



## STEPHEN F. AUSTIN STATE UNIVERSITY

NACOGDOCHES, TEXAS

PROCUREMENT AND BUSINESS SERVICES

P. O. Box 13030  
NACOGDOCHES, TX 75962

### REQUEST FOR PROPOSAL

**RFP NUMBER**  
**ASBESTOS-23**

**ADDENDUM NO. 1**  
**DATED: 12/21/2022**

**PROPOSAL MUST BE RECEIVED BEFORE:**  
**5:00PM, WEDNESDAY, JANUARY 11, 2023**

#### MAIL PROPOSAL TO:

Stephen F. Austin State University  
Procurement and Business Services  
P. O. Box 13030, SFA Station  
Nacogdoches, TX 75962-3030

#### HAND DELIVER AND/OR EXPRESS MAIL TO:

Stephen F. Austin State University  
Procurement and Business Services  
2102 Alumni Drive, Austin Bldg., Room 131  
Nacogdoches, TX 75962

Show RFP Number, Due Date and Time on Return Envelope

**NOTE:** PROPOSAL must be time stamped at **Stephen F. Austin State University**  
**Procurement and Business Services** before the hour and date specified for receipt of  
proposal.

#### **REFER INQUIRIES TO:**

Kim Jones  
Stephen F. Austin State  
University  
Procurement and Business  
Services  
936.468.6551  
email: [joneskk2@sfasu.edu](mailto:joneskk2@sfasu.edu)

**STEPHEN F. AUSTIN STATE UNIVERSITY**  
**Request for Proposal #**  
**ASBESTOS-23**  
**PROPOSAL MUST BE RECEIVED BEFORE:**  
**\*5:00PM, WEDNESDAY, JANUARY 11, 2023**

**ADDENDUM NO. 1**

**THIS ADDENDUM DOES NOT HAVE TO BE ACKNOWLEDGED FOR THE  
RESPONSE TO RECEIVE CONSIDERATION.**

**Updates in Red**

**Please note the following responses to questions received:**

**General Project Questions**

1. Regarding Exhibit C, page 2 of the Financial Proposal: Under the section of Services NOT included in Standard List Above- Unit rate pricing of Payment Bond and Payment and performance bond. Can a percentage of project/contract value be given instead of a per project amount?

**Answer: Yes**

**EXHIBITS**

**EXHIBIT C-REVISED FINANCIAL PROPOSAL-See attached.**

**EXHIBIT C-REVISED  
FINANCIAL PROPOSAL**

Having carefully reviewed the specifications and related documents affecting the proposal to provide asbestos abatement services to Stephen F. Austin State University, the undersigned submits the following Financial Proposal in accordance with the Request for Proposal documents:

**Respondent Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**UNIT COSTS:** the Table below identifies various types of asbestos-containing materials (ACM). Contractor shall provide a cost for each type of ACM included on the Table. The prices quoted in the Table below are for work within normal conditions (i.e., up to a maximum of 12-foot ceiling height, flat roof conditions for roof work, no holiday or weekend hours, etc. ). Prices listed in the table shall include all labor, material, and equipment to perform the function.

Standard list of ACM types and unit costs

Carpet ONLY \$ \_\_\_\_\_/square foot

Floor applied Mastic ONLY \$ \_\_\_\_\_/square foot

Floor Tile ONLY \$ \_\_\_\_\_/square foot

Floor Tile and Mastic (up to two layers thick) \$ \_\_\_\_\_/square foot

*NOTE: Above listed prices may be used ALONE or in conjunction with each other*

Applied and Lay-In Ceiling Tile \$ \_\_\_\_\_/square foot

Applied Ceiling/Wall Tile Button Mastic \$ \_\_\_\_\_/square foot

Plaster or stucco material (Ceilings) \$ \_\_\_\_\_/square foot

Plaster or stucco material (Walls) \$ \_\_\_\_\_/square foot

Roof flashing \$ \_\_\_\_\_/square foot

Roofing Felt \$ \_\_\_\_\_/square foot

Sheetrock with Joint Compound \$ \_\_\_\_\_/square foot

Spray-on Fireproofing (from 1/2 inch to 2 1/2 inch thickness) \$ \_\_\_\_\_/square foot

Surfacing Material

Boiler Insulation \$ \_\_\_\_\_/square foot

Rolled-on Texture \$ \_\_\_\_\_/square foot

Sprayed-on Texture (e.g. popcorn ceiling) \$ \_\_\_\_\_/square foot

Trowled-on Texture \$ \_\_\_\_\_/square foot

## EXHIBIT C FINANCIAL PROPOSAL (cont'd)

**Respondent Name:** \_\_\_\_\_

Thermal System Insulation

Less than or equal to 10 in. OD \$ \_\_\_\_\_/linear foot

Greater than 10 in. OD and less than 24 in. OD \$ \_\_\_\_\_/linear foot

Fitting less than or equal to 10 in. OD each \$ \_\_\_\_\_/fitting

Fitting greater than 10 in. OD and less than 24 in. OD \$ \_\_\_\_\_/fitting

Transite Material \$ \_\_\_\_\_/square foot

Wall, floor, or ceiling fibrous ACM board \$ \_\_\_\_\_/square foot

List of Services NOT included in Standard List above

Site Mobilization (once per job site) \$ \_\_\_\_\_/mobilization

OSHA Required Air Monitoring for Personnel \$ \_\_\_\_\_/day

Transportation and Disposal of ACM Waste \$ \_\_\_\_\_/cubic yard

Payment Bond (\$25,000 or more) \$ \_\_\_\_\_/per project OR % \_\_\_\_\_/per project

Payment and Performance Bond (\$100,000 or more) \$ \_\_\_\_\_/per project OR % \_\_\_\_\_/per project

Hourly Rates for workers if UNIT PRICE table above does not apply

Licensed Asbestos Abatement Worker \$ \_\_\_\_\_/hour

Licensed Asbestos Supervisor \$ \_\_\_\_\_/hour

Travel Costs (if applicable)

Travel to and from site \$ \_\_\_\_\_ per mile

Per Diem \$ \_\_\_\_\_ per day

Overnight Costs \$ \_\_\_\_\_ per day

Mobilization fees \$ \_\_\_\_\_ per day

Additional Materials – total shall not exceed 3% of the labor costs

For materials, equipment, and supplies that are not included in the above listed prices but are required at a job site the costs will be billed to the University at the quoted markup: \_\_\_\_\_%



# STEPHEN F. AUSTIN STATE UNIVERSITY

NACOGDOCHES, TEXAS

## PROCUREMENT AND BUSINESS SERVICES

P. O. Box 13030  
NACOGDOCHES, TX 75962

### REQUEST FOR PROPOSAL

#### RFP NUMBER

ASBESTOS-23

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Kim Jones  
Stephen F. Austin State University  
Procurement and Business Services  
936.468.6551  
email: [joneskk2@sfasu.edu](mailto:joneskk2@sfasu.edu)

**STEPHEN F. AUSTIN STATE UNIVERSITY  
Request for Proposal #ASBESTOS-18**

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- Exhibit G Non-Collusion Affidavit
- Exhibit H HUB Subcontracting Plan
- Exhibit I Draft Asbestos Abatement Agreement

## SECTION 1 INTRODUCTION

### 1.1 SCOPE OF PROPOSAL

- 1.1.1 Stephen F. Austin State University, hereafter referred to as “SFA” or “the University”, is seeking proposals from qualified Respondents to provide asbestos abatement services on an “as needed” basis, and at a minimum in accordance with Section 2, Statement of Work, and other Terms and Conditions. The University anticipates selecting two vendors with whom to negotiate final agreements.
- 1.1.2 For each project, the University will select the Contractor who represents the best value and is available. The University will be the sole judge of determining its own best value for each project.

### 1.2 CONTRACT TERM

The Term of the Agreement shall be effective from date of last signature through August 31, 2023. The University reserves the right to renew the Agreement for two (2) additional one-year periods, subject to mutual agreement of both parties. Contracted rates will be negotiated annually to be effective September 1 of each year.

### 1.3 SFA INFORMATION

Stephen F. Austin State University is a comprehensive, regional institution located in Nacogdoches, Texas. The University enrolls approximately 11,000 students, offering approximately 80 undergraduate majors and more than 120 areas of study within six academic colleges – business, education, fine arts, forestry and agriculture, liberal and applied arts, and sciences and mathematics. Accredited by the Southern Association of Colleges and Schools, SFA provides the academic breadth of a state university with the personalized attention of a private school.

During the past 5 fiscal years the University has processed orders for asbestos abatement work as follows:

**FY2018** Approximately (6) Orders issued for est. \$79,765.60 value  
**FY2019** Approximately (5) Orders issued for est. \$176,991.40 value  
**FY2020** No Orders issued  
**FY2021** No Orders issued  
**FY2022** Approximately (1) Order issued for \$26,895.00 value

### 1.4 SCHEDULE OF EVENTS\*

*DATE	EVENT
December 12, 2022	Issuance of Request for Proposal
December 19, 2022 by 5:00pm	Deadline for Questions
December 21, 2022 at 5:00pm	Question and Answer Addenda Document Posted, if any
January 11, 2023	Proposal Closing
January 12 – 22, 2023	Evaluation of Proposals and Selection of Finalists and/or negotiations
January, 2023	Award of Agreement

\*Dates are tentative and subject to change.

**1.5 OPEN RECORDS**

The parties understand the information exchanged in the negotiation process is confidential to the fullest extent permitted by law, and neither party will disclose such information to anyone other than representatives of the negotiating parties except as required by Texas law. Final awards and contracts, after all negotiations are completed, may be subject to the Texas Open Records Act. Additionally, state law requires each contract for the purchase of goods or services to be posted on the University's website. By entering into a contract with the university, the firm acknowledges and accepts the university will comply with all applicable laws regarding the public posting of contracts.

**1.6 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)**

Each respondent is required to make a good faith effort to subcontract with historically underutilized businesses and shall submit a HUB Subcontracting Plan using the HUB Subcontracting Plan documents provided in **Exhibit H**.

Stephen F. Austin State University is committed to making a good faith effort to increase business with historically underutilized businesses (HUBs) by contracting with HUBs either directly or indirectly through subcontracting opportunities. Respondents are encouraged to actively seek to subcontract or partner with HUBs in an effort to create an environment that actively acknowledges and values diversity.

The university has determined that subcontracting opportunities are probable under this contract.

The university's HUB goal for this procurement is:

**20.7% for Other Services**

Each HUB subcontracting plan will be evaluated independently of the response. If the HSP does not reflect a good faith effort to subcontract with HUBs, the entire response will be disqualified.

All questions regarding the HUB Subcontracting Plan may be directed to the Office of Procurement and Business Services, Kay Johnson, 936-468-4037, [johnsondk6@sfasu.edu](mailto:johnsondk6@sfasu.edu)

Failure to submit the HUB Subcontracting Plan may disqualify the entire response from consideration

**Failure to submit the HUB Subcontracting Plan will disqualify the entire response from consideration.**

**1.7 PARKING ON CAMPUS**

All vehicles parked on the University campus must properly display a valid parking permit and comply with all University parking rules. The Parking and Traffic Office supervises and coordinates all parking transportation and traffic related functions on the campus. Permits expire each August 31.

Contractor shall be responsible for obtaining parking permits from the Parking and Traffic Office and for resolving, should they arise, any parking regulation disputes and violations. The Parking and Traffic Office telephone number is 936-468-7275

**1.8 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, national, state, or local health emergency, war,



riots, flood, fire, sabotage, governmental authority, or any other circumstances ("Force Majeure Occurrence"). Provided, however, in the event of a Force Majeure Occurrence, Contracting Party agrees to use their best efforts to mitigate the impact of the occurrence so that University may continue to provide mission critical services during the Force Majeure Occurrence.

**1.9 RIGHT TO MODIFY**

Stephen F. Austin State University reserves the rights to modify, revoke, or cancel this RFP in whole or in part at any time prior to the date on which SFA executes a Contract with the selected Respondent(s).

**1.10 GROUP PURCHASING AUTHORITY**

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Section 51.9335, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP.

**1.11 PERFORMANCE AND PAYMENT BONDS**

The cost of all bonds must be included in the response.

If the bid amount is greater than \$100,000, a performance bond is to be provided in the amount of 100% of the contract amount. If the bid amount is greater than \$25,000, a payment bond is to be provided in the amount of 100% of the contract amount. These bonds are to be made payable to SFA, are to be drawn on a surety authorized to do business in the State of Texas, and are to be on forms acceptable to the University.

Required bonds are to be delivered to the SFA Purchasing Department within ten (10) days of notification award. Failure to submit the bond within the required timeframe will be considered breach of contract, and any contract awards, either verbal or in writing will be considered null and void.

**1.12 ADDITIONAL TERMS AND CONDITIONS**

<https://www.sfasu.edu/docs/procurement-business-services/purchase-order-general-terms-conditions.pdf>

## **SECTION 2 STATEMENT OF WORK**

### **2.1 SCOPE OF WORK**

- 2.1.1 Stephen F. Austin State University is seeking the services of a contractor to furnish all labor, materials, detailed documentation and equipment necessary for projects including the removal, packaging, transportation and disposal of asbestos-containing materials from university owned buildings and property in accordance with the specifications, terms and conditions herein.
- 2.1.2 The University performs Operations and Maintenance (O&M) asbestos abatement activities within university owned facilities and property on a routine basis. Asbestos-containing materials (ACM) that may be encountered include, but are not limited to, floor tile and mastic, thermal system insulation, transite, wall and ceiling texture, joint compound, lay-in and applied ceiling tiles, and roofing materials.
- 2.1.3 The University guarantees no minimum or maximum amount of work to be completed as a result of this RFP or subsequent awards.

### **2.2 CONTRACTOR'S RESPONSIBILITIES**

All work shall be performed in accordance with applicable federal, state and local rules and regulations. Contractor shall be required to stay abreast of any changes to applicable rules and regulations.

The work required under this contract includes, but is not limited to, the following tasks:

- Acquire any necessary permits or approvals;
- Maintain all applicable licenses and certifications;
- Removal of ACM;
- Packaging and labeling of ACM for disposal;
- Placarding of the disposal vehicle;
- Transportation of ACM for disposal;
- Proper disposal of ACM;
- File TDSHS Asbestos Notification and make necessary amendments;
- Provide a copy of the TDSHS Asbestos Notification to the SFA Safety Officer prior to starting any abatement work.

### **2.3 UNIVERSITY RESPONSIBILITIES**

The University will perform the following tasks under this contract:

- Provide Asbestos Assessment Reports and Asbestos Removal Specifications;
- Provide site contact information;
- Provide site access;
- Provide timely notice to Contractor in writing of ACM removal projects, detailing the location(s), type of work, and other pertinent information;
- Provide Asbestos Consultant, Air Monitoring Technician, and Project Manager to oversee asbestos removal work;
- Pay applicable Texas Department of State Health Services (TDSHS) asbestos notification fees.

## **2.4 AUTHORIZATION OF WORK**

For each project to be completed under these specifications the process for project authorization will be as follows.

- 2.4.1 The University will identify a project and provide the selected Contractor with required specifications and the required schedule for completion. If the first Contractor cannot complete the job within the required timeframe, the second Contractor will be contacted and provided the required specifications and schedule for completion.
- 2.4.2 For each identified project and using the unit prices quoted herein, the Contractor shall present a written cost estimate to the University's Safety Officer within a time frame to be determined by the Safety Officer.
- 2.4.3 Billing shall be for actual time and materials charged at the unit prices quoted herein.
- 2.4.4 Stephen F. Austin State University reserves the right to reject any submitted estimate and issue a solicitation for any project identified for completion under the agreement.
- 2.4.5 If the University accepts the written cost estimate and the Contractor can complete the project within the timeframe required, the Safety Officer will provide the appropriate written authorization to proceed.
- 2.4.6 No work shall be started and/or completed without signature authorization from the University's Vice President for Finance and Administration. Should the Contractor start and/or complete a project without the University's signed authorization as described herein, the Contractor is taking the risk of not being paid for such work.

## **2.5 INSURANCE REQUIREMENTS**

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 SFASU. Acceptance of the insurance certificates by SFASU 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 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 University.

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 University.

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:

<b>INSURANCE REQUIREMENTS</b>	<b>MINIMUM LIMITS</b>
Workers' Compensation (Statutory)	Statutory
Employer's Liability	Bodily Injury by Accident - \$1,000,000 Each Accident Bodily Injury by Disease - \$1,000,000 Each Employee Bodily Injury by Disease - \$1,000,000 Policy Limit
Commercial General Liability	\$3,000,000 Aggregate \$1,000,000 Products/Completed Operations \$1,000,000 Personal & Advertising Liability
Combined Bodily Injury & Property Damages	\$1,000,000 Each Occurrence \$50,000 Fire Damage \$5,000 Medical Expense
Comprehensive Automobile Coverage	\$1,000,000 Combined Single Limit NOTE: Required where a vehicle will be used on the premises. Coverage must include: All owned, leased, hired, non-owned and employee non-owned vehicles and, where applicable, Personal Injury Protection.
Environmental Impairment Liability (EIL) and/or Pollution Liability	\$1,000,000 Each Occurrence

## **SECTION 3 INSTRUCTIONS TO RESPONDENTS**

### **3.1 CONTACT INFORMATION**

All questions regarding the RFP, or response must be forwarded to the Director of Procurement and Property Services:

Kim Jones  
PO Box 13030  
Nacogdoches, TX 75962  
Phone: 936/468-6551  
Fax: 936/468-4282  
Email: [joneskk2@sfasu.edu](mailto:joneskk2@sfasu.edu)

### **3.2 SUBMITTAL DEADLINE AND LOCATION**

3.2.1 All proposals must be received by SFA no later than 5:00pm, Wednesday, January 11, 2023.

3.2.2 Proposals are to be submitted to:

#### **MAIL PROPOSAL TO:**

Stephen F. Austin State University  
Procurement and Business Services  
P.O. Box 13030, SFA Station  
Nacogdoches, TX 75962-3030

#### **HAND DELIVER AND/OR EXPRESS MAIL TO:**

Stephen F. Austin State University  
Procurement and Business Services  
2102 Alumni Drive, Austin Bldg., Room 131  
Nacogdoches, TX 75962

- 3.2.3 All U.S. Mail addressed to any component of SFA is delivered to a central mail room and redistributed by SFA personnel to the addressee's on-campus post office box. Consequently, there is a possibility of delay between receipt of mail at the central mail room and receipt in the Procurement and Business Services Department. Proposals must be in the office of the Procurement and Business Services Department by the time set for RFP closing in order to be considered, and receipt by SFA at the central mail room will not be deemed sufficient. The university shall not be responsible for responses received after the due date and time. Late responses will not be considered under any circumstances. Properly identified late responses will be returned to the respondent unopened.
- 3.2.4 Proposals will be publicly opened Thursday, January 12, 2023 at 8:45am in the office of Procurement and Business Services, 2102 Alumni Drive, Austin Building, Room 131. Only the names of the Respondents will be read aloud.
- 3.2.5 Proposals received after the time for closing will be returned to Respondent unopened regardless of the circumstance. It is the responsibility of the Respondent to get the proposals delivered in a timely manner regardless of delivery method or circumstances.
- 3.2.6 Faxed proposals will not be accepted.
- 3.2.7 Proposals may be withdrawn at any time prior to the time and date set for proposal closing.
- 3.2.8 Stephen F. Austin State University reserves the right to accept or reject any or all proposals and to waive irregularities or technicalities provided such waiver does not substantially change the offer or provide a competitive advantage to any Respondent in the judgment of Stephen F. Austin State University.

### 3.3 SUBMITTAL INSTRUCTIONS

- 3.3.1 All proposals must be submitted in the format prescribed in Section 3.6.
- 3.3.2 **Respondent shall submit one (1) complete electronic copy of the Proposal on electronic media** (e.g., USB Drive) in a Microsoft Office (Word, Excel, Project and PowerPoint files) version 2003 or later format, or searchable Adobe .PDF files. Respondents shall divide the electronic copy into **TWO (2)** separate electronic files, one of which shall contain Respondent's Qualifications in pdf format, additional file shall contain **Exhibits A – H** in pdf format.
- 3.3.3 All proposals must be complete and convey all of the information requested to be considered responsive. If the proposal fails to conform to the essential requirements of the RFP, SFA alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable and therefore a candidate for further consideration, or not susceptible to being made acceptable and therefore not considered for award.
- 3.3.4 Each respondent, by submitting a proposal, represents that the respondent has read and completely understands the request for proposal documents and agrees to abide by the terms of this RFP and any resulting agreement. Failure of the selected contractor to fulfill the provisions of this request for proposal shall in no way relieve the obligation of the Contractor to furnish all services necessary to carry out the provisions of the agreement.
- 3.3.5 Proposals shall be signed by a legally authorized representative of the Respondent. Unsigned proposals (**Exhibit A**) will be rejected as a material failure.

### 3.4 ACCEPTANCE AND FORMATION OF AGREEMENT

- 3.4.1 No recommendation for award will be made until Stephen F. Austin State University is fully satisfied that the Respondent is professionally competent and properly equipped to render the specified services.
- 3.4.2 The University reserves the right to further negotiate, after proposals are opened, with any Respondent that submits a proposal. SFA may award a contract(s) based on initial proposals received without any discussion of such proposals. Therefore, each proposal should be submitted on the most favorable and complete price and terms possible.
- 3.4.3 The University reserves the right to enter into an agreement not based only on the cost to the University, but which, in the sole opinion of SFA, is deemed to represent the best value to SFA. The university shall be the sole judge of determining which proposal represents the best value to the University.
- 3.4.4 By submitting a response, the Respondent agrees to accept an agreement including the scope of work and specifications herein and attached to this Request for Proposal.

### 3.5 EVALUATION CRITERIA

- 3.5.1 Award will be based on a comprehensive review and analysis based on weighted criteria and negotiation of the proposal that best meets the needs of the University. Submission of a proposal represents concurrence with this method of evaluation and award. Furthermore, Respondents will not, under any circumstances, dispute any award made using this method.
- 3.5.2 Evaluation of the proposals will be performed by an evaluation committee representing Stephen F. Austin State University. Proposals will be evaluated using the following criteria, which are

listed below in no particular order. Stephen F. Austin State University reserves the right to award an agreement not based only on lowest cost to the University, but on the criteria that best meet the University's requirements and goals. The University shall be the sole judge of determining which proposal represents the best value to the University.

### 3.5.3 Evaluation criteria

- a. 30% - Qualifications and Experience;
- b. 35% - Cost to the University (total cost of services INCLUDING reimbursable expense, if any);
- c. 15% - Permits, Licenses and Certifications;
- d. 20% - Work History with the University.

The University may conduct such investigations as deemed necessary to assist in the evaluation of any proposal and to establish the responsibility, qualifications and financial ability of the respondents.

## 3.6 PROPOSAL FORMAT

- 3.6.1 Proposals shall be prepared in a straightforward and concise manner, identifying clearly and concisely any deviations, enhancements, and other differences that exist between the RFP and the respondent's proposed services. Emphasis should be placed on responsiveness to the RFP requirements, completeness and clarity of content and conformance to the RFP instructions. **Respondents shall organize their proposal in a point-by-point format according to Section 3.6.2.** Failure to follow point-by-point presentation could be grounds for disqualification.

### 3.6.2 Proposal shall include the following information and be submitted in the following order:

- a. Required Submittal – **failure to provide any of the following documents will result in disqualification of the proposal from further consideration**
  - i. Exhibit A – Signed Execution Of Offer
  - ii. Exhibit B – Acknowledgement of Addenda, if any
  - iii. Exhibit C – Financial Proposal
  - iv. Exhibit G – Non-Collusion Affidavit
  - v. Exhibit H – HUB Subcontracting Plan
- b. Evaluation Submittals
  - i. Exhibit D – Qualifications of Respondent
  - ii. Insurance certificates
  - iii. Exhibit E – Respondent's Licenses and Certificates
  - iv. Exhibit F – Respondent's Legal and Compliance History
  - vi. Sample Invoice
  - vii. Sample Daily Log

***Stephen F. Austin State University reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the bid. SFA reserves the right to enter into an agreement not based only on lowest cost to the University, but which, in the sole opinion of SFA, is deemed to represent the best value to SFA.***

## EXHIBIT A EXECUTION OF OFFER

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.

By signature hereon, Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Qualifications. Failure to sign the response, or signing it with a false statement, shall void the submitted response or any resulting contracts, and the Respondent may be removed from all bid lists.

By the signature hereon affixed, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal antitrust laws nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business.

By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Bidder as defined in Rule 34 TAC 20.38.

### Certifications:

#### Representations and Warranties by Respondent

If Respondent is a corporation, limited liability company, or any other entity organized and existing under state law, Respondent 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 signing the Agreement on behalf of the Respondent has been duly authorized to act for and bind Respondent.

#### Tax Certification

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

#### 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, Respondent certifies that it is not ineligible to receive the Agreement or any payments under the Agreement and acknowledges that University may terminate the Agreement and/or withhold any payment and/or reimbursement if this certification is inaccurate.

#### Payment of Debt or Delinquency to the State

Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Respondent agrees that any payments owing to Respondent under the Agreement may be applied directly toward any debt or delinquency that Respondent 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.

The person signing the Response should show title or authority to bind his/her firm in contract.

Federal Employer's Identification Number: \_\_\_\_\_

Sole Owner should also enter Social Security No.: \_\_\_\_\_

Respondent/Company: \_\_\_\_\_

Signature (INK): \_\_\_\_\_

Name (Typed/Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No/Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

**THIS SHEET MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S RESPONSE.  
FAILURE TO SIGN AND RETURN THIS SHEET MAY RESULT IN THE REJECTION OF YOUR RESPONSE**



**EXHIBIT B  
ACKNOWLEDGEMENT OF ADDENDA**

Receipt is hereby acknowledged of the following addenda to this RFP.

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

Respondent/Company: \_\_\_\_\_

**Refer to the SFA Procurement and Business Services Department website to confirm all addenda issued:** <https://www.sfasu.edu/procurement-business-services/do-business/bids-rfps>

## EXHIBIT C FINANCIAL PROPOSAL

Having carefully reviewed the specifications and related documents affecting the proposal to provide asbestos abatement services to Stephen F. Austin State University, the undersigned submits the following Financial Proposal in accordance with the Request for Proposal documents:

**Respondent Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**UNIT COSTS:** the Table below identifies various types of asbestos-containing materials (ACM). Contractor shall provide a cost for each type of ACM included on the Table. The prices quoted in the Table below are for work within normal conditions (i.e., up to a maximum of 12-foot ceiling height, flat roof conditions for roof work, no holiday or weekend hours, etc. ). Prices listed in the table shall include all labor, material, and equipment to perform the function.

Standard list of ACM types and unit costs

Carpet ONLY \$ \_\_\_\_\_/square foot

Floor applied Mastic ONLY \$ \_\_\_\_\_/square foot

Floor Tile ONLY \$ \_\_\_\_\_/square foot

Floor Tile and Mastic (up to two layers thick) \$ \_\_\_\_\_/square foot

*NOTE: Above listed prices may be used ALONE or in conjunction with each other*

Applied and Lay-In Ceiling Tile \$ \_\_\_\_\_/square foot

Applied Ceiling/Wall Tile Button Mastic \$ \_\_\_\_\_/square foot

Plaster or stucco material (Ceilings) \$ \_\_\_\_\_/square foot

Plaster or stucco material (Walls) \$ \_\_\_\_\_/square foot

Roof flashing \$ \_\_\_\_\_/square foot

Roofing Felt \$ \_\_\_\_\_/square foot

Sheetrock with Joint Compound \$ \_\_\_\_\_/square foot

Spray-on Fireproofing (from 1/2 inch to 2 1/2 inch thickness) \$ \_\_\_\_\_/square foot

Surfacing Material

Boiler Insulation \$ \_\_\_\_\_/square foot

Rolled-on Texture \$ \_\_\_\_\_/square foot

Sprayed-on Texture (e.g. popcorn ceiling) \$ \_\_\_\_\_/square foot

Trowled-on Texture \$ \_\_\_\_\_/square foot

**EXHIBIT C**  
**FINANCIAL PROPOSAL (cont'd)**

**Respondent Name:** \_\_\_\_\_

Thermal System Insulation

Less than or equal to 10 in. OD	\$ _____/linear foot
Greater than 10 in. OD and less than 24 in. OD	\$ _____/linear foot
Fitting less than or equal to 10 in. OD each	\$ _____/fitting
Fitting greater than 10 in. OD and less than 24 in. OD	\$ _____/fitting
Transite Material	\$ _____/square foot
Wall, floor, or ceiling fibrous ACM board	\$ _____/square foot

List of Services NOT included in Standard List above

Site Mobilization (once per job site)	\$ _____/mobilization
OSHA Required Air Monitoring for Personnel	\$ _____/day
Transportation and Disposal of ACM Waste	\$ _____/cubic yard
Payment Bond (\$25,000 or more)	\$ _____/per project
Payment and Performance Bond (\$100,000 or more)	\$ _____/per project

Hourly Rates for workers if UNIT PRICE table above does not apply

Licensed Asbestos Abatement Worker	\$ _____/hour
Licensed Asbestos Supervisor	\$ _____/hour

Travel Costs (if applicable)

Travel to and from site	\$ _____ per mile
Per Diem	\$ _____ per day
Overnight Costs	\$ _____ per day
Mobilization fees	\$ _____ per day

Additional Materials – total shall not exceed 3% of the labor costs

For materials, equipment, and supplies that are not included in the above listed prices but are required at a job site the costs will be billed to the University at the quoted markup: \_\_\_\_\_ %

## **EXHIBIT D QUALIFICATIONS OF THE RESPONDENT**

1. Respondent shall identify its company name, address, telephone number(s), and FAX number(s) for the local office as well as the headquarters.
2. Respondent shall attach a copy of its current Statement of Qualifications. If subcontractors are to be utilized for services to be provided, current Statements of Qualifications for those companies must also be included.
3. Respondent shall submit a brief resume (one page maximum, 10 pt type minimum) of each professional person who will be assigned to this contract. Identify key persons by name and title and describe the primary work assigned as well as the percentage of time each person will devote to this contract.
4. Document Respondent's **experience** managing and performing removal, packaging, transportation, and disposal of asbestos-containing materials. If applicable, photos, schematic drawings, and vendor(s) brochures should be included with a narrative description.
5. Provide a minimum of five (5) references from state/regional peer universities. At a minimum, include institution name, contact name, telephone number, email address, length of business relationship, project description, and summary of work performed.
6. Respondent shall submit documentation of previous work history experience with SFA. Include number of years' experience with SFA and if no experience indicate as such.
7. Exceptions to Specifications, Terms and Conditions outlined in Exhibit I, Draft Asbestos Abatement Agreement.

**INCLUDE A COPY OF THE QUALIFICATIONS FOLLOWING THIS PAGE  
WITHIN THE PROPOSAL RESPONSE**

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**EXHIBIT E**  
**RESPONDENT'S LICENSES & CERTIFICATES**

1. Respondent shall procure all permits and licenses, pay all charges, costs, and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.
2. Respondent must provide a copy of the appropriate certifications, registrations, and licenses and related certificates (including subcontractors) with their submittal.
3. Respondent should include copies of the Company licenses and certificates from TDSHS, EPA, DOT, TCEQ, etc. and provide copies of individual licenses and certificates upon request from the City.

**ATTACH COPIES OF CURRENT APPLICABLE LICENSES AND CERTIFICATES FOLLOWING THIS PAGE WITHIN THE PROPOSAL RESPONSE**

## **EXHIBIT F**

### **RESPONDENT'S LEGAL AND COMPLIANCE HISTORY**

Respondent's legal and compliance history is a critical component of this Request for Proposal. Read this section with care and respond accordingly. Failure of the Respondent to provide all the information requested and to certify the report, will result in the Respondent's submittal being declared non-responsive.

Respondent shall attach a written report of legal action brought against:

- Respondent;
- Respondent's officers;
- Respondent's employees; AND
- Respondent's proposed subcontractors

Relating to the protection of the environment. The report shall include all legal action brought within **five (5) years of the closing date of this Request For Proposal #ASBESTOS-23**. The report shall detail the substance, status, and outcome of such legal action. This includes without limitation the names of the agency and/or persons bringing the action, all relevant dates, and all fines, judgments, and/or settlements.

"LEGAL ACTION" means: ANY enforcement action by the United States Environmental Protection Agency, the Occupational Safety and Health Administration, any other federal agency, the Texas Commission of Environmental Quality (including its predecessor agencies the Texas Water Commission and the Texas Air Control Board), the Texas Department of State Health Services, and any other state agency, commission or department, whether in Texas or elsewhere, as a result of violations, real or alleged, of any laws, licenses, permits, judicial orders, or administrative orders, relating to the protection of the environment. In this context, enforcement action shall include without limitation, written warnings, notices of violation, consent orders or agreements, compliance orders, administrative hearings, and criminal prosecution. Legal action also means any civil litigation brought by any person relating to the protection of the environment.

"RELATING TO THE PROTECTION OF THE ENVIRONMENT" means: requirements pertaining to the manufacture, processing, distribution, use, handling, storage, transportation, reporting, records keeping, permitting, licensing, treatment, disposal, emission, discharge, spill, release, or threatened release of:

- A. Hazardous materials, hazardous substances, hazardous wastes, toxic substances petroleum, industrial waste, solid waste, pollutants or contaminants into or onto the:
1. Air, surface water, drinking water, groundwater, storm water, publicly owned treatment works, or land.

THE REPORT SHALL BE SIGNED AND CERTIFIED by an authorized representative of the Respondent, using the form on the following page. **The top portion of the form is to be completed if a report is attached. The bottom portion of the form is to be completed if Respondent has no legal actions to report.**

An authorized representative of the Respondent shall mean (1) if the Respondent is a corporation: the president, secretary, or treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; (2) if the Respondent is a partnership, a general partner; and (3) if the Respondent is a sole proprietorship, the sole proprietor.

**INCLUDE A COPY OF THE REPORT FOLLOWING THE CERTIFICATION PAGE WITHIN THE PROPOSAL RESPONSE**

## Certification of Respondent's Legal and Compliance History

### Complete ONE of the Following Certifications

I certify under penalty of law that the attached report of Respondent's Legal and Compliance History was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

RESPONDENT:

\_\_\_\_\_  
Company Name

BY: \_\_\_\_\_  
(print or type name of signatory)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Title (print or type)

\_\_\_\_\_  
Date

I certify under penalty of law that the legal and compliance history of Respondent, Respondent's officers, Respondent's employees, and Respondent's proposed subcontractors was researched under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I hereby certify that no legal action relating to the protection of the environment was brought against Respondent, Respondent's officers, Respondent's employees, or Respondent's proposed subcontractors within the preceding five years. To the best of my knowledge and belief, this statement is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

RESPONDENT:

\_\_\_\_\_  
Company Name

BY: \_\_\_\_\_  
(print or type name of signatory)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Title (print or type)

\_\_\_\_\_  
Date

## **EXHIBIT G NON-COLLUSION AFFIDAVIT**

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Proposal (such persons, firms and corporations hereinafter being referred to as the "Respondents"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Proposal, has directly or indirectly entered into any agreement or arrangement with any other Respondent, or with any official of SFA or any employee thereof, or any person, firm or corporation under contract with

SFA whereby the Respondent, in order to induce acceptance of the foregoing Proposal by said SFA, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatsoever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondent which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Proposal.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and/or parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or SFA.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the Respondent without consultation with other Respondents or potential Respondents or foreknowledge of the prices to be submitted in response to this solicitation by other Respondents or potential Respondents on the part of the Respondent, its officers, partners, owners, providers, representatives, employees or parties in interest including the affiant.

### **CONFLICT OF INTEREST**

The undersigned Respondent and each person signing on behalf of the Respondent 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 SFA, nor any member of its Board of Regents, employee, or person whose salary is payable in whole or in part by SFA, has a direct or indirect financial interest in the award of the Proposal, or in the services to which this Proposal relates, or any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature \_\_\_\_\_

Company name \_\_\_\_\_

Date \_\_\_\_\_



# **EXHIBIT H**

## **HUB SUBCONTRACTING PLAN**



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - Section 3 - Self Performing Justification
  - Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE:** Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

## SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_

Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

#### **SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date  
(mm/dd/yyyy)

#### **Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

## Rev. 2/17

**IMPORTANT:** If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

Item Number:                      Description:

Page 1 of 1  
(Attachment A)

# HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**IMPORTANT:** If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No



# HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Fax #: \_\_\_\_\_

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

Requisition #: \_\_\_\_\_

Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

## SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

- Not Applicable

### 4. Bonding/Insurance Requirements:

- Not Applicable

### 5. Location to review plans/specifications:

- Not Applicable

# EASY HUB LOOKUP on the CMBL

In accordance with Texas Administrative Code 20.14, the following HUB lookup procedures have been developed utilizing the Comptroller of Public Accounts website to identify possible HUB Vendors for subcontracting opportunities.

To that end the following easy step by step instructions to identify NIGP codes and search for potential HUB subcontractors is provided by Stephen F. Austin State University. In addition, the University may have already completed searches that may be beneficial and include a list of potential HUB subcontractors that may be used by the Respondent. If you have a hard time reading the webpages cited, increase the page view to 200% or better.

For assistance with this instruction or further assistance in identifying potential HUB subcontractors, please contact Kay Johnson at 936-468-6550.

**STEP 1:** After identifying what areas that are going to be subcontracted for the project go to the following web address at Comptroller of Public Accounts:

<https://mycpa.cpa.state.tx.us/commbook/indexSearch>

State of Texas Commodity Code Search

(Revised January, 2016)

**NOTE:** Search results represent NIGP's search-friendly keyword data set and not official code descriptions. The official NIGP Commodity Book is copyrighted material to be used for reference purposes only and may not be reproduced without a license from Periscope Holdings, Inc.

[Go To Numeric Index](#)

Enter a word or words to match. Matches will contain all words entered.

**Search keywords:**

OR

**Search by Class:** (3 digits required)

[Reset](#)

**Search Results**

No search done yet or nothing entered to search for

texas.gov | Texas Records and Information Locator (TRAIL) | State Link Policy | Texas Homeland Security | Texas Veterans Portal

Glenn Hegar, Texas Comptroller • Home • Contact Us  
Privacy and Security Policy | Accessibility Policy | Link Policy | Public Information Act | Compact with Texans

At this point type in the item you are looking for in Search keywords: (for this example we are looking for drywall services). Press Submit Search and the results will appear. See example below:

The screenshot shows a web browser window with the URL [https://cmlreg.cpa.state.tx.us/commodity\\_book/Alpha\\_index\\_inquiry.cfm](https://cmlreg.cpa.state.tx.us/commodity_book/Alpha_index_inquiry.cfm). The page title is "State of Texas Commodity Code Search" and it is dated "(Revised January, 2016)". A note states: "NOTE: Search results represent NIGP's search-friendly keyword data set and not official code descriptions. The official NIGP Commodity Book is copyrighted material to be used for reference purposes only and may not be reproduced without a license from Periscope Holdings, Inc." There is a link to "Go To Numeric Index". A search bar contains the text "drywall". Below the search bar, there is a section for "Search Results" showing "10 results matching 'drywall' sorted by Keyword Match". The results are displayed in a table with two columns: "Class-Item" and "Keyword Match".

Class-Item	Keyword Match
150-33	DRYWALL GROUT
150-33	DRYWALL MORTAR
150-33	DRYWALL PLASTER
320-71	DRYWALL SCREWS
910-75	DRYWALL SERVICES, CEILING AND WALL
570-81	DRYWALL STUDS, STEEL
150-33	GROUT, DRYWALL
150-33	MORTAR, DRYWALL

The page will list Keyword Match for drywall. In this example the Class-Item for Drywall Services, Ceiling and Wall is 910-75. Remember to write down the Class and Item numbers. You will do the same for other items that you will be subcontracting on the project. Once you have completed collecting all Class and Item numbers for sub-contracting opportunities you can proceed to Step 2

**STEP 2:** With the Class and Item numbers you can search for HUB Vendors on the Centralized Master Bidders List – HUB Directory Search. Go to the following web address at Texas Comptroller of Public Accounts:

<https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>

Under **SEARCH FOR** mark HUBs Only (you are looking for HUB vendors)

The EXAMPLE below is how the form should be filled out. Search for HUBs on CMBL; Selection 1: Class-Item; Select Fields For Output (Vendor ID, Company Name, Contact Person, City, Email, Phone, Business Description, HUB Eligibility, HUB Gender)

In the example below we are searching for NIGP Class Code 910, Items 75 (Drywall Services).

Once all the information needed has been marked. Click : **SEARCH**.

Search For Vendors - Centralized Master Bidders List - HUB Directory Search

Glenn Hegar  
Texas Comptroller of Public Accounts

Search For Vendors

Related Links

- CMBL/HUB Directory Search Tips
- Register For CMBL - HUB
- HUB Mentor Protege Agreement Listing
- System for Award Management (EPLS)
- Debarred Vendors List

The **CMBL** is a master database used by State of Texas purchasing entities to develop a mailing list for vendors to receive bids based on the products or services they can provide to the State of Texas. Manufacturers, suppliers, and other vendors wishing to furnish materials, equipment, supplies, and services to the state should register for the CMBL to receive bidding opportunities.

The CMBL/HUB Directory Search is automatically defaulted to "CMBL Only" to perform a search for vendors, including Texas certified HUBs who have elected to register on the CMBL. Purchasing entities use NIGP Class and Item Codes within the "Multiple Vendor Search" feature to identify vendors who can provide the products or services they want to purchase, and to develop mailing lists of vendors to receive bids.

For detailed explanations of the various search and data output features (i.e., Search For, Single Vendor Search, Multiple Vendor Search, Business Category / Vendor Location Search, Select Fields For Output, Output Options) that may be used to create lists of potential vendors as well as retrieve detailed information on a specific vendor, click CMBL/HUB Directory Search Tips.

**Search** **Clear Search**

**SEARCH FOR**

☒ CMBL Only ☐ HUBs Only ☐ HUBs On CMBL ☐ All Vendors

**SINGLE VENDOR SEARCH**

Vendor ID:

Vendor Number:

Vendor Name:  contains

[Include Inactive Vendors](#) ☐ Note: If this box is checked, you must enter either a Vendor ID, Vendor Number or Vendor Name.

**MULTIPLE VENDOR SEARCH**

Selection	NIGP Class Code	Items	Highway District(s)
Selection 1	910	75	
Selection 2			
Selection 3			

**BUSINESS CATEGORY / VENDOR LOCATION SEARCH**

Business Category:

County Location:

City Location:  begins with

Zip Code Location:  exact

Highway District(s) Location:

Once the search is completed, a page like the one below will appear listing all the HUB companies that are Class 910 and Item 75.

The search found 222 vendors where are HUB's.

At this point you should look at the Business Description to confirm that the company does indeed provide drywall services. Note that the first company listed 1DZ ENTERPRISE, L.L.C. does not list drywall services, instead the company business description list Janitorial Service – if at all possible you should not use this company in your Good Faith Efforts as there are other companies that list dry wall in their business description.

3 B'S CONTSTRUCTION does list drywall and is a good candidate for sending a request to bid the project.

**YOU ARE REQUIRED TO SELECT THREE (3) HUB VENDORS TO CONTACT.**

When looking for HUB Vendors to support you at SFA look for these vendors that are close to Nacogdoches and East Texas. If none can be found in our area, expand your search to the Dallas/Fort Worth area, Austin and Houston market areas.

## NOTES:

- 1) SELECTING HUBS THAT ARE FROM EL PASO, AND FAR WEST TEXAS DOES NOT SHOW GOOD FAITH IN YOUR SELECTION PROCESS.
- 2) IF YOU DO NOT UNDERSTAND THESE DIRECTIONS OR NEED ASSITANCE PLEASE CONTACT THE SFA PROCUREMENT OFFICE FOR HELP.

Search For Vendors - C:\ x

https://mycpa.cpa.state.tx.us/tpasscblsearch/CmbllHubSearch.do

Glenn Hagar  
Texas Comptroller of Public Accounts

Search For Vendors

Results For HUBs Only Search

Search found 222 vendors, 222 are HUB's, Includes 0 Inactive Vendors.  
Search Condition : SearchType=HUB's Only,Section1 Class Code=910,Section1 Item(s)=(75)

[Back](#)

Vendor ID	Company Name	Contact Person	City	Email	Phone	Business Description
1475357271900	1DZ ENTERPRISE, L.L.C.	Debra A. Garcia	INGLESIDE	debbiegarc20@gmail.com	361-534-4244	Janitorial Service
1204990047000	3 B'S CONSTRUCTION	Owner/Andrew Rosas	LYTLE	andrewrosas@sbcglobal.net	210-382-0984	New construction, remodeling to include wood frame, metal stud,drywall. Installat suspended ceiling, concrete work and demolition.
1461995281600	360TXC	Tony Lester	AUSTIN	estimator@360txc.com	877-710-7474	We provide general contracting and complete project planning and management s vast project portfolio covers everything from 1,000sqft interiors and renovations to 25,000sqft+ ground-up and core-shell buildouts.
1472181557000	3J CONTRACTING	Jose Mondragon	CORPUS CHRISTI	3jcontracting@gmail.com	361-548-4937	Remodel, repair, Paint, Lawn Services,constructions,electrical, plumbing, fencing a demolition of small building,& hauling land waste.
1743004957100	A-1 TOTAL INTERIOR, INC.	Pres./CEO/Randy Sanchez Sr.	SAN ANTONIO	A1totalinteriors@sbcglobal.net	210-733-3739	Construction finish out new builds; remodels; commercial & residential contractors
1760404341800	A.C.T. SERVICES	President / Deborah Harris	SAN ANTONIO	debbie@actsoftx.com	210-902-5785	A.C.T. Services provides quality residential and commercial design and constructio
1752966405800	ACUMEN ENTERPRISES, INC.	Wayne Boyter	DESOTO	wayne@acumen-enterprises.com	972-572-0701	Mechanical HVAC & plumbing contractor, mechanical insulation, & general construc
1760616493100	ADVACS, INC.	Francis Foyeku	HOUSTON	fofoyeku@aol.com	713-266-7200	IT Services/Facilities Maintenance Service/Construction Management of Division 9
1263904481200	AG CONSTRUCTION MANAGEMENT	Anthony Gutierrez	AUSTIN	info@agcm.us	512-579-6498	Service general contractors for the federal, state, public works projects
1741946544200	AIR STREAM GENERAL CONSTRUCTION, INC	Rebecca Flores	SAN ANTONIO	bflores@air-streamservices.com	210-533-3264	Air-Conditioning, HVAC Contracting, Mechanical Services, and Facilities Support Se
1811519383300	ALA SIGNATURE SERVICES, LLC	Linda Alexander	KATY	alasignatureservices@gmail.com	817-993-9905	Facility/Building Maintenance Services; Janitorial/Custodial Services; General Freig Local; Administrative Services

10:32 AM 11/17/2016

## **POTENTIAL HUB SUBCONTRACTORS PROVIDED WITH**

Request for Proposal: #ASBESTOS-23

Issued by Stephen F. Austin State University

Closing Date/Time: January 11, 2023 5:00pm

This list of potential HUB subcontractors is provided for information only and SFA does not endorse, recommend, nor attest to the capabilities of any company or individual listed. A complete list of State certified HUBs can be searched online at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>

The Respondent is responsible for compliance with the Good Faith Effort requirements outlined in the Request For Proposal and HUB Subcontracting Plan documents.

**NIGP Class Code – vendors in the following commodity class codes are identified on the following pages. The vendor is responsible to identify all commodity classes that may represent subcontracting opportunities.**

910 38 Insulation and Asbestos Installation, Maintenance, Repair and Removal Services, Including Spray-On Insulation

961 27 Decontamination Services, Including Hazardous Material Decontamination

**EXHIBIT I**  
**DRAFT ASBESTOS ABATEMENT**  
**AGREEMENT**



## **STEPHEN F. AUSTIN STATE UNIVERSITY ASBESTOS ABATEMENT AGREEMENT**

**THIS AGREEMENT**, made by and between Stephen F. Austin State University, a Texas state agency and public institution of higher education (“University”), and *Contractor's Name* (“Contractor”).

**WHEREAS**, University intends to secure professional asbestos abatement and remediation services on a per project quoted basis for various University-owned buildings and property at Stephen F. Austin State University.

**NOW THEREFORE**, University and Contractor, for considerations as set forth, agree as follows:

### **ARTICLE 1. SCOPE OF WORK**

1. Contractor agrees to perform professional asbestos abatement and remediation services. Contractor shall furnish all labor, materials, detailed documentation, and equipment necessary for projects including the removal, packaging, transportation, and disposal of asbestos-containing materials from University-owned buildings and property in accordance with the specifications, terms, and conditions set forth herein and in the Agreement Documents.
2. University performs Operations and Maintenance (“O&M”) activities within University-owned facilities and property on a routine basis. Asbestos-containing materials (“ACM”) that may be encountered include, but are not limited to, floor tile and mastic, thermal system insulation, transite, wall and ceiling texture, joint compound, lay-in and applied ceiling tiles, and roofing materials.

### **ARTICLE 2. CONTRACT DOCUMENTS**

1. The Agreement Documents consist of:
  - a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
  - b. University’s 2015 Uniform General and Supplementary Conditions for Construction Contracts, attached hereto as Exhibit 1;
  - c. All Addenda issued before the Effective Date of this Agreement;
  - d. All Alternate Bid Proposals accepted by the Owner before the Effective Date of this Agreement;
  - e. All Change Orders issued after the Effective Date of this Agreement; and
  - f. University’s Request for Proposal (RFP) Number: Asbestos-18 and Contractor’s Proposal submitted in response, including the HUB Subcontracting Plan, which are attached and incorporated as Exhibit 3. To the extent of any conflict between Contractor’s Proposal and any other Agreement Document, this Asbestos Abatement Agreement shall govern.
2. The Agreement Documents form the entire and integrated Agreement between University and Contractor and supersede all prior negotiations, representations, or agreements, written or oral.

### **ARTICLE 3. PROJECT AUTHORIZATION PROCEDURE**

1. For each project undertaken by Contractor under this Agreement, the process for project authorization will be as follows:

- a. University will identify a project and provide Contractor with required specifications and the required schedule for completion. If Contractor cannot complete the job within the required timeframe, a second Contractor will be contacted and provided the required specification and schedule for completion.
  - b. For each identified project and using the unit prices quoted in Contractor's Proposal, Contractor shall present a written cost estimate to University's Safety Officer within a time frame to be determined by the Safety Officer.
  - c. Billing shall be for actual time and materials charged at the unit prices quoted in Contractor's Proposal.
  - d. University reserves the right to reject any submitted estimate and issue solicitation for any project identified for completion under this Agreement.
  - e. If the Safety Officer accepts the written cost estimate and Contractor can complete the project within the timeframe required, the Safety Officer will provide the appropriate written authorization to proceed.
  - f. No work shall be started and/or completed without signature authorization from University's Safety Officer. Should the Contractor start and/or complete a project without University's signed authorization as described herein, University may, at its sole discretion, withhold payment for services rendered.
2. Contractor shall reference and incorporate this Agreement into the written cost estimate and any invoice sent to University for asbestos abatement and remediation services.

#### **ARTICLE 4. PAYMENT TERMS**

1. University shall pay Contractor for performance under this Agreement on a per project quoted basis when University requires asbestos abatement services during the term of the Agreement. Contractor's rates for asbestos abatement and remediation services shall be in accordance with Contractor's Proposal. Any additional service costs shall be agreed to and authorized by University in writing before work is commenced.
2. Contractor understands and agrees that services will be provided on an as-needed basis. University guarantees no minimum or maximum amount of work to be completed as a result of this Agreement.
3. Payment terms for amounts due from University to Contractor under the Agreement (including but not limited to due dates, late fees, and interest) are governed by Chapter 2251 of the *Texas Government Code*. University is not responsible for the payment of collection costs or attorney's fees unless explicitly required by law. Payment is conditioned upon satisfactory completion of the project in accordance with the terms and conditions of this Agreement.
4. Any work begun under this Agreement shall continue to be billed at the rates stated in Contractor's Proposal until the project is completed. These rates are only effective for any projects beginning September 1, 2017 or later.
5. Notwithstanding anything stated herein, payment of Contractor's invoice for services rendered may be delayed if University disputes the invoice or acceptance of the services as performed. Payment for services shall not be construed as acceptance. Failure to dispute or give notice of non-acceptance of the work by University shall not constitute a waiver thereof.

#### **ARTICLE 5. TIME OF COMPLETION**

1. Contractor's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work.
2. Subject to the terms and conditions of this Agreement, Contractor understands and agrees that the time limit established by the schedule of completion described herein shall not be exceeded. THE

TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT.

3. For each consecutive calendar day after the expiration of the schedule of completion that any incomplete project prevents or impairs University's ability to operate and use the property for its intended purposes, including the correction of deficiencies found during final inspection, the amount of One Hundred Dollars (\$100.00) will be deducted from the money due or that becomes due to Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that University will sustain for late completion.

## **ARTICLE 6. CONTRACTOR SERVICES AND RESPONSIBILITIES**

1. Contractor's services consist of those services performed by Contractor, Contractor's employees, and Contractor's subcontractors and consultants.
2. All work shall be performed in accordance with applicable federal, state, and local statutes, rules, and regulations. Contractor shall be required to stay abreast of any changes to applicable laws, rules, regulations.
3. Contractor shall comply with all University policies, including those policies regarding asbestos removal on campus.
4. Contractor shall, at Contractor's sole expense:
  - a. Confer with University to ascertain requirements and limitations of each project and inspection of the project site(s);
  - b. Acquire any necessary permits or approvals;
  - c. Maintain all applicable licenses and certifications;
  - d. Be on site ready for work at the specified time each day Contractor is scheduled to work;
  - e. Provide on-site supervision and direction to carry out asbestos abatement services in accordance with the specifications and guidelines in the Agreement Documents;
  - f. Remove ACM from University-owned buildings and property;
  - g. Install, maintain, and remove air quality equipment in areas where asbestos containing materials are being abated;
  - h. Package and label ACM for disposal;
  - i. Placard the disposal vehicle;
  - j. Transport ACM for disposal;
  - k. Properly dispose of ACM;
  - l. File TDSHS Asbestos Notification and make necessary amendments thereto; and
  - m. Provide a copy of the TDSHS Asbestos Notification to the University Safety Officer prior to starting any work under this Agreement.
5. Protection
  - a. Work Area
    - i. Contractor shall be responsible, at all times, and while working at the work site, for the complete protection of University personnel, property, equipment and buildings from injury or damage.
    - ii. Contractor shall provide all shielding, barricades, warning signs and any other protection necessary to protect University personnel, equipment and the area in which Contractor is working from injury, damage and/or from contamination during the project.
    - iii. All protection required to fulfill Sections V(a)(i) and (ii) above will be installed at the beginning of the work period and removed as soon as the work is completed unless permission is given by the University Safety Officer to leave the protection in place.

- iv. Contractor shall be held completely and solely responsible for any and all damage as reasonably determined by the University Safety Officer, caused from contaminated equipment, procedures or materials used by Contractor in the performance of the work under this Agreement.
- v. Contractor shall notify the University Safety Officer immediately in the event of any damage to University property caused by Contractor's personnel, equipment or materials or in the event of any damage discovered prior to the beginning of the work.
- vi. Contractor shall promptly repair, or cause to have repaired to the complete satisfaction of the University Safety Officer any and all damage caused by Contractor's personnel or equipment, the procedures and/or the materials used by them in the performance of the work under this contract.

b. Material Storage

- i. All abated materials stored on University property shall be properly stored in enclosed and properly labeled in dumpsters designed for the purpose of storing such materials. Contractor shall be responsible for all materials stored by Contractor on University property.
- ii. Contractor shall be responsible for providing his own storage facilities and/or flammable storage cabinets.
- iii. Contractor shall be a licensed asbestos transporter as per Texas Department of Health Regulation 295.56.

6. Miscellaneous

a. Safety

- i. All Contractors' personnel involved in the work shall have in their possession at all times and use, as required, any and all safety equipment required by OSHA and/or the University's Environmental Health and Safety Department.
- ii. Staging, scaffolding and other protective measures must be approved for use by the University Safety Officer prior to its use.
- iii. All electrical cords shall be in proper repair.
- iv. Contractor must show it has a working safety program in effect. A copy of Contractor's Safety manual will be furnished to University upon request.

b. Cleanup

- i. Contractor shall thoroughly clean all walls, floors, roofs, staging, storage areas, etc. affected by its work.
- ii. Contractor shall remove all trash, debris and excess materials from the work site at the end of each work period.
- iii. No materials of any type shall be stored on rooftops.
- iv. University shall dispose of non-ACM materials not properly stored by Contractor. University shall not reimburse Contractor for improperly stored material that University has disposed of.
- v. Contractor shall leave all areas in a neat and clean condition. Clean up shall be approved by the University Safety Officer prior to the acceptance of the project and final release of payment by University.

c. Vehicles and Parking

- i. All vehicles used by Contractor to perform this contract must be clearly marked as belonging to Contractor.
- ii. All vehicles parked on University property must properly display a valid parking permit and comply with all University parking rules. The University Police Department (UPD) supervises and coordinates all parking transportation and traffic related function on the campus. Permits expire each August 31.

- iii. Contractor shall be responsible for obtaining parking permits from UPD and for resolving, should they arise, any parking regulation disputes and violations.
- d. Personnel
  - i. All personnel shall be full-time licensed employees of Contractor and/or licensed subcontractors. Contractor shall require all subcontractors to agree to the terms and conditions of the Agreement Documents in writing.
    - 1. Contractor shall maintain up-to-date copies of the licenses of all personnel that will be working at University.
    - 2. Contractor shall ensure that Texas Department of Health licensed individuals, consultants, or companies are used for any required asbestos work including but not limited to asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management, and third party asbestos monitoring.
  - ii. Contractor's equipment must be clean and free of dirt and grease. Only equipment with wheels of the type that will not damage the floor or carpet may be used at University facilities. Where necessary Contractor will be responsible to protect the floor and walls.
  - iii. Contractor shall diligently perform the work in accordance with good industry practices and in a workmanlike manner. Contractor shall use such methods and supervision so as to ensure satisfactory quality of work conforming to the provisions of this Agreement.
  - iv. Contractor will be responsible for repair or replacement of any University items damaged or ruined by negligence in the performance or process of its work.
  - v. Contractor agrees that it will promptly pay all labor costs. It is understood and agreed that Contractor will assume full liability for the payment and/or collection of all present and future Social Security, Unemployment Insurance, and/or other Payroll and Unemployment Taxes or assessments imposed by Governmental authorities, and arising from the employment of any person by Contractor.
  - vi. Contractor shall pay all applicable contributions, taxes and premiums payable under Federal, State and Local statutes measured upon the payroll of its employees engaged in the performance of work under this contract and other taxes applicable to materials and supplies furnished or work performed hereunder and shall hold University harmless from liability for any such contributions and taxes.
  - vii. In the event Contractor's personnel have an accident at the work site, Contractor shall immediately investigate and file an accident report within twenty-four (24) hours of the accident and in accordance with OSHA requirements.
  - viii. Contractor shall be expected to keep trained and proficient personnel at the work site and shall ensure skill levels are kept at or above state of the art standards for performing all aspects of this Agreement.

## **ARTICLE 7. UNIVERSITY RESPONSIBILITIES**

- 1. The University will perform the following tasks under this Agreement:
  - a. Provides Asbestos Assessment Reports and Asbestos Removal Specifications;
  - b. Provide site contact information;
  - c. Provide site access;
  - d. Provide timely notice to Contractor in writing of ACM removal projects, detailing the location(s), type of work, and other pertinent information;
  - e. Provide Contractor a timeline for schedule of completion as well as assigned work dates and times;

- f. Provide Asbestos Consultant, Air Monitoring Technician, and Project Manager to oversee asbestos removal work in conjunction with Contractor; and
- g. Pay applicable Texas Department of State Health Services (TDSHS) asbestos notification fees.

#### **ARTICLE 8. TERM OF AGREEMENT**

1. The agreement shall be valid from date of last signature through August 31, 20XX.
2. This agreement may be renewed for up to two (2) additional one-year periods with written agreement from University and Contractor.
3. Contracted rates will be negotiated annually to be effective September 1 of each year. Such renegotiated rates will be subject to written approval by University and will be incorporated into this Agreement as Amendments.

#### **ARTICLE 9. TERMINATION OF AGREEMENT**

1. In the event that either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the aggrieved party may notify the other party in writing via Certified Mail of such failure and demand that the same be remedied within ten (10) days. Should the defaulting party fail to remedy the same within said period, the other party shall then have the right to terminate this Agreement by giving the defaulting party thirty (30) days written notice.
2. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement by giving the other party thirty (30) days written notice.
3. Notwithstanding anything in the Agreement Documents to the contrary, University reserves the right to cancel immediately due to non-performance or breach of a provision of this Agreement. Upon said termination, Contractor shall be paid for all services satisfactorily rendered to the date of said termination in accordance with this Agreement. University shall be the sole judge of the acceptability of services provided hereunder.
4. 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.

#### **ARTICLE 10. INSURANCE REQUIREMENTS**

1. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance coverage required herein and certificates of such insurance have been filed with and reviewed by University. Acceptance of the insurance certificates by University shall not relieve or decrease the liability of the Contractor. Contractor shall require any subcontractors participating in the project to carry the same insurance coverage in accordance with the terms and conditions of the Agreement Documents.
2. If policies are not written for the amounts specified in University's Request for Proposal (RFP) Number: Asbestos-18 (except Workers' 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 primary policy.

3. 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 University.
4. Contractor's insurance shall be deemed primary and noncontributory with respect to any insurance carried by University for liability arising out of operations under this Agreement.
5. Stephen F. Austin State University, its officials, directors, employees, representatives and volunteers shall be named as Additional Insured and must include an endorsement to the policy that expressly extends coverage to University as an Additional Insured. This is not applicable to the workers' compensation policy.
6. Workers' Compensation Insurance
  - a. The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of University.
  - b. 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.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS**

1. University and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Agreement. Neither University nor the Contractor shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. University's Regents and employees shall at all times be construed as working in their official capacities and do not hereby bind themselves to individual liability.
2. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
3. The rights and remedies herein granted to University in the event of default or breach are cumulative, and the exercise thereof shall be without prejudice to the enforcement of any other right or remedy authorized by the law or this Agreement.
4. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parts, which are not included herein, and that no other agreement, statement, or promise not contained in the Agreement, shall be valid or binding.
5. 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.
6. 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.
7. 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.
  8. 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.
  9. 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 Agreements relates, or in any of the profits, real or potential, thereof.
  10. Products and Materials Produced in Texas. If Contractor will provide services under the Agreement, 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.
  11. Tax Exemption. University is exempt from the payment of taxes and will provide necessary documentation confirming its tax-exempt status.
  12. Indemnification. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND ITS DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL LIABILITY, LOSS, EXPENSES (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY FEES), OR CLAIMS FOR INJURY OR DAMAGES ARISING OUT OF THE PERFORMANCE OF THE AGREEMENT (COLLECTIVELY, "CLAIM") TO THE EXTENT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY CONTRACTOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS.
  13. 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 and this Addendum. 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.
  14. 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 successor 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.
  15. 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.

16. 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.
17. 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*.
18. Confidentiality. During the course of the work and/or services to be provided under this Agreement and for a period of five (5) years thereafter, Contractor may come in contact with confidential information of University. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by University. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify University of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to University all confidential information in Contractor's possession or control. Contractor shall further comply with all University information security policies that may apply.
19. 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 sexual 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.
20. Publicity. Contractor shall not use 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.
21. Compliance. Contractor shall observe and abide by all applicable local, state, and federal laws,

- regulations, and University policies and procedures.
22. 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.
  23. 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 University, and if Contracting Party is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to *Texas Government Code* Chapter 2271, Contracting Party 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*.
  24. Dispute Resolution; 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. To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement 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 University and 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 & Administration of University 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 the Agreement by University nor any other conduct, action or inaction of any representative of University relating to this contract constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (iii) University has not waived its right to seek redress in the courts.
  25. 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*.
  26. Employment of Former State Officer or Employee Restricted. Contractor acknowledges that, through its acceptance of this Agreement, it will be subject to the restrictions against employment of former state officers or employees contained in Section 572.069, *Texas Government Code*.
  27. Trafficking of Persons. Under Section 2155.0061, *Texas Government Code*, Contracting Party certifies that the individual or business entity named in the bid or Agreement is not ineligible to receive the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
  28. 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, Contracting Party agrees to use their best efforts to mitigate the impact of the occurrence so that University may continue to provide mission critical services during the Force Majeure Occurrence.

29. Buy American Iron and Steel: For Orders in which iron or steel products will be used, Contracting Party agrees to comply with Section 2252.202, Texas Government Code, requiring any iron or steel products produced through manufacturing process and used in the projects be produced in the United States, unless otherwise exempt under Section 2252.203, Texas Government Code
30. Energy Company Boycotts: Pursuant to Chapter 2274 of the Texas Government Code, to the extent applicable, Contracting Party certifies that it:
  - 1) does not boycott energy companies as defined in Section 809.001 (1) (A) Texas Government Code (i.e., fossil fuel companies);
  - 2) and will not boycott energy companies during the term of the Order.
31. Critical Infrastructure Affirmation: Pursuant to Section 2274.0102 of the Texas Government Code, Contracting Party certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is:
  - 1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of Texas Government Code, or
  - 2) headquarters in any of those countries.
32. Firearm Entities and Trade Associations Discrimination: Pursuant to Chapter 2274 of the Texas Government Code, for Orders that exceed \$100,000, Contracting Party certifies that it:
  - 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
  - 2) will not discriminate during the term of the Order against a firearm entity or firearm trade association.
33. Cybersecurity Training Certification: In accordance with Section 2054.5192, *Texas Government Code*, if Contracting Party, or a subcontractor, officer, or employee of Contracting Party, will have access to a state computer system or database, then Contracting Party shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by University. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Contracting Party shall verify to the University completion of the program by each such officer, employee, or subcontractor.
34. Contractor Certification Regarding COVID-19 Vaccination: Pursuant to Section 61.0085, *Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021))*. Contractor certifies that it does not require a customer to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor’s business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
35. Debarment and Suspension: Pursuant to Executive Order 12549 and Executive Order 12689, the University may not contract with parties listed on the General Services Administration’s System for Award Management (SAM). SAM identifies (via active exclusions) entities that have been debarred, suspended, or excluded from receiving federal contracts, subcontracts, or federal assistance and benefits. In compliance with the Code of Federal Regulations (CFR) Section 180.300, the University includes suspension/debarment provisions in its purchase orders. By accepting the University’s purchase order, the Contracting Party is certifying that, to the best of its knowledge, the Contracting Party/or any of its principals are not suspended or debarred. Contractor certifies that it is not subject to a vendor hold by the State of Texas. Contractor certifies that it is not subject to debarment or suspension by the Texas Comptroller.
36. Contractor Compliance and Certification Relating to Cloud Computing Services: Pursuant to Tex. Gov’t Code § 2054.0593, if Contracting Party provides cloud computing services and is authorized to access,

transmit, use, or store data for University, Contracting Party is required to meet security controls established by the Texas Department of Information Resources (DIR) and determined by University, which are commensurate with University's risk under the contract, based on the sensitivity of University's data. Contracting Party must periodically provide to university evidence that Contracting Party meets the security controls required under the contract. Contracting Party acknowledges this Agreement may be terminated and payment withheld if Contracting Party does not comply with this Section.

## **ARTICLE 12. HISTORICALLY UNDERUTILIZED BUSINESSES**

1. Contractor submitted an acceptable HUB Subcontracting Plan in Contractor's Proposal in response to University's Request for Proposal (RFP) Number: Asbestos-18.
2. Should any subcontracting information identified in the original submittal be changed, updated documentation shall be submitted to University's HUB Coordinator. University's HUB Coordinator shall be the sole point of contact regarding approval of Contractor's Good Faith Effort related to changes. Additional forms can be down-loaded from the [State Comptroller's Texas Procurement Services and Support Division](#).
3. Owner is required to submit monthly Progress Assessment Reports relating to payments made to subcontractors. University reserves the right to withhold payment until the monthly reports are received by University's HUB Coordinator. Progress Assessment Report forms can be down-loaded from the [State Comptroller's Texas Procurement Services and Support Division](#).

**IN WITNESS WHEREOF**, the authorized representatives of the parties have executed this Agreement and it is effective as of the date of last signature below.

### **ATTEST:**

\_\_\_\_\_  
Secretary  
Seal (if incorporated)

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title of Authorized Rep  
Stephen F. Austin State University

## EXHIBIT 1



STEPHEN F. AUSTIN  
STATE UNIVERSITY

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NACOGDOCHES, TEXAS

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# Uniform General Conditions for Construction Contracts

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## Article 1. Definitions

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

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.4 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.5 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.6 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.7 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all

- Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.8 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that documents to the best of A/E's and ODR's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.9 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor, and A/E. If the project equals or exceeds \$1,000,000, close-out documents shall also include building component information and values as specified in the Texas Higher Education System Generic Building Componentization Guidelines. If the project is less than \$1,000,000, building component information and values shall be provided upon request by Owner.
- 1.10 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.11 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.12 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.13 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.14 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.15 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.16 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.17 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.

- 1.18 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Ch. 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.19 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.20 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.21 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.
- 1.22 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.23 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.24 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.25 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Ch. 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.26 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.27 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.28 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.
- 1.29 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.30 *Project* means all activities necessary for realization of the Work. This includes design,

contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.

- 1.31 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.32 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.33 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.34 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.35 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.36 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.37 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.38 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.39 *Site* means the geographical area of the location of the Work.
- 1.40 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.41 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.42 *Subcontractor* means a business entity that enters into an agreement with Contractor to

perform part of the Work or to provide services, materials, or equipment for use in the Work.

- 1.43 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.44 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.45 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.46 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.47 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.48 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.49 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

## **Article 2. Wage Rates and Other Laws Governing Construction**

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

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

2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

2.2.1.1 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.

2.2.1.2 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.

2.2.1.3 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Ch. 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

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

2.2.1.5 Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.

- 2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule
- 2.2.3 Complaints of Violations.
- 2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation.
- 2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.
- 2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.
- 2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.
- 2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Nacogdoches County, Texas.
- 2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

- 2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Ch. 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.
- 2.7 Buy America Requirements for Iron and Steel Used in Construction. In accordance with Texas Government Code Section 2252.202, all iron or steel products (i.e. rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.

### **Article 3. General Responsibilities of Owner and Contractor**

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract



Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.

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

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

3.1.2.4 Owner's HUB Coordinator shall be Owner's Representative and sole point of contact regarding approval of the Contractor's good faith effort related to the original HUB Subcontracting Plan and subsequent changes.

3.1.2.5 The ODR will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various project team members that have a key role in these duties.

3.1.3 Owner Supplied Materials and Information.

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

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

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

3.1.5 Limitation on Owner's Duties.

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

responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.

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

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

3.2.1 Site Visits.

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

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

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

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

- 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
- 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;

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

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

3.2.4 Progress Meetings and Minutes. A/E shall prepare the agenda and conduct meetings with Owner and Contractor to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work on a regular basis as determined by Owner. Contractor shall cooperate with A/E whose responsibility is the preparation of meeting minutes for distribution to Contractor and Owner. In the absence of A/E at such meetings, Contractor shall be responsible for preparing and distributing minutes to Owner and A/E. If, in the opinion of Owner, it is feasible for A/E to conduct the meeting via telecommunication, A/E shall conduct the meeting and prepare and distribute the minutes to Owner and Contractor. A/E shall solicit input for the meeting agenda from Contractor and Owner a minimum of forty-eight (48) hours before a meeting and distribute the agenda a minimum of thirty-six (36) hours before a meeting and distribute the minutes, reports, and other similar documentation within one week of the respective work or event, unless directed otherwise by Owner

3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion.

3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.

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

General Conditions.

- 3.3.3 Quality Control. Contractor shall implement its existing quality control and safety plan for the Project, and shall use such standard of care as a contractor of ordinary prudence would exercise in the same or similar circumstances.
- 3.3.4 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.5 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.6 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.
- 3.3.7 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.8 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the Owner accept a bid or proposal from a Subcontractor but the Owner requires another bid or proposal to be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of Owner's requirement to select another bid or proposal rather than the one recommended.
- 3.3.8.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of

the Contract Documents including provisions of the Contract between Contractor and Owner.

- 3.3.8.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.9 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.10 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.11 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.12 Acts or Omissions. Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY

NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.13 Infringements.

3.3.13.1 Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

3.3.13.2 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

3.3.13.3 If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

3.3.13.4 Taxes/Workers' Compensation/Unemployment Insurance-Including Indemnity.

3.3.12.4.1 CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3.3.12.4.1 CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

3.3.13.6 Contractor shall promptly advise Owner in writing of any claim or

demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.

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

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

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

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

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

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

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

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

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

#### **Article 4. Historically Underutilized Business (HUB) Subcontracting Plan**



- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. §20.13(b).
- 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. §20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.
- 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. §20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.
- 4.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
- 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
- 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
- 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.
- 4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available in the Index Forms Library on the Facilities Design & Construction page of the Texas Facilities

Commission website.

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

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

## **Article 5. Bonds and Insurance**

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

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

5.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. Except for Construction Manager-at-Risk Contracts, where, in Owner's sole discretion and determination, a Performance Bond is acceptable in the amount guaranteed maximum price (GMP), the performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

5.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. Except for Construction Manager-at-Risk Contracts where, in Owner's sole discretion and determination, a Payment Bond is acceptable in the amount of the guaranteed maximum price (GMP).

The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.

- 5.1.2 Security Bond. The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price (“GMP”) to Owner and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.
- 5.1.3 When Bonds Are Due.
  - 5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.
  - 5.1.3.2 Payment and performance bonds are due within ten (10) days of Contractor’s receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor’s receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.
- 5.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov’t Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov’t Code § 2253.026.
- 5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov’t Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.1.8 Payment Claims when Payment Bond not Required. The rights of

Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570), stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
- 5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.
- 5.2.2 Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 5.2.3 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 5.2.4 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 5.2.5 The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.
- 5.2.6 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

5.2.6.1 Insurance Coverage Required.

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

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

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

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$5,000 Medical Expense each person;

\$1,000,000 Personal Injury and Advertising Liability;

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

\$50,000 Damage to Premises Rented to You;

and Coverage shall be on an "occurrence" basis.

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

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

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

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

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

Employer's liability limits for asbestos abatement will be:

\$500,000 each accident;

\$500,000 disease each employee; and

\$500,000 disease policy limit.

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

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

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

- 5.2.6.1.5 Special Form Builder's Risk Insurance, if applicable (or Special Form installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be Special Form, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by

Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

- 5.2.6.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- 5.2.6.1.5.2 Per paragraph 12.2, upon notification by Owner that Owner desires to occupy all or a portion of the Work prior to Substantial Completion, Contractor shall be responsible for notifying and securing prior approval from the insurance company to ensure the coverage shall not be cancelled or lapsed on account of partial occupancy. Such approval shall not be unreasonably withheld and must be secured within a timeframe to meet Owner's needs.
- 5.2.6.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.
- 5.2.6.1.5.4 The required insurance shall include coverage for Owner's property whether or not in the care, custody and control of Contractor prior to construction, during construction and during the warranty period (i.e., in the care, custody and control in the case of Builder's Risk Insurance, not in the care, custody and control in the case of General Liability, etc.).
- 5.2.6.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.
- 5.2.6.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.
- 5.2.6.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

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

5.2.6.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term. "Umbrella" Liability Insurance shall be maintained for an amount of not less than \$1,000,000 if the contract amount is less than \$1,000,000. If the contract amount is \$1,000,000 or more, the "Umbrella" Liability insurance shall be maintained for an amount of not less than \$5,000,000. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.7 Policies must include the following clauses, as applicable:

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

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

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

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

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



Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

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

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

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

5.2.9 Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

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

### **6.1 Drawings and Specifications.**

6.1.1 Copies Furnished. Contractor shall be provided electronic Drawings and Specification, free of charge. If requested by Contractor, hard copies (paper) of Drawings and Specification shall be provided at the reimbursable cost agreed upon by Owner. The number of hard copies provided shall be acceptable to the ODR.

6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by the A/E shall be the physical property of Owner and are to remain the intellectual property of A/E. These documents are not to be used on any other project. Owner may use the Contract record set and electronic versions as needed for warranty, operations and maintenance or future renovations or additions without written approval of A/E. All additional or confirmatory land survey field notes, investigations, samples, calculations, test results, and reports, for which Owner has paid for such direct services, shall be the sole property of Owner.

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

- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and workmanship); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control and more specific requirements shall govern over general requirements. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.6 Discrepancies and Omissions in Drawings and Specifications.
- 6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.
  - 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
  - 6.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
  - 6.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
  - 6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
  - 6.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to

Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

- 6.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.
- 6.2.2 Maintain the Record Documents including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

## Article 7. Construction Safety

- 7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91- 596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2 Notices. Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give ODR and A/E prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 7.4 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may

be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

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

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

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

7.5.1 Bind all Subcontractors to the same duty.

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

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

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

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

## **Article 8. Quality Control**

- 8.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 Testing.
- 8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:
- 8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
- 8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.
- 8.2.3.2 Acceptance by Owner of the quality and nature of tests.
- 8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
- 8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.

- 8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
- 8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.
- 8.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.

### 8.3 Submittals.

- 8.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.
  - 8.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
  - 8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for

complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) calendar days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) c a l e n d a r days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days' notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.

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

8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data to the extent possible from existing conditions and design information provided by A/E prior to fabrication; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

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

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



corrections requested on previous submissions.

8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or ODR shall not make formal changes to the Contract Documents via the submittal process. Changes to the Construction Documents shall be accomplished via Section 3.2.2 and Article 11 Changes.

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

8.3.5.1 The Contract Documents do not require extensive revisions; and

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

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

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

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

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

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

8.3.5.3.5 The specified product or method of construction cannot

receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;

- 8.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
- 8.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
- 8.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
- 8.3.5.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

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

#### 8.4 Field Mock-up.

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

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

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.

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

#### 8.5 Inspection During Construction.

- 8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. “Reasonable times” of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.
- 8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.
  - 8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover-up corrected Work until Owner indicates approval.
  - 8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## **Article 9. Construction Schedules**

- 9.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within thirty (30) calendar days after Substantial Completion or a mutually agreed upon longer period of time between Contractor and Owner, Contractor shall be responsible for Owner’s additional inspection, project management, and maintenance cost to the extent caused by Contractor’s failure to achieve Final Completion.
- 9.2 Notice to Proceed. Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 Work Progress Schedule. Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison

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

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

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

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

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

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

9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision

thereto does not indicate any approval of Contractor's proposed sequences and duration.

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

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

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

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

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

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

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

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

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

## 9.6 Modification of the Contract Time.

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

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

9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and/or related site conditions prevent Contractor from performing seven (7) continuous hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

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

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

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

9.6.2.2.3 Failure of Owner to have secured property, right-of-way or easements necessary for Work to begin or progress.

9.6.2.2.4 Changes in the Work that effect activities identified in

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

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

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

9.6.2.2.7 Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

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

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

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

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

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

- 9.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 9.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
- 9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
- 9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
- 9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
- 9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
- 9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.
- 9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.
- 9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.



## Article 10. Payments

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

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

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

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

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

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

10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;

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

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

10.2.1.4 Reimbursable expenses incurred solely and directly in support of the Project as agreed upon between Owner and A/E or Contractor. Provided that travel expenditures are at the State of Texas reimbursable rates, are at actual cost incurred, or are otherwise agreed upon by Owner.

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

10.2.1.6 Construction payment affidavit.

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

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

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

- 10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
- 10.3.2 Retainage. Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount when the contract price estimate is equal to or greater than four hundred thousand dollars (\$400,000) and ten (10) percent of the total earned amount when the contract price estimate is less than four hundred thousand dollars (\$400,000), the amount authorized by law, or as otherwise set forth in the Contract Documents. Retainage is managed in conformance with Tex. Gov't Code, Ch. 2252, Subch. B.
- 10.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
- 10.3.2.2 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.
- 10.3.2.3 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
- 10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
- 10.3.3.1 Defective or incomplete Work not remedied;
- 10.3.3.2 Damage to Work of a separate Contractor;
- 10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
- 10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
- 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
- 10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or
- 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

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

10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until substantial completion, responsibility for the care and protection of materials and Work in areas where punch list items are completed until final completion or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

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

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

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

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

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

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

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

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

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

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

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance

of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

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

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

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

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

10.6.2 The appropriate share is overdue on the eleventh (11<sup>th</sup>) day after the date Contractor receives the payment.

## **Article 11. Changes**

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

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

11.1.2 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the

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

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

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

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

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

11.3 Claims for Additional Costs.

11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving

rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.2.1. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.

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

11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.

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

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

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

11.7 Administration of Change Order Requests. All changes in the Contract shall be

administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.

- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
- 11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the establish Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
- 11.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 11.8 Pricing Change Order Work. Contractor will be entitled to mark-up the costs of change orders in an amount equal to the agreed upon fee as stated in the Contract. The following percentage amounts are the maximum amounts the Contractor's subcontractors will be allowed to add to the net additive amount or net deductive amount of the change orders:
  - 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation



and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific change shall not exceed twelve (12) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.

- 11.8.2 When change order work is performed by a subcontractor or subcontractors working for the Subcontractor, each affected Subcontractor shall figure its costs, overhead and profit as described below for subcontractor's self-performed Work. All Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.
- 11.8.3 On changes involving both additions and deletions, percentages for overhead and profit as stated in 11.8, 11.8.1, and 11.8.2 will be computed in the same manner on the net addition or the net deduction of any change order amount. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.
- 11.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 11.8.5 It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Contractor and/or all other lower-tier subcontractors (all referred to as "Subcontractors"). Contractor agrees that it will incorporate the provisions of this Article 11.8.5 into all agreements with lower tier Subcontractors who will also include these change order pricing requirements into agreements with all lower tier subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost-plus Fee change order proposals. Whenever change order proposals to adjust the contract price become necessary, Owner will have the right to select the method of pricing to be used by Subcontractor in accordance with these pricing provisions. The options will be (1) lump sum change order proposal, (2) unit price change order proposals, or (3) cost plus Fee change order proposal as defined in the following provisions:

11.8.5.1 Lump Sum Change Order Proposals: Subcontractor will submit a property itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. Owner will require itemized change orders on all change order proposals from the Subcontractor, regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable).

11.8.5.2 Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Subcontractor for those workers or crews of workers who the subcontractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in this Article 11.8. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages of this Article 11.8.

11.8.5.3 Labor Burden: Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Subcontractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)

11.8.5.4 Non-Reimbursable Labor Burden: Employee Stock Ownership Plan (ESOP) related fringe benefit costs are specifically considered non-reimbursable labor burden and any ESOP costs are considered covered by the allowable change order markups to cover overhead and profit.

11.8.5.5 Material: Estimated material change order costs shall reflect the Subcontractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect

cost reductions available to the Contractor due to “non-Cash” discounts, trade discounts, free material credits, and/or volume rebates. “Cash” discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Subcontractor is provided Owner funds in time for Subcontractor to take advantage of any such “cash” discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

11.8.5.6 Equipment: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For subcontractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for subcontractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

11.8.5.7 No Markup on Bonds and Liability Insurance Costs: Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.

11.8.5.8 Direct and Indirect Costs Covered by Markup Percentages: As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Subcontractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; ESOP related costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.

11.8.5.9 Contingency: In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

11.8.5.10 General Liability Insurance and Bonds: In the event the Subcontractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Subcontractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with change orders to Subcontractor's base contract price. Note: If a change order or a separate payment is made to reimburse the Subcontractor for the cost of a Performance and/or Payment Bond, the Subcontractor will be required to remit any bond dividend or rebate that it will receive from the Surety after the successful completion of the project.

11.8.5.11 Unit Price Change Order Proposals: As an alternative to Lump Sum Change Order Proposals, Owner or the Contractor acting with the approval of Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.

11.8.5.12 Subcontractor will submit, within seven (7) days after receipt of Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

11.8.5.13 Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.

11.8.5.14 Cost Plus Change Order Proposals: As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, Owner may elect to have any extra work performed on a cost-plus markup percentage fee basis. Upon written notice to proceed, Contractor and/or Subcontractors shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change. Owner and Subcontractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor and/or Subcontractor employees working on the project will be required to be submitted to Owner for both labor and equipment used for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked

by the Contractor and/or Subcontractor employees showing both base contract work as well as extra work performed by each employee.

11.8.5.15 Accurate Change Order Pricing Information: Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost plus Change Order Proposals or other contract price adjustments under the Contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any “buy-out savings” on change orders shall accrue 100% to Owner. “Buy-out savings” are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.

11.8.5.16 Right to Verify Change Order Pricing Information: Contractor, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

11.8.5.17 Requirements for Detailed Change Order Pricing Information: Contractor, subcontractor agrees to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

11.8.5.18 Discounts: If a Contractor enters into an agreement to pay a subcontractor before they receive payment by the Owner and in return they negotiate an early payment discount, the amount of any such discount that the

contractor is allowed to keep as a “cash discount earned” will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than one and ½ percent (1.5%) shall be credited to Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.

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

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

- 11.10 Final Resolution of Changes. Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to additive adjustments unless the adjustments are the results of Owner’s audit of change order pricing in accordance with the provisions included in Article 11.8.5.

## **Article 12. Project Completion and Acceptance**

- 12.1 Closing Inspections.

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

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

systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

- 12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, insurance and utilities. A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.
- 12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.
- 12.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of

all Work is a condition precedent to Contractor's right to receive Final Payment.

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

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

12.1.5 Additional Inspections.

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

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

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

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each



designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate.

Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

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

12.3 Acceptance and Payment

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

- 12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract.

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

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

- 12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all

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

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

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

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

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

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

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

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

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

## **Article 13. Warranty and Guarantee**

13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract,

and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

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

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

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

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

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

13.4.1 Observations by Owner and/or A/E;

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

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

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

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

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

13.4.7 Any inspection, test or approval by others.

- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service

before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.

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

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

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

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

13.8 Material Safety Data Sheet. Contractor shall submit Material Safety Data Sheets (MSDS) for all products used in the project. These MSDS must be provided no later than Contractor's application for Final Payment.

## **Article 14. Suspension and Termination**

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

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

the suspension, and issue a written determination of the findings.

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

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

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

14.3 Termination by Owner for Cause.

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

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

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

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

14.3.1.4 Failure to remedy defective work condemned by ODR;

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

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

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

14.3.1.8 Any material breach of the Contract; or

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

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

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

14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time. If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

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

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

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

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

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

allowable under Section 14.5.

- 14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
- 14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
  - 14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
    - 14.5.2.1 Stop all work.
    - 14.5.2.2 Place no further subcontracts or orders for materials or services.
    - 14.5.2.3 Terminate all subcontracts for convenience.
    - 14.5.2.4 Cancel all materials and equipment orders as applicable.
    - 14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
  - 14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.
- 14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

## **Article 15. Dispute Resolution**

- 15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114.
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

## **Article 16. Miscellaneous**

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
  - 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
  - 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform



all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.

16.3.1 Accessibility and Administration.

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

16.3.1.2 Owner shall administer the software.

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

16.4 Administrative Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code§ 2262.003 the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

16.4.1 Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

16.4.2 Contractor's "records" as referred to in this Article 16.4 shall include any and all information, materials and data of every kind and character, including without

limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, e-mails, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to Owner in connection with the contractor's dealings with Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- Compliance with contract requirements for deliverables.
- Compliance with approved plans and specifications.
- Compliance with Owner's business ethics expectations.
- Compliance with contract provisions regarding the pricing of change orders.
- Accuracy of Contractor representations regarding the pricing of invoices.
- Accuracy of Contractor representations related to claims submitted by Contractor or any of its payees.

16.4.3 Contractor shall require all payees receiving \$10,000 or more in connection with this contract (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.

16.4.4 Owner's authorized representative(s) shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, to conduct audits in compliance with this article.

16.4.5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to Owner (of any nature) by Contractor and/or Contractor's Subcontractors more than \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of Owner's audit shall be reimbursed to Owner by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.

16.4.6 In addition, to the normal paperwork documentation Contractor typically furnishes to Owner, in order to facilitate efficient use of Owner resources when reviewing and/or auditing Contractor's billings and related reimbursable cost records, Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History to Date	.pdf and Excel
Monthly Labor Distribution Detail (if not already separately detailed in Job Cost Detail)	.pdf and Excel
Total Job to Date Labor Distribution Detail (if not already included in the detailed Job Cost History to Date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Details Subcontract States Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.)	.pdf and Excel
Copies of executed subcontracts with all subcontractors	.pdf
Copies of all executed change orders issued to subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

## End of Uniform General Conditions

<b>NAME/ADDRESS</b>	<b>HUB</b>
Asian Contractor Association Website: <a href="http://www.acta-austin.com">www.acta-austin.com</a> Phone: 512-926-5400 Fax: 512-926-5410	
Southwest Minority Supplier Development Council Website: <a href="http://www.smsdc.org">www.smsdc.org</a> Phone: 512-386-8766 Fax: 512-386-8988	
Dallas/Fort Worth Minority Supplier Development Council Website: <a href="http://affiliate.nmsdc.org/dfwmsdc">http://affiliate.nmsdc.org/dfwmsdc</a> Phone: 214-630-0747 Fax: 214-637-2241	
Houston Minority Supplier Development Council Website: <a href="http://www.hmsdc.org">www.hmsdc.org</a> Contact: Angela Freeman Phone: 713-271-7805 Fax: 713-271-9770	
Tri-County Black Chamber of Commerce Website: <a href="http://www.tcbcc.org">http://www.tcbcc.org</a> Phone: 832-875-3977 Fax: 713-839-7329	
Women's Business Council – Southwest Website: <a href="http://www.wbcsouthwest.org">http://www.wbcsouthwest.org</a> Contact: Anita Steele Phone: 817-299-0566	
Women's Business Enterprise Alliance Website: <a href="http://www.wbea-texas.org">http://www.wbea-texas.org</a> Phone: 713-681-9232	
Golden Triangle Minority Business Council Website: <a href="http://www.gtmbc.com">www.gtmbc.com</a> PH: 409-962-8530 FX: 409-722-5402	

<b>NAME/ADDRESS</b>	<b>HUB</b>
Hispanic Contractors Association de San Antonio Website: <a href="http://www.hcadesa.org">www.hcadesa.org</a> PH: 210-444-1100 FX: 210-444-1101	
US Pan Asian American Chamber of Commerce Website: <a href="http://www.uspaacc-sw.org">www.uspaacc-sw.org</a> PH: 682-367-1393 FX: 817-469-9485	
El Paso Hispanic Chamber of Commerce Website: <a href="http://www.ephcc.org">www.ephcc.org</a> PH: 915-566-4066 FX: 915-566-9714	
Regional Hispanic Contractors Association (RHCA) Website: <a href="http://www.tamacc.org">www.tamacc.org</a> PH: 972-786-0909 FX: 972-786-0910	
Texas Association of Mexican American Chambers of Commerce (TAMACC) Website: <a href="http://www.tamacc.org">www.tamacc.org</a> Contact: Pauline Anton Phone: 512-444-5727	
<b>START SELECTED VENDORS HERE</b>	
Inland Environments LTD PO Box 6751 Kingwood, TX 77325-675 Contact: Jed A Landrey Email: Phone: 281.354.7500	WO/F
Intercon Environmental Inc 210 S. Walnut Creek Dr Mansfield, TX 76063-2013 Contact: Karen Andrews Email: Phone: 817.477.9995	WO/F
Tejas Destructors LLC 4170 County Road 279 Suite 300B Leander, TX 78641-8451 Contact: Alex Boogren Email: Phone: 817.266.3774	WO/F

<b>NAME/ADDRESS</b>	<b>HUB</b>
RNDI Companies Inc 311 East Interstate #30 Suite #7 Rockwall, TX 75087-5408 Contact: Diana Cross Email: Phone: 214.771.3977	HI/F
Quality Air Controllers Inc 610 James Dr. Richardson, TX 75080-7407 Contact: Nancy Yazdani Email: Phone: 214.384.1662	AS/M
PHP Asbestos and Demo Services LLC 18062 FM 529 #209 Cypress, TX 77433 Contact: Victor Hernandez Email: Phone: 346.320.3110	HI/M
Allen & Company Environmental Services 1600 California Pkwy N Fort Worth, TX 76115-4239 Contact: Melinda Allen Email: Phone: 817.887.9801	WO/F
A & M Environmental LLC 101 Main St. Pasadena, TX 77506-1405 Contact: Oscar Carrasco Email: Phone: 713.678.7519	HI/M
AOC Environmental Inc 2612 Wranglers Retreat Wichita Falls, TX 76310-7214 Contact: Michael Kussavage Email: Phone: 940.692.8989	HI/F
ARC Abatement Inc 225 S 12 <sup>th</sup> St Waco, TX 76701-1811 Contact: Amanda Talley Email: Phone: 254.755.6700	
Arrow Services Inc 10202 Airline Suite A Houston, TX 77037 Contact: Kip Kiphart Email: and Phone: 281.445.1426	

**RFP #ASBESTOS-23** Opening date **01/12/2023** time **8:45 am**

Pro-Tech Solutions Group LLC Marisol Escuadra 10006 Thurleigh St Houston, TX 77031 Email: PH: 832-850-7455	
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