



UNIFORM GENERAL CONDITIONS

TEXAS DEPARTMENT of TRANSPORTATION
125 E. 11th Street
Austin, Texas 78701

Support Services Division
Facilities Planning & Management Section
6230 East Stassney Lane
Austin, Texas 78744

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Article 1 General Definitions

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

- 1.1 **Addendum** means a change in proposal forms developed between advertising and bid submittal deadline. Addenda will be issued only by TxDOT and must be acknowledged by a bidder for his proposal to be publicly read.
- 1.2 **Advertisement** means the public announcement for work to be performed or materials to be furnished. The public announcement will be via the Electronic State Business Daily (ESBD) web site operated and maintained by the State acting through the Texas Comptroller of Public Accounts. (<http://www.txsmartbuy.com/sp>)
- 1.3 **Apparent Low Bidder** means the Bidder determined to have the numerically lowest total bid as a result of tabulation of bids by TxDOT.
- 1.4 **Architect/Engineer (A/E)** means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by TxDOT or Contractor to provide professional architectural and/or engineering services and to exercise overall responsibility for the design of a Project or a portion thereof, and to perform contract administration responsibilities as set forth in the Contract Documents.
- 1.5 **Authorization to Begin Work Letter** means the letter issued by TxDOT authorizing the Contractor to begin work in accordance with the provisions of the Contract and establishing the date stated in the Contract for completion of the Work, or establishing the beginning date time charges will commence for computing Contract Time for completion of the Work.
- 1.6 **Award** means the Commission's authorized representative's written acceptance of the Bidder's bid for a proposed Contract that authorizes TxDOT to enter into a Contract.
- 1.7 **Bid** means the offer of a Bidder for performing the Work described in the Contract Documents including any changes made by addendum.
- 1.8 **Bid Bond** means the security executed by the Bidder and the Surety furnished to TxDOT to guarantee payment of liquidated damages if the Bidder fails to enter into an awarded Contract.
- 1.9 **Bid Error** means a mathematical mistake made by a Bidder in an item number price entered into the proposal.
- 1.10 **Bid Form** means **Proposal Form**.
- 1.11 **Bidder** means an individual, partnership, limited liability company, corporation or joint venture submitting a bid for a proposed Contract.
- 1.12 **Building Contract** means a contract entered under Transportation Code, Chapter 223, Subchapter A for the construction or maintenance of a Department building or appurtenant facilities and considered to be a Highway Improvement Contract as defined in Texas Administrative Code, § 9.11.
- 1.13 **Business Day** means Monday through Friday, 8 a.m. to 5 p.m. excluding state and federal holidays.
- 1.14 **Calendar Day** means any day including Saturdays, Sundays, and legal holidays.
- 1.15 **Certificate of Insurance** means a form approved by the Department covering insurance requirements stated in the Contract.
- 1.16 **Change Order** means TxDOT's written order to the Contractor detailing changes to the specified Work, item quantities, or any other necessary modification of the Contract, at TxDOT's sole discretion.

- 1.17 **Claim** means a claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the Contract.
- 1.18 **Commission** means the Texas Transportation Commission or authorized representative.
- 1.19 **Company** means the Bidder and/or Contractor.
- 1.20 **Contract** means the entire agreement between the Owner and the Contractor, including all of the Contract Documents, establishing the obligation of the parties for furnishing of materials and performance of the Work prescribed in the Contract Documents.
- 1.21 **Contract Documents** means the elements of the agreement (Contract) between the Owner and the Contractor. These include, but are not limited to, Bonds, Insurance, Plans, Shop Drawings, Specifications, Uniform General Conditions, Special Conditions, *Special Provisions*, *Special Specifications*, *Standard Specifications*, Change Orders, Bidding Documents, Advertisement, Bidder's Proposal, and all pre-bid addenda.
- 1.22 **Contractor** means the individual, company, partnership, limited liability company, corporation, or joint venture and all principals and representatives, jointly and severally, that are responsible for performance of a Contract awarded by TxDOT. In the event of termination for cause of a Contract with a Performance Bond the Surety becomes the Contractor.
- 1.23 **Contract Sum** means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.24 **Contract Time** means the period of time from the date computation of time charges begin as set forth in the Authorization to Begin Work letter to the date stated in the Contract for completion of the Work, or the number of calendar days allowed in the Contract for completion of the Work, plus any TxDOT approved extensions.
- 1.25 **Day** means a calendar day, unless otherwise specifically stipulated.
- 1.30 **Dispute** means a disagreement between TxDOT and the Contractor or its authorized successor over the interpretation of the Contract Documents.
- 1.31 **District Representative (DR)** means the individual identified by TxDOT who will assist the Project Manager; perform periodic observations of the Work for general compliance with the plans and specifications; be the point of contact for coordination with the end-user for Work being conducted on an operational site; and perform other duties as specifically defined elsewhere in the Contract Documents and/or reflected in the Pre-construction Conference meeting minutes.
- 1.32 **Drawings** mean the sealed product of the Architect and/or Engineer which graphically depicts the Work.
- 1.33 **Engineer** see **Architect/Engineer (A/E)**.
- 1.34 **Environmental Laws** means Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §9601 et seq.; the Toxic Substance Control Act ("TSCAS"), 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §9601, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §7401 et seq.; M.G.L. c. 21C and c. 21E; Texas Health and Safety Code Chapter 361; Texas Water Code Chapter 26; and any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now in effect, or that may hereafter apply, relating to environmental matters.
- 1.35 **Executive Director** means the executive director of the Texas Department of Transportation.
- 1.37 **Final Acceptance** means the date determined and certified by the Architect/Engineer and TxDOT on which the Work is fully and satisfactorily complete in accordance with the Contract subject to the expiration of all warranty periods or any other overriding provision of the Contract Documents.

- 1.38 **Final Completion** means the date determined and certified by the Architect and/or Engineer, if applicable, and TxDOT on which the Work to the best of their information, knowledge and belief is fully and satisfactorily complete in accordance with the Contract subject to the expiration of all warranty periods or any other overriding provision of the Contract Documents.
- 1.39 **Hazardous Materials** means (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "oils," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq.; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §9601, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §7401 et seq.; M.G.L. c. 21C and c. 21E; Texas Health and Safety Code Chapter 361; Texas Water Code Chapter 26; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now in effect, or that may hereafter apply, relating to environmental matters (collectively the "Environmental Laws"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and (E) asbestos.; and (iii) any materials that, prior to execution of the Contract, were not designated as hazardous materials that, after execution of the Contract, become new hazardous materials subject to regulation under the aforementioned "Environmental Laws" and any applicable federal, state, or local law, regulation or ordinance.
- 1.40 **Letting** means the receipt, opening and determination of the apparent low Bidder.
- 1.41 **Letting Official** means the Executive Director or any TxDOT employee empowered by the Executive Director to officially receive and close the receipt of bids at a letting.
- 1.42 **Owner** means the State of Texas acting through the Texas Department of Transportation (TxDOT).
- 1.43 **Payment Bond** means the security executed by the Contractor and the Surety, furnished to the TxDOT obligating the Surety to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- 1.44 **Performance Bond** means the security executed on a form provided by TxDOT by the Contractor and the Surety, furnished to TxDOT to guarantee the completion of the Work in accordance with the terms of the Contract.
- 1.47 **Plans** mean Drawings.
- 1.48 **Power of Attorney for Surety Bonds** means an instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- 1.49 **Prime Contractor** means Contractor.
- 1.50 **Project** means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.51 **Project Manager (PM)** means the individual identified by TxDOT who will be responsible for the general administration of the Contract; is the single point of contact between TxDOT and the Contractor; conveys all directives on behalf of TxDOT to the Contractor; decides all questions which may arise as to the quality or acceptability of materials furnished, work performed, and interpretations of the plans and specifications when such action is not a contravention of a design decision made by an Architect / Engineer in preparation of the plans and specifications or such action is in conflict with statutes under which the Architect or Engineer is licensed for the protection of the public health or safety; the manner of performance and rate of progress of the Work; and

acceptable fulfillment of the Contract on the part of the Contractor unless otherwise specifically defined elsewhere in the Contract Documents.

- 1.52 **Project Site** means the real property on which the demolition, improvements, alternations, etc. as described in the Contract Documents will be implemented.
- 1.53 **Proposal** means the offer of the Bidder submitted on the prescribed form giving a bid price for performing the Work described in the plans and specifications and all addenda issued.
- 1.54 **Proposal Form** means the forms printed by the Bidder from the Electronic State Business Daily (ESBD) website operated and maintained by the State acting through the Texas Comptroller of Public Accounts.
- 1.55 **Proposal Guaranty** means the security designated in the proposal and furnished by the bidder as a guaranty that the bidder will enter into an awarded contract.
- 1.56 **Request for Proposal (RFP)** means a document generated by TxDOT which informs the Contractor of a proposed change in the Work, and appropriately describes or otherwise documents such proposed change.
- 1.57 **Responsive Bid** means a proposal that meets all requirements of the proposal form for acceptance.
- 1.58 **Routine Facilities Contract (RFC)** means a Contract let through the routine facilities contracting procedure for the construction or maintenance of a Department building or appurtenant facilities.
- 1.59 **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.
- 1.60 **Schedule of Values** means the cost breakdown, in such detail as acceptable to TxDOT, of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by TxDOT.
- 1.61 **Shop Drawings** means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.62 **Site** see **Project Site**.
- 1.63 **Special Conditions** means supplemental additions or revisions to the Uniform General Conditions applicable to the Contract not covered by the Uniform General Conditions. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.64 **Special Provisions** means additions or revisions to standard specifications.
- 1.65 **Specifications** means the written product of the Architect and/or Engineer, if applicable, that establishes the quality and/or performance of products utilized in the Work and processes/standards to be used, including testing and verification, for compliance.
- 1.66 **Standard Specifications** means the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted November 1, 2014 and updates as posted on TxDOT official website at <http://www.txdot.gov> and relevant to the Project.
- 1.67 **State** means the State of Texas.
- 1.68 **State Let Building Contract (SLBC)** means a Contract let through the state let building contracting procedure for the construction or maintenance of a Department building or appurtenant facilities.
- 1.69 **Subcontract** means the agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the Work prescribed in the Contract Documents.

- 1.70 **Subcontractor** means an individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets any portion of the Work or provide services, materials or equipment for use in the Work.
- 1.71 **Substantial Completion** means the stage of progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, so that TxDOT employees and the public can safely occupy, utilize, and operate the improvements and all elements of the Work for purposes intended without hindrance or material interference from the Contractor's minor "punch list items" completion activities or on-going work performance of those portions of the Work not being considered for Substantial Completion. The date of Substantial Completion is the date established by the Contractor and TxDOT as set forth in the Certificate of Substantial Completion issued by TxDOT.
- 1.72 **Supplemental Instruction** means a written order issued by the PM or authorized representative making minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time.
- 1.73 **TxDOT** means the Texas Department of Transportation acting on behalf of the State of Texas.
- 1.74 **Unit Price Work** means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.75 **Unilateral Change Order (ULCO)** means a Change Order issued by TxDOT without the agreement of the Contractor.
- 1.76 **Work** means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, or its agents or both, to fulfill the Contractor's obligations under the Contract.

Article 2 Procedures Governing Bidding

2.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.

2.2 EXAMINING DOCUMENTS AND WORK LOCATIONS

2.2.1 Examine the proposal form, plans, and specifications, and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed the examination. For plans which include data for borings, soil profiles, ground water elevations, and underground utilities the information was obtained for use by TxDOT in the preparation of the plans. This information is provided for the Bidder's information only and TxDOT makes no representation as to the accuracy of the data.

2.2.2 Oral explanations, instructions, or consideration of Contractor-proposed changes in the proposal form given during the bidding process are not binding. Only requirements included in the proposal form, associated uniform general conditions, specifications, plans and TxDOT-issued addenda are binding. Request explanations of documents in adequate time to allow TxDOT to reply before the bid opening.

2.2.3 Immediately notify TxDOT of any error, omission, or ambiguity discovered in any part of the proposal form and Contract documents. TxDOT will issue addenda when appropriate.

2.3 ELIGIBLE BIDDER

2.3.1 To be eligible to bid on a building contract a potential bidder must satisfactorily comply with any financial, experience, technical, or other requirement contained in the governing specifications applicable to the project in accordance with Texas Administrative Code Rule §9.12 (e).

2.4 PREPARING AND SUBMITTING THE BID

2.4.1 **Proposal Form.** Prepare the bid on the proposal form provided by TxDOT. Documents may be obtained electronically at the Electronic State Business Daily (ESBD) website operated and maintained by the State acting through the Texas Comptroller of Public Accounts. <http://www.txsmartbuy.com/sp>.

2.4.1.1 Execute the proposal form in ink with the complete and correct name of the individual, firm, corporation or combination thereof making the proposal. The person authorized to bind the Bidder or Bidders must sign the proposal. Specify a price in dollars and cents for each bid item and if included each allowance item on the proposal form.

2.4.2 **Proposal Guaranty.** Provide a proposal guaranty in the amount indicated on the proposal form. Use either a guaranty check or a printed bid bond. If a proposal guaranty is not required it will state so on the proposal form.

2.4.3 **Guaranty Check.** Make the check payable to the Texas Transportation Commission or the Texas Department of Transportation. The check must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, or a state or federally chartered credit union (collectively referred to as a "bank"). The check must be dated on or before the date of the bid opening. Postdated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument, except in the case of a teller's check, and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; or drawn by a bank and on a bank; or be payable at or through a bank. TxDOT will not accept personal checks, certified checks, or other types of money orders.

2.4.4 **Bid Bond.** Use the bid bond form provided by TxDOT. Submit the bid bond in the amount specified with the powers of attorney dated and attached. Retyped copies of the bid bond form will not be accepted. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond completed as outlined in this Section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with State law.

2.4.5 **Addendum.** Verify if addenda have been issued for the proposed Contract. If addenda have been issued they must be acknowledged on the Addendum Acknowledgment form. Submit the Addendum Acknowledgment form with the proposal.

2.4.6 **HUB Subcontracting Plan.** If a HUB Subcontracting Plan is required it will be so stated on the proposal form. If a HUB Subcontracting Plan is required complete and sign the HUB Subcontracting Plan (HSP) and submit with the proposal.

2.4.7 **Department of Homeland Security (DHS) E-Verify Registration.** Register in the DHS E-Verify system. Remain active in E-Verify throughout the life of the contract. Subcontractors must also register and remain active in E-Verify until their work is completed.

2.4.8 **Submittal of Bid.** Place the completed proposal form and the proposal guaranty in a sealed envelope marked to indicate the contents.

- 2.4.8.1 When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by the time and date set for the receipt of proposals, regardless of the method chosen for delivery.
- 2.4.9 **Revising the Proposal Form.** Make desired changes to the Bidder entered information on the proposal form in ink, initial each change made, and submit the proposal to the Letting Official. TxDOT will not make revisions to a bid on behalf of a Bidder.
- 2.4.10 **Withdrawing a Bid.** Submit a written request to withdraw a bid before the time and date set for the receipt of proposals. TxDOT will not accept oral requests. A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In case of joint venture, TxDOT will accept a request from a person authorized to bind a party to the joint venture. TxDOT may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

2.5 OPENING AND READING OF BIDS

- 2.5.1 **Reading of Bids.** At the time, date, and location specified in the official advertisement, the Letting Official will publicly open and read bids. A bid determined to be nonresponsive may or may not be read.
- 2.5.2 **Nonresponsive Bid.** TxDOT will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:
 - 2.5.2.1 the bid was not in the hands of the Letting Official at the time and location specified in the advertisement,
 - 2.5.2.2 a bid was submitted for the same proposal form by a Bidder or Bidders and one or more of its partners or affiliates,
 - 2.5.2.3 the Bidder did not acknowledge or improperly acknowledged all addenda,
 - 2.5.2.4 the Bidder is suspended or debarred by the Commission, Department, or any federal agency,
 - 2.5.2.5 the Bidder was prohibited from rebidding a specific proposal form due to failure to enter into a Contract on the original award,
 - 2.5.2.6 the bidder failed to enter into a Contract on the original award,
 - 2.5.2.7 the Bidder was defaulted or terminated on the original Contract, unless TxDOT terminated in the best interest of the State or the public,
 - 2.5.2.8 the Bidder or a subsidiary or affiliate of the Bidder has received compensation from TxDOT to participate in the preparation of the plans or specification or both on which the bid or Contract is based,
 - 2.5.2.9 the Bidder's HUB Subcontracting Plan was determined by TxDOT to be non-compliant,
 - 2.5.2.10 the Bidder did not submit a HUB Subcontracting Plan when it was required to be submitted,
 - 2.5.2.11 the Bidder failed to participate in the Department of Homeland Security's (DHS) E-Verify System as specified above,
 - 2.5.2.12 the proposal guaranty did not comply with the requirements contained in this Article,
 - 2.5.2.13 the proposal form was not signed,
 - 2.5.2.14 the proposal form was signed by a person who was not authorized to bind the Bidder or Bidders,
 - 2.5.2.15 a bid item or allowance item or both are left blank,
 - 2.5.2.16 the bid was in a form other than TxDOT official proposal form,
 - 2.5.2.17 the Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the proposal form as determined solely by TxDOT,
 - 2.5.2.18 certifications were not acknowledged,
 - 2.5.2.19 the Bidder did not attend a mandatory pre-bid conference.

2.6 CONSIDERATION OF BID ERRORS

- 2.6.1 **Consideration.** TxDOT will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:
 - 2.6.1.1 a written notification is submitted to TxDOT within 5 business days after the date the bid is opened; and
 - 2.6.1.2 the submittal identifies the items of work involved and include bidding documentation. TxDOT may request clarification of submitted documentation.

2.6.2 **Evaluation.** TxDOT will evaluate the claim of an error by the apparent low Bidder by considering the following:

- 2.6.2.1 the bid error relates to a material item of work,
- 2.6.2.2 the bid error amount is significant portion of the total bid,
- 2.6.2.3 the bid error occurred despite the exercise of ordinary care, and
- 2.5.2.4 the delay of the proposed work will not impact cost and safety to the public.

2.6.3 **Acceptance.** Acceptance of the bid error claim by TxDOT will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is re-let. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by TxDOT.

2.7 TIE BIDS

- 2.7.1 **Tie Bids.** If the bid amount for 2 or more Bidders is equal and those bids are the lowest responsive bids submitted, each tie Bidder will be given an opportunity to withdraw their bid. If 2 or more tie Bidders and do not withdraw their bids, the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than 2 Bidders. If all Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss or a series of coin tosses when there are more than 2 Bidders. The Letting Official will preside over the proceedings.

2.8 RETURN OF PROPOSAL GUARANTY

- 2.8.1 **Proposal Guaranty Check** The proposal guaranty check of all Bidder's except the apparent low Bidder will be returned via U.S. mail to the address specified on TxDOT Return Bid Guaranty Check Form by the Bidder.
- 2.8.2 **Bid Bond.** Bid bonds will not be returned.

Article 3 Award and Execution of Contract

- 3.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.

3.2 **AWARD OF CONTRACT**

- 3.2.1. **Time.** The Commission or designated representative will award, reject, or defer the Contract within 30 days after the opening of the proposal.
- 3.2.2. **Reservations.** TxDOT reserves the right to reject any or all proposals and to waive technicalities in the best interest of the State.
- 3.2.3. **Award.** The Commission or designated representative will award the Contract to the Bidder with the lowest responsive bid (low Bidder). The Commission or designated representative may award a Contract to the Bidder with the second lowest responsive bid (second lowest Bidder) when the following requirements have been met:
- 3.2.3.1 the Contract is for work with a TxDOT estimated cost to construct of less than \$300,000 and the Contract does not include federal funds,
 - 3.2.3.2 the low Bidder withdraws its bid or fails to enter into Contract,
 - 3.2.3.3 the second lowest Bidder agrees to perform the work for the amount of the low Bidder,
 - 3.2.3.4 the Executive Director or designated representative recommends in writing the award of the Contract to the second lowest Bidder, and
 - 3.2.3.5 the Commission or designated representative agrees with the Executive Director or designated representative's recommendation for award to the second lowest Bidder.
- 3.2.4. **Rejection.** The Commission or designated representative will reject the Contract if:
- 3.2.4.1 the low bid contains a bid error that in the sole determination of TxDOT satisfies the requirements and criteria in Article 2, or
 - 3.2.4.2 rejection of the Contract is in the best interest of the State.

3.3 **RESCINDING OF AWARD**

- 3.3.1 **Award Cancel.** The Commission or designated representative reserves the right to cancel the award of any Contract before contract execution with no compensation due when the cancellation is in the best interest of the State. TxDOT will return the proposal guaranty to the Contractor.

- 3.4 **EXECUTION OF CONTRACT.** Provide the following within fifteen (15) days after written notification of award of the Contract. If bonds are not required provide the following within seven (7) days after written notification of award of the Contract.

- 3.4.1. **Contract.** Execute the Contract as prescribed by TxDOT.
- 3.4.2. **Bonds.** Tender to TxDOT performance and payment bonds in accordance with Table 1. Execute and date the performance and payment bond in the full amount of the Contract with the powers of attorney. Furnish the payment and performance bond as guaranty for the protection of the claimants and TxDOT for labor and materials and the faithful performance of the Work in accordance with the Contract Documents.
- 3.4.2.1 Each bond shall be executed on TxDOT's form by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to TxDOT and in compliance with relevant provisions of the Texas Insurance Code. If a Surety upon a bond loses its authority to do business in the State, the Surety's underwriting limitation drops below the required bond amount or the Surety is declared bankrupt or insolvent, the Contractor shall, within fifteen (15) days after occurrence of any of the aforementioned events, furnish a replacement bond at no added cost to TxDOT. In such event the Work will be suspended until a substitute Surety acceptable to TxDOT is provided and a non-compensable time extension to the Contract will be granted for the fifteen (15) days or thirty (30) days if an acceptable Surety is not readily provided, whichever is sooner. The Contractor's inability to find an acceptable Surety within thirty (30) days will be deemed a breach of contract and TxDOT may, in its sole discretion assess liquidated damages or declare the Contract in default and terminate the Contract

Table 1
Bonding Requirements

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 to \$100,000	Payment
More than \$100,000	Performance and Payment

3.4.2.2 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 OR PERFORMANCE BONDS IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**

3.4.3. **Insurance.** Submit a certificate of insurance on TxDOT's form showing coverages in accordance with Contract requirements.

3.4.3.1 Insurance must cover the work for the duration of the Contract and must remain in effect until final acceptance. Failure to obtain and maintain insurance for the contracted Work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until TxDOT receives an acceptable certificate of insurance. Time charges will not stop for work stoppage due to expired insurance.

3.4.3.2 Provide TxDOT with a certificate of insurance verifying the types and amounts of coverage shown in Table 2. TxDOT shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under the Contract. The Contractor shall assess its own risks and if it deems appropriate or prudent or both, maintain higher limits or broader coverages or both at no additional cost to TxDOT.

Table 2
Insurance Requirements

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Not Less Than: \$600,000 each occurrence
Business Automobile Policy	Not Less Than: \$600,000 combined single limit
Workers' Compensation *	Not Less Than: Statutory - Texas
All Risk Builder's Risk Insurance **	100% of Contract Amount

* The Workers' Compensation policy must include a waiver of subrogation endorsement in favor of TxDOT.

** The All Risk Builder's Risk Insurance policy must name TxDOT as Loss Payee. Coverage shall include, but not be limited to, loss by fire, storm, extended coverage perils on work and materials intended for use on the project including adjacent structure, and damage resulting from faulty workmanship, materials, or design provided directly or indirectly by the Contractor.

3.4.3.3 By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 2 either through their own coverage or through the Contractor's coverage.

3.4.3.4 In the event the Contractor does not provide Workers' Compensation Insurance coverage for each Subcontractor and all sub-tier subcontractors employed on the project the Contractor shall provide TxDOT with a current Workers' Compensation Insurance coverage certificate for each Subcontractor and all sub-tier subcontractors employed on the project in accordance with Texas Labor Code §406 .096(b).

3.4.4 **Business Ownership Information.** Submit the names and social security numbers of each individual owning 25% or more of the firm, or firms in the case of a joint venture, on TxDOT's form.

3.4.4.1 Provide written notification to TxDOT immediately upon discovery information provided was erroneous when submitted or has become erroneous by reason of changed circumstances.

3.4.5 **Certificate of Interested Parties (Form 1295).** Submit the form in the following instances;

3.4.5.1 at contract execution for contracts awarded by the Commission;

3.4.5.2 at contract execution for contracts awarded with an award amount of \$1,000,000 or more;

3.4.5.3 any time an existing contract increases in value to \$1,000,000 or more due to changes in the contract;

3.4.5.4 any time there is an increase of \$1,000,000 or more to an existing contract (change orders, extensions, and renewals); or

3.4.5.5 when there is a change to the information in the Form 1295, when the form was filed for an existing contract.

3.5 FAILURE TO ENTER CONTRACT

3.5.1 **Proposal Guaranty.** If the Contractor fails to comply with all the requirements in this Article, the proposal guaranty will become the property of the State, not as a penalty, but as liquidated damages. The Contractor forfeiting the proposal guaranty will not be considered in future proposal for the same work unless there has been a substantial change in design of the work.

3.6 RETURN OF PROPOSAL GUARANTY

3.6.1. **Guaranty Check.** The proposal guaranty check of the low Bidder will be retained until after the Contract has been rejected or awarded and executed by TxDOT. The guaranty check will be returned via U.S. mail to the address specified on TxDOT Return Bid Guaranty Check Form by the Bidder.

3.6.2. **Bid Bond.** Bid bond will not be returned.

3.7 BEGINNING OF WORK

3.7.1. **Written Authorization.** Do not start work until receipt of the authorization to begin work letter issued by TxDOT. Do not start work at the project site until completion of the pre-construction meeting.

3.8 **ASSIGNMENT OF CONTRACT.** Do not assign, sell, transfer or otherwise dispose of the Contract or any portion, rights, title, or interest (including claims) without the approval of the company or designated representative. TxDOT must deem any proposed assignment justified and legally acceptable before the assignment can take place. Any assignment without TxDOT approval is void.

3.9 **EXCLUDED PARTIES.** The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by TxDOT or any federal agency.

3.10 **NOTICE OF STATE AUDIT AUTHORITY.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 4 Laws Governing Construction

- 4.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 4.2 **COMPLIANCE WITH LAWS.** Become familiar with and, at all times, comply with all applicable State and Federal laws, statutes, ordinances and regulations including but not limited to, laws governing labor, equal employment opportunity, safety, environmental protection, antiquities and primitive records preservation, and prevailing wage rates which, in any manner, affect the conduct of the Work.
- 4.2.1 **Fees and Permits.** Cooperate with governmental officials at all times where their jurisdiction applies. Apply for, pay all fees and provide supporting documentation necessary to secure permits, licenses, certificates, etc. which are required for performance of the Work. TxDOT hereby affirms the Contractor is not required to obtain building permits nor secure inspections by local jurisdictions for Work performed on State property. Any Texas Accessibility Standards (TAS) compliance review and inspection fees will be the responsibility of TxDOT.
- 4.2.2 **Change in Laws.** If there is any change between the date the Contract is executed and Final Completion in any applicable legal requirements which require a change in the Work in order to avoid a violation of any such applicable legal requirement, Contractor shall be responsible for changing the Work in order to avoid a violation of such legal requirements. A Change Order shall be executed to adjust the Contract Sum and/or Contract Time, if applicable, as a result of a change in legal requirements. If there is a change in any applicable legal requirement but the Work or portion thereof affected by such change is deemed to be "grandfathered" (i.e., the applicable legal requirement does not require that the Work be changed), such portion of the Work shall nevertheless be deemed to be in compliance with such applicable legal requirements and Contractor shall not be required to change the Work to otherwise comply with such changed legal requirements.
- 4.3 **ENVIRONMENTAL LAWS.** Conduct activities in compliance with applicable Environmental Laws and regulations and other requirements of the Contract relating to the environment, and its protection at all times.
- 4.3.1 **Hazardous Materials.** Contractor is responsible for all items it brings to 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 the Contractor. Contractor is responsible for the cost of any environmental remediation required resulting from the action or inaction of its employees, subcontractors, suppliers, or by other entities subject to direction of the Contractor.
- 4.3.1.1 Do not incorporate hazardous materials into the Work without prior written approval of TxDOT, and provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 4.4 **WAGE RATES.** Do not pay less than the wage scale of the various classes of labor as set forth in 29 USC Section 206. Published wage rates for the State of Texas and county of the project can be located at <https://beta.sam.gov/> (Davis-Bacon Act) pursuant to Chapter 2258, Texas Government Code. The specified wage rates are minimum rates only and no representation is made that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. The Contractor or Subcontractor shall pay overtime wages as required by the Fair Labor Standards Act, 29 United States Code 201, et. seq.
- 4.5 **RECORDS.** In accordance with Texas Government Code, Title 5, Subtitle A, Chapter 552 the Contractor shall make any information created, maintained, or exchanged with the State pursuant to the Contract, (public information) and not otherwise excepted from disclosure under the Texas Public Information Act, available to the State at no additional cost to unit.
- 4.5.1 Contractor and all Subcontractors shall keep, or cause to be kept, copies of weekly payrolls for review by TxDOT for a period of three years after completion of the project in accordance with Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter A, Rule §9.5. As a condition of payment and pursuant to Texas Government Code §2113.102, TxDOT internal audit staff may audit the Contractor and Subcontractor during normal business hours.
- 4.5.2 By entering into Contract, the Contractor agrees to provide or make available to the Department and any authorized governmental agency all records, including electronic and payment records related to the Contract for a period required in accordance with the Texas Administration Code, Title 43, Part 1, Chapter 9, Subchapter K, Rule §9.327, *Contractor Records*. Additionally, subcontracts shall include a clause adhering to the same requirement. Failure to provide access to the required documents by any party to the project may result in action by the State.
- 4.6 **VENUE FOR SUITS.** Venue for any suit arising from this Contract will be in a court of competent jurisdiction in Travis County, Texas.

- 4.7 **LICENSING OF TRADES.** Contractor shall comply with all applicable provisions of state law related to license requirements for professionals, skilled tradesmen, contractors, materialmen, suppliers and or laborers, as necessary to accomplish the Work.
- 4.7.1 **Loss of License.** In the event the Contractor, or one of its Subcontractors or sub-tier contractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract or cause to hire or contract with a licensed provider of the service at no additional cost to TxDOT.
- 4.8 **STATE SALES AND USE TAXES.** TxDOT qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Contractor shall claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts in Title 34 Texas Administrative Code §3.287.

Article 5 General Responsibilities of Owner and Contractor

- 5.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 5.2 **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
- 5.2.1 **Preconstruction Conference.** After the issuance of the Authorization to Begin Work Letter but prior to the commencement of time charges a conference will be convened for attendance by the TxDOT Project Manager (PM), Contractor, and others as deemed appropriate by the PM. 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, general administration of the Contract, effective communications between the project team members, and address any other item set forth in the preconstruction conference agenda. PM will provide an agenda for the preconstruction conference.
- 5.2.2 **TxDOT Project Manager (PM).**
- 5.2.2.1 Prior to the start of construction, TxDOT will identify the Owner's Representative also known as the TxDOT Project Manager
- 5.2.2.2 will be responsible for the general administration of the Contract;
- 5.2.2.3 is the single point of contact between TxDOT and the Contractor;
- 5.2.2.3.1 Notice to the PM, unless otherwise noted, constitutes notice to TxDOT under the Contract.
- 5.2.2.4 will convey all directives on behalf of TxDOT to the Contractor;
- 5.2.2.5 will decide all questions which may arise as to the quality or acceptability of materials furnished, work performed, and interpretations of the plans and specifications when such action is not a contravention of a design decision made by an Architect or Engineer in preparation of the plans and specifications or such action is in conflict with statutes under which an Architect or Engineer is licensed for the protection of the public health or safety; the manner of performance and rate of progress of the Work and acceptable fulfillment of the Contract on the part of the Contractor,
- 5.2.2.5.1 unless otherwise specifically defined elsewhere in the Contract Documents or conveyed to the Contractor in writing.
- 5.2.3 **TxDOT District Representative (DR).**
- 5.2.3.1 Prior to the start of construction, TxDOT will identify the District Representative (DR) who will assist the Project Manager (PM)
- 5.2.3.2 will perform periodic observations of the Work for general compliance with the plans and specifications;
- 5.2.3.3 will be the point of contact for coordination with the end-user for Work being conducted on the operational site;
- 5.2.3.4 will perform other duties as specifically defined in the Contract Documents, reflected in the Pre-construction Conference meeting minutes, or conveyed to the Contractor in writing by the PM.
- 5.2.4 **TxDOT Supplied Materials and Information.** TxDOT shall provide information, equipment, or services under TxDOT's control required by the Contract Documents to the Contractor with reasonable promptness.
- 5.2.5 **Availability of Lands.** Provide property access license(s) for permanent infrastructure on State property when so required for execution of the Work, unless otherwise required in the Contract Documents.
- 5.2.6 **Limitation on Owner's Duties.** TxDOT and its consultants 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. TxDOT is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. TxDOT is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. TxDOT 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 directly or indirectly on behalf of the Contractor.
- 5.2.7 **Site Visits.** Make site visits at intervals and in accordance with notification provisions as provided in the Contract Documents to observe the progress and quality of the various aspects of Contractor's executed Work and report findings. TxDOT retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
- 5.2.8 **Clarifications and Interpretations.** Provide clarifications or interpretations of the plans and specifications when determined by TxDOT to be necessary. The PM or designated representative will provide such clarifications or interpretations consistent with the intent of the plans and specifications with reasonable promptness to the Contractor as Supplemental Instruction (SI) or similar instrument. TxDOT shall respond to request for clarifications or interpretations

within fourteen (14) calendar days of receipt of such request. If the services of a TxDOT consultant are required for a clarification or interpretation of a request TxDOT will respond within twenty one (21) calendar days of receipt of such request. Clarifications to the drawings and specifications by TxDOT are not considered changes to the drawings and specifications.

- 5.3 ROLE OF ARCHITECT / ENGINEER (A/E).** To the extent specified in the Contract between TxDOT and the Architect/Engineer, the A/E shall provide general administration services for TxDOT during the construction phase of the Project. Written correspondence, requests for information, and shop drawings/submittals shall be directed to the TxDOT PM with a copy to the A/E. The A/E has the authority to act on behalf of TxDOT to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to the Contractor by the PM, upon request.

5.3.1 Site Visits.

- 5.3.1.1 The A/E will make visits to the site at intervals as provided in the A/E's contract agreement with TxDOT, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to TxDOT.
- 5.3.1.2 The A/E has the authority to interpret plans and specifications provided by the A/E and inspect the Work covered by same for compliance and conformance with the plans and specifications. TxDOT retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

- 5.3.2 Clarifications and Interpretations.** It may be determined that clarifications or interpretations of the plans and specifications provided by the A/E are necessary. Upon direction by the PM such clarifications or interpretations will be provided by the A/E consistent with the intent of the aforementioned plans and specifications. The A/E will issue these clarifications with reasonable promptness to the PM as Architect's Supplemental Instruction (ASI) or similar instrument. The PM will be responsible for transmittal of an ASI to the Contractor. If the Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, the Contractor shall so notify TxDOT in accordance with the provisions of Article 14.

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

- 5.3.3.1 The Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project nor will the A/E supervise, direct, control or have authority over the same.
- 5.3.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work.
- 5.3.3.3 The Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 5.3.3.4 Acts or omissions of the Contractor, or of any other person or organization performing or furnishing any of the Work.

- 5.4 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

- 5.4.1 Beginning of Work.** The Contractor shall not begin work until authorized by TxDOT in the Authorization to Begin Work letter.

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

- 5.4.3 Cooperation of Contractor.** Cooperate with TxDOT, TxDOT representatives, other contractors, utility companies, governmental / regulatory agency representatives, etc. whose work/operations are directly or indirectly impacted by the execution of the Work. At the written request of TxDOT, the Contractor shall immediately remove from the work locations any employee or representative of the Contractor or a subcontractor who, in the option of TxDOT, displays uncooperative behavior or who is disrespectful, disorderly, or otherwise objectionable. These individuals may not be reinstated without the written consent of TxDOT.

- 5.4.4 Contractor's Superintendent.** Employ a competent superintendent who will be present at the Project Site during the progress of the Work. The superintendent proposed for the project is subject to the approval of the PM. Approved superintendents may not be changed during the course of the project without the written approval of the PM, unless the superintendent leaves the employ of the Contractor.

- 5.4.5 Project Administration.** Provide project administration for all subcontractors, sub-tier contractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the PM in accordance with any applicable provision of the Contract Documents.

- 5.4.6 **Communications.** The Contractor will direct all communications to TxDOT through the PM or designated representative(s).
- 5.4.7 **Non-Compliant Work.** Should the PM or designated representative identify Work as non-compliant with the Contract Documents, the PM will communicate the finding to the Contractor and the Contractor will correct such Work at its expense.
- 5.4.8 **Cleaning.** 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.
- 5.4.9 **Labor.** Provide competent, suitably qualified personnel to provide any services required to construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times. At the written request of TxDOT, Contractor shall immediately remove from the work locations any employee or representative of the Contractor or a subcontractor who, in the sole opinion of TxDOT, does not perform work in a proper and skillful manner and may not reinstate these individuals without the written consent of TxDOT.
- 5.4.10 **Subcontractors.**
- 5.4.10.1 Do not employ, directly or indirectly, any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom TxDOT may have reasonable objection. TxDOT will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection.
- 5.4.10.2 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 the Contractor. Upon written request of the PM, the Contractor shall promptly furnish to TxDOT a copy of any specified subcontract promptly. The Contractor agrees that TxDOT has no obligation to review or approve the content of such contracts and that providing TxDOT such copies in no way relieves the 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 the Contractor in the same manner in which the Contractor is bound to TxDOT.
- 5.4.10.3 Do not substitute Subcontractors without the acceptance of TxDOT and compliance with the conditions of the HUB Subcontracting Plan if applicable. Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the Agreement between the Contractor and TxDOT. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with TxDOT only through the Contractor.
- 5.4.10.4 Contractor shall require all subcontractors to register and remain active in the Department of Homeland Security's (DHS) E-Verify System until their work is complete on the project.
- 5.4.11 **Availability of Other Lands.** The Contractor shall be solely responsible for obtaining authorization and pay any related fees to work within lands not under the sole control of TxDOT.
- 5.4.12 **Laws to be Observed.** Become familiar with and, at all times, observe and comply with all Federal and State laws and regulations which in any manner affect the conduct of the Work.
- 5.4.13 **Ancillary Areas.** Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
- 5.4.13.1 Confine all operations, including storage of materials and employee parking upon the Site of Work, to areas designated by the PM or DR.
- 5.4.13.2 The Contractor may erect, at its own expense, temporary buildings that will remain its property and shall remove such buildings and associated utility service lines upon completion of the Work, unless the Contractor requests and TxDOT provides written consent that it may abandon such buildings and utilities in place.
- 5.4.13.3 Use only established roadways or construct and use such temporary roadways as may be authorized by the PM or DR. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law; and provide protection to road surfaces, curbs, edges of pavement, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage; and repair any damage thereto at the expense of the Contractor.
- 5.4.13.4 TxDOT may restrict the Contractor's entry to the site to specifically assigned entrances and routes.
- 5.4.14 **Ancillary / Integral Professional Services.** In selecting an architect, engineer or land surveyor, etc. to provide professional services, if any, that are required by the Plans and Specifications, do so on the basis of competitive bids but make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Texas Government Code §2254.004.
- 5.4.15 **Notifications.** Provide written notifications to the PM or designate representative for all observations and inspections of the Work and any other required notifications set forth in the Contract Documents within the time frames specified.

- 5.4.16 **Continuing the Work.** Carry on the Work and adhere to the Progress Schedule during all disputes, disagreements or dispute resolution processes with TxDOT. No Work shall be delayed or postponed pending resolution of any disputes, disagreements or processes, except as TxDOT and the Contractor may agree in writing
- 5.4.17 **Environment.** Do not cause directly or indirectly pollution of air, soil, and water in, on, or around the Site or improvements through the release or discharge of any Hazardous Materials. At its sole cost and expense take any and all corrective action required by any applicable federal, state, county, municipal, and other laws, codes, ordinances, rules, and regulations to clean up, remove, and abate any and all soil contamination, groundwater contamination, or any other contamination of the Site caused directly or indirectly by any release or discharge of any Hazardous Materials in, on, under, and around the Site by Contractor and/or Contractor's employees, agents representatives, Subcontractors, invitees, or any other person occupying the Site or any portion thereof by, through, or under the Contractor, excluding TxDOT and its employees, agents, representatives or invitees occupying the Site or any portion thereof.
- 5.4.18 **Indemnity for Environmental Damages.** IF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE BRING OR DISPOSE OF ANY HAZARDOUS, TOXIC, OR OTHERWISE HARMFUL SUBSTANCES ONTO THE SITE, THE CONTRACTOR WILL INDEMNIFY, SAVE AND HOLD HARMLESS TXDOT FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, LOSSES AND ALL OTHER DAMAGE AND EXPENSE (INCLUDING COST OF DEFENDING AGAINST THE AFORESAID).
- 5.4.18.1 **THE CONTRACTOR'S INDEMNITY HEREUNDER INCLUDES, BUT IS NOT LIMITED TO, ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. CONTRACTOR SHALL BEAR THE COSTS FOR REMEDIATION OF ANY RESULTING ENVIRONMENTAL DAMAGES DUE TO THE ACTIVITIES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. THE CONTRACTOR'S INDEMNITY AND OBLIGATIONS HEREUNDER WILL SURVIVE THE TERMINATION OF THIS CONTRACT.**
- 5.4.19 **Utilities.** Be responsible for, unless stated otherwise in the plans and specifications, and bear all costs to extend any required utility service to the site as called for on the plans and specifications. Provide and pay all costs for protection of infrastructure under control of any utility service provider at no additional cost to TxDOT.
- 5.4.20 **Separate Contracts.** Additional Contractor responsibilities when TxDOT awards separate Contracts.
- 5.4.20.1 TxDOT reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.
- 5.4.20.2 TxDOT reserves the right to perform operations related to the Project with TxDOT forces and shall be responsible for any activities performed under separate contract.
- 5.4.20.3 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by Change Order.
- 5.4.21 **Errors, Omissions and Negligent Acts of the Contractor, its Subcontractors and Employees.** Be responsible for errors, omissions and negligent acts of its employees, subcontractors, suppliers and their agents and employees. This shall not be limited by any tier of subcontracting/supplier or "independent" contractor status. TxDOT may, in writing, require the Contractor to remove from the Project any of its employees or Subcontractor employees that the PM or designated representative finds to be careless, incompetent, or otherwise objectionable.
- 5.4.22 **Indemnification of TxDOT. THE CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, TXDOT, ET AL, AS SET FORTH IN VARIOUS SECTIONS OF THE CONTRACT DOCUMENTS. IN THE EVENT THE CONTRACTOR AND TXDOT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**
- 5.4.22.1 Provisions of this Indemnification are solely for the benefit of the parties hereto and TxDOT's successor or assignee, if any, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 5.4.22.2 Contractor shall promptly advise TxDOT in writing of any claim or demand against TxDOT or the Contractor known to the Contractor related to or arising out of the Contractor's activities under this Contract.
- 5.4.23 **Contractor's Risk of Performance.** Except as expressly provided in the contract provisions the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

Article 6 Historically Underutilized Business (HUB) Subcontracting Plan (if required)

- 6.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 6.2 **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. The HUB Program is applicable to TxDOT contracts relating to buildings, professional services, aviation, public transportation, private consultant services, and purchases funded entirely with State and local funds.
- 6.2.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. TxDOT's rules, Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter D, outline TxDOT's policy to encourage outreach to and potential utilization of HUBs in subcontracting opportunities through race, ethnic and gender-neutral means. The goal of this program is to promote full and equal business opportunity for all businesses in State contracting.
- 6.2.2 A Contractor who contracts with the State in an amount in excess of \$100,000 shall be required to make a good faith effort to award subcontracts to HUBs in accordance with the cited rules by submitting a HUB Subcontracting Plan and complying with the Subcontracting Plan after it is accepted by TxDOT and during the term of the Contract.
- 6.3 **COMPLIANCE WITH APPROVED HUB SUBCONTRACTING PLAN.** Comply with the HUB Program as follows.
- 6.3.1 Maintain and make available to TxDOT upon request business records documenting compliance with the accepted HUB Subcontracting Plan.
- 6.3.2 Upon receipt of payment for performance of Work, the Contractor shall submit to TxDOT a compliance report, in the format as provided by TxDOT that demonstrates Contractor's performance of the HUB Subcontracting Plan.
- 6.3.3 Prior to substituting a Subcontractor, promptly notify TxDOT in the event a change is required for any reason to the accepted HUB Subcontracting Plan.
- 6.3.4 Conduct the good faith effort activities required and provide TxDOT with necessary documentation to justify approval of a change to the approved HUB Subcontracting Plan.
- 6.3.5 Promptly and accurately explain and provide supplemental information to TxDOT to assist in TxDOT's investigation of the Contractor's good faith effort to fulfill the HUB Subcontracting Plan.
- 6.3.6 Cooperate in the execution of a Change Order or such other approval of the change in the HUB Subcontracting Plans as the Contractor and TxDOT may agree to.
- 6.4 **FAILURE TO DEMONSTRATE GOOD FAITH EFFORT.** Upon a determination by TxDOT the Contractor has failed to demonstrate a good faith effort to fulfill the HUB Subcontracting Plan or any Contract covenant detailed above, TxDOT may, in addition to all other remedies available to it, report the failure to perform to the Texas Procurement and Support Services (TPASS) with the Texas Comptroller of Public Accounts, and may bar the Contractor from future contracting opportunities with TxDOT.
- 6.5 **MONTHLY REPORTING.** Submit monthly a current HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report on forms downloaded from the Texas Comptroller of Public Accounts web site www.window.state.tx.us. This report shall include current information for all HUB and Non-HUB subcontractors and HUB suppliers.
- 6.6 **FINAL REPORT.** Submit monthly HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report documenting compliance with the HSP until all HUB and Non-HUB subcontractors and HUB suppliers have been tendered final payment and shall so designate by labeling the report form "FINAL REPORT".

Article 7 Bonds & Insurance

- 7.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 7.2 **CONSTRUCTION BONDS.** The Contractor is required to tender to TxDOT, prior to commencing work, performance and payment bonds, as required by Texas Government Code, Chapter 2253.
- 7.2.1 **Payment Bond.** A payment bond is required if the Contract Sum is in excess of \$25,000. The payment bond is payable to the State, in the full amount of the Contract Sum and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or supplied required materials or labor.
- 7.2.2 **Performance Bond.** A performance bond is required if the Contract Sum is in excess of \$100,000. The Performance Bond is solely for the protection of the State, in the full amount of the Contract Sum and conditioned on the faithful performance of the Work in accordance with the Contract Documents.
- 7.2.3 **Surety Requirements.** Each bond shall be executed on TxDOT's form by a corporate surety or sureties authorized to do business in the State of Texas, acceptable to TxDOT and in compliance with the relevant provisions of the Texas Insurance Code. If a Surety upon a bond loses its authority to do business in the State, the Surety's underwriting limitation drops below the required bond amount or the Surety is declared bankrupt or insolvent, the Contractor shall, within fifteen (15) days after occurrence of any of the aforementioned events, furnish a replacement bond at no added cost to TxDOT. In such event the Work will be suspended until a substitute Surety acceptable to TxDOT is provided and a non-compensable time extension to the Contract will be granted for the fifteen (15) days or thirty (30) days if an acceptable Surety is not readily provided, whichever is sooner. The Contractor's inability to find an acceptable Surety within thirty (30) days will be deemed a breach of contract and TxDOT may, in its sole discretion assess liquidated damages or declare the Contract in default and terminate the Contract.
- 7.2.4 **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 obligate the company to the terms of the bond, and state any limits in the amount for which the attorney can issue a single bond.
- 7.3 **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 OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD TXDOT HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**
- 7.4 **FURNISHING BOND INFORMATION.** TxDOT shall furnish a copy of the payment bond to any qualified person who complies with Tex. Gov't Code, §2253.026.
- 7.5 **CLAIMS ON PAYMENT BONDS.** Claims on payment bonds must be sent directly to the Contractor and his Surety in accordance with Texas Government Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to TxDOT may result in loss of their rights against the Contractor and/or his Surety. TxDOT 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.
- 7.6 **PERFORMANCE BOND SURETY'S OBLIGATION.** The Surety for the Performance Bond, if required, shall undertake the obligations of the Contractor in the event of the Contractor's failure to perform pursuant to the Contract or in the event of Contractor's insolvency or bankruptcy.
- 7.7 **INSURANCE REQUIREMENTS.** Carry insurance in the types and amounts indicated in Article 3 and as otherwise required by the Contract Documents for the duration of the Contract unless specifically stated otherwise. Regardless of approval and issuance of Final Acceptance, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods. TxDOT shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and if it deems appropriate or prudent or both, maintain higher limits or broader coverages or both at no additional cost to TxDOT.

- 7.7.1 The required insurance shall include coverage for TxDOT's property in the care, custody and control of Contractor, its subcontractors and its agents prior to construction, during construction and during the warranty period.
- 7.7.2 The required insurance shall be evidenced by delivery of a TxDOT certificate of insurance executed by the insurer or its authorized agent during contract execution
- 7.7.3 **Policy Expiration.** Provide an updated TxDOT certificate of insurance prior to expiration. In the event the Contractor fails to maintain the required insurance all work shall stop until TxDOT receives an acceptable certificate of insurance. Contract Time charges will not be suspended in the event work is stopped due to the failure of the Contractor to maintain the required insurance. Acceptance of the insurance certificate by TxDOT shall not relieve or decrease the liability of the Contractor.
- 7.7.4 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract to maintain during the term of the Contract, the same required minimum insurance including the required provisions and additional policy conditions unless specifically stated otherwise. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. As an alternative, the Contractor may include its Subcontractors as additional insured on the Contractor's coverage. In such event the Contractor's certificate of insurance shall note that Subcontractors are included as additional insured.
- 7.7.5 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and acceptable to TxDOT unless specifically stated otherwise.
- 7.7.6 Builder's Risk Insurance shall be dedicated project insurance and specific to this Contract.
- 7.7.7 All deductibles shall be the sole responsibility of the Contractor.
- 7.7.8 The insurance requirements specified do not reduce the liability the Contractor has assumed in the indemnification/hold harmless provisions of the Contract.
- 7.7.9 Upon written request, TxDOT, and/or its agents, shall be entitled to receive without expense, copies of the required policies and endorsements.

7.8 REQUIRED POLICY CLAUSES. Unless stated otherwise policies must include the following clauses:

- 7.8.1 Notice shall be delivered to TxDOT in accordance with the policy provisions should this insurance policy be cancelled before the expiration date thereof.
- 7.8.2 This insurance policy shall not be materially changed or non-renewed without notice being delivered to TxDOT in accordance with the policy provisions.
- 7.8.3 It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the State agency for liability arising out of operations and activities under the Contract with TxDOT.
- 7.8.4 TxDOT, its officials, directors, employees, representatives, and volunteers are added as additional insured as respects operations and activities of, or on behalf of, the named insured performed under Contract with TxDOT. This requirement is not applicable to the workers' compensation policy.

7.9 WORKER'S COMPENSATION INSURANCE.

- 7.9.1 Limits of liability: not less than statutory requirements by the Texas Workers' Compensation Act.
- 7.9.2 Worker's Compensation Insurance coverage must meet the statutory requirements of the Texas Labor Code, §401.011(44) and specific to construction projects for public entities as required by the Texas Labor Code, §406.096.
- 7.9.3 The Contractor shall provide TxDOT with a current Workers' Compensation Insurance coverage certificate for each Subcontractor and all sub-tier subcontractors employed on the project in accordance with Texas Labor Code §406.096(b).
- 7.9.4 The policy shall be endorsed with a Waiver of Subrogation in favor of TxDOT.

7.10 COMMERCIAL GENERAL LIABILITY INSURANCE.

- 7.10.1 Limits of liability: not less than \$600,000 for each occurrence.
- 7.10.2 Coverage shall include liability arising from products/completed operations, liability arising from explosion, collapse, underground property damage, damage to the work, and liability assumed under contract.

7.11. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- 7.11.1 Limits of liability: not less than \$600,000 combined single limit.

7.11.2 If coverage is specified separately, limits of liability not less than:

7.11.2.1 Bodily Injury: \$250,000 each person.

7.11.2.2 Property Damage: \$500,000 each occurrence.

7.11.3 Coverage extends to owned, hired and non-owned vehicles assigned to or used in performance of the Contract.

7.12 * BUILDER'S RISK INSURANCE.

* For renovation projects or projects that involve portions of work contained within an existing structure refer to Special Condition, if any, for additional Builder's Risk Insurance requirements.

7.12.1 Limits of liability: not less than 100% of Contract Sum.

7.12.2. Policy shall be an all risk policy. Coverage shall be all risk including, but not limited to, Fire, Wind, Lightning, Water, Hail, Smoke, Theft, Vandalism, Malicious Mischief, Collapse, Flood, Earthquake, Hurricane, Tornado, and damage resulting from faulty workmanship, materials, or design provided directly or indirectly by the Contractor. Coverage shall include transit and storage of materials and equipment in an amount sufficient to protect property being transported or stored.

7.12.3. The policy shall have endorsements as follows.

7.12.3.1. TxDOT shall be named as Loss Payee under the Loss Payable clause.

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

7.12.3.3. This insurance shall not contain an occupancy clause suspending or reducing coverage should TxDOT occupy, or begin beneficial occupancy before TxDOT has issued the certificate of Final Completion for the project.

7.13 SPECIAL INSURANCE COVERAGE.

7.13.1. **Asbestos Abatement Liability Insurance.** If the Contract Documents include work requiring the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials by the Contractor, its subcontractors or agents, the Contractor shall carry insurance providing coverage for any liability arising from such activities. In lieu of the Contractor carrying the aforementioned insurance the Contractor may retain the services of an asbestos abatement contractor with a current asbestos abatement contractor license issued by the Texas Department of State Health Services (TDSHS) and the services of an asbestos transporter with a current asbestos transporter license issued by TDSHS to provide the required services.

7.13.2. The liability insurance for asbestos related work required by the Texas Department of State Health Services must be in force in order to perform any asbestos related work.

Article 8 Contract Documents

8.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.

8.2 DRAWINGS AND SPECIFICATIONS

8.2.1 **Copies Furnished.** Contractor will be furnished, a digital set of Drawings and Specifications and any Addenda issued prior to or at the pre-construction conference.

8.2.2 **Ownership of Plans and Specifications.** All Plans, Specifications and copies thereof furnished by TxDOT are, and shall remain, TxDOT's intellectual property. These documents are not to be used on any other project, and shall be returned to TxDOT, upon request, following completion of the Work.

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

8.2.4 **Resolution of Conflicts in Documents.** In the event of a conflict between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement shall be the basis of Contractor pricing, and the Contractor shall notify the PM or designated representative for resolution of the issue prior to executing the Work in question.

8.2.5 **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 pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by TxDOT, relevant field measurements made by the 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.

8.2.6 Errors and Omissions in Drawings and Specifications.

8.2.6.1 Promptly report to the PM or designated representative the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

8.2.6.2 Contractor has no liability for design errors and omissions unless the Contractor knowingly failed to report a recognized problem to TxDOT or the Contractor, its subcontractors, or agents provided the design for the element of Work. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.

8.2.6.3 It is recognized that the Contractor is not acting in the capacity of a licensed design professional, unless the Contractor, its subcontractors or agent provide the design for any element of the Work requiring the services of a licensed design professional.

8.2.6.4 When the Contractor, its subcontractors or agents provide the design for any element of the Work requiring the services of a licensed design professional the Contractor has responsibility for discrepancies, errors, and omissions in the drawings and specifications provided for that element of the Work.

8.3 **REQUIREMENTS FOR RECORD DOCUMENTS.** Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence; keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction; and provide PM or designated representative access to these documents.

8.3.1 Failure to maintain such records constitutes cause for denial of a progress payment otherwise due.

8.3.2 Prior to requesting Substantial Completion Inspection Contractor shall furnish the PM or designated representative a complete legible set (a legible digital scan is acceptable) of the marked up "As-Constructed" set of plans and specifications maintained at the site. Concurrently with furnishing these record drawings, the Contractor shall furnish a preliminary digital copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the PM or designated representative.

8.3.2.1 Once determined acceptable, Contractor shall provide one (1) digital set of operating and maintenance manuals, approved submittals, and other record documents as required elsewhere in the Contract Documents. Submission and acceptance of these documents is a condition for the issuance of the Certificate of Substantial Completion by the PM. Any "As-Built" modifications to approved shop drawings which were prepared and issued under the seal of a licensed/registered professional must be reviewed and reissued under the seal of the licensed/registered professional of record.

Article 9 Safety

- 9.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 9.2 **GENERAL.** It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. 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.
- 9.3 **NOTICES.** Contractor shall provide notices as follows:
- 9.3.1 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 in any way affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 9.3.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDS for all materials in use on site throughout the construction phase and make such file available to TxDOT and its agents as requested.
- 9.4 **EMERGENCIES.** In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 9.4.1 Contractor shall have its authorized agents 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.
- 9.4.2 Give the PM or designated representative prompt notice of all such events.
- 9.4.3 Should the Contractor fail to respond, TxDOT is authorized to direct other forces to take action as necessary and TxDOT may deduct any cost of remedial action from funds otherwise due the Contractor.
- 9.4.4 If the Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the PM, DR and A/E in writing within 72 hours of the emergency response event detailing the event, actions taken and changes in the Work.
- 9.5 **INJURIES.** In the event of an incident or accident involving outside medical care for an individual on or near the Work, notify the PM or designated representative and other parties as may be directed within twenty-four (24) hours of the event and provide the PM or designated representative an incident report if so requested.
- 9.5.1 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.
- 9.5.2 Supply the PM, DR and A/E with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or a worker hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide the PM with written notification within one week of such catastrophic event and submit a full report.
- 9.6 **ENVIRONMENTAL SAFETY.** Upon encountering any 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 the PM or designated representative immediately.
- 9.6.1 Contractor shall bind all Subcontractors to the same duty.
- 9.6.2 Upon receiving notice of previously unknown hazardous material, the PM 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. As soon as possible upon completion of this investigation, the PM will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
- 9.6.3 TxDOT may hire third-party contractors to perform any or all such steps.

- 9.6.4 Should compliance with the PM's instructions result in an increase in the Contractor's cost of performance, or delay the Work, TxDOT will make an equitable adjustment to the Contract price and/or the time of completion, and modify the Contract in writing accordingly in accordance with the provisions of the Contract.
- 9.6.5 If the hazardous material event is the result of a release or discharge of Hazardous Materials by the Contractor directly or indirectly through any employees, agents, representatives, Subcontractors, invitees or any other persons occupying the Site or any portion thereof by, through or under the Contractor, the Contractor at its sole cost and expense, shall take any and all corrective action required by any applicable federal, state, county, municipal, and other laws, codes, ordinances, rules, and regulations to report, clean up, remove, and abate any and all soil contamination, groundwater contamination, or any other contamination of the Site caused directly or indirectly by any release or discharge of any Hazardous Materials.
- 9.6.6 **Environmental Quality.** The Contract shall prevent pollution of air, soil, and water in, on, under or around the Project Site. The Contractor, at its sole cost and expense shall take any and all corrective actions deemed necessary or desirable by TxDOT, and as required by any applicable federal, state, county, municipal, and other laws, codes, ordinances, rules and regulations to clean, remove and abate any and all such contamination of the air, soil, and water in, on under or around the Project Site or adjacent lands caused directly or indirectly by any release or discharge of any hazardous, toxic, or otherwise harmful substances at the Project Site by the Contractor and/or any entities or persons for whom the Contractor is responsible.
- 9.7 **INDEMNITY FOR ENVIRONMENTAL DAMAGES. IF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE BRING OR DISPOSE OF ANY HAZARDOUS, TOXIC, OR OTHERWISE HARMFUL SUBSTANCES ONTO THE SITE, THE CONTRACTOR WILL INDEMNIFY, SAVE AND HOLD HARMLESS TXDOT FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, LOSSES AND ALL OTHER DAMAGE AND EXPENSE (INCLUDING COST OF DEFENDING AGAINST THE AFORESAID).**
- 9.7.1 **THE CONTRACTOR'S INDEMNITY HEREUNDER INCLUDES, BUT IS NOT LIMITED TO, ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. CONTRACTOR SHALL BEAR THE COSTS FOR REMEDIATION OF ANY RESULTING ENVIRONMENTAL DAMAGES DUE TO THE ACTIVITIES OF THE CONTRACTOR, ITS SUBCONTRACTORS AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. THE CONTRACTOR'S INDEMNITY AND OBLIGATIONS HEREUNDER WILL SURVIVE THE TERMINATION OF THIS CONTRACT.**
- 9.8 **TRENCHING SAFETY.** When the project requires excavation which either exceeds a depth of five feet, or results in any worker's upper body being positioned below grade level, the Contractor is required to submit a trenching plan to the PM prior to commencing trenching operations providing the necessary protection to comply with the most current version of OSHA Standards and Interpretations, 29 CFR 1926, Subpart P, "Excavations." The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and employed by the Contractor.
- 9.9 **INDEMNIFICATION OF TXDOT. THE CONTRACTOR SHALL FULLY INDEMNIFY, SAVE AND HOLD HARMLESS TXDOT OF AND FROM ANY COSTS, LOSSES, DAMAGES OR LIABILITIES RESULTING FROM ITS FAILURE, OR THE FAILURE OF THE CONTRACTORS AND/OR SUBCONTRACTORS, TO COMPLY STRICTLY WITH THESE PROVISIONS. CONTRACTOR SHALL BEAR THE COSTS FOR ANY DAMAGES DUE TO THE ACTIVITIES OF THE CONTRACTORS, ITS SUBCONTRACTORS AND/OR ANY ENTITIES OR PERSONS FOR WHOM THE CONTRACTOR IS RESPONSIBLE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THE CONTRACT.**

Article 10 Quality Control

- 10.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 10.2 **MATERIALS & WORKMANSHIP.** Execute Work in a good and workmanlike matter in accordance with the Contract Documents. If required by a Special Condition the Contractor shall develop and provide a Quality Control Plan specific to this project and acceptable to TxDOT. Where Contract Documents do not specify quality standards, the Contractor shall complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, the Contractor shall incorporate all new materials and equipment into the Work under the Contract.
- 10.3 **TESTING.**
- 10.3.1 **Contractor Testing.** Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirement of the Contract Documents. This "quality control" testing shall include any particular testing required by the Plans and Specifications and the following general tests:
- 10.3.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 10.3.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 10.3.1.3 Routine, 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.
- 10.3.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 10.3.2 **TxDOT Testing.** TxDOT reserves the right to subject materials and systems incorporated into the Project to routine tests as may be specified or as deemed necessary by the PM or designated representative to ensure compliance with the quality and/or performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such "quality assurance" testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.
- 10.3.2.1 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, a TxDOT testing laboratory, or special consultant as appropriate, acceptable to TxDOT. Results of all tests shall be provided promptly to the PM and the Contractor.
- 10.3.3 **Non-Compliance (Test Results).** Should any of the tests indicate that a material and/or system does not comply with the contract requirements, the burden of proof remains with the Contractor, subject to:
- 10.3.3.1 Contractor selection and submission of the laboratory for TxDOT acceptance.
- 10.3.3.2 Acceptance by TxDOT of the quality and nature of tests.
- 10.3.3.3 All tests or bids or both be taken in the presence of the PM or designated representative.
- 10.3.3.4 If tests confirm that the material/systems, indicated by TxDOT testing to not be in compliance with Contract Documents, are in compliance with Contract Documents, TxDOT will pay the Contractor the cost of the test.
- 10.3.3.5 If tests reveal noncompliance, the 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.
- 10.3.3.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the PM determines appropriate, including complete removal and replacement of non-compliant work or material at no additional cost to TxDOT.
- 10.3.4 **Notice of Testing.** Contractor shall give the PM or designated representative twenty-four (24) hours written notice of its readiness and the date arranged so the PM or their designated representative may observe such testing or gathering of test samples.
- 10.3.5 **Test Samples.** Contractor is responsible for providing samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay
- 10.3.6 **Covering up Work.** If Contractor covers up any Work without providing TxDOT an opportunity to observe the testing, the Contractor shall, if requested by PM, uncover and recover the work at Contractor's expense.
- 10.4 **INSPECTIONS.**
- 10.4.1 **Access.** Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation or inspection or both of the Work by TxDOT and its agents.

10.4.2 **Notice of Inspection.** Contractor shall provide the PM or designated representative written notice five (5) calendar days or as otherwise mutually agreed, prior to the anticipated need for a cover up inspection. Should the PM or designated representative fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

10.4.3 **Covering Up Work.** If the Contractor covers up any Work without providing TxDOT an opportunity to inspect, the Contractor shall, if requested by PM or designated representative, uncover and recover the work at Contractor's expense.

10.4.3.1 Should corrections of the Work be required, the Contractor shall not cover up corrected Work until TxDOT indicates review.

10.5 **DEFICIENCIES IN THE WORK.** TxDOT reserves the right to withhold from funds remaining unpaid under the Contract amounts required to pay the costs of, but not limited to, the following:

10.5.1 Special site visits required to re-examine a cited deficiency which has not been corrected after a total of two (2) visits. The provisions for comprehensive inspections set forth in Article 10.4 shall govern those inspections.

10.5.2 Special monitoring to ensure compliance with the Contract Documents due to non-performance or poor workmanship.

10.5.3 Assessments of potential damage, resulting from failure of the Contractor to protect the Work.

10.6 SUBMITTALS.

10.6.1 **Contractor's Submittals.** Contractor shall submit in accordance 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 compliance with Contract Documents and certify compliance by review stamp affixed to each copy. Submittal data presented without the Contractor's certification will be returned without review or comment, and any delay resulting from such certification is the Contractor's responsibility.

10.6.1.1 Within twenty-one (21) calendar days of issuance of the Authorization to Begin Work letter, unless otherwise modified by the PM in writing, the Contractor shall submit to the PM, a submittal schedule/register, organized by specification section, listing all items to be furnished for review by the PM or designated representative. 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.

10.6.1.2 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 review answers from the PM. Reference Special Conditions for any additional item tracking/reporting information required to be included in the submittal schedule/register. The submittal register shall be updated at least monthly with actual reviewed dates. Contractor shall schedule submissions at least forty (40) days before reviewed submittal will be required. Contractor shall allow a minimum of twenty-one (21) calendar day duration after receipt by the PM for review of each submittal. If re-submittal is required, the Contractor shall allow a minimum of fifteen (15) calendar days for review. Contractor shall submit the updated submittal register with each request for progress payment.

TxDOT may establish alternate routine review procedures and schedules for submittals at the preconstruction conference, elsewhere in the Contract Documents, or as otherwise necessary.

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

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

10.6.2 **Review of Submittals.** PM or designated representative's review are only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The review of a separate item does not indicate review of an assembly in which the item functions. The review of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the PM or designated representative of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains TxDOT's written specific acceptance of the particular deviation.

10.6.3 **Correction and Resubmission.** Make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay of submittal review. Contractor shall direct attention in writing to the PM or designated representative, when applicable, to any new revisions other than the corrections requested on previous submissions.

- 10.6.4 **Limits on Shop Drawing Review.** Do not commence any Work requiring a submittal before review of the submittal. Contractor shall construct all such work in accordance with reviewed submittals and the Contract Documents. Review of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The PM or designated representative'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 review action.
- 10.6.5 **No Substitutions without Review.** PM or designated representative may receive and consider the Contractor's request for substitution when the Contractor agrees to reimburse TxDOT for direct and indirect review costs and satisfies 10.6.5.1, 10.6.5.2, and 10.6.5.3 in combination with one or more of the items in 10.6.5.4 through 10.6.5.11 of the following conditions, as determined by TxDOT. If the Contractor does not satisfy these conditions, the PM or designated representative will return the request without action except to record noncompliance with these requirements. TxDOT will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.
- 10.6.5.1 Contract Documents do not require extensive revisions.
- 10.6.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent and do not result in an increase in cost to TxDOT.
- 10.6.5.3 Request is timely, fully documented, and properly submitted.
- 10.6.5.4 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.
- 10.6.5.5 Request directly relates to an "or-equal" clause or similar language in the Contract Documents.
- 10.6.5.6 Request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.
- 10.6.5.7 Requested substitution offers TxDOT a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities TxDOT must assume.
- 10.6.5.8 Specified product or method of construction cannot receive necessary review by an authority having jurisdiction, and the PM or designated representative can review the request.
- 10.6.5.9 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.
- 10.6.5.10 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and Contractor certifies they can coordinate the proposed substitution.
- 10.6.5.11 Specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and Contractor certifies that the proposed substitution provides the required warranty.
- 10.6.6 **Unauthorized Substitutions at Contractor's Risk.** Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. Contractor shall reimburse TxDOT for any increased design or contract administration costs resulting from any unauthorized substitutions.

10.7 FIELD MOCK-UP.

- 10.7.7 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.
- 10.7.7.1 As a minimum, field mock-ups shall be as identified throughout the Contract Documents. Mockups for systems not part of the project scope shall not be required.
- 10.7.7.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to the PM. If mock-ups are freestanding, they shall remain in place until otherwise directed by the PM.
- 10.7.7.3 Include field mock-ups in their Work Progress Schedule and shall notify the PM and A/E of readiness for review sufficiently in advance to coordinate review without delay.

10.8 INSPECTION DURING CONSTRUCTION.

- 10.8.8 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 TxDOT and its agents.
- 10.8.9 Do not cover up any work with finishing materials or other building components prior to providing TxDOT and its agents an opportunity to perform an inspection of the Work.
- 10.8.9.1 Should corrections of the Work be required for approval, do not cover up corrected Work until TxDOT indicates approval.
- 10.8.9.2 Provide notification of at least five (5) calendar days or as otherwise mutually agreed, to the PM of the anticipated need for a cover up inspection. Should the PM fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

- 10.9 **BUY TEXAS.** Buy materials produced in Texas when the materials are available at a comparable price and in a comparable period of time. Provide documentation of purchases or a description of good-faith efforts on request.

Article 11 Construction Schedules

- 11.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 11.2 **WORK PROGRESS SCHEDULE.** Refer to any Special Condition, any Division 1 Specifications, or preconstruction conference meeting minutes for any alternate or additional schedule requirements. Unless indicated otherwise in those documents, submit the initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the date of the Authorization to Begin Work Letter to the PM or designated representative. Unless otherwise indicated or directed in writing the Work Progress Schedule shall be a computerized Critical Path Method (CPM) with full reporting capability and in a format and in sufficient detail acceptable to the PM or designated representative. The initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. The schedule, when accepted by TxDOT, shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration. Failure of the Contractor to provide a Work Progress Schedule as set forth above will be considered sufficient cause for TxDOT to order the work under the Contract to be stopped without suspension of Contract time charges.
- 11.2.1 **Schedule Requirements.** Submit in an electronic format acceptable to TxDOT the Work Progress Schedule accepted by TxDOT reflecting accurate and reliable representations of the planned progress of the Work, the Work performed to date, if any, and the Contractor's actual plans for its completion. organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 11.2.1.1 Re-submit initial Schedule as required to address review comments from the PM or designated representative until such Schedule is accepted by TxDOT as the Baseline Schedule.
- 11.2.1.2 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to TxDOT of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.
- 11.2.2 **Schedule Updates.** Update the Work Progress Schedule and the Submittal Schedule not less than monthly to reflect progress to date and current plans for completing the Work, and submit an electronic copy of the update to the PM or designated representative. TxDOT has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Progress Schedule logic only with TxDOT's concurrence when, in the Contractor's judgment, it becomes necessary for the management of the Work. Identify all proposed changes to schedule logic to the PM or designated representative via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.
- 11.2.3 **Effect of Work Progress Schedule.** The Work Progress Schedule is for the Contractor's use in managing the Work. Submittal of the Schedule, and successive updates or revisions, is for the information of TxDOT and to demonstrate that the Contractor has complied with requirements for planning the Work. TxDOT's acceptance of a schedule, schedule update or revision constitutes TxDOT's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.
- 11.2.3.1 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute TxDOT's consent or approval, alter the terms of the Contract, constitute a change in terms of the contract, or waive either the Contractor's responsibility for timely completion or TxDOT's right to damages for the Contractor's failure to do so. Change Orders are the only method of modifying the completion Date(s) and Contract Time.
- 11.3 **OWNERSHIP OF FLOAT.** Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or TxDOT, but belongs to the Project and may be consumed by either party as needed on a first-used basis.
- 11.4 **FORCE MAJEURE.** Force Majeure shall mean any delays, hindrances, or suspensions of the Work for (1) unexpected natural events (sometimes called "acts of God"); (2) strikes, labor disputes, labor shortages, or material shortages outside of the Contractor's reasonable control; (3) acts of public enemy; (4) riots; (5) epidemics disabling the labor force; (6) landslides; (7) earthquakes affecting the Project; (8) fires; (9) hurricanes (10) tornadoes; (11) partial or entire failure of public utilities affecting the Project; (12) delays associated with concealed, unknown, or unforeseen conditions associated with the Property which with reasonable diligence could not

have been discovered by the Contractor prior to execution of this Contract; (13) delay in issuing any governmental or regulatory permit, license or approval necessary or required for implementation of the Project which with reasonable diligence could not have been avoided by the Contractor; (14) any other similar cause or event not reasonably within the Contractor's / subcontractor's control and not resulting from their errors, omissions or negligent acts.

- 11.4.1 The Contractor's relief in the event of such Force Majeure delays, hindrances, or suspensions of the Work is the time impact to the critical path as determined by analysis of the Contractor's schedule. Upon review and concurrence of the time impact documentation by the PM a non-compensable time extension to the Contract Time will be issued by Change Order. When such delays, hindrances, or suspensions are the result of the conditions defined under Article 17.6, Termination by Contractor, the Contractor's relief will be governed by the conditions of Article 14 should the Contract be terminated under Article 17.

Article 12 Contract Time

- 12.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 12.2 **CONTRACT TIME. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time will cause damage to TxDOT and subject the Contractor to Liquidated Damages as provided in the Contract Documents.
- 12.3 **AUTHORIZATION TO BEGIN WORK.** TxDOT will issue an Authorization to Begin Work Letter authorizing the Contractor to begin construction in accordance with the provisions of the Contract and establishing the date stated in the Contract for completion of the Work, or establishing the beginning date time charges will commence for computing Contract Time for completion of the Work.
- 12.4 **COMPLETION OF WORK.** Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.
- 12.4.1 If, in the judgment of TxDOT, 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, TxDOT shall so notify the Contractor and Surety, if any.
- 12.4.2 Within ten (10) calendar days after such notice from the PM or designated representative, Contractor shall notify the PM in writing of the specific measures taken and/or planned to facilitate timely completion of the entire work or a separable portion thereof and include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project.
- 12.5 **COMPUTATION OF CONTRACT TIME FOR COMPLETION.** TxDOT will furnish the Contractor a monthly statement on prescribed forms, showing the number of calendar days charged during the month, total number of days allowed in the Contract and the number of days remaining under the Contract. The Contractor will be allowed ten (10) calendar days in which to protest the correctness of the statement with supporting documentation, otherwise the statement will stand.
- 12.6 **MODIFICATION OF THE CONTRACT TIME.**
- 12.6.1 **Extension of Time.** Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in *Article 14*. All extensions of time will be granted in calendar days. In no event 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 completion date.
- 12.6.2 **Excusable Delay.** Contractor may be entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:
- 12.6.2.1 Errors, omissions and imperfections in design which TxDOT corrects by means of changes in the drawings and specifications. Clarifications to the drawings and specifications by TxDOT are not considered changes to the drawings and specifications.
- 12.6.2.2 Unanticipated physical conditions at the Site which with reasonable diligence could not have been discovered by the Contractor prior to the execution of this Contract and the PM corrects by means of changes to the drawings and specifications or for which the PM directs changes in the Work identified in the Contract Documents.
- 12.6.2.3 Changes in the Work that effect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the PM.
- 12.6.2.4 Suspension of Work for convenience of TxDOT, which prevents Contractor from completing the Work within the Contract Time.
- 12.6.3 **Excusable Delay Relief.** In the event of such delays the time relief is the time impact to the critical path as determined by analysis of the Contractor's schedule. If the Contractor and TxDOT cannot agree on the time extension, TxDOT may issue a ULCO for fair and reasonable time extension. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant to the provisions of *Article 14*.
- 12.6.4 **Non-compensable Delay.** Contractor may be entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:
- 12.6.4.1 "Weather Day" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven (7) continuous hours

of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are non-compensable delays. When weather conditions at the site prevent work from proceeding, immediately notify the PM or designated representative for confirmation of the conditions. At the end of each calendar month, submit to the PM or designated representative a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Such documentation shall include the impact of any concurrent delay occurring during the "Weather Days" in question.

- 12.6.4.2 Force Majeure shall mean any delays, hindrances, or suspensions of the Work for (1) unexpected natural events (sometimes called "acts of God"); (2) strikes, labor disputes, labor shortages, or material shortages outside of the Contractor's reasonable control; (3) acts of public enemy; (4) riots; (5) epidemics disabling the labor force; (6) landslides; (7) earthquakes affecting the Project; (8) fires; (9) hurricanes (10) tornadoes; (11) partial or entire failure of public utilities affecting the Project; (12) delays associated with concealed, unknown, or unforeseen conditions associated with the Property which with reasonable diligence could not have been discovered by the Contractor prior to execution of this Contract; (13) delay in issuing any governmental or regulatory permit, license or approval necessary or required for implementation of the Project which with reasonable diligence could not have been avoided by the Contractor; (14) any other similar cause or event not reasonably within the Contractor's / subcontractor's control and not resulting from their errors, omissions or negligent acts.
- 12.6.5 **Non-compensable Delay Relief.** Contractor's sole relief in the event of such Weather Day or Force Majeure or both delays, hindrances, or suspensions of the Work is the time impact to the critical path as determined by analysis of the Contractor's schedule. Upon review and concurrence of the time impact documentation by the PM or designated representative a non-compensable time extension to the Contract Time will be issued by Change Order. In the event the Contractor and TxDOT cannot agree on the time extension, TxDOT may issue a ULCO for fair and reasonable time extension. When such delays, hindrances, or suspensions are the result of the conditions defined under Article 14, the Contractor's relief will be governed by the conditions of said Article should the Contract be terminated under Article 17.
- 12.6.6 **Concurrent Delay.** When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.
- 12.6.7 **Other Time Extension Requests.** If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work, weather, or force majeure, they shall give the PM or designated representative written notice, stating the nature of the delay, activities potentially affected, and evidence documenting the cause of delay within five (5) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Clarifications to the drawings and specifications by TxDOT are not considered changes to the drawings and specifications.
- 12.6.7.1 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 and include with Time Extension Requests a reasonably detailed narrative setting forth:
- 12.6.7.1.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.
- 12.6.7.1.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.
- 12.6.7.1.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 12.6.7.2 TxDOT will respond, subject to receipt of all required information, to the Time Extension Request by providing to the 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 the Contractor.
- 12.6.7.2.1 TxDOT will not grant time extensions for delays that do not affect the Contract Completion Date.
- 12.6.7.2.2 TxDOT will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt of all required information. If TxDOT cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, TxDOT will notify the Contractor in writing. Unless otherwise agreed by the Contractor, TxDOT has no more than fifteen (15) additional calendar days to prepare a final response. If TxDOT fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.
- 12.7 **NO DAMAGES FOR DELAY.** Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of TxDOT.
- 12.8 **DUTY TO PERFORM.** No extension of time releases the Contractor or the Surety furnishing a performance or payment bond, if any, from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 12.9 **FAILURE TO COMPLETE WORK WITHIN THE CONTRACT TIME. TIME IS OF THE ESSENCE FOR THIS CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time will cause damage to TxDOT. These damages are liquidated by agreement of the Contractor and TxDOT, as set forth in the Contract Documents.

12.10 **LIQUIDATED DAMAGES.** TxDOT may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the contract sum in the amount of Liquidated Damages stated in the Contract Documents.

12.10.1 The amount per day given in the following schedule will be deducted from the money due or to become due to the Contractor, not as a penalty, but as liquidated damages and added expense for engineering and administrative supervision.

PER DAY RATE FOR AMOUNT OF ORIGINAL CONTRACT		
Greater Than	Through	Amount Per Calendar Day
\$ 0	\$ 100,000	\$ 570
\$ 100,000	\$ 500,000	\$ 590
\$ 500,000	\$ 1,000,000	\$ 610
\$ 1,000,000	\$ 1,500,000	\$ 685
\$ 1,500,000	\$ 3,000,000	\$ 785
\$ 3,000,000	\$ 5,000,000	\$ 970
\$ 5,000,000	\$ 10,000,000	\$ 1,125
\$ 10,000,000	\$ 20,000,000	\$ 1,285
\$ 20,000,000		\$ 2,590

Article 13 Payments

- 13.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 13.2 **SCHEDULE OF VALUES.** Contractor shall submit to the PM or designated representative a Schedule of Values accurately itemizing each line item by material and labor for the various classifications of the Work based on the organization of the specification sections and using the same activity names and terms as the Work Progress Schedule. The Schedule of Values shall include line items for general conditions, fees, TxDOT allowance items and any additional detail as required by the PM or designated representative. The format for the Schedule of Values will be as provided by TxDOT.
- 13.2.1 The accepted Schedule of Values will be the basis for the progress payment under the Contract. No progress payments will be made prior to receipt of a Schedule of Values in such detail as acceptable to the PM or designated representative.
- 13.2.2 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by the PM, and submitted not less than twenty-one calendar (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 costs for general conditions, fees, contingencies, and TxDOT allowance items, if applicable, so that the sum of the items will equal the contract price. Each line item will contain labor and material value categories with values assigned as appropriate, the subtotal thereof equaling the value of the work in place when complete.
- 13.3 **LUMP SUM PAYMENT.** Contractor may elect to receive a single lump sum payment, adjusted as may be required by the requirements of the Contract Documents, for the Work after final acceptance of the Work by TxDOT. Work progress payments will not be made without the Contractor submitting a Schedule of Values acceptable to TxDOT.
- 13.4 **TEXAS IDENTIFICATION NUMBER.** Contractor will be required to secure from the Texas Comptroller of Public Accounts, a Texas Payee Identification Number. The Texas Payee Identification Number must correspond to the person(s) or entity shown on the Contract. A valid Texas Payee Identification Number is required prior to payment being processed for this Contract.
- 13.5 **PROGRESS PAYMENTS.** Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by TxDOT and the Contractor. Payment is not due until receipt by the PM or designated representative of a correct and complete Pay Application in electronic copy format. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. TxDOT will not process progress payment applications for Change Order work until all required parties execute the Change Order.
- 13.5.1 **Preliminary Pay Worksheet.** Once each month that a progress payment is to be requested, Contractor shall submit to the PM or designated representative a complete, clean copy of a preliminary pay application such that it is received by the PM or designated representative a minimum of seven (7) calendar days prior to any scheduled monthly work progress meeting, and shall include the following:
- 13.5.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work during the time covered by the application for payment, using the accepted Schedule of Values and approved form.
- 13.5.1.2 Copies of original invoices for any materials or equipment stored on site but not incorporated into the Work for which the Contractor is requesting payment.
- 13.5.1.3 Insurance certificates, invoices and any other documents required by the Contract Documents for materials or equipment stored off-site for which the Contractor is requesting payment.
- 13.5.1.4 TxDOT's Contractor's Application for Payment form reflecting any adjustments to the Contract Sum or Contract Time approved during the period of time covered by the application for payment.
- 13.5.1.5 An updated Work Progress Schedule including the Executive Summary and all required schedule reports.
- 13.5.1.6 An updated submittal schedule/register, if required.
- 13.5.1.7 An updated HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report and associated documentation for any modification to the plan authorized during the time covered by the application for payment.

- 13.5.1.8 Copy of any apprenticeship or trainee program registered with the United States Department of Labor, Employment and Training Administration if such program is being utilized by Contractor or any Subcontractor in performance of the Work. The Contractor shall provide a copy of any program modifications, updates or additional programs with subsequent applications for payment.
- 13.5.1.9 Such additional documentation as TxDOT may require as set forth in a Special Condition or elsewhere in the Contract Documents.
- 13.5.2 **Contractor's Application for Progress Payment.** Subject to the Contractor providing a complete preliminary pay application: Within the time frame as set forth in Article 13 the Contractor, PM and A/E will conduct a conference call review of the preliminary pay application prior to the scheduled monthly work progress meeting. Based on this review, the PM and A/E may require modifications to the preliminary pay application prior to submittal of the formal application for progress payment. The Contractor shall submit for approval during the scheduled monthly progress meeting the formal application for progress payment on the appropriate and completed forms reflecting the required modifications. Approval is subject to the condition TxDOT may require modification to the application based on observations of the Work made during the site visit. The Contractor shall promptly make such revisions as necessary for approval. Attach all additional documentation required by the PM and A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Texas Government Code, Chapter 2251. No invoice is complete unless it fully reflects all required modifications and attaches all required documentation including, but not limited to, the following:
- 13.5.2.1 TxDOT Contractor's Application for Payment form must be signed by a corporate officer or a representative duly authorized by the Contractor,
- 13.5.2.2 Updated Schedule of Values form;
- 13.5.2.3 Updated Work Progress Schedule;
- 13.5.2.4 TxDOT Contractor's Affidavit of Payments of Debts and Claims (monthly);
- 13.5.2.5 HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report;
- 13.5.2.6 Copies of manufacturer/supplier original invoice price for materials and equipment stored on the site but not incorporated in the Work payment is being requested for; and
- 13.5.2.7 Copies of warehouse records, receipts and manufacturer/supplier invoices for any materials and equipment stored off site verifying current status of quantities and their disposition.
- 13.6 **OWNER'S DUTY TO PAY.** Owner has no duty to pay the Contractor except on receipt by the PM or designated representative of the following:
- 13.6.1 a complete TxDOT Contractor's Application for Payment form certified by the Contractor, PM and designated representatives, as required, and all attachments;
- 13.6.2 the Contractor's updated Work Progress Schedule; and
- 13.6.3 confirmation that the Contractor's as-built documentation at the site is kept current.
- 13.6.4 **Stored Material.** Payment for stored materials and equipment confirmed by the PM or designated representative to be on-site or otherwise properly stored but not incorporated into the Work is limited to the manufacturer/supplier original invoice price or the scheduled value for the materials or equipment, whichever is less. Payment for off-site stored materials or equipment is subject to compliance with the provisions of Article 13.8.
- 13.6.5 **Retainage.** TxDOT will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in a Special Condition. Retainage may be managed in conformance with Transportation Code §223.010.
- 13.6.5.1 Provide written consent of Surety for any request for release of retainage.
- 13.6.6 **Price Reduction to Cover Loss.** TxDOT may reduce any application for payment, prior to payment to the extent necessary to protect TxDOT from loss on account of actions of the Contractor including, but not limited to:
- 13.6.6.1 Defective or incomplete Work not remedied.
- 13.6.6.2 Damage to Work of a separate Contractor.
- 13.6.6.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.
- 13.6.6.4 Persistent failure to carry out the Work in accordance with the Contract Documents.
- 13.6.6.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the contract sum.
- 13.6.6.6 Assessment of fines for violations of Prevailing Wage Rate law.
- 13.6.6.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

13.6.6.8 Failure to maintain acceptable storage/protection for stored materials and equipment on-site and off-site.

13.6.7 **Final Payment.** For purposes of Tex. Gov't Code § 2251.021 (a) (2), the date the performance of service is complete is the date when the PM or designated representative approves the final application for payment.

13.6.8 **Title to Material and Work.** Title to all material and Work covered by progress payments transfers to TxDOT upon payment.

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

13.7 **CONTINUED OBLIGATIONS.** Progress payments to the Contractor do not release the Contractor or its Surety from any obligations under this Contract.

13.7.1 Upon TxDOT's request, furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to TxDOT.

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

13.7.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials not incorporated in the work.

13.7.4 For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is complete is the date when the PM approves the final application for payment. The effects of Final Payment are as set forth in Article 15.4.7.

13.8 **OFF-SITE STORAGE.** With prior approval by TxDOT and in the event Contractor elects to store materials or equipment at an off-site location, the Contractor shall abide by the following conditions, unless otherwise agreed to in writing by TxDOT and the Contractor.

13.8.1 Store materials and equipment in a Bonded Commercial Warehouse.

13.8.2 Provide separate Insurance Coverage adequate not only to cover materials and equipment 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 TxDOT, must be filed with PM or designated representative.

13.8.3 Inspection by PM or designated representative is allowed at any time. TxDOT must be satisfied with the security, control, maintenance, and preservation measures.

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

13.8.5 TxDOT reserves the right to reject materials and equipment at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements, regardless of any previous progress payment made.

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

13.8.7 Make warehouse records, receipts and invoices available to PM or designated representatives, upon request, to verify the quantities and their disposition.

13.8.8 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 TxDOT or TxDOT's agents at a location near the jobsite as directed by the PM or designated representative. The full provisions of PERFORMANCE AND PAYMENT BONDS, if required, on this project cover the materials off-site in every respect as though they were stored on the Project Site.

Article 14 Contract Changes

- 14.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 14.2 **MINOR CHANGES.** TxDOT has the authority to order minor changes in the Work that do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, i.e. Supplemental Instruction, which the Contractor shall carry out promptly and record on as-built record documents.
- 14.3 **EMERGENCY CHANGE.** Emergency changes to save life or property may be initiated by the Contractor alone (per Article 9) with the claimed cost and/or time of such work fully documented as to necessity and detail to TxDOT's satisfaction.
- 14.4 **UNILATERAL CHANGE ORDER.** TxDOT, without invalidating the Contract, may order changes in the Work not included in the Contract that are necessary for the completion of the project, and will pay the Contractor a reasonable sum.
- 14.5 **CHANGE ORDERS.** A Change Order issued after execution of the Contract is a written order to the Contractor, signed by TxDOT (in accordance with TxDOT signature authorization policy), the Contractor, and (when applicable) the Architect/Engineer, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. Subject to compliance with TxDOT signature authorization policy, the PM may issue written authorization for the Contractor to proceed with work of a change order in advance of final execution by all parties.
- 14.5.1 TxDOT, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly, if required. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. Authorization to execute a Change Order is reserved exclusively to TxDOT and may not be delegated to a private firm under contract with the State.
- 14.5.2 If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, a mutually agreeable, equitable, adjustment shall be made and confirmed in writing in a Change Order.
- 14.5.3 It is recognized by the parties hereto and agreed by them that the specifications and drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the work to be completed to the satisfaction of TxDOT. Accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such specifications and drawings, or any changes in or additions to the specifications and drawings or to the Work ordered by TxDOT, and any resulting delays in the work or increases in Contractor's costs and expenses, 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, *quantum meruit*, or otherwise. TxDOT shall be liable to Contractor for the sum stated to be due Contractor in any Change Order, approved and signed by both parties. It is agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arising out of, or resulting directly or indirectly from the work performed by Contractor under such Change Order.
- 14.5.4 Procedures for administration of Change Orders shall be established by TxDOT and stated in the Contract Documents.
- 14.5.5 No order, oral statement, or direction from TxDOT or any duly appointed representative shall be treated as a Change Order or entitle the Contractor to an adjustment.
- 14.5.6 The Contractor agrees that TxDOT and any of its duly authorized representatives shall have access and the right to examine, during normal business hours, any books, documents, papers, and records of the Contractor related to the Project. Further, the Contractor agrees to include this provision in all its subcontracts. The period of access and examination described herein also relates to appeals under Article 18 of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract. The period of access and examination shall continue until final disposition of such claims, appeals or litigation.
- 14.6 **ADMINISTRATION OF CHANGE ORDER REQUESTS.** All changes in the Contract shall be administered in accordance with TxDOT procedures.

14.6.1 **Routine Change.** Routine changes in the Contract shall be formally initiated by TxDOT with a Request for Proposal form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, PM and/or designated representative concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by the Contractor without a Change Order. Approval of the Contractor's cost proposal by TxDOT, in compliance with TxDOT's signature authorization policy, will be required for authorization to proceed with the work being changed. TxDOT will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove such work at no cost to TxDOT.

14.6.1.1 Contractor shall furnish TxDOT an itemized breakdown, in such detail and form as acceptable to TxDOT, of all costs and supporting information including but not limited to quantities, material / equipment prices, tier subcontracted work performed, labor rates and employer payments, compensable insurance and rental rates for all proposed Change Order work. The itemized breakdown detail shall be the same for any Subcontractor work. Photocopies of Subcontractor and vendor/supplier proposals shall be furnished unless specifically waived in writing by the PM or designated representative. The Contractor shall provide a written response to TxDOT's Request for Proposal within fifteen (15) calendar days of receipt unless the Contractor and TxDOT mutually agree otherwise.

14.6.2 **Unexpected Circumstance.** 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 by TxDOT in compliance with TxDOT's signature authorization policy, 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. TxDOT reserves the right to issue a ULCO or Supplemental Instruction when in its sole opinion the circumstance which necessitated the change request could have been reasonably detected by the Contractor in fulfilling its duty to review the Contract Documents.

14.6.3 **Emergency Change.** Emergency changes to save life or property may be initiated by the Contractor alone (see [Article 9.4](#)) 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 to TxDOT's satisfaction.

14.6.4 **Valuation of Change Order Work.** The value of changes in the Work, either additive or deductive, executed under a Change Order, shall be determined in one of the following ways:

14.6.4.1 **Lump Sum.** By acceptance of a lump sum proposal as described by the following paragraphs.

14.6.4.1.1 Contractor shall furnish TxDOT an itemized breakdown, in such detail and form as acceptable to TxDOT, of all costs and supporting information including but not limited to quantities, material prices including supplier invoices/quotes, tier subcontracted work performed, labor rates and employer payments, and rental rates. The itemized breakdown detail shall be the same for any Subcontractor work. The Contractor shall furnish TxDOT the following additional information in the itemized breakdown, including insurance charges and bond charges used in computing the lump sum proposal. The information shall also be provided by any Subcontractor work.

14.6.4.1.2 Cost shall include:

- Labor cost, including the classifications through foremen when engaged in the actual and direct performance of the work, and actual employer payments to or on behalf of workers for health and welfare, pension, vacation, insurance, and any similar charges imposed by law (Social Security Tax, Workers' Compensation) or required by applicable collective bargaining agreements;
- materials, installed permanently in the work or expended in performance thereof;
- rental cost of construction plant and equipment at the work site;
- energy, fuel, and supplies consumed in operation of power-driven equipment;
- additional insurance cost, if any and only cost applicable to insurance limits required by the Contract Documents, directly resulting from the additional Work;
- necessary professional design and consulting fees; revisions of previously finalized shop drawings and/or fabrication drawings, and
- other allowable costs involved with Change Order work, except those costs listed in [Paragraph 14.6.4.1.3](#).
- In lieu of providing information for all employer payments to or on behalf of workers, excluding actual gross wages, the Contractor proposal may use a percentage factor based on methodology acceptable to TxDOT, which shall constitute full compensation for all employer payments other than actual gross wages. The Contractor shall provide complete supporting information for calculation of the percentage factor(s) when so requested by TxDOT.

14.6.4.1.3 Costs shall not include: (These costs shall be considered a part of overhead and profit or markups and no separate allowance will be made therefore)

- Labor for superintendents, assistant superintendents, office personnel (home and field);

- timekeepers and maintenance mechanics at any level of contracting;
- per diem and travel allowances for any of the aforementioned labor classifications;
- pieces of equipment, hand and small tools, or instruments having a new value of \$500.00 or less, whether or not consumed by use;
- safety programs;
- scheduling;
- on site and main offices and operating costs;
- incidental job burdens;
- modifications to record drawings;
- guarantee period cost allowances;
- punch list allowances, and
- insurance other than mentioned in Paragraph 14.6.4.1.2.

14.6.4.1.4 For work performed by the Contractor's forces, the maximum allowable percentages for overhead and profit on changes will not exceed:

- fifteen percent (15%) if the total of self-performed work is less than \$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 (7.5%) if the total of self-performed work is over \$20,000 for any specific change priced.

14.6.4.1.5 For subcontracted Work each affected Subcontractor shall figure its cost, overhead and profit as described above.

14.6.4.1.6 All subcontractor costs shall be combined, and to that total subcontractor cost the Contractor will be allowed to add a maximum mark-up of:

- ten percent (10%) if the total of all subcontracted work is less than \$10,000;
- seven and one half percent (7.5%) if the total of all subcontracted work is between \$10,000 and \$20,000; and
- five percent (5%) if the total of all subcontracted work is over \$20,000.

14.6.4.1.7 To the total of the above costs, Contractor will be allowed to add Bond cost, if bonds are required, if the change results in an increase in the Bond premium paid by the Contractor. Contractor shall provide written evidence from the Bonding Company of any increase in the Bond premium to TxDOT. Subcontractors shall be allowed to add Bond cost to their total costs if the changed work results in an increase in the Bond premium paid by the Subcontractor, and Contractor's contract with the Subcontractor requires the Subcontractor to maintain a bond for their Work. Contractor shall provide a copy of written evidence from the Bonding Company for any additional Subcontractor bond cost that is requested for inclusion in the change order.

14.6.4.1.8 On lump sum changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.

14.6.4.2 **Unit Price Work.** By acceptance of unit prices agreed upon by TxDOT and the Contractor.

14.6.4.2.1 Unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the item of work. Unit price includes all markups, overhead, profit, insurance, bond, etc. costs.

14.6.4.3 If a Surety has assumed the responsibilities of the Contract, TxDOT may pay the Surety for the completion contractor's profit and overhead, but it will not pay the Surety any profit or overhead.

14.6.4.4 TxDOT does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay due to Force Majeure or the Contractor.

14.6.5 **Contractor Cost Reduction Proposal.** Contractor may submit a cost reduction proposal for changing the requirements of the Contract Documents. The proposal shall demonstrate that changing the Contract requirements would:

- 14.6.5.1 Represent an advantage to TxDOT over the specified requirement;
- 14.6.5.2 Result in a net reduction in the total Contract Sum;
- 14.6.5.3 Not impact any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, esthetic, ease of maintenance, and necessary standardize features; and
- 14.6.5.4 Not detrimentally affect the Contract completion date.

14.6.5.5 All costs for compliance with these requirements, whether accepted or not, shall be borne by the Contractor.

14.6.5.6 The determination of TxDOT as to acceptability of the proposal will be final and TxDOT may accept in whole or in part any proposal submitted pursuant to this provision by issuing a Change Order that will identify the proposal on which it is based. The Change order will provide for an equitable adjustment in the Contract Sum in accordance with the provisions herein and will revise any other affected provisions of the Contract Documents.

14.7 CLAIMS FOR ADDITIONAL COSTS

14.7.1 In order for the Contractor to make a valid claim for an increase in the Contract Sum for unforeseen circumstances, Contractor shall give the PM or designated representative written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. Contractor shall not execute any work involving additional cost or time, except in an emergency endangering life or property without an approved Change Order or written authorization issued in accordance with TxDOT's signature authorization policy. Any TxDOT approved change in the Contract Sum shall be authorized by Change Order. If TxDOT and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 18.

14.7.2 If the 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 TxDOT to stop the Work where the Contractor was not at fault, 3) any written order for a minor change in the Work, the Contractor shall make such claim as stated above.

14.7.3 Failure of the Contractor or his Subcontractors failure to notify the A/E of obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/pre-proposal period, but claim additional costs for corrective work after contract award, shall be deemed an intent to circumvent competitive bidding for necessary corrective work. In such case, TxDOT, in its sole discretion, may let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by TxDOT.

14.8 **CONCEALED SITE CONDITIONS.** 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 bid/proposal documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the PM 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, the A/E, upon the approval of the PM, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions. 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 TxDOT's approval.

14.9 **EXTENSION OF TIME.** All Changes to the Contract Time shall be made by Change Order.

14.9 **CONTRACTOR'S RISK OF PERFORMANCE.** Except as expressly provided in this Article, other contract provisions or as may be determined by Article 18, the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance.

Article 15 Project Completion and Acceptance

15.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.

15.2 CLOSING INSPECTIONS

15.2.1 **Request for Substantial Completion Inspection.** When the Contractor considers the entire Work or part thereof Substantially Complete, it shall notify the PM or designated representative in writing that the Work will be ready for Substantial Completion Inspection on a specific date. Contractor shall include with this written notice:

15.2.1.1 Contractor's Punch List to indicate that it has previously inspected all Work associated with the request for inspection;

15.2.1.2 Documentation it has completed or scheduled items required for Substantial Completion to be complete before the specific date requested for the Substantial Completion Inspection.

15.2.1.3 If any item on the Punch List is required for Substantial Completion and not complete or scheduled for completion the Contractor shall not request a Substantial Completion Inspection.

15.2.1.4 If any item on the Punch List will prevent use of the building for the purposes it is intended to be utilized and not corrected, the Contractor shall not request a Substantial Completion Inspection.

15.2.1.5 The failure to include any items on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

15.2.1.6 TxDOT will review the list of items and schedule the requested inspection, or inform the Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced, items required to be complete or scheduled for completion are not completed, or conditions are not as represented on the Contractor's list.

15.2.2 **Substantial Completion Inspection.** On the date requested by Contractor, or as mutually agreed upon, with consideration of the status of open Punch List items, the PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT, will jointly attend the Substantial Completion Inspection, which shall be conducted by the PM or designated representative. If the PM or designated representative determines that the Work is Substantially Complete, the PM will issue a Certificate of Substantial Completion to be signed by the A/E of Record, if required, TxDOT and Contractor, establishing the date of Substantial Completion. If TxDOT determines the Work is not Substantially Complete the Contractor will be so notified. The PM or designated representative will provide with or independent of this certificate a list of Substantial Completion Punch List items. The term "Substantial Completion Punch List" items shall mean details of construction and mechanical and electrical adjustments which are minor in character and do not materially interfere with TxDOT's safe use, enjoyment and operation of the Project or designated portions thereof. If TxDOT elects to occupy the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of TxDOT, without disruption to TxDOT's use of the facility for its intended purposes.

15.2.3 **Requirements for Substantial Completion.** The Certificate of Substantial Completion for all or a designated portion of the Work will not be issued if the following items are incomplete, unless otherwise agreed to by TxDOT in writing, as they are considered essential elements of the Project and completion of these is a prerequisite for TxDOT's safe use, enjoyment and operation of the project or designated portions thereof.

15.2.3.1 Complete and accepted operation and maintenance (O&M) manuals for all installed equipment, systems and like items to include, but not be limited to, submittals, shop drawings, operation and maintenance instructions, wiring diagrams, spare parts lists, test/inspection results/reports and written warranties,

15.2.3.2 Verification that training of designated TxDOT personnel for various items of the Work requiring training as set forth in the Contract Documents is complete, as evidenced by submittal of a copy of the "sign in" sheet for each required training session;

15.2.3.3 A notarized affidavit attesting to TxDOT no hazardous materials were incorporated into the Work unless prior written approval of TxDOT was granted, as verified by attaching a copy of the TxDOT authorization,

15.2.3.4 A notarized certification to TxDOT that all equipment and materials used in fulfillment of their contract responsibilities are non-Asbestos Containing Building Materials (ACBM) in compliance with the Texas Asbestos Health Protection Rules as administered by the Texas Department of State Health Services;

15.2.3.5 Verification, to the satisfaction of the PM or designated representative, that inspections required by any authority having jurisdiction over any element of the Work have been conducted which shall include any registrations as may be required and the issuance of any permits, licenses, certificates, etc. as may be required for any system or equipment, i.e. boilers, elevators, etc., unless specifically stated otherwise in the Plans and Specifications. The Texas Accessibility Standards (TAS) compliance review and inspection will be the responsibility of TxDOT or authorized representative and is not a condition for Substantial Completion;

- 15.2.3.6 Demonstration, to the satisfaction of the PM or designated representative(s), that all equipment and systems function as required by the Contract Documents, i.e commissioning;
- 15.2.3.7 Completion of landscaping as set forth in the Contract Documents; and
- 15.2.3.8 Submittal of all asbestos containing material abatement documentation and/or mold remediation documentation, if asbestos abatement and/or mold remediation is part of the Contract Work.
- 15.2.4 **Substantial Completion Punch List.** In the event the thirty (30) calendar day time frame or the time frame set forth in the Certificate of Substantial Completion to complete the Substantial Completion Punch List Work expires and TxDOT has not been provided written notice from the Contractor that the Work is ready for Final Completion Inspection, and as **TIME IS OF THE ESSENCE IN COMPLETION OF THE WORK**, TxDOT will provide the Contractor written notice of a date specific an inspection will be held. The Contractor, PM or designated representative and other TxDOT representatives as determined by TxDOT shall conduct the inspection. If TxDOT determines the Substantial Completion Punch List Work is not complete and/or corrected, TxDOT shall, without invalidating the Contract, have the right, upon written notice to the Contractor, to complete the Work using duly qualified contractors or TxDOT forces. The Contractor shall reimburse TxDOT for any reasonable costs incurred by TxDOT in completing the Work with offsets and deductions in the Final Payment. This provision does not invalidate any other provision in the Contract Documents available to TxDOT for completion and/or correction of the Work.
- 15.2.5 **Final Completion Inspection.** Contractor shall complete the list of items identified on the Substantial Completion Punch List within the time frame specified and prior to requesting a Final Completion Inspection. Unless otherwise specified, directed by TxDOT in writing or otherwise agreed in writing by the parties, the Contractor shall complete and/or correct all Substantial Completion Punch List work within thirty (30) calendar days of the Substantial Completion date. Upon completion of the Substantial Completion Punch List work, the Contractor shall give written notice to the PM or designated representative that the Work will be ready for Final Inspection on a specific date. Contractor shall include with this written notice:
- 15.2.5.1 copy of the updated Substantial Completion Punch List indicating resolution of all items;
- 15.2.5.2 original marked-up As-Built drawings reflecting all modifications and changes made to the Work. If the Project is being delivered in phases the original marked-up As-Built drawings shall be delivered at completion of the last phase.
- 15.2.5.3 On the date specified or as soon thereafter as is practicable, the PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT will inspect the Work. The PM or designated representative will submit a Final Punch List of open items that the inspection team requires corrected or completed before final acceptance of the Work.
- 15.2.6 **Final Punch List.** In the event the Contractor fails to complete the Final Punch List items within seven (7) days of receipt of the Final Punch List or as otherwise agreed to in writing by the parties and as **TIME IS OF THE ESSENCE IN COMPLETION OF THE WORK**, TxDOT shall, without invalidating the Contract, have the right, upon written notice to the Contractor, to complete the Final Punch List Work using duly qualified contractors or TxDOT forces and the Contractor shall reimburse TxDOT for any reasonable costs incurred by TxDOT in completing the Work with offsets and deductions in the Final Payment. This provision does not invalidate any other provision in the Contract Documents available to TxDOT for completion and/or correction of the Work.
- 15.2.7 **Final Punch List Inspection.** Contractor shall correct or complete all items on the Final Punch List before requesting Final Payment. Unless otherwise agreed to in writing by the parties, the Contractor shall complete this work within seven (7) days of receipt of the Final Punch List and notify the PM or designated representative in writing stating the disposition of each Final Punch List item. The PM or designated representative, Contractor and other TxDOT representatives as determined by TxDOT shall promptly inspect the completed items. When the Final Punch List is complete, and the Contract is fully satisfied according to the Contract Documents, subject to the limitations of the **Effect on Warranty** provision, the PM or designated representative will issue a certificate establishing the date of Final Completion. Final Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.
- 15.2.8 **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 limitation(s) as determined by TxDOT.
- 15.2.9 **Purpose of Inspection.** Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike manner, in compliance with the Contract. Work accepted with incomplete Punch List items or failure of TxDOT or other parties to identify Work that does not comply with the Contract Documents, or is defective in operation or workmanship does not constitute a waiver of TxDOT's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.
- 15.2.10 **Additional Inspections.** The Contract Agreement contemplates three (3) comprehensive inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Completed Final Punch List Inspection. The cost to TxDOT of additional inspections resulting from the Work not being ready for one or more of these inspections shall be charged to the Contractor. TxDOT may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, TxDOT will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after the Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections. However, such work shall be subject to all provisions of this Contract.

15.2.11 **Phased and Whole Completion.** The contract may provide, or project conditions may warrant, as determined by the PM or designated representative, 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 and Occupancy 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.

15.2.12 **Time Charges.** The date Time Charges for the project as a whole terminates will be the date set forth in the Certificate of Substantial Completion for the project issued by TxDOT. When the Work is to be completed in designated elements or portions (phases), time charges for the project will not stop until the date set forth in the Certificate of Substantial Completion for the last phase of the Work issued by TxDOT.

15.3 **TxDOT'S RIGHT OF OCCUPANCY.** TxDOT may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should TxDOT wish to use or occupy the Work, or part thereof, at or prior to Substantial Completion, the PM or designated representative will notify the Contractor in writing. Work performed on the premises by third parties on TxDOT's behalf does not constitute occupation or use of the Work by TxDOT for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of TxDOT so as to not disrupt TxDOT's use of, or access to occupied areas of the project.

15.4 ACCEPTANCE AND PAYMENT

15.4.1 **Request for Final Payment.** Following the certified completion of all work, including all punch list items, cleanup, and the delivery and approval of record documents, the Contractor shall submit an Application for Final Payment. The Contractor shall include all sums held as retainage and forward the Application for Final Payment to the PM or designated representative for review and approval. If TxDOT determines that any item remains incomplete, including but not be limited to, maintenance and operation manuals, training, guarantees and warranties, record documents and all other items required by the Contract that have not been submitted to and approved by TxDOT, TxDOT may take no action on the Application for Final Payment and return the Application for Final Payment to the Contractor with a list of missing or incomplete items.

15.4.2 **Allowances.** If the Contract Documents contains allowance items, all savings under any of the designated Allowance Items shall accrue to the benefit of TxDOT and the Contract Sum shall be reduced by one hundred percent (100%) of such savings.

15.4.3 **Final Payment Documentation.** No Application for Final Payment is complete unless it fully reflects all required modifications and includes all required executed documentation including, but not limited to, the following:

15.4.3.1 TxDOT Contractor's Application for Payment form;

15.4.3.2 Updated Schedule of Values form;

15.4.3.3 TxDOT' Contractor's Affidavit of Payments of Debts and Claims (final) form;

15.4.3.4 If requested, documentation establishing payment or satisfaction of all such obligations connected with the work of the Contract, such as receipts, releases and waivers of claims, to the extent and in such form as designated by TxDOT;

15.4.3.5 If required, TxDOT Consent of Surety Company to Final Payment form;

15.4.3.6 If required, a signed TxDOT Change Order making final adjustment to the Contract Sum or Contract Time as may be required for offsets and deductions, allowance items reconciliation, time adjustments, or any other item requiring a change to the Contract;

15.4.3.7 HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report,

15.4.3.8 TxDOT Buy America Affidavit form.

15.4.4 **Offsets and Deductions.** TxDOT may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, TxDOT may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, TxDOT will identify each deduction, the amount, and the explanation of the deduction. Such offsets and deductions shall be incorporated via a final Change Order, including Unilateral Change Order as may be applicable.

15.4.5 **TxDOT Approval.** The A/E and PM will review a submitted complete Application for Final Payment promptly but in no event later than ten (10) days after its receipt. The PM will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it subject to any offsets and deductions, noting approval and forward for payment processing.

15.4.6 **Final Payment Due.** Final Payment is due and payable by TxDOT, subject to all allowable offsets and deductions, on receipt of a complete Application for Final Payment. If the Contractor disputes any amount deducted by TxDOT, the

Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment and Article 18 shall apply to unresolved disputes.

- 15.4.7 **Effect of Final Payment (TxDOT).** Final Payment, when accepted by the Contractor, constitutes a waiver of all claims by TxDOT, relating to the condition of the Work except those arising from any one, combination or all of the following:
- 15.4.7.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 15.4.7.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 15.4.7.3 Terms of any warranties required by the Contract, or implied by law;
 - 15.4.7.4 Claims arising from personal injury or property damage to third parties; and
 - 15.4.7.5 Disputes pending under Article 18 that have not been resolved.
- 15.4.8 **Effect of Final Payment (Contractor).** Acceptance of Final Payment constitutes a waiver of all claims by the Contractor, except those specifically identified in writing and submitted prior to or at the time of Final Payment and disputes pending under Article 18 that have not been resolved. Provided, however, that the Contract shall not be deemed fully performed and closed until the expiration of all periods of time provided under the Contract Documents or applicable law for the Contractor to submit a claim or protest a Unilateral Change Order (ULCO).
- 15.4.9 **Effect on Warranty.** Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article 16 Warranty and Guaranty

- 16.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 16.2 **CONTRACTOR'S GENERAL WARRANTY AND GUARANTY.**
- 16.2.1 Contractor warrants to TxDOT 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 best finish and workmanship.
 - 16.2.2 Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new.
 - 16.2.3 TxDOT 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 Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the 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 TxDOT or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by TxDOT, at any time, or by any repair or correction of such defect made by TxDOT.
 - 16.2.4 All warranties must include statements that the warranty is assignable to the end user, subject to Texas laws and that venue for any legal proceedings under the warranty shall be in a court of competent jurisdiction in the county where the warranted item is incorporated into the Project.
- 16.3 **WARRANTY PERIOD.** Except as may be otherwise specified in the Contract Documents or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work at no cost to TxDOT. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of completion of the relevant phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.
- 16.4 **LIMITS ON WARRANTY.** Contractor's warranty and guaranty hereunder excludes defects or damage caused by:
- 16.4.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible.
 - 16.4.2 Normal wear and tear under normal usage after acceptance of the Work by TxDOT.
- 16.5 **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 a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 16.5.1 Observations by TxDOT and/or designated representatives.
 - 16.5.2 Recommendation or authorization to pay any progress or final payment by PM or designated representative.
 - 16.5.3 Issuance of a certificate of Substantial Completion by TxDOT or any payment TxDOT to Contractor under the Contract Documents.
 - 16.5.4 Use or occupancy of the Work or any part thereof by TxDOT.
 - 16.5.5 Any acceptance by TxDOT or any failure to do so.
 - 16.5.6 Any review of a Shop Drawing or sample submittal;
 - 16.5.7 Any inspection, test or approval by others; or
 - 16.5.8 Final payment by TxDOT.
- 16.6 **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 the Contractor. The PM or designated representative will certify the date of service commencement in the Substantial Completion Certificate.

- 16.6.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 16.6.2 Contractor may satisfy any such obligation by obtaining and assigning to TxDOT a complying warranty from a manufacturer, supplier, or Subcontractor, provided the warranty provides for assignment to the end user. Where an assigned warranty is tendered to TxDOT but does not fully comply with the requirements of the Contract, the Contractor remains liable to TxDOT on all elements of the required warranty not provided by the tendered warranty.
 - 16.6.3 A complying warranty from a manufacturer, supplier, or Subcontractor assigned to TxDOT by the Contractor shall be subject to and governed by the laws of the State of Texas.
- 16.7 **CORRECTION OF DEFECTS.** Upon receipt of written notice from TxDOT, or any agent of TxDOT designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to TxDOT and its designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to TxDOT, or if the Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, TxDOT may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.
- 16.8 **CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK.** Ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7)) from all subcontractors and materials suppliers, and provide a notarized certification to TxDOT that all equipment and materials used in fulfillment of their contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification is a condition for Substantial Completion of the Project in whole or in part.
- 16.9 **TELECOMMUNICATIONS SYSTEM WARRANTY PERIOD.** Except as may be otherwise specified or agreed, repair all defects in materials, equipment, or workmanship appearing within two (2) years from the date of Substantial Completion of the telecommunications system Work at no cost to TxDOT. If Substantial Completion occurs by phase, then the warranty period for the particular telecommunications system Work begins on the date of completion of the relevant phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

Article 17 Suspension and Termination

- 17.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 17.2 **SUSPENSION OF WORK FOR CAUSE.** TxDOT may, at any time without prior notice, suspend all or any part of the Work, if TxDOT determines it is considered necessary to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which is expected to impair the integrity, usefulness or longevity of the Work when completed, or for any reason set forth in any other Article of the Uniform General Conditions.
- 17.2.1 TxDOT will give the 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, the Contractor shall immediately stop the work so identified. As soon as practicable following the issuance of such a notice, TxDOT will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 17.2.2 If it is confirmed that the cause was within the control of the Contractor, the Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of the Contractor, and the suspension has prevented the Contractor from completing the Work within the Contract Time, the Contractor may be entitled to a Change Order increasing the Contract Sum and/or extending the Contract Time caused by any such suspension of Work.
- 17.2.3 Suspension of work under this provision will be no longer than is reasonably necessary to identify and remedy the conditions giving rise to the suspension. If TxDOT and the Contractor cannot reach agreement on the validity of any work suspension issued by TxDOT or on Contractor's entitlement to an adjustment to the Contract Sum and/or Contract Time such dispute shall be resolved pursuant to the Article 18.
- 17.3 **SUSPENSION OF WORK FOR TXDOT'S CONVENIENCE.** Upon seven (7) calendar days written notice to the Contractor, TxDOT may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. TxDOT will give the Contractor a written notice of suspension for convenience, which sets forth the dates and number of suspension days for the Work, or any portion of it. When such a suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by TxDOT at any time on seven (7) calendar days written notice to the Contractor. If TxDOT suspends the Work for its convenience for more than sixty (60) consecutive calendar days, the Contractor may elect to terminate the contract pursuant to the provisions of the Contract.
- 17.4 **TERMINATION BY TXDOT FOR CAUSE.**
- 17.4.1 TxDOT may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of, but not limited to, the following circumstances.
- 17.4.1.1 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 to continue prosecution of the Work,
- 17.4.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the PM or designated representative,
- 17.4.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract,
- 17.4.1.4 Failure to remedy defective work condemned by the PM or designated representative,
- 17.4.1.5 Failure to pay subcontractors, laborers, materialmen and suppliers pursuant to Tex. Gov't Code Chapter 2251;
- 17.4.1.6 Persistent endangerment to the safety of labor or of the Work, including display of uncooperative, disruptive or threatening behavior,
- 17.4.1.7 Failure to resume the Work that has been discontinued within a reasonable number of days after written notice to do so,
- 17.4.1.8 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract,
- 17.4.1.9 Any material breach or substantial violation of a provision of the Contract,
- 17.4.1.10 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

- 17.4.2 Should TxDOT decide to terminate the employment of the Contractor under any of the provisions of the **Termination by TxDOT For Cause** provision of this Article, it will provide to the Contractor and its Surety, if Surety is required, written notice of the intent to declare the Contractor in default if the Contractor does not proceed as directed within ten (10) days after receipt of the notice.
- 17.4.3 Should the Contractor or its Surety, if Surety is required, after having received notice of intent to declare the Contractor in default, demonstrate to the satisfaction of TxDOT within the time frame set forth in the notice, remedy to the condition(s) upon which the notice was based, the notice shall be rescinded in writing by TxDOT. If so rescinded, the Work may continue without an extension of time or any increase in the Contract Sum related directly or indirectly to the remedy.
- 17.4.4 Failure by TxDOT to exercise the right to terminate in any instance or for any proper reason is not a waiver of the right to do so in any other instance or for any other proper reason.
- 17.4.5 If the Contractor or its Surety, if Surety is required, fails to demonstrate activities to remedy the condition(s) upon which the notice of intent was based, to the satisfaction of TxDOT and within the time frame set forth in the notice following receipt of notice, TxDOT will give written notice to the Contractor and Surety, if Surety is required, declare the Contractor to be in default of the Contract, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor. TxDOT shall also without violating the Contract, demand the Contractor's Surety, if Surety is required, complete the remaining Work in accordance with the terms of the original Contract subject to, but not limited to, the following:
- 17.4.5.1 The Surety, if Surety is required, becomes the Contractor in a takeover;
 - 17.4.5.2 A completing Contractor will be considered a subcontractor of the Surety, if Surety is required;
 - 17.4.5.3 TxDOT reserves the right to approve or reject proposed subcontractors. HUB's must continue to be used in accordance with the commitments previously approved in the HSP by TxDOT;
 - 17.4.5.4 Work may resume after TxDOT receives and approves certificates of insurance as required by the Contract Documents. Certificates of insurance may be issued in the name of the completing Contractor;
 - 17.4.5.5 The Surety, if Surety is required, is responsible for making every effort to expedite the resumption of the Work and completion of the Contract;
 - 17.4.5.6 The completing Contractor may complete the Work utilizing the materials at the work location it deems suitable and acceptable subject to compliance with the provisions of the Contract Documents;
 - 17.4.5.7 Time charges will continue until completion of the Contract;
 - 17.4.5.8 Any costs incurred by TxDOT including, but not limited to, the cost of additional A/E services, other consultants, contract administration, liquidated damages, and any work or service of any type made necessary by such default or neglect will be the responsibility of the Surety. All costs associated with this work will be deducted from money due to the Surety. If the amount due TxDOT exceeds the sum that would have been payable under the Contract, the Surety will be liable and pay TxDOT the balance of these costs in excess of the Contract Sum. This obligation for payment survives the termination of the Contract.
- 17.4.6 In termination for cause the Contractor may be subject to sanctions under Title 43 Texas Administrative Code Chapter 9, Subchapter G.
- 17.4.7 The Surety's obligation for performance shall survive the termination of the Contract. Should the Surety fail to so demonstrate within thirty (30) days following receipt of termination notice to TxDOT's reasonable satisfaction that the condition or conditions upon which the notice of termination is based have been removed, corrected, or will not recur, TxDOT may, upon written notice to the Surety arrange for completion of the Work and pursue its legal remedies. TxDOT shall file suite for the cost incurred by TxDOT to complete the Work including, but not limited to, the cost of additional A/E services, other consultants, contract administration, and any work or service of any type made necessary by such default, corrections to the Work, or neglect.
- 17.4.7.1 In addition to any rights TxDOT may have against the Surety TxDOT reserves the right in termination for cause to take assignment of any and all contracts between the Surety, and its Subcontractors, vendors and suppliers. The PM or designated representative will promptly notify the Surety of the contracts, TxDOT elects to assume. Upon receipt of such notice, the Surety shall promptly take all steps necessary to affect such assignment.
- 17.4.8 If it is determined, after the Contractor is declared in default, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of TxDOT as provided for in the **Termination for Convenience of TxDOT** provision under this Article.
- 17.5 **TERMINATION FOR CONVENIENCE OF TXDOT.** TxDOT 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:
- 17.5.1 TxDOT will immediately notify the Contractor and the A/E in writing, specifying the reason for and the effective date of contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

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

17.5.2.1 Stop all work.

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

17.5.2.3 Terminate all subcontracts.

17.5.2.4 Cancel all materials and equipment orders as applicable.

17.5.2.5 Take action that is necessary to protect and preserve all property related to this Contract and materials, equipment and other property which is in the possession of the Contractor and for which TxDOT has paid the Contractor.

17.5.3 When the Contract is terminated for TxDOT's convenience, the Contractor may recover from TxDOT payment for all Work executed, including any additional work required pursuant to the notice of termination, and for any provable loss and reasonable expenses attributable to the Work resulting from such termination, but not for anticipated profits after the date of termination.

17.6 **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 the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional days' written notice to the PM or designated representative, terminate the Contract and recover from TxDOT payment for all Work previously executed and for any provable loss and reasonable expenses attributable to the Work resulting prior to such termination, but not for anticipated profits after the date of notice by the Contractor. If the cause of the work stoppage is removed prior to the end of the thirty (30) day notice period, the Contractor may not terminate the Contract.

17.7 **SETTLEMENT ON TERMINATION.** When the Contract is terminated for any reason, the Contractor shall, at any time prior to sixty (60) days after the effective date of termination, submit a final termination settlement proposal to TxDOT based upon recoverable costs as provided herein. If the Contractor fails to submit the proposal within the time allowed, TxDOT may determine the amount due to the Contractor because of the termination and TxDOT will pay the determined amount to the Contractor. All settlements on termination shall be administered as a Change Order.

Article 18 Dispute Resolution

- 18.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 18.2 **CONTRACTOR DISPUTES.** It is TxDOT's goal to have a dispute settled at the District / Office / Division, depending on the type of contract, level prior to elevating it to the Contract Claim Committee.
- 18.3 **UNRESOLVED CONTRACTOR DISPUTES.** The Alternate Dispute Resolution Process is authorized under Texas Government Code Chapter 2009. The Alternative Dispute Resolution Process shall be used by TxDOT and the Contractor to attempt to resolve any claim made by the Contractor or TxDOT.
- 18.3.1 **Contractor Claim.** A claim filed by the Contractor shall follow the Contract Claim Procedure as set forth in Texas Administrative Code (TAC) Title 43, Part 1, Chapter 9, Subchapter A, Rule §9.2.
- 18.3.1.1 Only the Contractor (prime contractor) shall submit a claim to begin a claim proceeding.
- 18.3.1.2 The prime contractor agrees to file a claim only after completion of the contract or when required for orderly performance of the contract.
- 18.3.1.3 The Prime Contractor shall file a claim no later than one year after the earlier of: the date TxDOT issues notice to the Contractor that it is in default, or the date TxDOT terminates the Contract; or the date TxDOT issues Final Acceptance of the Project.
- 18.3.1.4 After a claim proceeding has begun TxDOT may make a counter claim.
- 18.3.1.5 A claim filed by the prime contractor must be considered by the Contract Claim Committee. After a committee decision is issued, the Contractor can file with TxDOT's Executive Director a written petition requesting an administrative hearing.
- 18.3.2 **Owner Claim.** TAC 43, §9.2 does not abrogate TxDOT's authority to file a claim in a court of competent jurisdiction. The procedure for TxDOT to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.
- 18.4 **CONDITION PRECEDENT TO FORMAL ADMINISTRATIVE HEARING.** Compliance by the Contractor with TAC 43, §9.3 Contract Claim Procedure is a condition precedent to the filing of a contested case proceeding under Government Code Chapter 2001.
- 18.5 **CONDITION PRECEDENT TO SEEKING CONSENT TO SUE.** Compliance with the contested case process provided in Government Chapter 2001 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code.
- 18.6 **CONTINUED PERFORMANCE.** The pendency of a claim or claims does not authorize any suspension of performance by the Contractor nor relieve the Contractor from any of its obligations, in whole or in part.
- 18.7 **ACCESS TO DOCUMENTS.** The Contractor agrees that TxDOT and any of its duly authorized representatives shall have access and the right to examine, during normal business hours, any books, documents, papers, and records of the Contractor related to the Project. Further, the Contractor agrees to include this provision in all its subcontracts. The period of access and examination described herein also relates to appeals under this Article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract. The period of access and examination shall continue until final disposition of such claims, appeals or litigation.

Article 19 Miscellaneous

- 19.1 **RESOLUTION OF CONFLICTS IN THE DOCUMENTS.** In the event of conflict between the requirements of this Article and the Specifications the more restrictive shall apply.
- 19.2 **SPECIAL CONDITIONS.** When the Work contemplated by TxDOT 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 Special Conditions as described below.
- 19.2.1 Special Conditions shall relate to a particular project, be peculiar to that project, and may alter or expand any of the Uniform General Conditions.
- 19.3 **STANDARD SPECIFICATIONS.** When the Work contemplated by TxDOT requires the use of *Standard Specifications*, as defined in Article 1, for construction of elements of the Work, the Measurement and Payment sections of each *Standard Specifications* Item Number referenced are modified as described below. The term "TxDOT Item Number" or "Item Number", if used, shall have the same meaning as *Standard Specifications* Item Number.
- 19.3.1 **Measurement.** The Measurement section of the *Standard Specifications* Item Number is voided and the Item will be measured on a percentage of Work completed and materials stored corresponding to the Schedule of Values Work classification under which the Item is included.
- 19.3.2 **Payment.** The Payment section of the *Standard Specifications* Item Number is voided and the payment for the Item will be made on a percentage of Work completed and materials stored corresponding to the Schedule of Values Work classification under which the Item is included.
- 19.4 **PERSONAL LIABILITY OF PUBLIC OFFICIALS.** TxDOT employees are agents and representatives of the State and will incur no liability, personal or power or authority granted under the Contract.
- 19.5 **ASSIGNMENT OF CONTRACT.** Contractor shall not assign, sell, transfer, or otherwise dispose of the Contract or any portion, rights, title, or interest (including claims) without the approval of the Commission or designated representative. TxDOT must deem any proposed assignment justified and legally acceptable before the assignment may be approved. Any assignment, without TxDOT's approval, is void.
- 19.6 **RESPONSIBILITY FOR DAMAGE CLAIMS. THE CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS THE STATE AND ITS AGENTS AND EMPLOYEES FROM ALL SUITES, ACTION OR CLAIMS AND FROM ALL LIABILITY AND DAMAGES FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY DUE TO THE CONTRACTOR'S NEGLIGENCE IN THE PERFORMANCE OF THE WORK AND FROM ANY CLAIMS ARISING OR AMOUNTS RECOVERED UNDER ANY LAWS, INCLUDING WORKERS' COMPENSATION AND THE TEXAS TORT CLAIMS ACT. INDEMNITY AND SAVE HARMLESS THE STATE AND ASSUME RESPONSIBILITY FOR ALL DAMAGES AND INJURY TO PROPERTY OF ANY CHARACTER OCCURRING DURING THE PROSECUTION OF THE WORK RESULTING FROM ANY ACT, OMISSION, NEGLECT OR MISCONDUCT ON THE CONTRACTOR'S PART IN THE MANNER OR METHOD OF EXECUTING THE WORK; FROM FAILURE TO PROPERLY EXECUTE THE WORK; OR FROM DEFECTIVE WORK OR MATERIALS. THE CONTRACTOR SHALL NOT BE RELEASED FROM THESE RESPONSIBILITIES UNTIL ALL CLAIMS HAVE BEEN SETTLED AND SUITABLE EVIDENCE TO THAT EFFECT TENDERED TO THE STATE.**
- 19.7 **ASSERTION OF CLAIM.** If the Contractor asserts any claim or brings any type of legal action (including an Original Action, Third Party Action, or Cross Claim) against any Commissioner, or individual employee of TxDOT for any cause of action or claim for alleged negligence arising from the Contract, the Contractor will be ineligible to bid on any contract with TxDOT during the pendency of the claim or legal action.
- 19.7.1 Individual owners of a contracting firm are treated the same as a contractor. Therefore, the requirement is met when owners of a contracting firm bring a claim of legal action against a TxDOT employee.

CERTIFICATION OF ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

Pursuant to [Title 43 Texas Administrative Code Chapter 10, Required Conduct by Entities Doing Business with The Department](#), as a steward of public resources, the department must ensure the protection of public funds and maintain a high level of transparency and accountability. Therefore, the department expects entities doing business with the department to adhere to ethical standards of conduct.

By signing the contract, the Contractor certifies they are fully aware of the ethical conduct requirements of the department as outlined in Title 43 Texas Administrative Code Chapter 10 to include:

- [Subchapter A: General Provisions](#)
- [Subchapter B: Other Entities; Internal Ethics and Compliance Procedures](#)
- [Subchapter C: Required Conduct by Entities Doing Business with The Department](#)
- [Subchapter F: Sanctions and Suspension for Ethical Violations by Entities Doing Business with The Department](#)

It is also the responsibility of the contractor to ensure that all sub-contractors are aware of these ethical requirements.

CONFLICT OF INTEREST CERTIFICATION

Pursuant to Texas Government Code Section 2261.252(b), the Department is prohibited from entering into contracts in which Department officers and employees have a financial interest.

By signing the Contract, the Contractor certifies that it is not prohibited from entering into a Contract with the Department as a result of a financial interest as defined under Texas Government Code Section 2261.252(b), and that it will exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict of interest with the Department.

The Contractor also certifies that none of the following individuals, nor any of their family members within the second degree of affinity or consanguinity, owns 1% or more interest or has a financial interest as defined under Texas Government Code Section 2261.252(b) in the Contractor:

- Any member of the Texas Transportation Commission; and
- The Department's Executive Director, General Counsel, Chief of Procurement and Field Support Operations, Director of Procurement, and Director of Contract Services.

Violation of this certification may result in action by the Department.

CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application 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.

E-VERIFY CERTIFICATION

Pursuant to Texas Transportation Code §223.051, all TxDOT contracts for construction, maintenance, or improvement of a highway must include a provision requiring Contractors and subcontractors to use the U.S. Department of Homeland Security's E-Verify system to determine employment eligibility. By signing the contract, the Contractor certifies that prior to the award of the Contract:

- the Contractor has registered with and will, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of all persons hired to perform duties within Texas during the term of the agreement; and
- the Contractor will require that all subcontractors also register with and, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of the subcontract to determine the eligibility of all persons hired to perform duties within Texas during the term of the agreement.

Violation of this requirement constitutes a material breach of the Contract, subjects a subcontractor to removal from the Contract, and subjects the Contractor or subcontractors to possible sanctions in accordance with Title 43, Texas Administrative Code, Chapter 10, Subchapter F, "Sanctions and Suspension for Ethical Violations by Entities Doing Business with the Department."



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E-Verify System Instructions for Facility-Related Contracts

1. If your company is not already registered, register here:
<https://www.e-verify.gov/>
2. Upon registration, the system automatically creates the "E-Verify Memorandum of Understanding for Employers." Note: If you need technical support, contact E-Verify
<https://www.e-verify.gov/contact-us>
3. Access your company's "E-Verify Memorandum of Understanding for Employers" and save the file as a PDF.
4. As affirmation of your company's compliance with SB 312, you must submit the "E-Verify Memorandum of Understanding for Employers".

To obtain a copy of employer's fully executed MOU, log into the E-Verify system above.

Select Company

Select Edit Profile

Go to MOU tab at the bottom of the page

Failure to submit the "E-Verify Memorandum of Understanding for Employers" will result in your proposal being rejected.

For more information, contact the Support Services Division at (512) 416-2458 or email

SSD_ContractLettings@txdot.gov

OUR VALUES: People • Accountability • Trust • Honesty

OUR MISSION: Connecting You With Texas

An Equal Opportunity Employer

Certification Regarding Disclosure of Public Information

Pursuant to Subchapter J, Chapter 552, Texas Government Code, contractors executing a contract with a governmental body that results in the expenditure of at least \$1 million in public funds must:

- 1) preserve all contracting information* as provided by the records retention requirements applicable to Texas Department of Transportation (TxDOT) for the duration of the contract,
- 2) on request of TxDOT, promptly provide any contracting information related to the contract that is in the custody or possession of the entity, and
- 3) on completion of the contract, either:
 - A. provide, at no cost to TxDOT, all contracting information related to the contract that is in the custody or possession of the entity, or
 - B. preserve the contracting information related to the contract as provided by the records retention requirements applicable to TxDOT

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

By entering into Contract, the Contractor agrees to:

- provide, or make available, to TxDOT and any authorized governmental investigating or auditing agency all records, including electronic and payment records related to the contract, for the same period provided by the records retention schedule applicable to TxDOT, and
- ensure that all subcontracts include a clause requiring the same.

* As defined in Government Code §552.003, “Contracting information” means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- 1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- 2) solicitation or bid documents relating to a contract with a governmental body;
- 3) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- 4) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- 5) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

CERTIFICATION TO NOT BOYCOTT ISRAEL

Pursuant to Texas Government Code §2271.002, the Department must include a provision requiring a written verification affirming that the Contractor does not boycott Israel, as defined in Government Code §808.001, and will not boycott Israel during the term of the contract. This provision applies to a contract that:

- 1) is with a Contractor that is not a sole proprietorship,
- 2) is with a Contractor with 10 or more full-time employees, and
- 3) has a value of \$100,000 or more.

By signing the contract, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Violation of this certification may result in action by the Department.

CERTIFICATION TO NOT BOYCOTT ENERGY COMPANIES

Pursuant to Texas Government Code §2274.002, the Department must include a provision requiring a written verification affirming that the Contractor does not boycott energy companies, as defined in Government Code §809.001, and will not boycott energy companies during the term of the contract. This provision applies to a contract that:

- 1) is with a Contractor that is not a sole proprietorship,
- 2) is with a Contractor with 10 or more full-time employees, and
- 3) has a value of \$100,000 or more.

By signing the contract, the Contractor certifies that it does not boycott energy companies and will not boycott energy companies during the term of this contract. "Boycott" means taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (1) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (2) does business with a company described by (1).

Violation of this certification may result in action by the Department.

CERTIFICATION TO NOT DISCRIMINATE AGAINST FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS

Pursuant to Texas Government Code §2274.002, the Department must include a provision requiring a written verification affirming that the Contractor:

- 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Government Code §2274.001, and
- 2) will not discriminate against a firearm entity or firearm trade association during the term of the contract.

This provision applies to a contract that:

- 1) is with a Contractor that is not a sole proprietorship,
- 2) is with a Contractor with 10 or more full-time employees, and
- 3) has a value of \$100,000 or more.

By signing the contract, the Contractor certifies that it does not discriminate against a firearm entity or firearm trade association as described and will not do so during the term of this contract. "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to: (1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. "Discriminate against a firearm entity or firearm trade association" does not include: (1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Violation of this certification may result in action by the Department.

Special Provision to Item 000

Special Labor Provisions for State Projects



1. GENERAL

This is a "Public Works" Project, as provided under Government Code Title 10, Chapter 2258, "Prevailing Wage Rates," and is subject to the provisions of the Statute. No provisions in the Contract are intended to be in conflict with the provisions of the Statute.

The Texas Transportation Commission has ascertained and indicated in the special provisions the regular rate of per diem wages prevailing in each locality for each craft or type of worker. Apply the wage rates contained in the specifications as minimum wage rates for the Contract.

2. MINIMUM WAGES, HOURS AND CONDITIONS OF EMPLOYMENT

All workers necessary for the satisfactory completion of the work are within the purview of the Contract.

Whenever and wherever practical, give local citizens preference in the selection of labor.

Do not require any worker to lodge, board or trade at a particular place, or with a particular person as a condition of employment.

Do not charge or accept a fee of any from any person who obtains work on the project. Do not require any person who obtains work on the project to pay any fee to any other person or agency obtaining employment for the person on the project.

Do not charge for tools or equipment used in connection with the duties performed, except for loss or damage of property. Do not charge for necessary camp water.

Do not charge for any transportation furnished to any person employed on the project.

The provisions apply where work is performed by piece work, station work, etc. The minimum wage paid will be exclusive of equipment rental on any shipment which the worker or subcontractor may furnish in connection with his work.

Take responsibility for carrying out the requirements of this specification and ensure that each subcontractor working on the project complies with its provisions.

Any form of subterfuge, coercion or deduction designed to evade, reduce or discount the established minimum wage scales will be considered a violation of the Contract.

The Fair Labor Standards Acts (FLSA) established one and one-half (1-1/2) pay for overtime in excess of 40 hours worked in 1 week. Do not consider time consumed by the worker in going to and returning from the place of work as part of the hours of work. Do not require or permit any worker to work in excess of 40 hours in 1 week, unless the worker receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.

The general rates of per diem wages prevailing in this locality for each class and type of workers whose services are considered necessary to fulfill the Contract are indicated in the special provisions, and these rates govern as minimum wage rates on this Contract. A penalty of \$60.00 per calendar day or portion of a calendar day for each worker that is paid less than the stipulated general rates of per diem wages for any work done under the Contract will be deducted. The Department, upon receipt of a complaint by a worker,

will determine within 30 days whether good cause exists to believe that the Contractor or a subcontractor has violated wage rate requirements and notify the parties involved of the findings. Make every effort to resolve the alleged violation within 14 days after notification. The next alternative is submittal to binding arbitration in accordance with the provisions of the Texas General Arbitration Act (Art. 224 et seq., Revised Statutes).

Notwithstanding any other provision of the Contract, covenant and agree that the Contractor and its subcontractors will pay each of their employees and contract labor engaged in any way in work under the Contract, a wage not less than what is generally known as the "federal minimum wage" as set out in 29 U.S.C. 206 as that Statute may be amended from time to time.

Pay any worker employed whose position is not listed in the Contract, a wage not less than the per diem wage rate established in the Contract for a worker whose duties are most nearly comparable.

3. **RECORD AND INSPECTIONS**

Keep copies of weekly payrolls for review. Require subcontractors to keep copies of weekly payrolls for review. Show the name, occupation, number of hours worked each day and per diem wage paid each worker together with a complete record of all deductions made from such wages. Keep records for a period of 3 years from the date of completion of the Contract.

Where the piece-work method is used, indicate on the payroll for each person involved:

- Quantity of piece work performed.
- Price paid per piece-work unit.
- Total hours employed.

The Engineer may require the Contractor to file an affidavit for each payroll certifying that payroll is a true and accurate report of the full wages due and paid to each person employed.

Post or make available to employees the prevailing wage rates from the Contract. Require subcontractors to post or make available to employees the prevailing wage rates from the Contract.

Special Provision 000

Notice of Contractor Performance Evaluations



1. GENERAL

In accordance with Texas Transportation Code §223.012, the Director of Support Services Division for building contracts will evaluate Contractor performance based on quality, safety, and timeliness of the project.

2. DEFINITIONS

- 2.1. **Project Recovery Plan (PRP)**—a formal, enforceable plan developed by the Contractor, in consultation with the Director of Support Services Division, that documents the cause of noted quality, safety, and timeliness issues and specifies how the Contractor proposes to correct project-specific performance deficiencies.

In accordance with Title 43, Texas Administrative Code (TAC), §9.23, the Director of Support Services Division will request a PRP if the Contractor's performance on a project is below the Department's acceptable standards and will monitor the Contractor's compliance with the established plan.

- 2.2. **Corrective Action Plan (CAP)**—a formal, enforceable plan developed by the Contractor, and proposed for adoption by the Support Services Division, that documents the cause of noted quality, safety, and timeliness issues and specifies how the Contractor proposes to correct statewide performance deficiencies.

In accordance with 43 TAC §9.23, the Division will request a CAP if the average of the Contractor's statewide final evaluation scores falls below the Department's acceptable standards for the review period and will monitor the Contractor's compliance with the established plan.

3. CONTRACTOR EVALUATIONS

In accordance with Title 43, Texas Administrative Code (TAC) §9.23, the Chief Administrative Officer for building contracts will schedule evaluations at the following intervals, at minimum:

- Interim evaluations—at or within 30 days after the anniversary of the notice to proceed, for Contracts extending beyond 1 yr., and
- Final evaluation—upon project closeout.

In case of a takeover agreement, neither the Surety nor its performing Contractor will be evaluated.

In addition to regularly scheduled evaluations, the Chief Administrative Officer may schedule an interim evaluation at any time to formally communicate issues with quality, safety, or timeliness. Upon request, work with the Chief Administrative Officer to develop a PRP to document expectations for correcting deficiencies.

Comply with the PRP as directed. Failure to comply with the PRP may result in additional remedial actions available to the Chief Administrative Officer under the Uniform General Conditions. Failure to meet a PRP to the Chief Administrative Officer's satisfaction may result in immediate referral to the Performance Review Committee for consideration of further action against the Contractor.

The Chief Administrative Officer will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards or comply with a PRP, including consideration of sufficient time.

Follow the escalation ladder if there is a disagreement regarding an evaluation or disposition of a PRP. The Contractor may submit additional documentation pertaining to the dispute. The Chief Administrative Officer's decision on a Contractor's evaluation score and recommendation of action required in a PRP or follow up for non-compliance is final.

4. DIVISION OVERSIGHT

Upon request of the Support Services Division, develop and submit for Division approval a proposed CAP to document expectations for correcting deficiencies in the performance of projects statewide.

Comply with the CAP as directed. The CAP may be modified at any time up to completion or resolution after written approval of the premise of change from the Division. Failure to meet an adopted or revised adopted CAP to the Division's satisfaction within 120 days will result in immediate referral to the Performance Review Committee for consideration of further action against the Contractor.

The Division will consider and document any events outside the Contractor's control that contributed to the failure to meet performance standards or comply with a CAP, including consideration of sufficient time and associated costs as appropriate.

5. PERFORMANCE REVIEW COMMITTEE

The Performance Review Committee, in accordance with 43 TAC §9.24, will review at minimum all final evaluations, history of compliance with PRPs, any adopted CAPs including agreed modifications, any information about events outside a Contractor's control contributing to the Contractor's performance, and any documentation submitted by the Contractor and may recommend one or more of the following actions:

- take no action,
- reduce the Contractor's bidding capacity,
- prohibit the Contractor from bidding on one or more projects,
- immediately suspend the Contractor from bidding for a specified period of time, by reducing the Contractor's bidding capacity to zero, or
- prohibit the Contractor from being awarded a Contract on which they are the apparent low bidder.

The Deputy Executive Director will determine any further action against the Contractor.

6. APPEALS PROCESS

In accordance with 43 TAC §9.25, the Contractor may appeal remedial actions determined by the Deputy Executive Director.

Special Provision to Item 506

Temporary Erosion, Sedimentation, and Environmental Controls



Item 506, "Temporary Erosion, Sedimentation, and Environmental Controls," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 506.1., "Description." The second paragraph is voided and replaced by the following.

Contractor is considered primary operator to have day-to-day operational control as defined in TPDES GP TXR150000.

- 1.1. For projects with soil disturbance of less than 1 acre, no submittal to TCEQ will be required but Contractor will follow SWP3. For projects with soil disturbance of 1 acre to less than 5 acres a small site notice will be posted at the site. For projects with soil disturbance of 5 acres or more a notice of intent (NOI) is required and a large site notice posted at site. Postings will be in accordance with TPDES GP TXR150000. Postings not associated with project specific locations will be in same location as Department's postings.
- 1.2. **Notice of Intent (NOI).** Submit a NOI, if applicable, with the TCEQ under the TPDES GP TXR150000 at least 7 days prior to commencement of construction activities at the project site. Provide a signed copy to the Engineer and any other MS4 operators at the time of submittal. The Department will submit their NOI prior to contractor submission and will provide a copy for Contractor's use in completing the Contractor's NOI form.
- 1.3. **Notice of Change (NOC).** Upon concurrence of the Engineer, submit a NOC, if applicable, to the TCEQ within 14 days of discovery of a change or revision to the NOI as required by the TPDES GP TXR150000. Provide a signed copy of the NOC to the Engineer and any other MS4 operators at the time of submittal.
- 1.4. **Notice of Termination (NOT).** Upon concurrence of the Engineer, submit a NOT, if applicable, to the TCEQ within 30 days of the Engineer's approval that 70% native background vegetative cover is met or equivalent permanent stabilization have been employed in accordance with the TPDES GP TXR 150000. Provide a signed copy of the NOT to the Engineer and any other MS4 operators at the time of submittal.

Section 506.3.3., "Training," is supplemented by the following:

Training is provided by the Department at no cost to the Contractor and is valid for 3 yr. from the date of completion. The Engineer may require the following training at a frequency less than 3 yr. based on environmental needs:

- "Environmental Management System: Awareness Training for the Contractor" (English and Spanish) (Approximate running time 20 min.), and
- "Storm Water: Environmental Requirements During Construction" (English and Spanish) (Approximate running time 20 min.).

The contractor responsible person environmental (CRPE), alternate CRPE designated for emergencies, Contractor's superintendent, Contractor, and subcontractor lead personnel involved in soil disturbing or SWP3 activities must enroll in and complete the training listed below and provide the certificate of completion to the Engineer before performing soil disturbing or SWP3 activities on the project. Training is provided by a third party and is valid for 3 years from the date shown on the Certificate of Completion. Coordinate enrollment as prescribed by the Department and pay associated fees for the following training:

- "Revegetation During Construction"
- "Construction General Permit Compliance," and

- "Construction Stage Gate Checklist (CSGC)."

Training and associated fee will not be measured or paid for directly but are subsidiary to this Item.

Item 506

Temporary Erosion, Sedimentation, and Environmental Controls



1. DESCRIPTION

Install, maintain, and remove erosion, sedimentation, and environmental control measures to prevent or reduce the discharge of pollutants in accordance with the Storm Water Pollution Prevention Plan (SWP3) on the plans and the Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR150000. Control measures are defined as Best Management Practices used to prevent or reduce the discharge of pollutants. Control measures include, but are not limited to, rock filter dams, temporary pipe slope drains, temporary paved flumes, construction exits, earthwork for erosion control, pipe, construction perimeter fence, sandbags, temporary sediment control fence, biodegradable erosion control logs, vertical tracking, temporary or permanent seeding, and other measures. Erosion and sediment control devices must be selected from the *Erosion Control Approved Products* or *Sediment Control Approved Products* lists. Perform work in a manner to prevent degradation of receiving waters, facilitate project construction, and comply with applicable federal, state, and local regulations. Ensure the installation and maintenance of control measures is performed in accordance with the manufacturer's or designer's specifications.

Provide the Contractor Certification of Compliance before performing SWP3 or soil disturbing activities. By signing the Contractor Certification of Compliance, the Contractor certifies they have read and understand the requirements applicable to this project pertaining to the SWP3, the plans, and the TPDES General Permit TXR150000. The Contractor is responsible for any penalties associated with non-performance of installation or maintenance activities required for compliance. Ensure the most current version of the certificate is executed for this project.

2. MATERIALS

Furnish materials in accordance with the following:

- Item 161, "Compost,"
- Item 432, "Riprap," and
- Item 556, "Pipe Underdrains."

2.1. Rock Filter Dams.

2.1.1. Aggregate. Furnish aggregate with approved hardness, durability, cleanliness, and resistance to crumbling, flaking, and eroding. Provide the following:

- Types 1, 2, and 4 Rock Filter Dams. Use 3 to 6 in. aggregate.
- Type 3 Rock Filter Dams. Use 4 to 8 in. aggregate.

2.1.2. Wire. Provide minimum 20 gauge galvanized wire for the steel wire mesh and tie wires for Types 2 and 3 rock filter dams. Type 4 dams require:

- a double-twisted, hexagonal weave with a nominal mesh opening of 2-1/2 × 3-1/4 in.;
- minimum 0.0866 in. steel wire for netting;
- minimum 0.1063 in. steel wire for selvages and corners; and
- minimum 0.0866 in. for binding or tie wire.

2.1.3. Sandbag Material. Furnish sandbags meeting Section 506.2.8., "Sandbags," except that any gradation of aggregate may be used to fill the sandbags.

- 2.2. **Temporary Pipe Slope Drains.** Provide corrugated metal pipe, polyvinyl chloride (PVC) pipe, flexible tubing, watertight connection bands, grommet materials, prefabricated fittings, and flared entrance sections that conform to the plans. Recycled and other materials meeting these requirements are allowed if approved.
- Furnish concrete in accordance with Item 432, "Riprap."
- 2.3. **Temporary Paved Flumes.** Furnish asphalt concrete, hydraulic cement concrete, or other comparable non-erodible material that conforms to the plans. Provide rock or rubble with a minimum diameter of 6 in. and a maximum volume of 1/2 cu. ft. for the construction of energy dissipaters.
- 2.4. **Construction Exits.** Provide materials that meet the details shown on the plans and this Section.
- 2.4.1. **Rock Construction Exit.** Provide crushed aggregate for long- and short-term construction exits. Furnish aggregates that are clean, hard, durable, and free from adherent coatings such as salt, alkali, dirt, clay, loam, shale, soft or flaky materials, and organic and injurious matter. Use 4- to 8-in. aggregate for Type 1. Use 2- to 4-in. aggregate for Type 3.
- 2.4.2. **Timber Construction Exit.** Furnish No. 2 quality or better railroad ties and timbers for long-term construction exits, free of large and loose knots and treated to control rot. Fasten timbers with nuts and bolts or lag bolts, of at least 1/2 in. diameter, unless otherwise shown on the plans or allowed. Provide plywood or pressed wafer board at least 1/2 in. thick for short-term exits.
- 2.4.3. **Foundation Course.** Provide a foundation course consisting of flexible base, bituminous concrete, hydraulic cement concrete, or other materials as shown on the plans or directed.
- 2.5. **Embankment for Erosion Control.** Provide rock, loam, clay, topsoil, or other earth materials that will form a stable embankment to meet the intended use.
- 2.6. **Pipe.** Provide pipe outlet material in accordance with Item 556, "Pipe Underdrains," and details shown on the plans.
- 2.7. **Construction Perimeter Fence.**
- 2.7.1. **Posts.** Provide essentially straight wood or steel posts that are at least 60 in. long. Furnish soft wood posts with a minimum diameter of 3 in., or use nominal 2 × 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 × 1-1/5 in. Furnish T- or L-shaped steel posts with a minimum weight of 1.25 lb. per foot.
- 2.7.2. **Fence.** Provide orange construction fencing as approved.
- 2.7.3. **Fence Wire.** Provide 14 gauge or larger galvanized smooth or twisted wire. Provide 16 gauge or larger tie wire.
- 2.7.4. **Flagging.** Provide brightly-colored flagging that is fade-resistant and at least 3/4 in. wide to provide maximum visibility both day and night.
- 2.7.5. **Staples.** Provide staples with a crown at least 1/2 in. wide and legs at least 1/2 in. long.
- 2.7.6. **Used Materials.** Previously used materials meeting the applicable requirements may be used if approved.
- 2.8. **Sandbags.** Provide sandbag material of polypropylene, polyethylene, or polyamide woven fabric with a minimum unit weight of 4 oz. per square yard, a Mullen burst-strength exceeding 300 psi, and an ultraviolet stability exceeding 70%.
- Use natural coarse sand or manufactured sand meeting the gradation given in Table 1 to fill sandbags. Filled sandbags must be 24 to 30 in. long, 16 to 18 in. wide, and 6 to 8 in. thick.

Table 1
Sand Gradation

Sieve Size	Retained (% by Weight)
#4	Maximum 3%
#100	Minimum 80%
#200	Minimum 95%

Aggregate may be used instead of sand for situations where sandbags are not adjacent to traffic. The aggregate size must not exceed 3/8 in.

- 2.9. **Temporary Sediment Control Fence.** Provide a net-reinforced fence using woven geo-textile fabric. Logos visible to the traveling public will not be allowed.
- 2.9.1. **Fabric.** Provide fabric materials in accordance with [DMS-6230](#), "Temporary Sediment Control Fence Fabric."
- 2.9.2. **Posts.** Provide essentially straight wood or steel posts with a minimum length of 48 in., unless otherwise shown on the plans. Furnish soft wood posts at least 3 in. in diameter, or use nominal 2 × 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 × 1-1/2 in. Furnish T- or L-shaped steel posts with a minimum weight of 1.25 lb. per foot.
- 2.9.3. **Net Reinforcement.** Provide net reinforcement of at least 12.5 gauge (SWG) galvanized welded wire mesh, with a maximum opening size of 2 × 4 in., at least 24 in. wide, unless otherwise shown on the plans.
- 2.9.4. **Staples.** Provide staples with a crown at least 3/4 in. wide and legs 1/2 in. long.
- 2.9.5. **Used Materials.** Use recycled material meeting the applicable requirements if approved.
- 2.10. **Biodegradable Erosion Control Logs.**
- 2.10.1. **Core Material.** Furnish core material that is biodegradable or recyclable. Use compost, mulch, aspen excelsior wood fibers, chipped site vegetation, agricultural rice or wheat straw, coconut fiber, 100% recyclable fibers, or any other acceptable material unless specifically called out on the plans. Permit no more than 5% of the material to escape from the containment mesh. Furnish compost meeting the requirements of Item 161, "Compost."
- 2.10.2. **Containment Mesh.** Furnish containment mesh that is 100% biodegradable, photodegradable, or recyclable such as burlap, twine, UV photodegradable plastic, polyester, or any other acceptable material.
- Furnish biodegradable or photodegradable containment mesh when log will remain in place as part of a vegetative system.
- Furnish recyclable containment mesh for temporary installations.
- 2.10.3. **Size.** Furnish biodegradable erosion control logs with diameters shown on the plans or as directed. Stuff containment mesh densely so logs do not deform.

3. QUALIFICATIONS, TRAINING, AND EMPLOYEE REQUIREMENTS

- 3.1. **Contractor Responsible Person Environmental (CRPE) Qualifications and Responsibilities.** Provide and designate in writing at the preconstruction conference a CRPE and alternate CRPE who have overall responsibility for the storm water management program. The CRPE will implement storm water and erosion control practices; will oversee and observe storm water control measure monitoring and management; will monitor the project site daily and produce daily monitoring reports as long as there are BMPs in place or soil disturbing activities are evident to ensure compliance with the SWP3 and TPDES General Permit TXR150000. During time suspensions when work is not occurring or on contract non-work days, daily inspections are not required unless a rain event has occurred. The CRPE will provide recommendations on

how to improve the effectiveness of control measures. Attend the Department's preconstruction conference for the project. Ensure training is completed as identified in Section 506.3.3., "Training," by all applicable personnel before employees work on the project. Document and submit a list, signed by the CRPE, of all applicable Contractor and subcontractor employees who have completed the training. Include the employee's name, the training course name, and date the employee completed the training. Provide the most current list at the preconstruction conference or before SWP3 or soil disturbing activities. Update the list as needed and provide the updated list when updated.

- 3.2. **Contractor Superintendent Qualifications and Responsibilities.** Provide a superintendent that is competent, has experience with and knowledge of storm water management, and is knowledgeable of the requirements and the conditions of the TPDES General Permit TXR150000. The superintendent will manage and oversee the day to day operations and activities at the project site; work with the CRPE to provide effective storm water management at the project site; represent and act on behalf of the Contractor; and attend the Department's preconstruction conference for the project.
- 3.3. **Training.** All Contractor and subcontractor employees involved in soil disturbing activities, small or large structures, storm water control measures, and seeding activities must complete training as prescribed by the Department.

4. CONSTRUCTION

- 4.1. **Contractor Responsibilities.** Implement the SWP3 for the project site in accordance with the plans and specifications, TPDES General Permit TXR150000, and as directed. Coordinate storm water management with all other work on the project. Develop and implement an SWP3 for project-specific material supply plants within and outside of the Department's right of way in accordance with the specific or general storm water permit requirements. Prevent water pollution from storm water associated with construction activity from entering any surface water or private property on or adjacent to the project site.
- 4.2. **Implementation.** The CRPE, or alternate CRPE, must be accessible by phone and able to respond to project-related storm water management or other environmental emergencies 24 hr. per day.
- 4.2.1. **Commencement.** Implement the SWP3 as shown and as directed. Contractor-proposed recommendations for changes will be allowed as approved. Conform to the established guidelines in the TPDES General Permit TXR150000 to make changes. Do not implement changes until approval has been received and changes have been incorporated into the plans. Minor adjustments to meet field conditions are allowed and will be recorded in the SWP3.
- 4.2.2. **Phasing.** Implement control measures before the commencement of activities that result in soil disturbance. Phase and minimize the soil disturbance to the areas shown on the plans. Coordinate temporary control measures with permanent control measures and all other work activities on the project to assure economical, effective, safe, and continuous water pollution prevention. Provide control measures that are appropriate to the construction means, methods, and sequencing allowed by the Contract. Exercise precaution throughout the life of the project to prevent pollution of ground waters and surface waters. Schedule and perform clearing and grubbing operations so that stabilization measures will follow immediately thereafter if project conditions permit. Bring all grading sections to final grade as soon as possible and implement temporary and permanent control measures at the earliest time possible. Implement temporary control measures when required by the TPDES General Permit TXR150000 or otherwise necessitated by project conditions.

Do not prolong final grading and shaping. Preserve vegetation where possible throughout the project, and minimize clearing, grubbing, and excavation within stream banks, bed, and approach sections.
- 4.3. **General.**
- 4.3.1. **Temporary Alterations or Control Measure Removal.** Altering or removal of control measures is allowed when control measures are restored within the same working day.

- 4.3.2. **Stabilization.** Initiate stabilization for disturbed areas no more than 14 days after the construction activities in that portion of the site have temporarily or permanently ceased. Establish a uniform vegetative cover or use another stabilization practice in accordance with the TPDES General Permit TXR150000.
- 4.3.3. **Finished Work.** Remove and dispose of all temporary control measures upon acceptance of vegetative cover or other stabilization practice unless otherwise directed. Complete soil disturbing activities and establish a uniform perennial vegetative cover. A project will not be considered for acceptance until a vegetative cover of 70% density of existing adjacent undisturbed areas is obtained or equivalent permanent stabilization is obtained in accordance with the TPDES General Permit TXR150000. An exception will be allowed in arid areas as defined in the TPDES General Permit TXR150000.
- 4.3.4. **Restricted Activities and Required Precautions.** Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens, or any other petroleum product. Operate and maintain equipment on-site to prevent actual or potential water pollution. Manage, control, and dispose of litter on-site such that no adverse impacts to water quality occur. Prevent dust from creating a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property. Wash out concrete trucks only as described in the TPDES General Permit TXR150000. Use appropriate controls to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water (i.e., dewatering). Prevent discharges that would contribute to a violation of Edwards Aquifer Rules, water quality standards, the impairment of a listed water body, or other state or federal law.
- 4.4. **Installation, Maintenance, and Removal Work.** Perform work in accordance with the SWP3, according to manufacturers' guidelines, and in accordance with the TPDES General Permit TXR150000. Install and maintain the integrity of temporary erosion and sedimentation control devices to accumulate silt and debris until soil disturbing activities are completed and permanent erosion control features are in place or the disturbed area has been adequately stabilized as approved.

The Department will inspect and document the condition of the control measures at the frequency shown on the plans and will provide the Construction SWP3 Field Inspection and Maintenance Reports to the Contractor. Make corrections as soon as possible before the next anticipated rain event or within 7 calendar days after being able to enter the worksite for each control measure. The only acceptable reason for not accomplishing the corrections with the time frame specified is when site conditions are "Too Wet to Work." Take immediate action if a correction is deemed critical as directed. When corrections are not made within the established time frame, all work will cease on the project and time charges will continue while the control measures are brought into compliance. Commence work once the Engineer reviews and documents the project is in compliance. Commencing work does not release the Contractor of the liability for noncompliance of the SWP3, plans, or TPDES General Permit TXR150000.

The Engineer may limit the disturbed area if the Contractor cannot control soil erosion and sedimentation resulting from the Contractor's operations. Implement additional controls as directed.

Remove devices upon approval or as directed. Finish-grade and dress the area upon removal. Stabilize disturbed areas in accordance with the permit, and as shown on the plans or directed. Materials removed are considered consumed by the project. Retain ownership of stockpiled material and remove it from the project when new installations or replacements are no longer required.

- 4.4.1. **Rock Filter Dams for Erosion Control.** Remove trees, brush, stumps, and other objectionable material that may interfere with the construction of rock filter dams. Place sandbags as a foundation when required or at the Contractor's option.

Place the aggregate to the lines, height, and slopes specified, without undue voids for Types 1, 2, 3, and 5. Place the aggregate on the mesh and then fold the mesh at the upstream side over the aggregate and secure it to itself on the downstream side with wire ties, or hog rings for Types 2 and 3, or as directed. Place rock filter dams perpendicular to the flow of the stream or channel unless otherwise directed. Construct filter dams according to the following criteria unless otherwise shown on the plans:

- 4.4.1.1. **Type 1 (Non-Reinforced).**
- **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
 - **Top Width.** At least 2 ft.
 - **Slopes.** No steeper than 2:1.
- 4.4.1.2. **Type 2 (Reinforced).**
- **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
 - **Top Width.** At least 2 ft.
 - **Slopes.** No steeper than 2:1.
- 4.4.1.3. **Type 3 (Reinforced).**
- **Height.** At least 36 in. measured vertically from existing ground to top of filter dam.
 - **Top Width.** At least 2 ft.
 - **Slopes.** No steeper than 2:1.
- 4.4.1.4. **Type 4 (Sack Gabions).** Unfold sack gabions and smooth out kinks and bends. Connect the sides by lacing in a single loop–double loop pattern on 4- to 5-in. spacing for vertical filling. Pull the end lacing rod at one end until tight, wrap around the end, and twist 4 times. Fill with stone at the filling end, pull the rod tight, cut the wire with approximately 6 in. remaining, and twist wires 4 times.
- Place the sack flat in a filling trough, fill with stone, connect sides, and secure ends as described above for horizontal filling.
- Lift and place without damaging the gabion. Shape sack gabions to existing contours.
- 4.4.1.5. **Type 5.** Provide rock filter dams as shown on the plans.
- 4.4.2. **Temporary Pipe Slope Drains.** Install pipe with a slope as shown on the plans or as directed. Construct embankment for the drainage system in 8-in. lifts to the required elevations. Hand-tamp the soil around and under the entrance section to the top of the embankment as shown on the plans or as directed. Form the top of the embankment or earth dike over the pipe slope drain at least 1 ft. higher than the top of the inlet pipe at all points. Secure the pipe with hold-downs or hold-down grommets spaced a maximum of 10 ft. on center. Construct the energy dissipaters or sediment traps as shown on the plans or as directed. Construct the sediment trap using concrete or rubble riprap in accordance with Item 432, "Riprap," when designated on the plans.
- 4.4.3. **Temporary Paved Flumes.** Construct paved flumes as shown on the plans or as directed. Provide excavation and embankment (including compaction of the subgrade) of material to the dimensions shown on the plans unless otherwise indicated. Install a rock or rubble riprap energy dissipater, constructed from the materials specified above, to a minimum depth of 9 in. at the flume outlet to the limits shown on the plans or as directed.
- 4.4.4. **Construction Exits.** Prevent traffic from crossing or exiting the construction site or moving directly onto a public roadway, alley, sidewalk, parking area, or other right of way areas other than at the location of construction exits when tracking conditions exist. Construct exits for either long- or short-term use.
- 4.4.4.1. **Long-Term.** Place the exit over a foundation course as required. Grade the foundation course or compacted subgrade to direct runoff from the construction exits to a sediment trap as shown on the plans or as directed. Construct exits with a width of at least 14 ft. for one-way and 20 ft. for two-way traffic for the full width of the exit, or as directed.
- 4.4.4.1.1. **Type 1.** Construct to a depth of at least 8 in. using crushed aggregate as shown on the plans or as directed.
- 4.4.4.1.2. **Type 2.** Construct using railroad ties and timbers as shown on the plans or as directed.

- 4.4.4.2. **Short-Term.**
- 4.4.4.2.1. **Type 3.** Construct using crushed aggregate, plywood, or wafer board. This type of exit may be used for daily operations where long-term exits are not practical.
- 4.4.4.2.2. **Type 4.** Construct as shown on the plans or as directed.
- 4.4.5. **Earthwork for Erosion Control.** Perform excavation and embankment operations to minimize erosion and to remove collected sediments from other erosion control devices.
- 4.4.5.1. **Excavation and Embankment for Erosion Control Features.** Place earth dikes, swales, or combinations of both along the low crown of daily lift placement, or as directed, to prevent runoff spillover. Place swales and dikes at other locations as shown on the plans or as directed to prevent runoff spillover or to divert runoff. Construct cuts with the low end blocked with undisturbed earth to prevent erosion of hillsides. Construct sediment traps at drainage structures in conjunction with other erosion control measures as shown on the plans or as directed.
- Create a sediment basin, where required, providing 3,600 cu. ft. of storage per acre drained, or equivalent control measures for drainage locations that serve an area with 10 or more disturbed acres at one time, not including offsite areas.
- 4.4.5.2. **Excavation of Sediment and Debris.** Remove sediment and debris when accumulation affects the performance of the devices, after a rain, and when directed.
- 4.4.6. **Construction Perimeter Fence.** Construct, align, and locate fencing as shown on the plans or as directed.
- 4.4.6.1. **Installation of Posts.** Embed posts 18 in. deep or adequately anchor in rock, with a spacing of 8 to 10 ft.
- 4.4.6.2. **Wire Attachment.** Attach the top wire to the posts at least 3 ft. from the ground. Attach the lower wire midway between the ground and the top wire.
- 4.4.6.3. **Flag Attachment.** Attach flagging to both wire strands midway between each post. Use flagging at least 18 in. long. Tie flagging to the wire using a square knot.
- 4.4.7. **Sandbags for Erosion Control.** Construct a berm or dam of sandbags that will intercept sediment-laden storm water runoff from disturbed areas, create a retention pond, detain sediment, and release water in sheet flow. Fill each bag with sand so that at least the top 6 in. of the bag is unfilled to allow for proper tying of the open end. Place the sandbags with their tied ends in the same direction. Offset subsequent rows of sandbags 1/2 the length of the preceding row. Place a single layer of sandbags downstream as a secondary debris trap. Place additional sandbags as necessary or as directed for supplementary support to berms or dams of sandbags or earth.
- 4.4.8. **Temporary Sediment-Control Fence.** Provide temporary sediment-control fence near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the fence into erosion-control measures used to control sediment in areas of higher flow. Install the fence as shown on the plans, as specified in this Section, or as directed.
- 4.4.8.1. **Installation of Posts.** Embed posts at least 18 in. deep, or adequately anchor, if in rock, with a spacing of 6 to 8 ft. and install on a slight angle toward the runoff source.
- 4.4.8.2. **Fabric Anchoring.** Dig trenches along the uphill side of the fence to anchor 6 to 8 in. of fabric. Provide a minimum trench cross-section of 6 × 6 in. Place the fabric against the side of the trench and align approximately 2 in. of fabric along the bottom in the upstream direction. Backfill the trench, then hand-tamp.
- 4.4.8.3. **Fabric and Net Reinforcement Attachment.** Attach the reinforcement to wooden posts with staples, or to steel posts with T-clips, in at least 4 places equally spaced unless otherwise shown on the plans. Sewn

vertical pockets may be used to attach reinforcement to end posts. Fasten the fabric to the top strand of reinforcement by hog rings or cord every 15 in. or less.

- 4.4.8.4. **Fabric and Net Splices.** Locate splices at a fence post with a minimum lap of 6 in. attached in at least 6 places equally spaced unless otherwise shown on the plans. Do not locate splices in concentrated flow areas.

Requirements for installation of used temporary sediment-control fence include the following:

- fabric with minimal or no visible signs of biodegradation (weak fibers),
- fabric without excessive patching (more than 1 patch every 15 to 20 ft.),
- posts without bends, and
- backing without holes.

- 4.4.9. **Biodegradable Erosion Control Logs.** Install biodegradable erosion control logs near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the biodegradable erosion control logs into the erosion measures used to control sediment in areas of higher flow. Install, align, and locate the biodegradable erosion control logs as specified below, as shown on the plans, or as directed.

Secure biodegradable erosion control logs in a method adequate to prevent displacement as a result of normal rain events, prevent damage to the logs, and as approved, such that flow is not allowed under the logs. Temporarily removing and replacing biodegradable erosion logs as to facilitate daily work is allowed at the Contractor's expense.

- 4.4.10. **Vertical Tracking.** Perform vertical tracking on slopes to temporarily stabilize soil. Provide equipment with a track undercarriage capable of producing a linear soil impression measuring a minimum of 12 in. long × 2 to 4 in. wide × 1/2 to 2 in. deep. Do not exceed 12 in. between track impressions. Install continuous linear track impressions where the 12 in. length impressions are perpendicular to the slope. Vertical tracking is required on projects where soil disturbing activities have occurred unless otherwise approved.

- 4.5. **Monitoring and Documentation.** Monitor the control measures on a daily basis as long as there are BMPs in place and/or soil disturbing activities are evident to ensure compliance with the SWP3 and TPDES General Permit TXR150000. During time suspensions when work is not occurring or contract non-work days, daily inspections are not required unless a rain event has occurred. Monitoring will consist of, but is not limited to, observing, inspecting, and documenting site locations with control measures and discharge points to provide maintenance and inspection of controls as described in the SWP3. Keep written records of daily monitoring. Document in the daily monitoring report the control measure condition, the date of inspection, required corrective actions, responsible person for making the corrections, and the date corrective actions were completed. Maintain records of all monitoring reports at the project site or at an approved place. Provide copies within 7 days. Together, the CRPE and an Engineer's representative will complete the Construction Stage Gate Checklist on a periodic basis as directed.

5. MEASUREMENT

- 5.1. **Rock Filter Dams.** Installation or removal of rock filter dams will be measured by the foot or by the cubic yard. The measured volume will include sandbags, when used.
- 5.1.1. **Linear Measurement.** When rock filter dams are measured by the foot, measurement will be along the centerline of the top of the dam.
- 5.1.2. **Volume Measurement.** When rock filter dams are measured by the cubic yard, measurement will be based on the volume of rock computed by the method of average end areas.
- 5.1.2.1. **Installation.** Measurement will be made in final position.
- 5.1.2.2. **Removal.** Measurement will be made at the point of removal.

- 5.2. **Temporary Pipe Slope Drains.** Temporary pipe slope drains will be measured by the foot.
- 5.3. **Temporary Paved Flumes.** Temporary paved flumes will be measured by the square yard of surface area. The measured area will include the energy dissipater at the flume outlet.
- 5.4. **Construction Exits.** Construction exits will be measured by the square yard of surface area.
- 5.5. **Earthwork for Erosion and Sediment Control.**
- 5.5.1. **Equipment and Labor Measurement.** Equipment and labor used will be measured by the actual number of hours the equipment is operated and the labor is engaged in the work.
- 5.5.2. **Volume Measurement.**
- 5.5.2.1. **In Place.**
- 5.5.2.1.1. **Excavation.** Excavation will be measured by the cubic yard in its original position and the volume computed by the method of average end areas.
- 5.5.2.1.2. **Embankment.** Embankment will be measured by the cubic yard in its final position by the method of average end areas. The volume of embankment will be determined between:
- the original ground surfaces or the surface upon that the embankment is to be constructed for the feature and
 - the lines, grades and slopes of the accepted embankment for the feature.
- 5.5.2.2. **In Vehicles.** Excavation and embankment quantities will be combined and paid for under "Earthwork (Erosion and Sediment Control, In Vehicle)." Excavation will be measured by the cubic yard in vehicles at the point of removal. Embankment will be measured by the cubic yard in vehicles measured at the point of delivery. Shrinkage or swelling factors will not be considered in determining the calculated quantities.
- 5.6. **Construction Perimeter Fence.** Construction perimeter fence will be measured by the foot.
- 5.7. **Sandbags for Erosion Control.** Sandbags will be measured as each sandbag or by the foot along the top of sandbag berms or dams.
- 5.8. **Temporary Sediment-Control Fence.** Installation or removal of temporary sediment-control fence will be measured by the foot.
- 5.9. **Biodegradable Erosion Control Logs.** Installation or removal of biodegradable erosion control logs will be measured by the foot along the centerline of the top of the control logs.
- 5.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this item.

6. PAYMENT

The following will not be paid for directly but are subsidiary to pertinent items:

- erosion-control measures for Contractor project-specific locations (PSLs) inside and outside the right of way (such as construction and haul roads, field offices, equipment and supply areas, plants, and material sources);
- removal of litter, unless a separate pay item is shown on the plans;
- repair to devices and features damaged by Contractor operations;
- added measures and maintenance needed due to negligence, carelessness, lack of maintenance, and failure to install permanent controls;

- removal and reinstallation of devices and features needed for the convenience of the Contractor;
- finish grading and dressing upon removal of the device; and
- minor adjustments including but not limited to plumbing posts, reattaching fabric, minor grading to maintain slopes on an erosion embankment feature, or moving small numbers of sandbags.

Stabilization of disturbed areas will be paid for under pertinent Items except vertical tacking which is subsidiary.

Furnishing and installing pipe for outfalls associated with sediment traps and ponds will not be paid for directly but is subsidiary to the excavation and embankment under this Item.

- 6.1. **Rock Filter Dams.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid as follows:

- 6.1.1. **Installation.** Installation will be paid for as "Rock Filter Dams (Install)" of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

- 6.1.2. **Removal.** Removal will be paid for as "Rock Filter Dams (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.

When the Engineer directs that the rock filter dam installation or portions thereof be replaced, payment will be made at the unit price bid for "Rock Filter Dams (Remove)" and for "Rock Filter Dams (Install)" of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

- 6.2. **Temporary Pipe Slope Drains.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Temporary Pipe Slope Drains" of the size specified. This price is full compensation for furnishing materials, removal and disposal, furnishing and operating equipment, labor, tools, and incidentals.

Removal of temporary pipe slope drains will not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the pipe slope drain installation or portions thereof be replaced, payment will be made at the unit price bid for "Temporary Pipe Slope Drains" of the size specified, which is full compensation for the removal and reinstallation of the pipe drain.

Earthwork required for the pipe slope drain installation, including construction of the sediment trap, will be measured and paid for under "Earthwork for Erosion and Sediment Control."

Riprap concrete or stone, when used as an energy dissipater or as a stabilized sediment trap, will be measured and paid for in accordance with Item 432, "Riprap."

- 6.3. **Temporary Paved Flumes.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Temporary Paved Flume (Install)" or "Temporary Paved Flume (Remove)." This price is full compensation for furnishing and placing materials, removal and disposal, equipment, labor, tools, and incidentals.

When the Engineer directs that the paved flume installation or portions thereof be replaced, payment will be made at the unit prices bid for "Temporary Paved Flume (Remove)" and "Temporary Paved Flume (Install)." These prices are full compensation for the removal and replacement of the paved flume and for equipment, labor, tools, and incidentals.

Earthwork required for the paved flume installation, including construction of a sediment trap, will be measured and paid for under "Earthwork for Erosion and Sediment Control."

- 6.4. **Construction Exits.** Contractor-required construction exits from off right of way locations or on-right of way PSLs will not be paid for directly but are subsidiary to pertinent Items.

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" for construction exits needed on right of way access to work areas required by the Department will be paid for at the unit price bid for "Construction Exits (Install)" of the type specified or "Construction Exits (Remove)." This price is full compensation for furnishing and placing materials, excavating, removal and disposal, cleaning vehicles, labor, tools, and incidentals.

When the Engineer directs that a construction exit or portion thereof be removed and replaced, payment will be made at the unit prices bid for "Construction Exit (Remove)" and "Construction Exit (Install)" of the type specified. These prices are full compensation for the removal and replacement of the construction exit and for equipment, labor, tools, and incidentals.

Construction of sediment traps used in conjunction with the construction exit will be measured and paid for under "Earthwork for Erosion and Sediment Control."

- 6.5. **Earthwork for Erosion and Sediment Control.**

- 6.5.1. **Initial Earthwork for Erosion and Sediment Control.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Excavation (Erosion and Sediment Control, In Place)," "Embankment (Erosion and Sediment Control, In Place)," "Excavation (Erosion and Sediment Control, In Vehicle)," "Embankment (Erosion and Sediment Control, In Vehicle)," or "Earthwork (Erosion and Sediment Control, In Vehicle)."

This price is full compensation for excavation and embankment including hauling, disposal of material not used elsewhere on the project; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Sprinkling and rolling required by this Item will not be paid for directly but will be subsidiary to this Item.

- 6.5.2. **Maintenance Earthwork for Erosion and Sediment Control for Cleaning and Restoring Control Measures.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid under a Contractor Force Account Item from invoice provided to the Engineer.

This price is full compensation for excavation, embankment, and re-grading including removal of accumulated sediment in various erosion control installations as directed, hauling, and disposal of material not used elsewhere on the project; excavation for construction of erosion-control features; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Earthwork needed to remove and obliterate erosion-control features will not be paid for directly but is subsidiary to pertinent Items unless otherwise shown on the plans.

Sprinkling and rolling required by this Item will not be paid for directly but will be subsidiary to this Item.

- 6.6. **Construction Perimeter Fence.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Construction Perimeter Fence." This price is full compensation for furnishing and placing the fence; digging, fence posts, wire, and flagging; removal and disposal; and materials, equipment, labor, tools, and incidentals.

Removal of construction perimeter fence will not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the perimeter fence installation or portions thereof be removed and replaced, payment will be made at the unit price bid for "Construction Perimeter Fence," which is full compensation for the removal and reinstallation of the construction perimeter fence.

- 6.7. **Sandbags for Erosion Control.** Sandbags will be paid for at the unit price bid for "Sandbags for Erosion Control" (of the height specified when measurement is by the foot). This price is full compensation for materials, placing sandbags, removal and disposal, equipment, labor, tools, and incidentals.
- Removal of sandbags will not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the sandbag installation or portions thereof be replaced, payment will be made at the unit price bid for "Sandbags for Erosion Control," which is full compensation for the reinstallation of the sandbags.
- 6.8. **Temporary Sediment-Control Fence.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid as follows:
- 6.8.1. **Installation.** Installation will be paid for as "Temporary Sediment-Control Fence (Install)." This price is full compensation for furnishing and operating equipment finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.
- 6.8.2. **Removal.** Removal will be paid for as "Temporary Sediment-Control Fence (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 6.9. **Biodegradable Erosion Control Logs.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid as follows:
- 6.9.1. **Installation.** Installation will be paid for as "Biodegradable Erosion Control Logs (Install)" of the size specified. This price is full compensation for furnishing and operating equipment finish backfill and grading, staking, proper disposal, labor, materials, tools, and incidentals.
- 6.9.2. **Removal.** Removal will be paid for as "Biodegradable Erosion Control Logs (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 6.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

In accordance with Texas Government Code [§2161.252](#), a proposal that **does not** contain an **up-to-date HUB Subcontracting Plan (HSP)** is non-responsive and will be rejected without further evaluation. In addition, if the Department determines that the HSP was not developed in good faith, it will reject the proposal for failing to comply with material specifications based on the **IFB**.

Click + Control to follow the link below to get current HUB Subcontracting Plan documents.

<https://comptroller.texas.gov/purchasing/docs/hub-forms/hsp-allfms.pdf>

I.3.1 Introduction

The Department is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. The Department encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to [Texas Government Code §2161.181](#) and [§2161.182](#), and the Department's HUB policy and rules, the Department is required to make a good faith effort to increase HUB participation in its contracts. The Department may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

I.3.2 Department's Administrative Rules

The Department has adopted the CPA's HUB rules as its own. The Department's HUB rules are located in [Title 43, Part 1, Chapter 9, Subchapter L](#) of the Texas Administrative Code, and the CPA rules are located in [Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#). If there are any discrepancies between the Department's administrative rules and this **IFB**, the rules shall take priority.

I.3.3 HUB Participation Goal

The CPA has established statewide HUB participation goals for different categories of contracts in [34 T.A.C. §20.284](#). In order to meet or exceed the HUB participation goals, the Department encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This contract is classified as a **Building Construction** contract under the CPA rule, and therefore has a HUB Annual Procurement Utilization Goal of **21.1%** per fiscal year.

I.3.4 Required HUB Subcontracting Plan

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

In accordance with [34 T.A.C. §20.285\(a\).\(1\).\(C\)](#) of the HUB Rules. State agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

The Department has determined that subcontracting opportunities are probable for this **IFB**. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

The Department shall review the documentation submitted by the respondent to determine if a good faith effort has been made, in accordance with solicitation and HSP requirements. During the good faith effort evaluation, The Department may, at its discretion, allow clarifications or enhancements to information submitted with the HSP.

If the Department determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with the advertised specifications. The reasons for rejection shall be recorded in the procurement file.

I.3.5 CPA Centralized Master Bidder's List

Respondents may search for HUB subcontractors in the CPA's [Centralized Master Bidders List \(CMBL\)/HUB Directory](#). For this procurement, the Department has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code:

910-36 Heating, Air Conditioning, and Ventilation Maintenance, Repair and Installation Services

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

The Department does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

I.3.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract

An HSP must demonstrate that the respondent made a good faith effort to comply with the Department's HUB policies and procedures. The following subparts outline the items that the Department will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

I.3.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

I.3.6.2 Notify Potential HUB Subcontractors

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs that have an active HUB certification. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

I.3.6.2.1 Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

I.3.6.2.2 Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, or 3:

I.3.6.3 Method 1: Respondent Intends to Subcontract with only HUBs:

The respondent must identify in the HSP the HUBs, with an active HUB certification, that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs;

I.3.6.4 Method 2: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The respondent must identify in the HSP and submit written documentation that one or more HUBs, with an active HUB certification, will be utilized; and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. Only HUB subcontractors that have an existing contract with the respondent for less than five years may be used to comply with the good faith effort requirements under this method.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; or,

I.3.6.6 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to minority or women trade organizations or development centers to assist in identifying potential HUBs, with an active HUB certification, of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give minority or women trade organizations or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of minority and women trade organizations is located on the CPA's website under the [Minority and Women Organization link](#).

- Written notification to at least three (3) HUB businesses, with an active HUB certification, of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
 - o a description of the scope of work to be subcontracted,
 - o information regarding the location to review project plans or specifications,
 - o information about bonding and insurance requirements,
 - o required qualifications and other contract requirements, and
 - o a description of how the subcontractor can contact the respondent.

Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file;

Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in identifying qualified applicants for the HUB program.

I.3.6.7 Written Justification of the Selection Process

The Department will make a determination if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. The Department may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders, and did not reject qualified HUBs, with an active HUB certification, who were the best value responsive bidders.

I.3.7 Method 4: Respondent Does Not Intend to Subcontract

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section I.3.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by the Department:

- Provide evidence of sufficient respondent staffing to meet the **IFB** requirements,
- Provide monthly payroll records showing the respondent staff fully dedicated to the contract,
- Allow the Department to conduct an onsite review of company headquarters or work site where services are to be performed, and,
- Provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

I.3.8 Post-award HSP Requirements

The HUB Subcontracting Plan (HSP) shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, the Department will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP, and must submit monthly subcontract reports to the Department by completing the HUB "Prime Contractor Progress Assessment Report" and **"HUB Subcontracting Plan (HSP) Progress Compliance Form - 2579"**. This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, the Department will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for the Department's review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from the Department before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section I.3.6 of this **IFB** (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, or participate in the Mentor Protégé Program).

For this reason, the Department encourages respondents to identify, as part of their HSP, multiple subcontractors who are able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow the Department to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract, and will be subject to remedial actions. The Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program [\(see 34 T.A.C. §20.585 relating to Debarment\)](#) and [\(see 34 T.A.C. §20.586 relating to Procedures for Investigations and Debarment\)](#).

"General Decision Number: TX20220029 02/25/2022

Superseded General Decision Number: TX20210029

State: Texas

Construction Type: Highway

Counties: Aransas, Calhoun, Goliad, Nueces and San Patricio Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

* SUTX2011-010 08/08/2011

Rates	Fringes
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CEMENT MASON/CONCRETE

FINISHER (Paving & Structures)...\$ 12.64 **

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 10.69 **

Structures.....\$ 13.61 **

LABORER

Asphalt Raker.....\$ 11.67 **

Flagger.....\$ 8.81 **

Laborer, Common.....\$ 10.25 **

Laborer, Utility.....\$ 11.23 **

Pipelayer.....\$ 11.17 **

Work Zone Barricade

Servicer.....\$ 11.51 **

PAINTER (Structures).....\$ 21.29

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 14.25 **

Asphalt Paving Machine.....\$ 13.44 **

Mechanic.....\$ 17.00

Motor Grader, Fine Grade....\$ 17.74

Motor Grader, Rough.....\$ 16.85

TRUCK DRIVER

Lowboy-Float.....\$ 16.62

Single Axle.....\$ 11.61 **

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information

on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate

that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

"General Decision Number: TX20220277 02/25/2022

Superseded General Decision Number: TX20210277

State: Texas

Construction Type: Building

Counties: Calhoun, Goliad and Victoria Counties in Texas.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number Publication Date
0 01/07/2022

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02/25/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 29.47	24.10

ELEC0278-002 03/20/2020

	Rates	Fringes
ELECTRICIAN.....	\$ 26.25	8.24

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2021

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 26.01	7.56

* SUTX2014-057 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.04	0.00
CARPENTER.....	\$ 15.21	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 15.33	0.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 9.68 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.36 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.25 **	0.00

OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....	\$ 13.37 **	0.00
OPERATOR: Loader.....	\$ 13.55 **	0.94
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 14.45 **	0.00
PIPEFITTER.....	\$ 25.80	8.55
PLUMBER.....	\$ 25.64	8.16
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours

they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the

wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"