

AGREEMENT FOR CONCRETE WORK
BETWEEN

STEPHEN F. AUSTIN STATE UNIVERSITY
AND
COX CONCRETE CONTRACTORS, INC.

AGREEMENT is made this 1st day of April 2020, by and between Stephen F. Austin State University (hereinafter referred to as "University") and Cox Concrete Contractors (hereinafter referred to as "Contractor"). Unless otherwise provided, "University" and "Contractor" refer also to the management, employees, and agents of the parties.

In consideration of the mutual promises and covenants contained in this document, the University and Contractor agree as follows:

1. INTRODUCTION

This contract is for the purpose of establishing a time and materials contract for all material, labor, tools and related services to provide minor improvements of \$200,000 or less involving concrete involving concrete and asphalt maintenance, repair, and replacement services, specifically, the services of a qualified general contractor on an "as-needed" basis to perform the following but not limited to removal, construction, reconstruction, or alteration of concrete or asphalt, concrete or asphalt site repairs, and general removal and replacement of damaged concrete or asphalt infrastructure under the direction of the Physical Plant Department.

1.1. Definitions

- 1.1.1. Concrete and asphalt site repair shall be defined as the repair of damaged existing structures, including streets and sidewalks, and not exceeding \$200,000. Concrete site repairs will include but not be limited to: curb & gutter, sidewalks, driveway aprons; ADA work, sidewalk link projects; street repairs and/or resurfacing; parking lots; utility vaults, storm-drain inlets, retaining walls; and other associated removals, excavations, filling, grading, compaction, necessary to complete the work as directed by the Owner's Designated Representative (ODR); and Possible disposal of surplus materials and cleaning up of work area.
- 1.1.2. Concrete new construction shall be defined as the modification of any existing structure and/or the creation of new structures, including sidewalks, and not exceeding \$200,000. Concrete new construction will include but not be limited to: curb cuts, sidewalks, pads for equipment, retaining walls, driveways, streets (short sections), curbs, gutters, utility, vaults, etc.
- 1.1.3. Other associated minor alterations shall be defined as non-concrete work but work that is associated with the concrete site repair or concrete new construction and that is associated in such a way as to be difficult to separate the work from the overall project.

1.2. Contract Representatives

1.2.1. Physical Plant Representative:

- 1.2.1.1. John Branch, Assistant Director, Physical Plant, 936-468-4165.
- 1.2.1.2. Allen Singleton, Manager of Mechanical Maintenance & Building Trades, 936-468-4546.

1.2.2. Physical Plant Contact:

- 1.2.2.1. Jessica DeWitt, Manager of Physical Plant Projects, 936-468-4807.
- 1.2.2.2. Mark Scott, Manager of Transportation and Special Services, 936-468-4411.
- 1.2.2.3. Gary Williams, Manager of Grounds, 936-468-5107.

2. GENERAL TERMS AND CONDITIONS

2.1. Standard of Performance

All work is to be performed in a neat and workmanlike manner, site kept clean at all times, protection provided to avoid damage to all adjoining property, including improvements, performed as quickly as possible consistent with best industry construction practices, and guaranteed for one (1) full year from date of completion against all defects.

Contractor shall comply with all local, state, and Federal orders, ordinances, laws, rules, and regulations of duly constituted authorities having jurisdiction over this work.

2.2. Payment

Payment will be made Net 30 upon completion and acceptance by the Physical Plant Representative of each individual purchase order or as otherwise mutually agreed between Contractor and the University, in accordance with the Prompt Payment Act of Texas.

2.3. Insurance

The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and certificates of such insurance have been filed with and reviewed by the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the Contractor.

If policies are not written for the amounts specified below (except Worker's Compensation and Employer's Liability), Contractor shall carry Excess Liability insurance for any difference in amounts specified. If Excess Liability insurance is provided, it shall follow the form of the primary policy.

This insurance shall not be canceled, limited in scope of coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner.

Contractor's insurance shall be deemed primary with respect to any insurance carried by Stephen F. Austin State University for liability arising out of operations under this Contract.

Stephen F. Austin State University, its officials, directors, employees, representatives and volunteers shall be named as additional insured. This is not applicable to the workers' compensation policy.

The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.

The workers' compensation insurance coverage must include the responsibility of the Contractor to provide coverage for every worker either under the Contractor's policy or under the policy

provided by a subcontractor. The Contractor's policy shall provide that, in the event that a subcontractor's policy fails to provide worker's compensation coverage of a worker that such insurance coverage is provided by the Contractor's policy.

Unless otherwise provided for herein, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage as follows:

TYPE OF COVERAGE

LIMITS OF LIABILITY

1. Worker's Compensation Coverage **OR**
Employer's Liability with \$1,000,000 each occur aggregate
2. Comprehensive General Liability
 - a. \$1,000,000 each occur
 - b. \$2,000,000 general aggregate
 - c. \$2,000,000 products
3. Comprehensive Automobile Liability
 - a. \$1,000,000 combined single limit

2.4. Contract Period

This contract shall be for a term from April 1, 2020 through March 31, 2021. The University reserves the option to renew for four (4) additional one-year periods.

2.5. Performance and Payment Bonds:

Performance bonds are required on contracts exceeding \$100,000. Payment bonds are required on contracts exceeding \$25,000.

Should the Contractor fail to execute and return the required Performance and/or Payment Bond(s) within ten (10) days after the date of notice of award, the Bid Guarantee shall become the property of SFASU, not as a penalty but as liquidated damages.

2.6. Materials Storage

The Contractor will be responsible for storage of his own materials and equipment, and the removal of same upon completion of work. The storage area will be designated by the Physical Plant Representative prior to the start of work.

The Contractor and subcontractors are responsible for the security of their materials, tools and equipment on the project site. The University is not responsible for theft or vandalism to any such materials, tools, or equipment.

2.7. Safety

All work will be performed on the SFA campus, and the safety of SFA students and employees will be paramount. The University reserves the right to stop work at any time should the Contractor fail to meet safety requirements.

The Contractor shall coordinate construction activity to assure the safety of those who must cross the project site and shall cooperate with the University in minimizing inconvenience to, or interference with the normal use of existing buildings and grounds by staff, students, or the public.

When the Contractor is to have active work sites open over night, Contractor shall enclose the designated work site using a three (3) foot tall high visibility plastic fence. Fence posts shall be spaced 6 to 8 feet on center. The fabric shall be secured tightly to all fence posts. The layout of the fence shall have the prior approval of the Physical Plant Representative.

The Contractor shall provide and maintain the necessary barriers and accommodations for a completely safe route of accessibility.

The Contractor shall conduct operations to prevent damage to adjacent building structures and other facilities, as well as and in such a manner to protect the safety of building occupants.

The Contractor shall notify the Physical Plant Representative at least 24 hours prior to the start of any site mobilization.

In the event the Contractor encounters on the site any previously unknown potentially hazardous waste material, or other materials potentially contaminated by hazardous waste, the Contractor shall immediately stop work in and secure the affected area and report the condition to the Physical Plant Representative. The work in the affected area shall not thereafter be resumed, until the Physical Plant representative has given notice that the material has been rendered harmless or is not hazardous waste or contaminated by hazardous waste. The Contractor shall not be required to perform any work relating to removal of any materials determined to be hazardous waste or contaminated by hazardous waste.

2.8. Alternate Dispute Resolution

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by SFASU and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Vice President for Finance and Administration of SFASU shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by SFASU nor any other conduct, action or inaction of any representative of SFASU relating to this contract constitutes or is intended to constitute a waiver of SFASU's or the state's sovereign immunity to suit; and (iii) SFASU has not waived its right to seek redress in the courts.

2.9. INDEMNIFICATION AND LIMITATION OF LIABILITY.

THAT TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE UNIVERSITY, AND HOLD HARMLESS THE UNIVERSITY AND ITS RESPECTIVE REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND

AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES), AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT AND WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THE CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW. THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS CONTRACT FOR ANY REASON WHATSOEVER.

THE CONTRACTOR AGREES TO JOINTLY AND SEVERALLY INDEMNIFY AND HOLD SFASU, ITS OFFICERS, EMPLOYEES, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES WHICH THE STATE MAY INCUR OR SUSTAIN BY REASON OF THE FAILURE OF THE BIDDER TO FULLY PERFORM AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.

LIMITATION OF LIABILITY. EXCEPT IN CONNECTION WITH PERSONAL INJURY, DEATH OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY ACTIONABLE AGAINST THE UNIVERSITY UNDER THE TEXAS TORT CLAIMS ACT, THE UNIVERSITY SHALL NOT BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTIES OR OTHERWISE. THE UNIVERSITY'S LIABILITY SHALL NOT EXCEED THE CASH VALUE TO THE UNIVERSITY OF THIS CONTRACT.

2.10. Fraud and Ethics

Contractor is hereby advised that the University maintains policies regarding fraudulent or unethical conduct. These policies establish examples of acceptable and unacceptable conduct as well as procedures and responsibilities for detecting, reporting and resolving instances of known or suspected fraudulent activity and prescribe a coordinated approach toward investigation and resolution of fraudulent activity; reference University Policies 2.7, Fraud and 17.22, Purchasing Ethics and Confidentiality.

3. SPECIFICATIONS

- 3.1. Work shall be performed by craftsmen skilled in their respective trades and shall present appearance typical of best trade practice. Work not done and/or concrete not installed in this manner shall be repaired, removed/replaced, or otherwise remedied as directed by the Physical Plant Representative. The University shall be the sole judge of determining the acceptability of work performed.
- 3.2. All work shall be performed under the direction of the Physical Plant Representative. Any drawings, plans and technical specifications will be furnished as needed for each project.

- 3.3. The Contractor shall be familiar with the Americans with Disabilities Act and shall ensure that completed jobs meet ADA requirements.
- 3.4. The Contractor must have an adequate knowledge of concrete additives, finishes, and equipment used to ensure that work is performed in a manner consistent with industry practice and in a manner acceptable to the University. The University shall be the sole judge of the acceptability of services provided hereunder.
- 3.5. All wash out of concrete from truck or other equipment and related items shall be the responsibility of the Contractor and shall not be performed on the University's property or adjoining property.
- 3.6. The Physical Plant Representative shall be contacted by the Contractor to inspect all work a minimum of twenty-four (24) hours prior to placement of concrete.
- 3.7. After all work is completed, and prior to payment, a final inspection shall be made by the Physical Plant Representative. Any work not up to standard shall be torn out and replaced before final payment is made. The University shall be the sole judge of determining the acceptability of work performed.
- 3.8. Neither the final certificate of payment nor any provisions in the contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of acceptance by the University. The Physical Plant Representative shall give notice of observed defects with reasonable promptness.
- 3.9. The Contractor shall be responsible:
 - 3.9.1. to furnish all labor, materials and equipment to install, replace, and/or construct concrete projects as authorized and identified by the Stephen F. Austin State University Physical Plant Representative;
 - 3.9.2. to perform all digging, forming, removal and disposal of debris, finishing, and protection of concrete;
 - 3.9.3. for all phases of work from layout and demolition to clean up of job site;
 - 3.9.4. if needed, to work in conjunction with other contractors and construction managers;
 - 3.9.5. to provide, at all times, adequate and expert managerial and administrative supervision for its employees in the service area. Upon initiation of the contract, the Contractor shall provide to the Physical Plant Representative a list of managers and foremen and associated cell phone numbers, pager numbers and office phone numbers;
 - 3.9.6. to maintain an adequate staff of experienced and qualified employees in the service area for efficient performance under this Contract.

- 3.9.6.1. Contractor shall be an equal opportunity employer and shall conform to all Affirmative Action and other applicable requirements; accordingly, Contractor shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, religion, national origin, or sex in any manner prohibited by law.
- 3.9.6.2. The University may, at any time, require the removal and replacement of any of Contractor's employees for good cause. The University shall be the sole judge of determining 'good cause'.
- 3.9.7. to provide the University Accounts Payable and Physical Plant Representative with an itemized invoice including all charges for labor, equipment, material, etc., at the completion of each job. Payment will not be made without an approved itemized invoice.
 - 3.9.7.1. All equipment charges shall be for actual time used on the job (no idle time charges).
 - 3.9.7.2. The time and materials nature of this contract will require the following itemized information to be submitted with the invoice:
 - 3.9.7.2.1. an itemized list naming the employees performing work and the dates and times the work was performed; and
 - 3.9.7.2.2. an itemized list of materials used, if any, and their associated costs.
- 3.10. The University shall be responsible:
 - 3.10.1. to move any plants, shrubs or trees necessary for the execution of this contract. No major root system of a tree shall be cut or damaged in any way during construction without the written consent of the Physical Plant Representative;
 - 3.10.2. to remove or replace sod if it is to be saved or reused. If the sod is not to be saved or reused, the Contractor shall excavate and remove the sod from the premises;
 - 3.10.3. to assign responsibility, either in-house or to the Contractor, for adjustments of manhole covers, valves boxes, monuments, markers, and any other similar structure when required on any given job;
- 3.11. Authorization of Work

For each individual project to be completed under these specifications, a separate Purchase Order will be issued. The process for project authorization will be as follows:

SFA will identify a project and specify the work parameters of the project to the Contractor and provide any required drawings, specifications, and/or request a site visit with the Contractor.

 - 3.11.1. For each identified project and using the unit prices of the contract, the Contractor shall promptly present to the ODR a written proposal estimating the time and materials needed to complete the project.
 - 3.11.2. Any proposals exceeding \$200,000 will be rejected and competitive sealed bids will be issued for the project. Furthermore, SFA reserves the right to reject any submitted

proposals, regardless of the proposed amount, and request competitive sealed bids for any project, including those covered by this contract, as it deems in its best interest.

- 3.11.3. No work shall be started and/or completed without a Work Authorization having been issued and signed by SFA. Should the Contractor start and/or complete a project without written authorization, the Contractor may not be paid for such work.
- 3.11.4. Billing shall be for actual time charged at the unit prices quoted on the bidder's bid form.
- 3.11.5. Should there be any associated minor alterations needed for the project that are not included in the contract unit prices, the Contractor should identify these and include quotes on these items in their written proposal to the ODR.
- 3.11.6. Within 48 hours of receipt of a Work Authorization request, the Contractor must notify the ODR or his designee of the date the scheduled work will be begin.

3.12. Time of Performance

The crew availability to the University shall be based on an eight hour day, 7 days per week. The Contractor shall be flexible enough to work with the University's schedule set forth for the completion of a job.

TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within thirty (30) calendar days after Substantial Completion or longer period of time as mutually agreed between Contractor and Owner, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion

All work is to be completed as mutually agreed by and between Owner and Contractor. Failure to complete work (including clean-up) by the mutually agreed date shall be deemed as a breach of contract. Liquidated damages will be assessed, not as a penalty, but as liquidated damages for such breach of contract. Liquidated damages may range from \$50 per day to \$500 per day depending on the scope of the project. The purchase order for each project will state the liquidated damages amount. The University shall be the sole judge of determining the amount of liquidated damages applicable to each order. The University may withhold payment and/or deduct liquidated damages for breach of contract as well as any other right or remedy under law. Failure to enforce a right or remedy shall not be deemed a waiver.

4. CONTRACT RATES

4.1. Labor Charges

- a. Foreman/Journeyman\$32.00/hr
- b. Finisher\$32.00/hr
- c. Skilled Laborer\$24.50/hr
- d. Common Laborer\$15.00/hr
- e. Driver / Equipment Operator.....\$24.50/hr
- f. General Laborer.....\$15.00/hr

The Contractor shall charge for actual time and materials used on each project. The University guarantees no minimum or maximum amount of work.

Materials to be charged at Cost Plus 9.5 %

Equipment Charges

a. Tractor-Loader-Backhoe, 70hp+.....	\$25.00/hr
b. Skid-steer Loader w/ backhoe attachment.....	\$25.00/hr
c. Skid-steer Loader w/standard bucket.....	\$20.00/hr
d. Skid-steer Loader w/ hydraulic breaker	\$35.00/hr
e. Concrete saw, wet/dry cut; 10hp-12hp.....	\$ 5.00/hr
f. Vibratory rammer/tamper.....	\$10.00/hr
g. Dump truck; 8yd min.....	\$20.00/hr
h. Oxy/Acetylene cutting torch; full size bottles.....	\$10.00/hr
i. Rebar bender; up to #6 electric hydraulic.....	\$10.00/hr
j. Portable generator; 3000-6000 watt.....	\$ 5.00/hr
k. Hammer drill; contractor grade.....	\$ 5.00/hr
l. Circular saw; contractor grade.....	\$ 5.00/hr
m. Vibratory plate packer; 5-10hp.....	\$ 5.00/hr
n. Concrete pump, minimum 25 cubic yard/hr.	\$450/day
o. Crawler dozer, minimum 70 hp	\$150/day
p. Skid-steer loader with auger attachment (6", 12", 18", 24")..	\$180/day
q. Skid-steer loader with sweeper attachment.....	\$180/day
r. Crawler trencher, 6" and 12" chains	\$ 85/day
s. Mini excavator	\$200/day
t. Portable welding machine.....	\$100/day
u. Georgia buggies	\$ 15/day
v. Sand blaster.....	\$ 40/day
w. Trash pump, minimum 2"	\$ 25/day
x. Caulk machine	\$ 75/day
y. Troweling machine	\$ 40/day
z. Concrete vibrator	\$ 25/day
aa. Pressure washer.....	\$ 40/day
bb. Air compressor, minimum 250 CFM.....	\$ 85/day
cc. Jackhammer, with hose(s).....	\$ 25/day
dd. Traverse lift, minimum 40" reach	\$200/day
ee. Post tension cable puller	\$ 50/day
ff. Asphalt laydown machine, std 12 ft.....	\$750/day
gg. Double drum roller/vibrator.....	\$395/day
hh. Compactor/jumping jack.....	\$ 60/day
ii. Water truck.....	\$500/day
jj. Asphalt patch truck	\$500/day
kk. Tack truck sprayer.....	\$ 90/day

5. MISCELLANEOUS

5.1. Cancellation

Either party may cancel the contract by giving the other thirty (30) days written notice prior to the effective cancellation date. Upon cancellation, Contractor shall be paid for all services satisfactorily rendered to the date of said cancellation in accordance with this Contract.

5.2. Representations and Warranties by Contractor.

If Contractor is a corporation, limited liability company, or any other entity organized and existing under state law, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

5.3. Tax Certification.

If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

5.4. Eligibility to Receive Payment.

In accordance with Section 231.006 of the *Texas Family Code* and Sections 2155.004 and 2155.006 of the *Texas Government Code*, Contractor certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that University may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.

5.5. Payment of Debt or Delinquency to the State.

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

5.6. Conflict of Interest.

Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of University's Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreement relates, or in any of the profits, real or potential thereof.

5.7. Products and Materials Produced in Texas.

Contractor covenants and agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under the Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

5.8. Tax Exemption.

University is exempt from the payment of taxes and will provide necessary documentation confirming its tax-exempt status.

5.9. Subcontracts.

If Contractor subcontracts any of the work set forth in the Agreement, Contractor shall ensure that each subcontractor, vendor, affiliate, agent or representative agrees to and complies with all provisions of the Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

5.10. Assignment.

Contractor shall not assign any of its rights under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of University. Contractor shall not delegate any performance under this Agreement, except with the prior written consent of University. Any purported assignment of rights or delegation of performance in violation of this provision is null and void.

5.11. Entire Agreement.

This Agreement is the entire agreement between University (including University's employees) and Contractor. Contractor acknowledges and agrees that no University employee other than its President or his designee has the authority to bind University in contract. University will not be bound to any other terms and conditions set forth in any documents, agreements, or policies posted on Contractor's website unless such terms and conditions are set forth in the Agreement. Contractor may not unilaterally change any term or condition of the Agreement.

5.12. Loss of Funding.

Performance by University under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of University (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

5.13. State Auditor's Office.

Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successive agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

5.14. Limitations.

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO

LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

5.15. Sovereign Immunity.

The Parties stipulate and agree that no provision of, or any part of the Agreement between University and Contractor, or any subsequent change order, amendment, or other Agreement modification shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to University beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the United States.

5.16. Access to Public Information.

Contractor is required to make any information created or exchanged with University pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to University. Contractor acknowledges that University may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

5.17. Title IX.

University strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and the University's sexual harassment policy and procedures ("Regulations"). Specifically, the Regulations apply to all students, employees, visitors, and other third parties on University-controlled property, including institutions and entities with whom University places its students. Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to: (1) report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; (2) cooperate with University's Title IX investigation; and (3) cooperate fully with all sanctions that University may impose against such individual, organization, or entity, who is found to have violated the Regulations. If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including, but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and immediate termination of business or contractual relationships.

5.18. Publicity.

Contractor shall not use the University's name, logo, service mark, or other likeness in any press release, marketing materials, or other public announcement without receiving University's prior written approval.

5.19. U.S. Department of Homeland Security's E-Verify System.

By entering into the Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (i) all persons employed to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement, within the United States of America. Contractor shall provide, upon request of University, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of the University and at no fault to the University, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that the University must undertake to replace the terminated Agreement.

5.20. Israel Non-Boycott Verification.

If the Agreement has a value of \$100,000 or more that is to be paid wholly or partly from public funds of Owner, and if Contractor is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to *Texas Government Code* Chapter 2271, Contractor affirmatively states that it does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001(1), *Texas Government Code*.

5.21. Contracts with Foreign Terrorist Organizations Prohibited.

Pursuant to Section 2252.152, *Texas Government Code*, and to the extent applicable, Contractor hereby represents, verifies, and warrants that it does not do business with Iran, Sudan, or any foreign terrorist organization identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, *Texas Government Code*.

5.22. Trafficking of Persons.

Under Section 2155.0061, *Texas Government Code*, Contractor certifies that the individual or business entity named in the bid or Agreement is not ineligible to received the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

5.23. Force Majeure.

Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, governmental authority, or any other circumstances ("Force Majeure Occurrence"). Provided, however, in the event of a Force Majeure Occurrence, Contractor agrees to use their best efforts to mitigate the impact of the occurrence so that Owner may continue to provide mission critical services during the Force Majeure Occurrence.

5.24. Governing Law.

This Agreement and the applicable statute of limitations for any disputes under this Agreement shall be brought in a court of competent jurisdiction in Nacogdoches, or Angelina County, Texas and governed by Texas law.

IN WITNESS WHEREOF, the parties have executed this agreement in the year and on the day first above written.

Stephen F. Austin State University

Signature

Dr. Danny R. Gallant

VP Finance & Administration

Date

4/24/2020

Cox Concrete Contractors, Inc.

Signature

Printed Name

Title

Date

Sandra J. Cox

Sandra J. Cox

President

4-8-20



STEPHEN F. AUSTIN
STATE UNIVERSITY

Office of the General Counsel

CONTRACT ROUTING SLIP

Date of Receipt: 2/3/16 By: DD

Contract Name: Agreement for Contract
Work - Cox Concrete Contractors

iContracts No: _____

Department: Procurement / PPD ☐ ORSP

Contact: Nicole Ivancic

Term: FY 20

Return Deadline: _____ ☐ ASAP

☒ OGC Contract ☐ Vendor Contract ☐ Other

Comments: _____

APPROVED AS TO FORM:

[Signature]
Office of the General Counsel

Review By: VPFA

Signature By: _____

After Signature Return to: ☒ Procurement ☐ ORSP

☐ OGC ☐ Department ☐ Other—_____