



Texas State Technical College Waco

Tax Exempt # 74-1646989

Procurement Office

3801 Campus Dr.

Waco, TX 76705

(254) 867-3757 phone

(254) 867-3792 fax

INVITATION FOR COMPETITIVE SEALED PROPOSALS

Title:

Renovations to Kultgen Automotive Technology Center 2013

Proposal # RFP 131114

Posted Date: 11/18/2013

All forms must be completed and returned for consideration.

Proposal Closing Date/Time: December 10, 2013 at 2:00 PM Central Daylight Time

Mail Proposals to:

Texas State Technical College
Attn: Melissa Warren, Director
Procurement Services
3801 Campus Drive
Waco, Texas 76705

Hand Deliver Proposals to:

Texas State Technical College
Procurement Services
Attn: Melissa Warren, Director
Patterson Hall, 2nd Floor
103 10th Street (on-campus address)
Waco, Texas 76705

Please note that the on-campus address is located on the TSTC Waco campus.

There is a similar address in the downtown area of the city of Waco, Texas.

All bids MUST be delivered to the address listed on the TSTC campus

by the time and date listed above.

Faxed Proposals will not be accepted.

Emailed Proposals will not be accepted.

Late Proposals will not be accepted.

1. GENERAL INFORMATION

- 1.1. **Information about Texas State Technical College System --** Texas State Technical College, (herein referred to as "TSTC"), is a state-supported, technical college system that services students throughout the state of Texas. The TSTC system includes four colleges: TSTC Harlingen, TSTC Marshall, TSTC Waco, and TSTC West Texas (which has campuses in Abilene, Breckenridge, Brownwood, and Sweetwater).
- 1.2. **Historically Underutilized Business (HUB) Firms --** TSTC endeavors to promote full and equal opportunity for businesses to supply TSTC with goods and/or Services that are necessary to support TSTC's educational mission. In this regard, TSTC commits to select Proposers in accordance with (i) needs, (ii) resources, (iii) HUB goals and guidelines established by the Texas Legislature and the Texas Building and Procurement Commission, and (iv) policies and procedures for contracting with Historically Underutilized Businesses.
- 1.3. **Request for Proposals --** By means of this Request for Proposals, (hereinafter referred to as "RFP"), TSTC invites all qualified Proposers to submit Proposals in accordance with the requirements outlined in this RFP. TSTC anticipates that, based on its review and evaluation of the Proposals received pursuant to this RFP, it will select a Proposer and execute a contract whereby the Proposer renders Services to TSTC, in accordance with terms and conditions set forth in the contract.
- 1.4. **Purpose of the Request for Proposals --** TSTC Waco is requesting Competitive Sealed Proposals for the renovation of the Kultgen Automotive Center on the Texas State Technical College campus in Waco, Texas. The renovation includes exterior painting of existing cmu walls, replacement of exterior metal wall panels, renovation of the existing entry plaza, renovation of existing walks for ADA compliance, and a new entry canopy. The renovation shall be constructed as designed and specified in this and related documents that are part of this RFP. The purpose of this Request for Proposals (RFP) is to engage a Proposer to furnish materials, labor, and equipment required to construct this project in accordance with the plans and specifications developed by the architect, Parkhill Smith and Cooper.
- 1.5. **Documents Attached to this RFP --** Documents included in this RFP that pertain to making a proposal for this project are listed as follows:
 - 1.5.1. TSTC's Uniform General Conditions
 - 1.5.2. Agreement between Owner and Contractor (Only filled out in the event of contract award)
 - 1.5.3. Bid Proposal Form
 - 1.5.4. HUB Subcontracting Plan Worksheet
 - 1.5.5. TSTC's HUB Policy

- 1.5.6. Plans and specifications detailing the construction of the project have been developed by the architect, Parkhill Smith and Cooper.

To Request Drawings and Specifications and Questions Pertaining Thereto:	TSTC Project Manager Contact for General Questions Regarding the Project:
Jamie Zavodny Project Manager Parkhill Smith and Cooper 3110 N. IH-35 Round Rock, Texas 78681 P: 512-739-9344 E: jamie.zavodny@team-psc.com	Selby Holder Director, Physical Plant Texas State Technical College 3801 Campus Drive Waco, Texas 76705 P: (254) 867-3704 E: selby.holder@tstc.edu

2. PROPOSAL REQUIREMENTS

- 2.1. Proposals must be received in a sealed envelope by the date and time shown above for consideration. Please indicate the RFP #, RFP Title, and RFP Closing Date and Time on the sealed envelope and either hand deliver or mail to the address on page 1.
- 2.2. Open records requests, after award is made, may be requested by contacting Jerry Sorrells via email at: jerry.sorrells@tstc.edu
- 2.3. **Requirements for Submission --** The Respondent must submit one original signed Proposal. The Proposal and accompanying documentation are the property of TSTC and will not be returned.
- 2.4. **Required Documents for the Proposal --** All proposals must include the following documents:
- 2.4.1. Bid Bond(s)
 - 2.4.2. Completed Proposal Form
 - 2.4.3. Completed HUB Subcontracting Plan Worksheet

3. RFP PROCEDURES

- 3.1. **Receipt of Proposals --** Proposals will be date/time stamped upon arrival. The date/time stamp used will be the official clock for proposal opening time. TSTC will not provide delivery receipt for mail delivered proposals.
- 3.1.1. TSTC will not provide proof of delivery of bid/proposals which are delivered by hand or courier. No proof of delivery shall be necessary.
 - 3.1.2. Any Proposal received AFTER the DATE AND TIME specified will be IMMEDIATELY disqualified from consideration, and will be RETURNED unopened to the proposer.
- 3.2. **Proposal Opening --** Proposals will be opened after the deadline indicated in this RFP. The proposal opening process is open to the public. Upon submittal, all proposals become the property of TSTC and will not be returned.

3.3. **Evaluation of Proposals**

Evaluation criteria will be that of Best Value to TSTC as TSTC deems necessary. The evaluation criteria will be as follows:

Category	Criteria	Score
Price	Proposal sum.	56 points
Time	Proposed construction contract time.	8 points
Supervision	Proposer's assigned Supervisor and abilities.	10 Points
Reputation	Reputation of proposer.	10 Points
Business	Proposer's and subcontractors' financial background and stability, including past claims and suits.	4 points
Change Orders/Fairness	Change Order record of fairness	4 points
HUB	HUB participation.	8 points
Total		100 points

3.4. **Award of Contract --** After the evaluation process of the proposals, an award will be made in the form of an executed contract between TSTC and the selected vendor of award. TSTC reserves the right to the method of evaluation and award, and reserves the right to reject any or all proposals, or waive irregularities it deems necessary. TSTC intends to negotiate and award an agreement with the vendor submitting the proposal TSTC determines best meets TSTC's requirements and is considered to be the best value overall.

4. **RFP Conditions**

4.1. **Exhibits --** Anything related to this RFP shall comply with the documents listed below:

4.1.1. Agreement between Owner and Contractor

4.1.2. 2011 Uniform General and Supplementary General Conditions for Texas State Technical College Building Construction Contracts

4.1.3. TSTC's HUB Policy

4.1.4. HUB Subcontracting Plan

4.1.5. Bid Proposal Form

4.2. **Right to Reject --** This RFP does not commit TSTC to select a Proposer or to award a Contract to any Proposer. TSTC reserves the right to accept or reject, in whole or in part, any Proposal it receives pursuant to this RFP.

4.3. **Right to Modify, Rescind, or Revoke RFP --** TSTC reserves the rights to modify, rescind, or revoke this RFP, in whole or in part, at any time prior to the date on which the authorized representative of TSTC executes a Contract with the Selected Proposer.

- 4.4. **Compliance with RFP Requirements** -- By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. TSTC, at its sole discretion, may disqualify a Proposal from consideration, if TSTC determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.
- 4.5. **Binding Effect of Proposal** -- Unless otherwise agreed in writing and signed by an authorized agent of TSTC, each Proposer agrees to and shall be bound by the information and documentation provided with the Proposal, including prices quoted for Services.
- 4.6. **Signature, Certification of Proposer** -- The Proposal must be signed and dated by a representative of the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the Proposal. Each Proposer submitting a Proposal certifies to both (a) the completeness, veracity, and accuracy of the information provided in the Proposal and (b) the authority of the individual whose signature appears on the Proposal to bind the Proposer to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be automatically disqualified.
- 4.7. **Risk of Loss, Damage, Delay** -- Proposer acknowledges and agrees to release and hold harmless the TSTC System, its campus components, Board of Regents, officers, employees, agents, and personnel, from and against any and all claims, liability, damages, and costs, including court costs and attorneys' fees, arising out of or pursuant to delivery of the Proposal or failure to deliver the Proposal to the Purchasing Office at TSTC, as designated in this RFP.
- 4.8. **Ownership of Proposals** -- All Proposals become the physical property of TSTC upon receipt.
- 4.9. **Use, Disclosure of Information** -- Proposer acknowledges that TSTC is an agency of the State of Texas, and is therefore required to comply with the Texas Public Information Act, Tex. Government Code Ch. 552. If a Proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer must specifically label such data, secrets, or information as follows: "**PRIVILEGED AND CONFIDENTIAL -- PROPRIETARY INFORMATION.**" To the extent permitted by law, information labeled by the Proposer as proprietary will be used by TSTC only for purposes related to or arising out of the (a) evaluation of Proposals, (b) selection of a Proposer pursuant to the RFP process, and (c) negotiation and execution of a Contract, if any, with the Proposer selected.
- 4.10. **Public Disclosure** -- All information, documentation, and other materials submitted in response to this solicitation are considered and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after the solicitation is completed.

Please contact Jerry Sorrells by email at Jerry.Sorrells@systems.tstc.edu for requests.

- 4.11. **Costs of Participation --** TSTC specifically disclaims responsibility, and/or liability, for all costs, expenses, or claims related to or arising out of the Proposers participation in this RFP process, including but not limited to costs incurred as a result of preparing, copying, shipping, presenting, and/or clarifying the Proposal and the information relevant to the Proposal.
- 4.12. **Compliance with Applicable Laws, Regulations, Ordinances, Board of Regents Policies, University Policies and Procedures --** By submitting a Proposal, the Proposer agrees to, and shall comply with all applicable local, state and federal laws and regulations, as well as with all applicable policies and procedures of the Texas State Technical College System. System policies and procedures may be accessed at the following Internet address: <http://www.tstc.edu>
- 4.13. **Rescission of Proposal --** A Proposal can be withdrawn from consideration at any time prior to expiration of the deadline for proposals, as stated in this RFP, pursuant to a written request sent to the Procurement Office Attn: Melissa Warren.
- 4.14. **Request for Electronic Copy --** A Proposer may request an electronic copy of the RFP from TSTC, pursuant to a written request sent to the Procurement Office Attn: Melissa Warren.
- 4.15. **Request for Clarification by TSTC --** TSTC reserves the right to request clarification of any information contained in a Proposal.
- 4.16. **Safety --** Contractor must comply with all applicable safety regulations, including but not limited to, the TSTC Waco, College Operating Procedure (9.16) Contractor Safety. The "COP" may be downloaded or viewed at this electronic link: <http://iam.tstc.edu/users/cop/COP9.16-01-13-03.pdf>
- 4.17. **Contract Award --** A response to the solicitation is an offer to contract with Texas State Technical College based on the terms and conditions contained therein. RFP's do not become contracts and are not binding until a written contract, signed by authorized College administrator and authorized personnel of the awarded vendor pursuant to this RFP.
- 4.18. **Submitted Responsive Documents --** The RFP and submitted responsive documents, or portions of each, and at the College's sole discretion, may become incorporated by reference and a part of the written contract and will be binding on both the College and the Proposer after execution of the contract by both parties.
- 4.19. **Compliance with Laws --** The services provided and all representations in the RFP response must be such that they are or would be in conformity with all federal, state, county and local laws, regulations, rules, and orders. Upon request, the Proposer shall furnish to TSTC certificates of compliance with all such laws.
- 4.20. **Taxes --** TSTC is tax exempt as a governmental subdivision of the State of Texas under Texas Tax Code Section 151.

- 4.21. **Ethics Conduct** -- Any direct, or indirect, actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify vendors and contractors from current and future consideration for participation in TSTC orders and contracts.
- 4.22. **Bond Requirements** -- A Bid/Proposal Bond is required for this project. Said bid bond shall be provided through an appropriate surety agent as outlined in the Bid Bond Proposal Exhibit in an amount not less than two percent (5%) of the greatest total amount of the bid or proposal, as a guarantee of the bid or proposal. A cashier's check for the bid/proposal bond amount may be provided in lieu of a bid/proposal bond.

2011 Uniform General and Supplementary General Conditions
For
Texas State Technical College Building 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 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.2 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.3 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant to Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.4 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractors' and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.5 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other Close-Out documents required by the Contract Documents.
- 1.6 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.

- 1.7 *Close-Out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.8 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.9 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.10 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.11 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.12 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.13 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.14 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.15 *Construction Manager-at-Risk*, in accordance with Tex. Educ. Code § 51.782, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.16 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.17 *Day* means a calendar day unless otherwise specifically stipulated.
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- 1.18 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Educ. Code § 51.780.
- 1.19 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.20 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.21 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.22 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.23 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.24 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.25 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.
- 1.26 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.27 *Project* means all activities necessary for realization of Owner's desired building or other structure, including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, work by Owner's forces and/or other contractors, and fulfillment of all Contract and warranty obligations.
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- 1.28 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change, including Contractor's response of pricing for the proposed change.
- 1.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor before Final Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders, and posting and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.34 *Schedule of Values* means the detailed breakdown of the cost of materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.35 *Shop Drawings* mean the drawings, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.36 *Site* means the geographical area of the location of the Work.
- 1.37 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.38 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.

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

Article 2. Wage Rates and Other Laws Governing Construction

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

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

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

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

2.2.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification. Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case shall any worker be paid less than the wage indicated for laborers.

2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60.00) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule.

2.2.3 Complaints of Violations.

2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Chapter 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

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

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

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

2.5 Royalties, Patents and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specification 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 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 the Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items

qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

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

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

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

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

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

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

3.1.3 Owner Supplied Materials and Information.

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

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

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

3.1.5 Limitation on Owner's Duties.

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

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

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

Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal or replacement of Work.

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

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

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

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

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

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

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

Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility and general character of the Site and/or building.

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, Division 1 of the Specifications and other provisions of the Contract, as well as outlined in the pre-construction conference.

3.3.1.1 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 and 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 Contract Documents.

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

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

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

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

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

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

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

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

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

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

3.3.11 Indemnification of Owner. **Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS Owner and the elected and appointed officials, employees, directors, volunteers, and representatives of Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to personal or bodily injury, death, or property damage, made upon Owner directly or indirectly arising out of, resulting from, or related to Contractor's activities under this Contract, including any acts or omissions of Contractor or any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and**

representatives while in the exercise of the performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, its officers or employees, separate contractors or assigned contractors, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

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

3.3.12 Ancillary Areas. Contractor shall operate and maintain operations and associated storage areas at the Site of the Work in accordance with the following:

3.3.12.1 All Contractor operations, including storage of materials and employee parking upon the Site of Work shall be confined to areas designated by Owner.

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

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

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

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

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

3.3.15 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to the Site, integration of activities within Contractor's Work Schedule, and Project information as requested.

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

Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

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

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

4.1.2 A Contractor who contracts with the State in an amount of \$100,000.00 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.

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

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

Article 5. Bonds and Insurance

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

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

5.1.1.1 A performance bond is required if the Contract Sum is in excess of One Hundred Thousand Dollars (\$100,000.00). The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

5.1.1.2 A payment bond is required if the Contract price is in excess of Twenty-Five Thousand Dollars (\$25,000.00). 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 is Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner but is unable 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 before execution of a Construction Manager-at-Risk or Design-Build Contract.

5.1.3.2 Payment and performance bonds are due before execution of a contract on competitively bid or competitively sealed proposal projects or before execution of a GMP proposal on Construction Manager-at-Risk projects or Design-Build 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 thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OF PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

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 Twenty-Five Thousand Dollars (\$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 U.S. Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.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 required insurance shall include coverage for Owner's property prior to construction, during construction and during the warranty period. 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, consistent with its status as an independent 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 Owner's 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. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated by any means deemed appropriate by Owner.

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

5.2.2.1 Insurance Coverage Required.

5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:

\$1,000,000.00 each accident;

\$1,000,000.00 disease each employee; and

\$1,000,000.00 disease policy limit.

Policies must include (a) Other States Endorsement to include Texas if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

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

\$1,000,000.00 per occurrence;

\$2,000,000.00 general aggregate;

\$2,000,000.00 products and completed operations aggregate; and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall name Owner as an additional insured with a waiver of subrogation, and shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per project) or its equivalent.

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

5.2.2.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials, 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 \$1,000,000.00 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:

\$1,000,000.00 each accident;

\$1,000,000.00 disease each employee; and

\$1,000,000.00 disease policy limit.

If this Contract is for asbestos abatement only, the All-Risk Builder's Risk or All-Risk Installation Floater is not required.

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

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

5.2.2.1.5 All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the Project involves solely the installation of equipment). Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials with no exclusion for testing. If Builder's Risk, limit shall be equal to 100 percent of the Contract. If Installation Floater, limit shall be equal to 100 percent of the contract cost. Sublimits shall include Debris Removal, Ordinance or Law, Pollution Clean-up, Interior Water Damage, Sewer Back-up and Collapse Coverage, including any delay in completion due to a covered loss, including but not limited to earnings, interest expense, advertising and promotion expense, consultant fees, legal and accounting fees and insurance premiums. The policy shall be written jointly in the names of the Owner, the Contractor,

Subcontractors and, Subcontractors shall be named as additional insured. The policy shall have endorsements as follows:

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

5.2.2.5.1.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.

5.2.2.5.1.3 Loss, if any, shall be adjusted with and made payable to the Owner as Trustee for the insureds as their interests may appear; the right of subrogation under the Builder's Risk policy shall be waived as to the Owner. The Owner shall be named as Loss Payee. For renovation projects or projects that involve portions of work contained within an existing structure, refer to Special Conditions for possible additional Builder's Risk insurance requirements.

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

If the Contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required.

5.2.3 Policies must include the following clauses, as applicable:

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

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

5.2.3.3 The 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 the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.

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

5.2.4 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract, at the 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, the Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the Subcontractors are included as additional insureds and that Contractor agrees to provide Workers' Compensation for the Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

5.2.5 Workers' Compensation Insurance Coverage must meet the statutory requirements of Tex. Lab. Code, §401.011(44), and those specific to construction projects for public entities as required by Tex. Lab. Code, §406.096.

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

6.1 Drawings and Specifications.

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

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

6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complementary, 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 installation); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.

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

6.1.6 Discrepancies and Omissions in Drawings and Specifications.

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

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

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

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

6.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies,

errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.

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

6.1.6.7 Owner does not warrant or make any representations as to the accuracy, suitability, or completeness of any information furnished to Contractor by Owner or its representatives.

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, and shall 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. Contractor shall provide Owner and A/E access to these documents at their request.

6.2.2 Maintain the Record Documents which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order, or otherwise. Contractor shall make available the Record Documents and 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 Records 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 catalogue, wiring diagrams, spare parts, specified service warranties, and like publications, and parts for all installed equipment, systems, and like items as described in the Contract Documents.

6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy in a format acceptable to the ODR

of all Record Documents, unless otherwise specified 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. Contractor shall maintain a complete file of MSDSs for all materials in use on the 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. Contractor shall:

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. Contractor shall:

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 fatality or three 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, findings 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 the 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 Contractor shall 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 and 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, Contractor shall complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, Contractor shall 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 by the Contract Documents.

8.2.2 Contractor shall provide the following testing as well as any other testing required of Contractor by the Specifications:

8.2.2.1 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.

8.2.2.2 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.

8.2.2.3 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.

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

8.2.3 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.

8.2.4 Noncompliance (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:

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

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

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

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

8.2.4.5 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.

8.2.4.6 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 noncompliant work or material.

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

8.2.6 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.

8.2.7 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 of approval will be returned without review or comment. Any delay resulting from Contractor's failure to certify approval of the Submittal 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 from A/E and Owner. The Submittal Register shall indicate the projected dates for procurements 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, and must show and allow a minimum of fifteen (15) days duration after receipt by A/E and ODR for review and approval. If re-submittal is required, an additional fifteen (15) day minimum review time is allowed. Contractor will 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, and not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Contractor will revise and/or update both schedules monthly to ensure consistency and current Project data. Contractor will provide to ODR the updated Submittal Register and Work Progress Schedule with each application for progress payment, and will 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, catalogue numbers and similar data, and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous and written manner on the submittal transmittal and at the time of submission, 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, and 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. Contractor shall construct all such Work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

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

8.3.5.1 The Contract Documents do not require extensive revisions; and

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

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

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

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

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

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

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

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

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

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

8.3.6 Unauthorized Substitutions at Contractor’s Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse

Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

8.4 Field Mock-Up.

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

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

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

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

8.5 Inspection During Construction.

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

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

8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not 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 or as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, 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 Conditions, Special Conditions and Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit tier 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 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.

Note: This article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design-Build contracts are outlined in Division 1 Project Planning and Scheduling Specifications.

9.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and 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 the 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 the original schedule as Baseline Schedule, and shall 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. The Work Progress Schedule must 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 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 are for the information of Owner and to demonstrate that Contractor has complied with the 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 otherwise indicated 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. Before Contractor uses any portion of the float, Contractor

must submit a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.

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 The expedited delivery of materials; and/or

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 extensions 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 measure 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's Substantial Completion date(s).

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

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

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

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

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

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

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

9.6.3 Contractor’s relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor’s schedule. In the event that Contractor incurs additional 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. An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work, regardless of the extent or frequency of Owner's exercise of such rights or remedies.

9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay or 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 or delay, only one notice of claim is necessary. Contractor shall 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 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 bond. Those obligations remain in full force until 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 and 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's request for a time extension shall be deemed rejected by Owner.

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 may 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, Contractor will 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. Contractor shall make the worksheets available to ODR at the time of Contract execution. Thereafter, Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

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

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

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

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

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

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

10.2.1.5 Construction payment affidavit.

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

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

10.3 **Owner's Duty to Pay.** Owner has no duty to pay 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 has maintained and updated the Record Documents kept at the Site.

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 percent (85%) 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 percent (5%) of the total earned amount, the amount authorized by law, or as otherwise

set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformity with Tex. Gov't Code, Chapter 2252, Subchapter B.

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

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

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

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

10.3.3.1 Defective or incomplete Work not remedied;

10.3.3.2 Damage to Work of a separate Contractor;

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

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

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

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

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

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

10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final

acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.

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

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

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

10.4.3 Contractor must 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, Contractor must abide by the following conditions unless otherwise agreed 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 Texas State Technical College 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 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 those materials 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 locations.

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

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

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

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

10.6.2 The appropriate share is overdue on the eleventh (11th) day after the date the 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 the Vice President of Administrative and Financial Services, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or 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. The Vice President of Administrative and Financial Services 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 and without approval of Contractor's Surety, 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 ULCO.

11.1.2 Owner and Contractor acknowledge and agree that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections and that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner, therefore, any minor errors, omissions or imperfections in the Specifications or Drawings, or any changes in or additions to the Specifications or

Drawings to correct minor errors or omissions or the Work ordered by Owner 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. However, should the nature of the errors or omissions necessitate substantial changes in the Work such that a Change Order is appropriate, Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The sum established in any Change Order, 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 for the changes in the Work described in the Change Order, as permitted under Tex. Gov't Code, Chapter 2260.

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

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

11.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of said 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 in setting the unit prices 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 wished to make a claim for an increase in the Contract Sum not related to a requested change, it shall give to Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event or discovery of any conditions

giving rise to such claim. Contractor must notify Owner and A/E before proceeding to execute any Work considered to add 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, and failure to provide the required notice will invalidate any subsequent notice or claim for additional cost or time from Work. 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 the 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 Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on the 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 character are disclosed differing materially from the conditions inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make 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 Proposed Change Order (PCO) form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

11.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.

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

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

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

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

11.8.1 For Work performed by its forces, Contractor will be allowed its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for workers' compensation and comprehensive general liability insurance, plus its actual 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. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens, and general Home Office expenses, and no separate allowance will be made therefor.

Allowable percentages for overhead and profit on changes will not exceed fifteen percent (15%) if the total of self-performed Work is less than or equal to \$10,000, ten percent (10%) if the total of self-performed Work is between \$10,000 and \$20,000, and seven and one half percent (7 ½%) if the total of self-performed Work is over \$20,000, for any specific change priced.

11.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as describe above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost to Contractor will be allowed to add a maximum mark-up of ten percent (10%) if the total of all subcontracted Work is less than or equal to \$10,000, seven and one half percent (7 ½%) if the total of all subcontracted Work is between \$10,000 and \$20,000, and five percent (5%) if the total of Subcontractor Work is over \$20,000.

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

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

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

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

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

11.11 Finality of Changes – Owner. All Change Orders are subject to audit by Owner or its representative at any time in accordance with Article 16.4 and Change Order amounts may be adjusted lower as a result of such audit.

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 catalogue, 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 its delegate. If ODR concurs with the determination of Contractor and A/E 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, insurance and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to Final Inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.

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

12.1.2.1 Contractor will correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the Parties, Contractor will complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, Contractor will 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 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 limitations as determined by Owner.

12.1.4 Purpose of Inspection. Inspection is to determine 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 indentify 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 of 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 costs 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 or notice.

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, insurance and maintenance. Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as not to 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 Document, Contractor shall submit a certified Application for Final Payment to 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 a 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 or will be paid after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of a 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 the Contractor with corrections for action and resubmission; or 2) accept it, note A/E's approval, and send the approved Application for Final Payment 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 deduction, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first

(21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.

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

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

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

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

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

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

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

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

Article 13. Warranty and Guarantee

13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the

Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E, or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

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

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

13.3.1 Modification of 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 Work that is not in accordance with the Contract Documents or will constitute 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 Certificate of Substantial Completion.

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 Contract 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/or its 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 duties are non Asbestos Containing Building Materials (ACBMs). This certification must be provided no later than Contractor's Application for Final Payment.

Article 14. Suspension and Termination

14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, 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 for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and 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 sixty (60) 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, will remain suspended and the date on which the suspension of Work will cease.

14.3 Termination by Owner for Cause.

14.3.1 Upon thirty (30) days 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 with 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, or material suppliers pursuant to Tex. Gov't Code, Chapter 2251;

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

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

14.3.1.8 Any material breach of the Contract; or

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

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

14.3.3 Upon receipt of a termination notice, Contractor or its Surety has thirty (30) days to cure the reason(s) for the termination or demonstrate to the satisfaction of Owner that Contractor is prepared to remedy the condition(s) upon which the notice of termination was based with diligence and promptness. If Owner is satisfied that Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by Owner and the Work shall continue without an extension of time.

14.3.4 If, at the conclusion of the thirty (30) day cure period, Contractor or its Surety is unable to demonstrate to the satisfaction of Owner Contractor's ability to remedy the reason(s) for the termination, Owner may immediately terminate the employment of Contractor, make alternative arrangements for completion of the Work, and deduct the cost of completion from the unpaid Contract Sum.

14.3.4.1 Owner's cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.

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, in which case 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 notices, Contractor shall promptly take all steps necessary to effect such assignment(s).

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 notify Contractor and A/E in writing specifying the reason for and the effective date of the Contract termination. The 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 dispute 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 appropriate 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 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 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 unilaterally determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 15. Dispute Resolution

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

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

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

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

Article 16. Miscellaneous

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

16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State of Texas. Supplementary General Conditions may expand upon matter 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 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, amendments, Change Orders and other administrative activities.

16.3.1 Accessibility and Administration.

16.3.1.1 When used, Owner will make the software available 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 Right to Audit.

16.4.1 Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, Owner, any successor agency and their representatives, including independent auditors, to conduct an audit or investigation in connection with these funds. Contractor further agrees to cooperate fully with any party conducting the audit or investigation, including providing all records requested.

16.4.2 Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract were expended in accordance with the terms of this Contract, the requirements of Owner, and with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and Owner's property for a period of four (4) years after the date of submission of a request for Final Payment or until a resolution of all billing questions, whichever is

later. Contractor shall make available at reasonable times and upon reasonable notice and for reasonable periods all documents and other information related to the Work of this Contract.

16.4.3 Contractor shall ensure that this clause concerning the authority to audit funds receive indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

END OF UNIFORM GENERAL CONDITIONS



**AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

CONTRACT NO. 131114A

This Agreement is made the XXth day of January, in the year 2014, by and between XXXX, hereinafter called the Contractor, and Texas State Technical College (TSTC), an institution of higher education and an agency of the State of Texas, hereinafter called the Owner.

WITNESSETH, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK: The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled “Kultgen Automotive Technology Center Renovations 2013” in Waco, Texas” (Project No. 131114A). The Construction Drawings and Specifications were prepared for TSTC by Parkhill Smith and Cooper. TSTC’s Uniform General Conditions (UGC) are incorporated by reference for all purposes, and attached hereto as **Exhibit 1**. The Contractor shall do everything required by this Agreement, the Uniform General Conditions, the Special Conditions, the Addenda, the Specifications, the Drawings, the Proposal (attached as **Exhibit 2**, including any unit prices stated therein), and the Historically Underutilized Business (HUB) Subcontracting Plan (attached as **Exhibit 3**.)

The Specifications and Drawings will be provided by:

Jamie Zavodny
PARKHILL SMITH & COOPER
3812 Aqua Lane
Round Rock, Texas 78681
Email: jamie.zavodny@team-psc.com
Work: 512-739-9344

ALTERNATES: The following Alternate Proposals, fully described in the Specifications, are included as a part of this Contract: NONE

ARTICLE 2. TIME OF COMPLETION: The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work within XXXX(#####) calendar days after such commencement date; as such completion date may be extended by approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 3. THE CONTRACT SUM: The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of XXXXXXXX Dollars and ## Cents (\$#####), and make payment on account as hereinafter provided.

ARTICLE 4. HUB SUBCONTRACTING PLAN: The Owner has adopted a Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plan submitted with Contractor's Proposal and attached as **Exhibit 3**. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 5. DEFAULT: Owner may, by written notice of default to the Contractor terminate this Agreement, in whole or in part, for cause if the Contractor fails to perform in full compliance with the contract requirements, through no fault of Owner. Owner will provide a thirty (30) day written notice of termination to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and Owner will provide the Contractor with an opportunity for consultation with Owner prior to termination.

ARTICLE 6. LIQUIDATED DAMAGES: For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of Five Hundred Dollars (\$500.00) will be deducted from the money due or becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 7. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK:

The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos)

Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection)

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 8. INDEPENDENT CONTRACTOR: Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

ARTICLE 9. INSURANCE: The Contractor shall procure and maintain, at its expense, during the term of the contract or any extensions thereof, insurance as listed below. Insurance shall be written by companies acceptable to Owner and authorized to do business in the State of Texas. Policies shall include terms and provisions indicated below. The Contractor shall provide and furnish evidence of the following insurance:

Workers Compensation – Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) annual aggregate;

Business Automobile Liability Insurance - Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence;

Comprehensive General Liability - Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate.

Contractor shall obtain and maintain in full force at all times during the term of this contract insurance coverage naming the State of Texas, acting through Texas State Technical College Waco, as an additional insured and loss payee on its policies described above.

Each policy of required insurance shall provide for ten (10) days written notice of cancellation to Owner and include the following provisions: "It is a condition of this policy that the Company shall furnish written notice to Texas State Technical College Waco, 3801 Campus Drive, Waco, Texas 76705 ten (10) days in advance of any reduction in, or cancellation of this policy."

Insurance shall be effective and evidence of acceptable insurance furnished to Owner prior to commencing any operations under this Agreement.

ARTICLE 10. BONDS: Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, *Texas Government Code*.

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.

Contractor shall provide Performance and Payment bonds before the execution of this Agreement. Such bonds shall be in the amount of Sixty-Nine Thousand, Nine Hundred and Sixty Five Dollars and Zero Cents (\$69,965.00). 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.

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.

ARTICLE 11. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the specified grant, loan or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Background Checks. Contractor is required to do a Department of Public Safety background check on each and every person on the project site. The Contractor also ensures that any employees or assigns that are noted on the Department of Public Safety background reporting are in compliance with federal laws and the laws of the State of Texas.

Access and Identification. All personnel, while on the project site, must have all of the following:

1. A valid State of Texas ID or driver's license.
2. A photo ID bearing:
 - a. the name of the company for which the individual works,
 - b. the individual's name,
 - c. a recent photo of the individual.

Sexual Offender Search. TSTC recognizes that some sexual offenders, after having served their sentence, are no longer considered to be a threat to society, and the State of Texas has approved them to work in Higher Educational environments. The Respondent ensures that it, and all of its subcontractors and assigns that will be on TSTC property have been searched on the Texas Public Sex Offender Registry. The Contractor also ensures that any employees or assigns that are on the Texas Public Sex Offender Registry or any other state or federal sexual offender registry are in compliance with federal laws and the laws of the State of Texas regarding sexual offenders. The Texas Public Sex Offender Registry website is: <https://records.txdps.state.tx.us/SexOffender>. The National Sex Offender Public Website is: <http://www.nsopw.gov/>. Any employees, subcontractors, or assigns that are shown on the sexual offender registries must be documented. Documentation shall include explanation and verification of any employees, assigns or subcontractors that appear on the sexual offender lists; and show that those on the lists have met the requirements of the State of Texas to work on the property of higher education facilities.

Eligibility Certification. Pursuant to Section 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

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 this 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.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a

document, will have the same effect as physical delivery of the paper document bearing the original signature.

Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

Conflict of Interest. Contractor certifies that no member of the Board of Regents of Texas State Technical College, the Owner, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

Antitrust. Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this contract.

Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand TSTC's Conflicts of Interest Policy available at <http://iam.tstc.edu/users/cop/COP2.48-12-10-07.pdf> and http://www.system.tstc.edu/governance/sos/hr/HR_2_1_12.pdf, and applicable state ethics laws and rules available at <http://www.utsystem.edu/ogc/ethics/statelaws.htm>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause TSTC employees to violate TSTC's Conflicts of Interest Policy or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

ARTICLE 12. INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS AND EMPLOYEES, AND TEXAS STATE TECHNICAL COLLEGE WACO, THE TEXAS STATE TECHNICAL COLLEGE SYSTEM, IT OFFICERS, REGENTS, EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS STATE TECHNICAL COLLEGE WACO.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TEXAS STATE TECHNICAL COLLEGE WACO OR TEXAS STATE TECHNICAL COLLEGE SYSTEM FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSION OF TEXAS STATE TECHNICAL COLLEGE WACO, TEXAS STATE TECHNICAL COLLEGE SYSTEM OR ITS EMPLOYEES.

ARTICLE 13. BREACH OF CONTRACT CLAIMS:

- a. **To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor:**
 - i. **Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary**

course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Contract. Contractor's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that Owner allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of Owner, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Contractor in accordance with the notice provisions in this Contract, shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.

- ii. If the parties are unable to resolve their disputes under subparagraph (a.) of this section, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by Owner.
- iii. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (1) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (2) Owner has not waived its right to seek redress in the courts.

- b. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. Owner and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

ARTICLE 14. TEXAS PUBLIC INFORMATION ACT: Notwithstanding any provisions of this Agreement to the contrary, the Contractor understands that Owner will comply with the Texas Public Information Act, Chapter 552, *Texas Government Code*, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Owner agrees to notify Contractor of a request for information related to Contractor's work under this Agreement. The Contractor will cooperate with Owner in the production of documents responsive to the request. The Contractor may request that Owner seek an opinion from the Attorney General of the State of Texas. However, Owner will not honor Contractor's request for an opinion if the request is not based upon a reasonable interpretation of

the Texas Public Information Act. Additionally, the Contractor will notify Owner's General Counsel of receipt of any third party requests for information that was provided by the State of Texas for use in conducting this Agreement. This Agreement and all data and other information generated or otherwise obtained in the performance of its responsibilities under this Agreement may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

BY SIGNING THE SIGNATURE PAGE BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

SAMPLE



SIGNATURE PAGE

(SEAL)

ATTEST:

By: _____
(original signature)

(name and title printed)

Date: _____

CONTRACTOR:

By: _____
(original signature)

(name and title printed)

(company name printed)

Date: _____

CONTENT PREPARED BY:

By: _____
(original signature)

Name: Wm. Brian Pollard
Title: Director of Facilities Planning and
Construction, TSTC Waco

Date: _____

TSTC:

By: _____
(original signature)

Name: Kevin Dorton
Title: Vice President of Administrative
Services, TSTC Waco

Date: _____

FORM APPROVED:

By: _____
(original signature)

Susan Shafer
Associate General Counsel
Texas State Technical College Waco

Date: _____

DOCUMENT 00410

PROPOSAL FORM

Date: _____ 20 _____

TEXAS STATE TECHNICAL COLLEGE WACO

3801 CAMPUS DRIVE

WACO, TEXAS 76705

Dear Madam:

The undersigned, having carefully examined the specifications, drawings, and related documents entitled:

KULTGEN AUTOMOTIVE TECHNOLOGY CENTER RENOVATIONS 2013

3801 CAMPUS DRIVE, WACO, TEXAS

all as prepared by Parkhill, Smith & Cooper, Inc., 1700 W. Wall, Suite 100, Midland, Texas 79701, as well as having attended a pre-proposal conference and made an on-site inspection of the premises and all other conditions affecting the cost and/or execution of the work, proposes to furnish all materials, labor, and equipment necessary to complete the work in accordance with said documents, of which this proposal is a part, for the following sum:

I. TOTAL PROPOSAL: _____ Dollars (\$ _____)

(Note: All amounts shall be shown in both written and figure form. In case of discrepancy between the written amount and the figure, the written amount will govern. For alternates, check whether it is an add, deduct or no change.)

We have included, in the Proposal sum, all applicable taxes and all material and contingency allowances described in Section 01200 – PRICE AND PAYMENT.

The undersigned acknowledges receipt of ____ addenda to the Drawings and Project Manual as follows:

No.	Date	No.	Date	No.	Date
-----	------	-----	------	-----	------

No.	Date	No.	Date	No.	Date
-----	------	-----	------	-----	------

(The Proposer is to fill in I.D. Number and date of each thereby acknowledging receipt of Addenda).

If awarded the contract, the undersigned agrees to commence work under this contract on or before January 6, 2014 and to substantially complete the project within _____ (Proposer to fill in days) calendar days from said commencement date, unless modified by change order.

Proposer agrees to pay the Owner \$100.00 per day, as liquidated damages, for each day the substantial completion of this project extends beyond the stipulated substantial completion date.

If notified of the acceptance of this proposal within thirty (30) days of the time set for the opening of proposals, proposer agrees within ten (10) days of notification, to execute a contract in the form of the AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum, as amended for the above work, for the above stated compensation.

PROPOSAL SECURITY, as defined in the Advertisement For Proposals, which the Undersigned agrees to disposition of, as stated in Advertisement For Proposals and Instructions to Proposers, is attached to this Proposal.

ATTACHMENTS

In accordance with Instructions to Proposers, the following documents will be submitted within 24 hours of Proposal opening and made a condition of the Proposal:

Proposal security in form of _____

Proposer's qualifications statement and supporting data.

The following documents included in the Appendix of Document 00430 - Proposal Form Supplements is attached to and made a condition of the Proposal:

Appendix A - List of HUB Contractor/Subcontractors: Include names of all Contractor/Subcontractors and portions of the Work each Contractor/Subcontractor will perform.

Respectfully Submitted,

By: _____

Title: _____

Business Address with Zip Code

(SEAL: If Proposal is
by Corporation)

Telephone Number with Area Code _____

FAX Number with Area Code _____

Fill in the applicable information:

A Corporation, chartered in the State of _____.

Authorized to do business in the State of Texas.

A Partnership, composed of _____, and
_____ and _____.

An Individual operating under the name of _____.

Corporate Seal:

END PROPOSAL FORM



Facilities Planning and Construction
3801 Campus Dr. | Building 3701 | Waco, TX 76705
254.867.3704
800.792.8784
www.tstc.edu

POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)

In accordance with the Texas Government Code, Sections 2161.181-182 and Section 111.11 of the Texas Administrative Code (TAC), The Board of Regents of the Texas State Technical College shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The Texas Building and Procurement Commission (TBPC) HUB Rules 1 TAC Sections 111.11-111.28, encourage the use of HUBs by implementing these policies through race-, ethnic- and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- **11.9% for heavy construction other than building contracts;**
- **26.1% for all building construction, including general contractors and operative builders contracts:**
- **57.2% for all special trade construction contracts;**
- **20% for professional services contracts**
- **33% for all other services contracts, and**
- **12.6% for commodities contracts.**

Texas State Technical College shall make a good faith effort to meet or exceed these goals to assist HUBs in receiving a portion of the total contract value of all contracts that Texas state Technical College expects to award in a fiscal year. Texas State Technical College may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F.

HUB Subcontracting Plan

In accordance with Government Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit a State of Texas HUB Subcontracting Plan (HSP) within 24 hours of their solicitation response.



HUB SUBCONTRACTING PLAN (HSP)

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

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to 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 State of Texas Disparity Study. The HUB goals defined in 1 TAC §20.13 are: *11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.*

-- Agency Special Instructions/Additional Requirements --

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Solicitation #: _____

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- Yes, I will be subcontracting portion(s) of the contract.
 (If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.
 (If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1) -	(#11) -
(#2) -	(#12) -
(#3) -	(#13) -
(#4) -	(#14) -
(#5) -	(#15) -
(#6) -	(#16) -
(#7) -	(#17) -
(#8) -	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

*If you have more than twenty subcontracting opportunities, a continuation page is available at http://www.window.state.tx.us/procurement/prog/hub/hub-forms/hsp_sep06_cont1.doc

Texas State Technical College – Waco

Enter your company's name here: _____ Solicitation #: _____

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.window.state.tx.us/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # _____ Description: _____

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmb/hub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	____%	\$ _____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*
_____	_____	____%	\$ _____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

Enter your company's name here: _____ Solicitation #: _____

SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

- Yes If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

- No If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

SECTION 10 - 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 are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- 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 to be performed and must provide documents regarding staff and other resources.

Signature Printed Name Title Date