing the date of Substantial Completion and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

1.1.6. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, Contractor, Subcontractors, and A/E, including but not limited to, the use of any EPMCS utilized by TFC for the Project.

1.1.7. *Consideration* means the funds and any and all other forms of valid, legal consideration as discussed in Article V of this Contract.

1.1.8. *Construction Services* means the construction and management services to be provided to TFC by Contractor as specified in Section 3.3 of the UGC and as further specified in this Contract.

1.1.9. *Contract Documents* means those documents identified in Article III of this Contract.

1.1.10. *Deliverables* means the Construction Services, which are specified to be delivered by Contractor pursuant to the terms of this Contract.

1.1.11. *Effective Date* means the date that the last signature of a party is affixed hereto.

1.1.12. *EPMCS* means electronic project management control system.

1.1.13. *Final Inspection Deadline* means the date that is thirty (30) days after the Substantial Completion Inspection, and by which date A/E must conduct a final inspection, as set forth in UGC Section 12.1.2.

1.1.14. *Governmental Authorities* means the city, the county, any municipal utility district or similar taxing authority in which the Project is located, the State of Texas, the Federal Emergency Management Agency, the United States Army Corps of Engineers, the Environmental Protection Agency, the Texas Commission for Environmental Quality, and any other governmental or quasi- governmental agency or authority having jurisdiction over any development or construction activities on the Project or the Contractor.

1.1.15. *Laws and Regulations* means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders including those governing labor, equal employment opportunity, safety, and environmental protection, including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act and the Texas Architectural Barriers Act and Texas Accessibility Standards found in Texas Government Code, Chapter 469, of any and all Governmental Authorities.

1.1.16. *MEP Systems* mean mechanical, electrical, and plumbing systems.

1.1.17. *Notice to Proceed* (or "NTP") means the written notice to be issued to Contractor by TFC, which shall inform Contractor of, among other things, the date to begin commencement of work and the date anticipated for Substantial Completion.

1.1.18. *Open Items 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.

1.1.19. *Person* means an individual, firm, partnership, corporation, association and any other legally recognized entity.

1.1.20. *Post-Final Inspection Punchlist* means the punchlist of items that TFC will deliver to Contractor that sets out any part of the work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.

1.1.21. *Post-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Final Inspection, and by which date A/E shall deliver any Post-Final Inspection Punchlist to Contractor.

1.1.22. *Pre-Construction Tasks* means the mobilization and pre-construction services to be provided to TFC as part of the pre-construction phase of the Project as described in Article II below.

1.1.23. *Pre-Construction Tasks Deadline* means the date that is twenty-one (21) days after delivery of a Notice to Proceed, and by which date Contractor shall complete all Pre-Construction Tasks.

1.1.24. *Pre-Final Inspection Punchlist* means the list of final punchlist items as defined in UGC, Section 12.1.1.2 that TFC will deliver to Contractor along with a Certificate of Substantial Completion.

1.1.25. *Pre-Final Inspection Punchlist Deadline* means the date that is a fixed number of days after the date of the Substantial Completion Inspection, and by which date A/E shall deliver a Pre-Final Inspection Punchlist to Contractor.

1.1.26. *Project Manager* means the individual designated by Contractor, and who must be approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of Contractor, on behalf of Contractor, pursuant to the terms and conditions of this Contract, and who shall have decision-making authority to bind Contractor with respect to the Construction Services and the Project.

1.1.27. *Project* means as stated in Section 2.1 below, and includes each component design/construction package that may be prescribed by TFC.

1.1.28. *Punchlist* means, except as may be specifically provided otherwise below, a list of items of work to be finished, remaining work to be performed, or work that does not meet quality or quantity requirements as required in the Contract Documents.

1.1.29. *RFI Response* means a written clarification, instruction, and/or interpretation, including, but not necessarily limited to, an architect's supplemental instructions issued in response to an Request for Information, which response must be consistent with the intent of the

Construction Documents.

1.1.30. *Scope of Services* means the Construction Services as set out in Section 2.2 below.

1.1.31. *Shop Drawings* means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the work.

1.1.32. *Site* means lands or areas indicated in the Contract Documents as being furnished by TFC upon which the work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of the Contractor.

1.1.33. *Subcontract* means any agreement between Contractor and a Subcontractor.

1.1.34. *Subcontractor* means a Person, including a supplier that enters into an agreement with Contractor to perform any part of the Construction Services.

1.1.35. *Substantial Completion* has the same meaning as defined in UGC, Section 1.44.

1.1.36. *Substantial Completion Inspection Deadline* means the date that is a fixed number of days after proper written notification is delivered to TFC and A/E by Contractor that Contractor has fully satisfied the requirements of UGC, Subsection 12.1.1, and by which A/E must conduct a Substantial Completion Inspection.

1.1.37. *TFC Project Manager* means the individual designated by TFC as the owner's designated representative with the direct responsibility to properly supervise the design and construction of the project, as defined in Section 2.1 below, and the services being provided pursuant to this Contract on behalf of TFC, including, but not limited to, (i) serving as the point of contact between TFC, the Using Agency (if any), and A/E; and (ii) supervising TFC's review and approval of the Construction Services.

1.1.38. *Using Agency* has the same meaning as defined in Texas Government Code, Section 2166.001(10).

II. DESCRIPTION OF PROJECT & SCOPE OF SERVICES

2.1. Description of Project. The Project for which Contractor agrees to provide Construction Services is as defined in Article II, and is generally described as the remodel of the Department of Public Safety Data Center Headquarters Building A, located at 5800 N. Lamar Boulevard, Austin, Texas. Services shall include, but not be limited to the following: (i) remodel of the data center; (ii) electrical upgrades; (iii) HVAC upgrades; (iv) chiller installation; (v) back-up generator installation; and (vi) the installation of a Sapphire or equivalent fire suppression system.

2.2. Scope of Services. Contractor agrees to timely deliver the Construction Services described in this Contract. In the event of any material conflict between the duties and responsibilities of

Contractor as set out in the UGC, the 2015 Supplementary General Conditions, any Special Conditions, or in any other Contract Documents, and as set out in this Contract, the duties and responsibilities set out in this Contract shall control to the extent of any such material conflict.

2.2.1. Pre-Construction Phase. Upon receipt of a Notice to Proceed, Contractor shall commence, and soon as reasonably practicable, but in no event later than the Pre-Construction Tasks Deadline, timely complete the following Pre- Construction Tasks for the Project.

2.2.1.1. Consult with staff of TFC, any representatives of the Using Agency and A/E as may be directed by TFC, and become thoroughly familiar with: (i) the Site; and (ii) any and all relevant and existing Site and facilities studies.

2.2.1.2. Attend a pre-construction conference between TFC, A/E, and any other representatives as deemed appropriate by TFC, before any work at the Site is commenced, at such time and location as may be determined by TFC. The Communication Protocol, initial Work Progress Schedule, procedures for handling Shop Drawings and other submittals, processing pay applications, maintaining required records, designation of Project Manager, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said conference.

2.2.1.3. Reaffirm the assignment and identity of Project Manager.

2.2.1.4. If requested by TFC, assign appropriate Contractor staff to receive instruction regarding the use of the EPMCS to be utilized by TFC.

2.2.1.5. Prepare, for A/E's review and TFC's review and acceptance, a procurement schedule for items that must be ordered well in advance of commencement of construction. Contractor shall timely expedite and coordinate the ordering and delivery of products and materials that must be ordered well in advance of commencement of construction.

2.2.1.6. Prepare a safety plan as specified in UGC Section 7.1, and deliver the plan to A/E and TFC for review.

2.2.1.7. Designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be, at a minimum, the prevention of accidents and the maintenance and supervision of said safety plan.

2.2.1.8. Prepare, deliver, and periodically update as specified herein, the initial Work Progress Schedule, as set forth in UGC Section 1.49.

2.2.1.8.1. When acceptable to TFC, this initial Work Progress Schedule shall become the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

2.2.1.8.2. Contractor shall update the Work Progress Schedule as per the provisions of UGC, Subsection 9.3.2. All updated Work Progress Schedules shall

include (i) the components of the work; (ii) times of commencement and completion required of each Subcontractor; (iii) ordering and delivery of products, including those that must be ordered well in advance of construction; (v) a clear delineation of the critical path; and (v) the occupancy requirements of TFC.

2.2.1.8.3. On a monthly basis, or as otherwise agreed in writing by TFC, Contractor shall submit written progress reports to TFC and A/E, showing percentages of completion and other information required by TFC.

2.2.2. Construction Phase. Contractor shall timely deliver to TFC the Construction Services for the Project as follows.

2.2.2.1. Direct all RFIs to A/E.

2.2.2.2. Adhere to the Work Progress Schedule established in accordance with the terms and conditions of this Contract, as it may be amended from time to time.

2.2.2.3. Except as otherwise required for the safety or protection of persons or the work or property at the Site or adjacent thereto, and except as otherwise may be stated in the Contract Documents, perform all work at the Site Monday through Friday, from 6:00 a.m. until 6:00 p.m. Contractor shall not permit the performance of work on any other day or time without TFC's prior written consent, which consent shall not be unreasonably withheld.

2.2.2.4. All requests for clarification of information provided in the Contract Documents or for direction concerning information necessary in order to perform the work must be directed to A/E via an RFI.

2.2.2.5. On a monthly basis, or as otherwise agreed in writing by TFC, submit written progress reports to TFC and A/E reporting Contractor's assessment of percentages of completion and other information required by TFC.

2.2.2.6. Unless and until instructed otherwise in writing by TFC, prepare a daily log containing: (i) a record for each day's weather; (ii) a statement of which days since the previous monthly report are claimed by Contractor to be subject to force majeure portions of the Work in progress; (iii) number of workers on site; (iv) identification of all equipment on site; (v) problems that might affect progress of the Work; and (vi) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said daily log into EMPCS as directed by TFC, by the end of each next business day.

2.2.2.7. As defined in UGC Section 1.48 during the progress of the Work, keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris must be in compliance with all applicable Laws and Regulations.

2.2.2.8. Plan for and develop the schedule to accommodate necessary inspections and testing of electrical systems. Contractor is strictly prohibited from (i) de-energizing or otherwise deactivating; or (ii) energizing or otherwise activating, any electrical systems or equipment at the Site without a minimum of twenty-four (24) hour advance notice to, and written approval of, TFC. Any provisions in the Contract Documents to the contrary notwithstanding, TFC reserves the right to deny and/or revoke Contractor's authority to energize or otherwise activate any electrical systems or equipment at the Site. Contractor will not be entitled to receive additional compensation for any such denial or revocation.

2.2.2.9. Prior to Substantial Completion of the Work, as defined in UGC Section 1.48, clean the Site and the Work and make it ready for utilization by TFC. At the Substantial Completion of the work, Contractor shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the end user, and shall restore all property not designated for alteration by the Contract Documents to original condition.

2.2.2.10. Confine all construction operations within the limits of construction indicated on the Drawings as defined in UGC Section 1.22 or otherwise agreed to in writing by TFC, and use due care in placing construction tools, equipment, materials and supplies so as to cause the least possible damage to property and interference with traffic. If additional easements for its operations are needed, Contractor is solely responsible for acquisition and maintenance of the easement.

2.2.2.11. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

2.2.2.12. In order for an Application for Final Payment to be considered complete and subject to review and approval, submit to TFC a Final Payment punchlist in such form as prescribed by TFC, jointly executed by Contractor, TFC and A/E. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

2.2.2.13. Achieve Substantial Completion within the period of time specified in the proposal as accepted by TFC, which shall be stated in the NTP. In the event the Project is to be constructed in phases, each phase must be constructed within the period of time specified in the respective proposals, and which shall be stated in the respective NTP.

2.2.2.13.1. At such time that Contractor considers the entire work or a portion thereof Substantially Complete, Contractor must notify TFC and A/E in writing that said work will be ready for a Substantial Completion Inspection on a specific date.

2.2.2.13.1.1. Contractor shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by TFC and/or A/E, the following:

2.2.2.13.1.1.1. a list of those portions of the work that are to be the subject of the Substantial Completion Inspection; and

2.2.2.13.1.1.2. the Open Items List, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

2.2.2.13.1.2. The delivery of the foregoing notice by Contractor shall constitute Contractor's certification that it has, in fact, inspected each and every portion of the Work that is to be the subject of the Substantial Completion Inspection and that they are completed in conformity with the Contract Documents.

2.2.2.13.2. No later than ten (10) days prior to the date of the Substantial Completion Inspection, Contractor must deliver to A/E a copy of Contractor's marked-up Record Documents as defined in the UGC Section 1.34, 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 for the work that is the subject of the Substantial Completion Inspection.

2.2.2.13.3. Subject to the provisions of UGC Section 12.1.1, and no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection while accompanied by the TFC Project Manager to determine whether said portion of the work has achieved Substantial Completion.

2.2.2.13.3.1. In the event A/E determines that the Work, or any portion thereof, has not been performed or completed in accordance with the Contract Documents, and no later than the Pre- Final Inspection Punchlist Deadline, A/E shall prepare and deliver to Contractor a Pre-Final Inspection Punchlist with a copy to TFC.

2.2.2.13.3.2. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, TFC by reason of Contractor's failure to timely correct and/or complete the items that are the subject of the Substantial Completion Inspection, Contractor shall be liable to TFC for such fees and/or damages for which TFC may issue a Unilateral Change Order (ULCO) and deduct those costs from the Final Payment.

2.2.2.13.4 Contractor shall achieve substantial completion within three hundred sixty five (365) days after issuance of the NTP.

2.2.2.14. Subject to the provisions of UGC Section 12.1.2, and no later than the Final Inspection Deadline, and prior to requesting a final inspection, Contractor must complete and/or correct all Work specified in the Pre-Final Punchlist.

2.2.2.14.1. Issuance of a Certificate of Substantial Completion is a condition precedent to Contractor's right to issue notice that the Work will be ready for final inspection.

2.2.2.14.2. By requesting a final inspection, Contractor thereby certifies that it has, in fact, inspected each and every portion of the work that is set out in the Pre-Final Punchlist, and that they are completed in conformity with the Contract Documents.

2.2.2.14.3. No later than the Final Inspection Deadline, A/E shall conduct a Final Inspection, while accompanied by the TFC Project Manager, to determine whether all of the items set out in the Pre-Final Punchlist have been fully completed in accordance with the Contract Documents.

2.2.2.14.4. In the event A/E determines that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Contract Documents, A/E shall prepare and deliver to Contractor, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist with a copy to TFC.

2.2.2.14.5. No later than ten (10) days after receipt of the Post-Final Inspection Punchlist, and prior to submitting a request for Final Payment, Contractor must complete and/or correct all work specified in the Post-Final Inspection Punchlist.

2.2.2.14.6. In the event any fees and/or other consequential damages are charged to, or incurred by, TFC by reason of Contractor's failure to timely correct and/or complete the items that are the subject of the Final Inspection, Contractor shall be liable to TFC for such fees and/or damages.

2.2.2.14.7. At final completion, Contractor shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

2.2.2.15. In order for an Application for Final Payment to be considered complete and subject to review and approval, Contractor must deliver to TFC:

2.2.2.15.1. a fully completed and executed Final Payment Checklist in such form as is prescribed by TFC;

2.2.2.15.2. all test reports; and

2.2.2.15.3. all Close-out Documents as defined in UGC Section 1.10

2.2.2.15.3.1. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirements are fully satisfied.

2.2.2.15.3.2. Issuance of a Certificate of Final Completion is a condition precedent to Contractor's right to receive Final Payment.

2.2.3. Contractor Services During All Phases. Contractor shall timely deliver to TFC the following services, as applicable, during all phases for which Contractor is obligated to provide Construction Services.

2.2.3.1. Participate with A/E in all explanatory presentations as may be requested by TFC.

2.2.3.2. Critically review and closely scrutinize all documents submitted by all Subcontractors, suppliers, and all other third-parties.

2.2.3.3. Thoroughly review and closely scrutinize the performance, constructability, schedules, and costs of all of its Subcontractors and suppliers.

2.2.3.4. Critically review and evaluate Subcontractor's proposed means, methods, schedule, and costs as relevant to each Subcontractor's discipline.

2.2.3.5. Maintain work progress and products consistent with the schedules.

2.2.3.6. Promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties.

2.2.3.7. Actively participate in all meetings and/or teleconferences to bring the full measure of Contractor's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment.

2.2.3.8. Ensure that each Subcontractor includes thorough examinations of all documents they author, for accuracy, intended completeness, and constructability as their standard of care for the Project.

2.2.3.9. Ensure that its Project Manager, and any other representative of Contractor whose presence is requested by TFC, attend all meetings and participate in all conference calls that are scheduled by TFC or A/E.

2.2.3.10. Cooperate with any commissioning agent that may be engaged by TFC.

2.2.4. TFC Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or approvals by TFC shall be in its sole and absolute discretion, and must be in writing.

2.2.4.1. No changes to: (i) the scope of the Construction Services; or (ii) the Consideration, shall be valid or enforceable unless evidenced by a fully executed written amendment to this Contract.

2.2.4.2. To the extent that TFC approval is required to authorize incurring any costs, such approval must be acquired prior to incurring any such costs.

2.2.4.3. Contractor is not authorized to commence providing any Construction Services to TFC or any Using Agency with respect to the Project unless and until an appropriate Notice to Proceed is delivered by TFC.

2.2.4.4. TFC, including by and through the TFC Project Manager, reserves the right, if deemed appropriate by TFC in its sole discretion, to extend any of the deadlines set out in this Contract.

2.2.4.5. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews of inspections during the course of design and construction of the Project. However, Contractor shall not be relieved of any of its obligations arising pursuant to this Contract.

2.2.4.6. No inspections of the Project conducted by TFC or A/E during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of Contractor's responsibilities arising pursuant to this Contract. Neither the approval and/or final acceptance of the Project or any Deliverables, the payment of any Pay Application, or the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, nor be deemed, a release of Contractor's obligation to perform and timely deliver the Construction Services in a manner consistent with (i) that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

III. CONTRACT DOCUMENTS

3.1. Contract Documents. In performing its Construction Services for the Project, Contractor shall be bound by, and comply with, the following Contract Documents.

3.1.1. UGC. The UGC.

3.1.2. Supplementary General Conditions. The Supplementary General Conditions.

3.1.3. Special Conditions. The Special Conditions to the 2015 Uniform General Conditions.

3.1.4. Contractor's Response to RFP. Any additional services or provisions depicted in Contractor's Response to RFP No. 303-6-00041 (collectively, the "RFP"), a digital copy of which

Response and Contractor's Pricing Response is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD and labeled therein as "Exhibits D," and "Exhibit D-1," respectively, to the extent any warranties, representations, and/or promises of additional services are made therein, and only to that extent.

3.1.5. Drawings. The Drawings prepared by HMG & Associates, Inc. dated August 31, 2015, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD and labeled therein as "Exhibit E."

3.1.6. Specification (Project Manual and Addenda Thereto). The Specification (Project Manual and Addenda Thereto) prepared by HMG & Associates, Inc. dated August 31, 2015, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD and labeled therein as "Exhibit F."

IV. TERM, SUSPENSION AND TERMINATION

4.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on August 31, 2017, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.

4.2. Suspension of Work.

4.2.1. For Cause. TFC may suspend all or any part of the work, for cause, without prior notice, as more specifically provided in UGC Section 14.1.

4.2.2. For Convenience. TFC may suspend all or any part of the work for the convenience of TFC for a period of up to thirty (30) days, without breach of this Contract, upon seven (7) days written notice, as more specifically provided in UGC Section 14.2.

4.2.2.1. Upon receipt of a Notice of Suspension pursuant to this subsection, Contractor shall, subject to the provisions of UGC Section 14.2, immediately stop all work.

4.3. Termination.

4.3.1. For Cause. Upon written notice to Contractor and its surety, TFC may, without prejudice to any right or remedy, terminate this 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, each one of which shall be considered a material breach of this Contract.

4.3.1.1. Failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials.

4.3.1.2. A violation, whether discovered or asserted before or after the

Effective Date, of any Laws and/or Regulations of any Governing Authority.

4.3.1.3. The failure of Contractor to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents.

4.3.1.4. Failure to timely remedy defective work.

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

4.3.1.6. Creating endangerment to the safety of employees, Subcontractors, or any other members of the public or of the Work.

4.3.1.7. Failure to timely obtain and deliver, or maintain any required bonds or any required proof of insurance, pursuant to the Contract Documents.

4.3.1.8. The falsity of any material statement, warranty or representation when given or made by Contractor to TFC or A/E, whether in this Contract, in Contractor's response to the RFP, or otherwise, or any such statement, warranty or representation becoming materially false at any time during the term of this Contract, or any fraud committed by Contractor or its members, officers, agents, or principals in connection with the procurement of this Contract or the delivery of the Construction Management Services.

4.3.1.9. If Contractor: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law; (iii) is the subject of an involuntary proceeding under any bankruptcy or other similar law and such proceeding is not dismissed within sixty (60) days; or (iv) makes any admission of its inability to pay its debts generally as they become due.

4.3.1.10. The appointment of a trustee, receiver, or liquidator for Contractor.

4.3.1.11. The use of or otherwise incorporating an item of material or equipment into the Project that is not specified by the Drawings or Specifications, as defined in UGC Sections 1.22 or 1.41; or otherwise approved pursuant to the procedures set out in the Requirements for Substitutions and Equivalents.

4.3.1.12. Failure to timely comply with any other requirements of the Contract Documents.

4.3.1.13. Upon receipt of a notice of termination pursuant to this Section, Contractor shall immediately stop all work, and shall continue to cease work activities, unless and until TFC and Contractor agree on the method and means of satisfying UGC Section 14.3.4.

4.3.2. <u>For Convenience.</u> TFC may terminate this Contract for any reason and at any time during the performance of the work as more particularly provided in UGC, Section 14.5.

4.3.2.1. Upon receipt of a notice of termination pursuant to this Section, Contractor shall immediately: (i) stop all work; and (ii) comply with the provisions of UGC, Subsection 14.5.2.

V. CONSIDERATION

5.1. Contract Sum. The Contract Sum shall not exceed the sum of Three Million Two Hundred Six Thousand Six Hundred Seventy-Nine and No/100 Dollars ($3,206,679.00).

5.2. Amendment of Contract Sum. Any amendment to the Contract Sum must be submitted to TFC for review and, if approved, must be evidenced by a Change Order, as defined in UGC Section 1.9, issued by TFC in order to be valid and enforceable. Contractor's claims for amendment to the Contract Sum and Owner's orders for changes in the Work shall be executed and documented as a Change Order in accordance with Article 11 of the UGC subject to the 2015 Supplementary General Conditions or Special Conditions or as provided below. Where single Change Orders exceed six percent (6%) of the original contract amount in value or where the aggregate previous change order value exceeds twenty-five percent (25%) of the original contract amount in value, the Change Order will be further documented through an amendment to this Construction Services Contract as set forth in UGC Section 10.2. As set forth in UGC Section 10.2, periodically and no less frequently than a quarterly basis, executed Change Orders will be codified within this Construction Services Agreement through an amendment.

5.3. Payment of the Contract Sum. The Contract Sum shall be paid in accordance with Article 10 of the UGC, subject to the 2015 Supplementary General Conditions or Special Conditions or as provided below.

5.3.1. Initial Pay Application. At least twenty-one (21) days prior to the submission of the initial pay application, the Schedule of Values, as defined in UGC Section 1.37, must be submitted and approved by TFC, as per UGC Section 10.1.1.

5.3.2. Subsequent Pay Applications. In addition to the requirements of UGC Article 10, each Pay Application must also include the following additional documentation.

5.3.2.1. An updated Work Progress Schedule, including the executive summary and all required schedule reports, including any time Change Orders, as per UGC Sections 8.3.1.3 and 10.2.1.2.

5.3.2.2. A HUB Subcontracting Plan Progress Assessment Report (PAR) monthly compliance report, as per UGC Sections 4.2.5.1 and 10.2.1.3.

5.3.2.3. All test results and reports from all Subcontractors and/or otherwise under Contractor's possession or subject to Contractor's control.

5.3.2.4. A duly executed Conditional Waiver & Release on Progress

Payment from each Subcontractor that complies with Tex. Prop. Code §53.284(b).

5.3.2.5. Any other information or documentation as may be requested by TFC.

5.3.3 Payment Application Certifications. Each submission of a Payment Application shall also constitute Contractor's certification that:

5.3.3.1. Contractor has updated all expired insurance policies as required by UGC Section 5.2;

5.3.3.2. Contractor has updated the Record Documents, as per UGC Section 6.2.3.

5.3.3.3. Contractor has updated the Submittal Register, as per UGC Section 8.3.1.2.; and

5.3.3.4. the sums contained in the Payment Application that represent amounts owed to Subcontractors and/or suppliers are, in fact, due and owing to said Subcontractors and/or suppliers, without any deductions or offsets.

5.3.4. Prompt Payment. All payments shall be governed as follows.

5.3.4.1. Payments to Contractor. Contractor shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act" and the provisions set out in Article 10 of the UGC, subject to the Special Conditions.

5.3.4.2. Payments to Subcontractors. For all services rendered, Contractor's payment to Subcontractors is due within ten (10) days after receipt of payment from the TFC and, when appropriate, in the sole discretion of TFC, TFC may issue joint checks to Contractor and Subcontractor(s).

VI. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS

6.1. Acknowledgements, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees as follows:

6.1.1. TFC Deliverables to Contractor. TFC shall have provided Contractor with a copy of, or reasonable access to, the following information and documentation regarding the Project.

6.1.1.1. The UGC.

6.1.1.2. The 2015 Supplementary General Conditions.

6.1.1.3. Any Special Conditions.

6.1.1.4. Sample copies of the following:

6.1.1.4.1. contract forms; and

6.1.1.4.2. bond forms.

6.1.1.5. Bidding information and instructions.

6.1.1.6. Minimum wage rates.

6.1.1.7. The PAR.

6.1.1.8. The communication protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project.

6.1.2. TFC Services to Contractor. TFC shall timely provide, or cause to be provided, to Contractor the following services for the Project.

6.1.2.1. Assuming satisfactory completion of all criminal background checks, assist Contractor in obtaining such access to the Project Site as is reasonably necessary to enable Contractor to provide the Construction Services.

6.1.2.2. Designate the TFC Project Manager who will manage the construction of the Project and the services being provided pursuant to this Contract and the other Contract Documents.

6.1.2.3. Provide intermediate reviews of the work product of Contractor as necessary to allow Contractor to proceed with delivery of the Construction Services in a timely manner.

6.2. Acknowledgements, Covenants, and Agreements of Contractor. Contractor acknowledges, covenants, and agrees as follows:

6.2.1. Timely Delivery of Conforming Services. Contractor will, subject to Force Majeure events, as defined in Article XII below, timely provide the Construction Services and construct the Project in conformity with, and as specified in, this Contract, the UGC, the 2015 Supplementary General Conditions, any Special Conditions, and the other Construction Documents.

6.2.2. Risk of Loss. Contractor shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under which the work must be done are different from what were estimated or anticipated by Contractor, or because of weather, floods, elements or other causes.

6.2.3. Limitation of Authority. Contractor agrees that the TFC Project Manager shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Contract in any way, or waive strict compliance with the terms and conditions of this Contract, any deviation from which must be evidenced by the TFC Project Manager in writing.

6.2.4. Cooperation. All Project managers, employees, and associated Subcontractors shall cooperate with and assist each other and all other Contractors and design professionals retained by TFC.

6.2.5. Contractor Cooperation. 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. 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. 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. 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.

6.2.6. Contractor Safety. All Contractors and subcontractors conducting work for TFC shall abide by all 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, Occupational Safety and Health Regulations. 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. 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.

6.2.7. Contractor Cooperation. 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.

6.2.7.1. 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.

6.2.7.2. 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.

6.2.7.3. 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.

6.2.8. E-Verify. By entering into this Contract, CMR 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 CMR to perform work pursuant to the Contract, within the United States of America. CMR 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 CMR, and CMR'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. CMR shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract. For persons not eligible for E-Verify screening, CMR (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

6.2.9. Identification of Project Manager and All Subcontractors. The Project Manager identified in the initial List of Project Manager and Subcontractors (hereinafter referred to as the "List"), a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD and labeled therein as "Exhibit H," will supervise the efforts of Contractor to timely provide TFC with the Construction Services.

6.2.9.1. The Project Manager must be committed to the Project on a full-time basis. TFC reserves the right to approve the appointment of the Project Manager and to demand that the Project Manager, and any of Contractor's employees or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation or ordinance of any city, county, the State of Texas, or the United States, or any other Laws and Regulations; (ii) TFC's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (v) any other like reasons.

6.2.9.2. The Project Manager and Subcontractors identified in the List shall not be removed or replaced by Contractor, nor shall any other Subcontractors be engaged by Contractor, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.2.10. Texas Construction Fund Trust Act. All payments to Contractor shall be subject to the provisions of the Texas Construction Fund Trust Act, Tex. Prop. Code Ann. §162.001, et seq.

6.2.11. 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, Chapter 2155.

6.2.12. No Assumption. No approvals or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of any responsibility by TFC for any defect, error or omission in said Deliverables or Construction Management Services.

6.2.13. Debts or Delinquencies Owed to the State. Any payment due under this Contract may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055.

6.2.14. General and Criminal Background Checks.

6.2.14.1. Contractor 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 TFC as to the facts and circumstances surrounding the conviction.

6.2.14.2. 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.

6.2.14.2.1. 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 TFC within fifteen (15) days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by Contractor.

6.2.14.2.2. All criminal background checks must be completed before any employee or Subcontractor performs any services at the Site.

6.2.14.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "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 the *Texas Facilities Commission Criminal Background Check and Application Guidelines*, a digital copy of which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD, and named therein as "Exhibit I." Contractor's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Work Progress Schedule.

6.2.15. 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 shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. Contractor shall include the above provisions in all Subcontracts pertaining to the work.

6.2.14. No Advertising. Contractor shall not advertise that it is doing business with TFC or use this Contract as any sort of marketing or sales tool without the prior written consent of TFC.

6.2.15. No Warranties By TFC. **CONTRACTOR ACKNOWLEDGES THAT ANY AND ALL TESTS, MAPS, REPORTS, AND DRAWINGS IN THE POSSESSION OF THE TFC THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, UTILITY LOCATIONS, AND OTHER SITE CONDITIONS AND/OR RESTRICTIONS WHICH MAY IMPACT THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT WERE PREPARED SOLELY FOR TFC'S BENEFIT AND FOR INFORMATION PURPOSES ONLY, AND THAT CONTRACTOR SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT CONTRACTOR'S OWN RISK.**

6.2.16. Encountering Different Conditions. Contractor agrees that it shall make no claims for damages, additional compensation or extension of time against TFC because of encountering actual conditions in the course of the work which vary or differ from conditions or information contained in the Contract Documents. All risks of differing subsurface conditions shall be borne solely by Contractor.

6.2.17. Sequencing of Construction. TFC reserves the right to: (i) direct the Construction Phase to commence prior to completion of the Pre-Construction Phase, in which case the phases will proceed concurrently; or (ii) to complete the Project in phases.

6.2.18. Warranties and Guarantees. All warranties and guarantees required by the Specifications shall expressly run to the benefit of TFC. If required by TFC or A/E, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

VII. WARRANTIES AND REPRESENTATIONS BY CONTRACTOR

7.1. Warranties and Representations by Contractor. Contractor hereby makes the following warranties, representations and certifications, all of which are true, accurate and complete at the time of the Effective Date and throughout the term of the Contract, and which shall be true, accurate and complete with respect to each Deliverable. All representations and warranties discussed below shall survive the expiration or termination of this Contract.

7.1.1. Compliance with All Laws. 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. As part of its delivery of the Construction Management Services, Contractor shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Contract.

7.1.1.1. Neither Contractor, nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the Request for Proposals for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.1.2. TFC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary to address TFC's or Contractor's required compliance with all Laws and Regulations.

7.1.1.3. Contractor has determined what licenses, patents and permits are required under the Contract and will have acquired all such licenses, patents and permits prior to commencement of construction.

7.1.1.4. Neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has: (i) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15 or the Federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.2. Responses to RFP. All statements, representations and certifications contained in, or otherwise set out in, Contractor's response(s) to the RFP for this Project were true and correct when made, and shall remain true and correct throughout the term of this Contract.

7.1.3. 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 hired since 1986 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 all contractors and subcontractors who contract with the State. Contractor shall not place any employee of Contractor at a worksite, nor shall Contractor permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States.

7.1.3.1. Contractor warrants that Contractor: (i) maintains and follows an established policy to verify the employment authorization if its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to Contractor's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States.

7.1.3.2. Contractor further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Contractor comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS–ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and (iii) has responded, and shall at all times during the term of the Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Agreement, Contractor shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of Contractor or any of its employees.

7.1.3.3. Contractor acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

7.1.4. Proficiency in Systems. Contractor is proficient in the use of CAD systems and the EPMCS utilized by TFC.

7.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; (ii) conform to or exceed the specifications set forth in the Contract Documents; and (iii) be fit for ordinary use, of good quality, and with no material defects.

7.1.5.1. Where a Shop Drawing or Sample is required by the Contract Documents or the Submittal Register, any related work performed prior to A/E's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

7.1.5.2. Any provisions in the UGC to the contrary notwithstanding, including, but not necessarily limited to Section 13.2, the creation of Contractor's general one (1) year warranty shall not be construed to constitute a waiver of Contractor's obligation to correct, or otherwise be responsible for, any latent defects beyond the above- mentioned one (1) year corrective period.

7.1.5.3. Any provision in the UGC to the contrary notwithstanding, no warranty periods shall commence unless and until a Certificate of Substantial Completion has been issued for the corresponding work or portion thereof.

7.1.6. Warranty of Improvements. Any provisions herein to the contrary notwithstanding, Contractor expressly warrants that all improvements, including workmanship and materials incorporated into the Project, shall be free from defects.

7.1.7. Eligibility. The individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate pursuant to Texas Government Code, Section 2155.004(b).

7.1.8. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006, regarding delinquent child support, the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Contractor has provided, prior to its execution of this Contract, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Contract. Contractor acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

7.1.9. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. Contractor represents and warrants that it has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. Contractor further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either Contractor or any of Contractor's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then Contractor has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

7.1.10. Disclosure of Former State Executives. Pursuant to Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, 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 Contract. If Contractor employs or has used the services of a former executive head of TFC or any other state agency, then Contractor has provided 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.

7.1.11. Financial Interest/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.

7.1.12. 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.

7.1.13. 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.

7.1.13. Affirmation as to Submittals. Upon submittal to TFC of any documentation or data that was created or modified by Contractor, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

7.1.14. Drawings and Specifications. Contractor is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but Contractor shall promptly report to A/E and TFC, in writing, any nonconformity discovered by or made known to Contractor in the form of an RFI.

7.1.15. Site Inspection. Contractor has had an opportunity to examine, and has carefully

examined, all of the Contract Documents including, but not limited to, the Drawings and the Specifications, and has fully acquainted itself with the Scope of work, design, availability of materials, existing facilities, the general topography, soil structure, substructure conditions, obstructions, and all other conditions pertaining to the work, the site of the work and its surrounding; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the work; and that anything in any of the Contract Documents or in any representations, statements or information made or furnished by TFC or its representatives notwithstanding, Contractor will regardless of any such conditions pertaining to the work, the site of the work or its surroundings, complete the work for the compensation stated in this Contract, and pursuant to the extent of Contractor's liability under this Contract, assume full and complete responsibility for any such conditions pertaining to the work, the site of the work or its surroundings, and all risks in connection therewith.

VIII. STATE FUNDING

8.1. State Funding. 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. 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.

IX. COPYRIGHTS AND TRADEMARKS

9.1. Copyrights. Contractor agrees that all Deliverables provided pursuant to this Contract are subject to the rights of TFC in effect on the date of execution of this Contract. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by Contractor are subject to copyright protection, Contractor hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. Contractor shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

9.1.1. Disclaimers. All such Deliverables furnished by Contractor pursuant to this Contract shall be considered instruments of its services in respect to the Project. It is understood that Contractor does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If A/E, at TFC's request and authorization, verifies or adapts Contractor's Deliverables for TFC's use on another study, Contractor shall be compensated for redesign or new

design, bidding, and construction administration services.

9.1.2. Delivery to TFC. Contractor shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Contract for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Contract, whether written, digital, or electronic.

9.1.3. TFC Right to Use. Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of the Project.

9.1.14. No Use of Name or Trademark. Contractor agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Contract, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

X. RECORDS, AUDIT, PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

10.1. Books and Records. Contractor shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

10.2. Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.003, the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

10.3. Records Retention. All records relevant to this Contract shall be retained for a minimum of seven (7) years. This retention period runs from the date of payment for the relevant goods or

services by TFC, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

10.4 Confidentiality Provisions Applicable to Contractor.

10.4.1. Protection of Confidential Information. Contractor hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of Construction Management Services to TFC, certain Confidential Information (as defined below) will be disclosed to Contractor; and (ii) that whether developed by TFC or others employed by or associated with TFC, all Confidential Information is, and shall remain, the exclusive and confidential property of TFC, and shall be at all times regarded, treated and protected as such by Contractor in accordance with this Contract. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

10.4.2. Definition of Confidential Information. "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is: (i) proprietary to, about, or created by TFC; (ii) gives TFC some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of TFC; (iii) designated as "Confidential Information" by TFC, or from all the relevant circumstances should reasonably be assumed by Contractor to be confidential and proprietary to TFC; or (iv) not generally known by Contractor. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as confidential).

10.4.2.1. Work product resulting from, or related to, work, projects, or services performed or to be performed by TFC for Contractor and/or for actual and potential Using Agencies that are related to the business and/or operations of TFC, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used in connection therewith.

10.4.2.2. Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs\.

10.4.2.3. Information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).

10.4.2.4. Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and

operational manuals, pricing, marketing, and all other manner and methods of conducting TFC's business.

10.4.2.5. Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of TFC which have been or are being discussed.

10.4.2.6. Any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential "Contracting Person" regarding a potential "Qualifying Project" as those terms are defined in Chapter 2267 of the Texas Government Code, *Public and Private Facilities and Infrastructure as added by Acts 2011, 82nd Leg., ch. 1334, § 1*, including, but not necessarily limited to, the names of the Contracting Person, including their representatives, (collectively, "Business Customers"); the parties to and substance of any agreements between TFC and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and the type, quantity and specifications of products and services purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers.

10.4.3. Exclusions. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by Contractor in breach of the terms of this Contract; (ii) becomes available to Contractor from a source (other than TFC) which source is not, to the best of Contractor's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by Contractor.

10.4.4. Covenants. As a consequence of Contractor's acquisition or anticipated acquisition of Confidential Information, Contractor will occupy a position of trust and confidence to TFC with respect to TFC's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, Contractor agrees that it is reasonable and necessary that it make the following covenants:

10.4.4.1. No Disclosure. Both during and forever after the performance of its due diligence investigation, Contractor will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC's prior, written consent, and Contractor will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against Contractor's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and Contractor understands that such similarity does not excuse Contractor from abiding by its covenant or other obligations pursuant to this Contract.

10.4.4.2. No Use, Copying, or Transfer. Both during and after the conduct of its due diligence investigation, Contractor will not use, copy, or transfer Confidential Information

other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against Contractor's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing or otherwise exploiting, directly or indirectly, any products or services (including software in any form) that embody or are derived from Confidential Information.

10.4.4.3. No Use of Name or Trademark. Contractor agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks (or any names under which TFC conducts business or operations) for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Contract, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole and absolute discretion.

10.4.4.4. Non-Circumvention. Contractor agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.

10.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 10.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by Contractor to the extent that such information is (i) confidential by law; (ii) marked or designated "confidential," or words to that effect, in a font size no smaller than normal font, by Contractor; or (iii) information that TFC is otherwise required to keep confidential by this Contract.

10.6. Public Records. Notwithstanding any provisions of this Agreement to the contrary, Contractor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. 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 specified by TFC. Contractor may request that TFC seek an opinion from the Attorney General of the State of Texas. However, TFC will not honor Contractor's request for an opinion if the request is not based upon a reasonable interpretation 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 that was provided by the State of Texas for use in performing the Agreement. This Agreement and all data and other information generated or otherwise obtained in its performance may be 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 Agreement, 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 Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge

to the State.

XI. BONDS AND INSURANCE

11.1. Bonds. For all phases of the Project, Contractor shall timely obtain and deliver to TFC the bonds required by Section 5.1 of the UGC for each such phase, provided however, the provisions of Subsection 5.1.3.1 of the UGC to the contrary notwithstanding, Contractor shall have obtained and delivered the Bid Bond contemporaneously with submission of Contractor's response to an RFP or other TFC solicitation process.

11.2. Insurance Requirements. Contractor shall timely obtain and maintain insurance in the following types and amounts for the duration of this Contract (unless specifically provided otherwise herein), and must timely comply with the following additional insurance requirements:

11.2.1. Amounts and Types of Insurance Coverages. The amounts and types of required insurance coverages are as follows:

11.2.1.1. Workers' Compensation and Employers' Liability Coverage. Contractor hereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that Contractor provides or will provide at, or prior to, execution of the Guaranteed Maximum Price Amendment, Workers' Compensation and Employers' Liability insurance for employees employed on this public project with limits of not less than: (i) $1,000,000 each accident; (ii) $1,000,000 disease each employee; and (iii) $1,000,000 disease policy limit.

11.2.1.1.1. Coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44).

11.2.1.1.2. As per Tex. Lab. Code §406.096(b), Contractor shall require each Subcontractor to certify in writing to the Contractor that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. Contractor shall forward said certifications to TFC within ten (10) days of the Effective Date of the Contract.

11.2.1.1.3. The policy must include Other States Endorsement to include the State of Texas if Contractor's business is domiciled outside the State of Texas.

11.2.1.1.4. The policy must be endorsed to include Waiver of Subrogation in favor of the Texas Facilities Commission.

11.2.1.2. Commercial General Liability. Commercial general liability insurance coverage including premises; operations; blanket contractual liability coverage assumed under the Contract and all contracts relative to the Project, including independent contractor's liability pursuant to un-amended ISO, or its equivalent; products and completed operations; and extended to include explosion, collapse, and underground hazards, with a combined single limit of

$1,000,000 per occurrence for coverages A, B, & C, and a general aggregate of $2,000,000.

11.2.1.2.1. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent.

11.2.1.2.2. The policy must be endorsed to include Additional Insured status in favor of the Texas Facilities Commission.

11.2.1.2.3. The policy must be endorsed to include Waiver of Subrogation in favor of the Texas Facilities Commission.

11.2.1.2.4. The policy must be endorsed to include 30 day Notice of Cancellation, 10 day notice for non-payment, in favor of the Texas Facilities Commission.

11.2.1.3. Asbestos Abatement Liability Insurance. [If applicable] Asbestos abatement liability coverage including coverage for liability for bodily injury and property damage arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials with a limit of $1,000,000 per accident; $1,000,000 disease per employee; and $1,000,000 disease policy limit, with a combined single limit of at least $2,000,000 per occurrence.

11.2.1.3.1. The policy must be a claims-made policy and the coverage period shall be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), with an extended discovery period for a minimum of five (5) years which shall not commence until the expiration of the longest warranty period(s).

11.2.1.3.2. In the event this Contract provides for only asbestos abatement, neither all-risk builder's risk nor an all-risk installation floater shall be required.

11.2.1.3.3. In the event Contractor elects to engage a Subcontractor to perform any asbestos abatement, said Subcontractor must timely obtain and maintain the same asbestos abatement liability coverage as set forth above. In addition thereto:

11.2.1.3.3.1. said asbestos abatement liability insurance must comply with all requirements set forth in (i) the General Requirements for All Insurance; and (ii) the No Cancellation or Lapse sections below; and

11.2.1.3.3.2. as soon as reasonably practicable, but in no event later than the Effective Date of the Contract, said Subcontractor must deliver to TFC, at no expense to TFC, a duly executed Proof of Satisfaction and timely deliver, or cause to be delivered, the insurance documentation described therein.

11.2.1.4. Business Automobile Liability Insurance. Business automobile

liability coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $1,000,000 bodily injury per person, $1,000,000 bodily injury per occurrence, and at least $1,000,000 property damage liability per accident.

11.2.1.4.1. No aggregate shall be permitted.

11.2.1.4.2. Such insurance must include coverage for loading and unloading hazards.

11.2.1.4.3. The policy must be endorsed to include Additional Insured status in favor of the Texas Facilities Commission.

11.2.1.4.4. The policy must be endorsed to include Waiver of Subrogation in favor of the Texas Facilities Commission.

11.2.1.4.5. The policy must be endorsed to include 30 day Notice of Cancellation, 10 day notice for non-payment, in favor of the Texas Facilities Commission.

11.2.1.5. Special Conditions Builder's Risk Insurance. At, or prior to, execution of the Guaranteed Maximum Price Amendment, Contractor shall obtain and maintain Broad Form Builder's Risk Insurance, or Broad Form installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

11.2.1.5.1. Coverage shall be Broad Form, including, but not be limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm.

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

11.2.1.5.3. For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of $1,000,000.00 or the value of the Total Contract Sum, whichever is less. These policy limits are in addition to the builder's risk policy limit that is equal to the total sum for Existing Property and TFC-furnished equipment, if any, specified by TFC.

11.2.1.5.3.1. 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.

11.2.1.5.4. 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.

11.2.1.5.5. The policy must be written jointly in the names of TFC and Contractor. Subcontractors must be named as additional insureds.

11.2.1.5.6. The policy shall have endorsements as follows:

11.2.1.5.6.1. this insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

11.2.1.5.6.2. 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; and

11.2.1.5.6.3. 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.

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

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

11.2.1.6. Umbrella Liability Insurance. Umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring Contractor for an amount of not less than $1,000,000.00, which provides coverage at least as broad as, and applies in excess and follows form of, the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss.

11.2.2. General Requirements for All Insurance. The following provisions shall apply to all insurance requirements:

11.2.2.1. Deductibles and Self-Insured Retentions. Contractor shall be responsible for all deductibles and self-insured retentions, if any, stated in policies. All deductibles and self-insured retentions shall be disclosed on the certificates of insurance.

11.2.2.2. Claims–Made Policies. If coverage is underwritten on a claims-made basis, the retroactive date for the policy and all renewals shall be coincident with the Effective Date of this Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. Any premiums for this extended reporting period shall be paid by Contractor.

11.2.2.3. Additional Policy Requirements. In the event the primary insurance policy does not so provide, Contractor shall obtain and maintain endorsements as to each deficient policy, or provide such other document(s) as may be approved in advance by TFC, that satisfy all of the following requirements:

11.2.2.3.1. naming **"Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers,"** as additional insureds, provided however, this requirement does not apply to workers' compensation insurance;

11.2.2.3.2. the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third-party acceptable to TFC, notify the TFC Project Manager Insurance Analyst, TFC - FDC, P.O. Box 13047, Austin, Texas 78711, of any: (i) non-renewal; (ii) cancellations; or (iii) material changes, at least thirty (30) days prior to change or cancellation for any reason except in the case of cancellation for non-payment of premiums, the notification must be at least ten (10) days prior to cancellation;

11.2.2.3.2.1. "Material Change" means any of the following changes to the policy during the term of the Policy:

11.2.2.3.2.1.1. a change in the policy period;

11.2.2.3.2.1.2. a material revision to, or removal of, a coverage section;

11.2.2.3.2.1.3. a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or

11.2.2.3.2.1.4. an increase of the amount of any self-insured retentions; and

11.2.2.3.3. as to those policies wherein TFC is an additional insured, said insurance coverages must be primary and non-contributing with respect to insurance or self-insurance carried by TFC, if any; and

11.2.2.3.4. the policy must provide a waiver of subrogation rights to TFC for the workers' compensation, employers' liability, commercial general liability, and business automobile liability policies.

11.2.2.4. No Commencement of Work. Contractor shall not, nor allow any Subcontractor(s) to commence work until the proof of satisfaction of the insurance requirements has been received and approved by TFC. However, any approval of the insurance requirements

by TFC shall not relieve or reduce the liability of Contractor hereunder.

11.2.2.5. Qualifications of Insurer. All insurance must be written by a company licensed to do business in the State of Texas at the time the policy and any renewals are issued, and must be written by a company with an A.M. Best rating of A- or better.

11.2.3. No Cancellation or Lapse. Contractor shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for builder's risk (or as applicable, an installation floater) is not governed by this provision.

11.2.4. Notice of Erosion. Contractor shall provide TFC thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Contract.

11.2.5. Right to Review. TFC reserves the right to review the insurance requirements of Article XII 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 and/or of Contractor, provided however, such modifications must be commercially available to Contractor. TFC shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

11.2.6. Losses Paid by Contractor. Actual losses not covered by insurance as required by this Contract shall be paid by Contractor.

11.2.7. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Contract may subject Contractor to, among other remedies, the following:

11.2.7.1. disqualification from eligibility to participate in any other or future projects with TFC;

11.2.7.2. suspension of work for cause pursuant to UGC, Article 14;

11.2.7.3. in the event Contractor fails to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to Contractor under the Contract or under any other contract between TFC and Contractor; and/or

11.2.7.4. TFC may withhold of any payments due to Contractor from this Project or any other TFC project until satisfaction is achieved.

11.2.8. TFC a Third-Party Beneficiary. It is hereby acknowledged and agreed that TFC is a third-party beneficiary of any agreement(s) between Contractor and any and all Persons who procure, or cause to be procured, the above-described insurance coverages, and all renewals

thereof, for the Project.

XII. MISCELLANEOUS

12.1. **Indemnification.** **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

12.1.1. **Infringements.** **(a) CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. (b) CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. (c) IF CONTRACTOR BECOMES AWARE OF**

AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGING.

12.1.2. **Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.** **(a) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. (b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

12.1.1. Notice to TFC. In the event Contractor becomes aware of any claim that may be subject to the above-described indemnification, Contractor shall notify TFC of such claim within five (5) business days of becoming aware.

12.1.2. Settlement Authority. No settlement of any such claim shall be made by Contractor without TFC's prior written approval.

12.2. 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 Chapter 2161 of the Texas Government Code. Contractor has submitted an approved HUB Subcontracting Plan, a digital copy of the form for which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD, and named therein as "Exhibit J." Contractor shall provide the HUB Program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan Progress Assessment Report ("PAR"), a digital copy of the form which is incorporated herein by reference for all purposes in .pdf format on the Exhibits DVD, and named therein as "Exhibit K." PARs shall be submitted monthly with each invoice and are a condition of payment.

12.3. 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. TFC has no right or obligation to control the methods and means of performing the work except as to the obligation to ensure compliance with the Contract Documents. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the work among Subcontractors or delineating the work to be performed by any specific trade. 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 the following.

12.3.1. Withholding. Withholding of income taxes, FICA, or any other taxes or fees.

12.3.2. Insurance. Industrial or workers' compensation insurance coverage.

12.3.3. Group Insurance Plans. Participation in any group insurance plans available to employees of the State of Texas.

12.3.4. ERS. Participation or contributions by the State to the State Employees Retirement System.

12.3.5. Vacation and Sick Leave. Accumulation of vacation leave or sick leave.

12.3.6. Unemployment Compensation. Unemployment compensation coverage provided by the State.

12.4. No Assignment & Subcontracts. Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC. Notwithstanding the foregoing, it is mutually understood and agreed that Contractor may subcontract with third parties for some or all of the Construction Management Services to be performed. In any approved Subcontracts, Contractor shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of Contractor specified herein. Nothing herein shall be construed to relieve Contractor of the responsibility for ensuring that the goods delivered and/or the services rendered by Contractor and/or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to TFC of any such Subcontractor performing work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

12.5. Drug Free Work Place. Contractor, Contractor's employees and Subcontractors 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 Contractor, Contractor's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

12.6. No Smoking. All facilities where work is to be performed are nonsmoking buildings. Contractor's employees and Subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

12.6. Notices. All notices, demands and requests required in this Contract shall be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (ii) one (1) business day after deposit with Federal Express or comparable overnight delivery system for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

TFC:	Texas Facilities Commission 1711 San Jacinto Boulevard, Suite 400 Austin, Texas 78701 Attention: Legal Services Division
With a Copy to:	Texas Facilities Commission 1711 San Jacinto Boulevard, Suite 400 Austin, Texas 78701 Attention: John S. Raff, Deputy Executive Director

If to Contractor: Structure Tone Southwest
3724 Executive Center Drive
Building 9, Suite 155
Austin, Texas 78731
Attention: Anthony Roberts, Account Executive

Either party hereto may change its address by giving the other party written notice thereof at least five (5) business days in advance of the Effective Date for such new address.

12.7 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.

12.8. 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 pursuant to this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto.

12.9. 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 that this 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.

12.10. Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation for payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely 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 (hereinafter referred to as "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.

12.10.1. In any such event, the party claiming Force Majeure shall notify the other party of the Force Majeure event in writing within forty-eight (48) hours of the commencement of the Force Majeure event, and within forty-eight (48) hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above-described notices, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event.

12.10.2. If possible, the notice shall set forth the extent and duration thereof.

12.10.3. 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 nonperformance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to Contractor. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of the Contractor's services under this Contract require a written amendment to this Contract.

12.11. Dispute Resolution. 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.

12.12. Legal Construction and Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be substituted a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.13. Multiple 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.

12.14. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their representatives, successors and assigns.

12.15. Limitation on Authority and No Other Obligations. Contractor shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debts,

obligations, expenses, or liabilities of any kind on behalf of TFC or the State of Texas.

12.16. No Waiver of Sovereign Immunity. Nothing in the Contract shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC or the Using Agency. 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 the 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.

12.17. No Implied Waiver. The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Contract shall not be construed as a waiver or a relinquishment thereof for the future.

12.18. No Third-Party Beneficiaries. This Contract is made solely and specifically among and for the benefit of the parties named herein and the Using Agency, and their respective successors and assigns, and no other Person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of this Contract as a third-party beneficiary or otherwise.

12.19. Further Assurances. Contractor shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Contract.

12.20. No Presumptions for Ambiguities. Each party hereby represents and warrants that although the initial draft of this Contract may have been prepared by one party, both parties have been given the opportunity to review this Contract with counsel of their choice, and have made additions, revisions, and amendments hereto. Therefore, each party hereby covenants and agrees that they are co-drafters of this Contract such that any ambiguities cannot be construed against any party.

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

12.22. 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, Contractor 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).

Contractors 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/.

12.23. Work Made for Hire. All work shall constitute the exclusive property of TFC. All right, title and interest in and to said work shall automatically and without further notice or action vest in TFC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TFC, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to TFC. TFC shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give TFC and/or the State of Texas, as well as any person designated by TFC and/or the State of Texas, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to TFC beyond those amounts payable to Contractor for the services rendered under this Contract.

12.24. Schedule of Exhibits. The following shall be the exhibits to this Contract, which are contained on the Exhibits DVD and are hereby incorporated herein by reference:

12.24.1.	Exhibit A.	2015 Uniform General Conditions;
12.24.2.	Exhibit B.	2015 Supplementary General Conditions;
12.24.3.	Exhibit C.	Special Conditions;
12.24.4.	Exhibit D.	Contractor's Response to RFP;
12.24.5.	Exhibit D-1.	Contractor's Pricing Response;
12.24.6.	Exhibit E.	Drawings;
12.24.7.	Exhibit F.	Specifications;
12.24.8.	Exhibit G.	[Purposefully Left Blank];
12.24.9.	Exhibit H.	List of Project Manager and Subcontractors;
12.24.10.	Exhibit I.	Texas Facilities Commission Criminal Background Check and Application Guidelines;
12.24.11.	Exhibit J.	HUB Subcontracting Plan Form; and

12.24.12. Exhibit K. HUB Subcontracting Plan PAR Form.

12.25. 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.

12.26. Entire Agreement and 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. **THERE ARE NO OTHER ORAL OR WRITTEN AGREEMENTS BETWEEN THE PARTIES HERETO OR OTHER THIRD PARTY RELATING TO THE SUBJECT TRANSACTION.**

TEXAS FACILITIES COMMISSION	**STRUCTURE TONE SOUTHWEST**
By:	By:
Harvey Hilderbran	Print Name: Joseph Cribbin
Executive Director	Title: President
Date of Execution: 6/10/16	Date of Execution: 6/3/2016

G.C. ____
Dir. ____
D.E.D. ____

TFC Contract No. 16-109-000

STRUCTURE TONE SOUTHWEST

EXHIBITS DVD