

**CONSTRUCTION AGREEMENT
BETWEEN
FORT BEND COUNTY, TEXAS, as Owner
AND
SPAUGLASS CONSTRUCTION CORPORATION, as Contractor
RFP 18-055**

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| <u>AGREEMENT :</u> | |
| ARTICLE I. AGREEMENT DOCUMENTS | 1 |
| ARTICLE II. DEFINITIONS..... | 1 |
| ARTICLE III. WORK | 5 |
| ARTICLE IV. COMPLETION OF WORK | 5 |
| ARTICLE V. COMPENSATION | 5 |
| ARTICLE VI. DEFAULT BY CONTRACTOR..... | 5 |
| ARTICLE VII. AUDITOR'S CERTIFICATE..... | 6 |
| ARTICLE VIII. EXECUTION | 7 |
| <u>EXHIBITS:</u> | |
| Exhibit A - General Description of Work | |
| Exhibit B - General Terms and Conditions | |
| Exhibit C - Compensation | |
| Exhibit D – Warranty, Insurance and Indemnity | |
| Exhibit E – Insurance Requirements, Performance and Payment Bonds | |
| Exhibit F – Payment Application | |
| Exhibit G – Contractor Affidavit, Lien Waiver and Release (Partial) | |

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT, entered into on this day by and between Fort Bend County, Texas, by and through its Commissioners Court, hereinafter referred to as ("Owner") and SPAWGLASS CONSTRUCTION CORPORATION, hereinafter referred to as the ("Contractor") and effective on the date executed by the Owner, pursuant to Request for Proposal ("RFP") 18-055.

W I T N E S S E T H:

In consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

ARTICLE I. AGREEMENT DOCUMENTS

This Agreement consists of this Agreement and Exhibits A through G which are attached hereto and which are made a part hereof as though set forth in full herein.

The above-referenced Exhibits are as follows:

- Exhibit A – General Description of Work
- Exhibit B – General Terms and Conditions
- Exhibit C – Compensation
- Exhibit D – Warranty, Insurance and Indemnity
- Exhibit E – Insurance Requirements, Performance and Payment Bonds
- Exhibit F – Payment Application
- Exhibit G – Contractor Affidavit, Lien Waiver and Release (Partial)

ARTICLE II. DEFINITIONS

All terms defined in any part of this Agreement shall have the same meaning when used in any other part of this Agreement. When used in this Agreement, the following terms shall have the meanings set forth opposite such terms, respectively:

"Act of Defaults" - As defined in Exhibit B.9

"Agreement" - This Agreement and Exhibits A through G attached hereto.

"Applications for Payment" - As defined in Exhibit C.2.1.

"Change Orders" - As defined in Exhibit B.8

"Change Order Notices" - As defined in Exhibit B.8

"Contract Documents" - The Contract Documents for the Project shall consist of this Agreement, RFP 18-055, the Contractor's Response to RFP 18-055, Contractor's Proposal dated July 30, 2018, Construction Documents, Construction Document Change Orders, and any other Change Order

thereto that together form the entire integrated Agreement between Owner and Contractor. Owner's instructions to proposers, the Contractor's proposal, project manual, general requirements, general conditions, and supplementary conditions, addenda, the specifications, the drawings, and the notice of acceptance of the said proposal together with this Agreement form the Agreement, and they are as fully a part of the Agreement as if hereto attached or herein repeated.

"Construction Documents" - The final stage of the detailed architectural and engineering documents setting forth the design for the Project prepared by Design Engineer on behalf of Owner as the Design Engineer or Engineer of Record. Construction Documents consist of working drawings and specifications setting forth and describing: (1) the construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, civil, electrical, structural, mechanical, plumbing and all other systems and their components, and (3) the necessary proposal information and the Agreement, Supplementary Conditions, and Special Conditions, if any, of the contract.

"Construction Work" - As defined in Exhibit A.2.

"Contract Lump Sum" - Twenty-one million eighty-four thousand sixty seven and no/100 Dollars (\$21,084,067.00) or as such may be adjusted from time to time pursuant to Exhibit B.8. The Contract Lump Sum includes a four percent (4%) Owner Contingency.

"Critical Milestone" - The milestones set forth in the Critical Path Schedule.

"Critical Path Schedule" - The document which shall be prepared by Contractor within fifteen (15) days of final execution of this Agreement, and attached as Schedule 1 to Exhibit C, using a critical path method scheduling system setting forth a weekly three (3) week look-ahead schedule with respect to the Work and each major segment of the Work the time schedule for causing the tasks involved to be performed including the estimated dates for commencement and completion. Upon Owner's approval, from time to time the Critical Path Schedule may be amended. Contractor shall submit an updated Critical Path Schedule with each monthly pay application.

"Contractor" - The entity engaged by the Owner for construction of the Project. Contractor shall, in accordance with this Agreement, complete the Project and control scheduling of the construction of the Project, including components thereof.

"Contractor's Project Manager" - Contractor shall, in accordance with this Agreement, include as a part of its business organization or in its employ or under contract a project manager with the competency, skills and all required licenses in the State of Texas (or the "State") to manage the Project in accordance with the Contract Documents. Contractor's Project Manager shall be the primary point-of-contact for the Contractor. Owner, Owner's Representative, Program Manager, and Owner's Construction Inspector may rely upon written consents and approvals signed by Contractor's Project Manager, as the consent and approval of Contractor.

"Days" - Calendar days unless otherwise stated herein, upon which all schedules under this Agreement shall be based.

"Defect" - A fault in the Work or a failure of the Work or any part thereof to be in compliance with the Drawings and Specifications (as refined and modified in compliance with Exhibit B.8, B.3.4.4 and A.1.2).

"Defect Period(s)" - That period commencing on the effective date of this Agreement and ending on the first anniversary of the Final Completion Date.

"Design Engineer" - The entity engaged by the Owner for design the Project. The term "Design Engineer" includes engineers, surveyors, designers and the other consultants retained by Owner. The Design Engineer is not an employee of Owner, but is engaged or retained for the purpose of performing design services for the Project. The Design Engineer designated by the Owner for purposes of this Agreement is Lockwood, Andrews & Newnam, Inc.

"Drawings and Specifications" - The Preliminary Drawings and Specifications, as amended and refined from time to time pursuant to Exhibit B.8 and Exhibits A.1.2 and B.3.4.4.

"Final Completion Date" - The date certified by the Owner Representative and Contractor in a final completion certificate as being the date upon which, to the best of Owner Representative's and Contractor's knowledge and belief, the Work is complete in accordance with the Contract Documents and that all the Punchlist Items have been finished. Warranties required by the Contract Documents shall commence on the date of issuance of Certificate of Occupancy. If the Certificate of Occupancy is withheld due to Owner furnished services, then warranties will commence on the date of Substantial Completion.

"Governmental Authority" - Any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence, with authority over the Work.

"Indemnified Parties" - Owner and all officers, directors, agents, employees, representatives, successors and assigns of such parties, their respective affiliates, parent corporations and subsidiary corporations.

"Laws and Regulations" - The laws, rules, regulations, and orders (both civil and military) of the United States of America and any other Governmental Authority having jurisdiction over the Work or any part thereof, any site where any part of the Work is performed, or any transportation routes or methods between such sites, whether such now exist or hereafter come into effect.

"Notice to Proceed" - A written document issued by Owner instructing Contractor to begin performance of the Work as specified in such document and in compliance with this Agreement.

"Owner" - Fort Bend County, Texas, the address of which for notices (unless changed by written notice to Contractor) is County Judge, 401 Jackson, 1st Floor, Richmond, Texas 77469, with a copy to James Knight, Director, Facilities Management and Planning, 301 Jackson Street, Suite 301, Richmond, Texas 77469.

"Owner Representative" - James Knight, Director, Facilities Management and Planning, 301 Jackson Street, Suite 301, Richmond, Texas 77469, or such other person as selected by the Owner and written notice of such selection is given by Owner to Contractor.

"Preconstruction Work" - As defined in Exhibit A.1.

"Preliminary Schedule of Values" - The preliminary schedule of values prepared by Contractor and submitted to the Owner Representative.

"Program Manager" - The Program Manager is retained by the Owner in accordance with a contract executed between the Program Manager and the Owner for the purposes of (i) Pre-Construction Phase Services; (ii) Construction Phase Services, including (a) Billing, (b) Compliance to ensure all aspects of the Project adhere to the guidelines and regulations of the Federal Transportation Administration ("FTA") and the Texas Department of Transportation ("TxDOT") necessary to guarantee continued funding, (c) Construction Management to ensure day-to-day activities are conducted in accordance with the general construction contract, (d) Contract Administration adhering to the terms of this Agreement to ensure the Project is completed according to schedule and within budget, and (e) Development and Management of overall Project-wide safety and security concerns; and (iii), Close-out Phase Services. The term "Program Manager" includes engineers, surveyors, designers and the other consultants retained by the Program Manager. The Program Manager is not an employee of the Owner, but is engaged or retained by it for the purpose of performing design and construction administration services for the Project. The Program Manager designated by the Owner for purposes of this Agreement is Huitt-Zollars, Inc.

"Project" - The construction of the Public Transportation Administrative and Operating Facility to be constructed under this Agreement as described in RFP 18-055.

"Project Construction Program" - As defined in Exhibit A.1.1.

"Proposed Change Order" - As defined in Exhibit B.8.

"Punchlist Items" - Details of construction, mechanical adjustment or incidental repairs and decoration for the Project, the noncompletion of which does not materially interfere with Owner's access to or use of the Project as determined solely by the Owner.

"Records" - As defined in Exhibit B.4.3.

"Schedule of Values" - A schedule listing of the amount of value (expressed in terms of dollars) agreed upon by Contractor and the Owner Representative to be attributable to the portions of the Construction Work. This Schedule of Values shall be agreed upon and identified by Contractor and the Owner Representative pursuant to Exhibit B.1.2.

"Scheduled Substantial Completion Date" - As included in the Critical Path Schedule.

"Subcontractor" - Any party to a contract with the Contractor of supply or service related to the Project.

"Substantial Completion Date" - The date certified by Owner Representative and Contractor as being the date Work has been completed such that all systems are operational as designed and the Project has received a Certificate of Occupancy for its intended use with the only remaining Work to be completed being Punchlist Items. If the Final Certificate of Occupancy is withheld due to Owner furnished services, then the Certificate of Substantial Completion will be issued, provided all other requirements of Substantial Completion are completed.

"Transfer Date" - As defined in Exhibit B.12.2.

"Work" - The Construction Work together with all other obligations of Contractor under this Agreement.

"Work Commencement Conditions" - As defined in Exhibit B.1.1.

ARTICLE III.
WORK

Except as otherwise provided for in this Agreement, Contractor shall perform the Work, and in connection therewith shall furnish (or cause to be furnished) all personnel, materials, supplies, equipment, tools, labor, supervision, utilities, transportation, and other materials, facilities, and services as and when required to perform the Work and all matters incidental thereto. The Work shall be completed as specified in the Critical Path Schedule and shall be completed within as specified in RPF 18-055.

ARTICLE IV.
COMPLETION OF WORK

Subject to delays caused by a failure of the Work Commencement Conditions or other delays beyond the control of the Contractor, Contractor shall commence, perform and complete the Work in accordance with the Contract Documents.

ARTICLE V.
COMPENSATION

As consideration for the performance of the Work, Owner shall pay to Contractor the compensation provided for in Exhibit C. Subject to the terms of Article III hereof and of Exhibit B.8, the compensation provided for in Exhibit C covers and includes all the compensation, payment and remuneration whatsoever that Owner is obligated to pay Contractor in connection with or growing out of this Agreement or the performance by Contractor of its obligations under this Agreement.

ARTICLE VI
DEFAULT BY CONTRACTOR

If Contractor, including any part of its business organization or its employ or under contract pursuant to this Agreement shall default or shall fail or neglect to carry out the Work in accordance with the Contract Documents or the Construction Documents or shall fail to otherwise fully comply with its obligations under this Agreement, the Contractor agrees that the Owner may, after giving the Contractor seven (7) days written notice, during which period the Contractor fails to commence and diligently pursue the cure of such default or failure, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from payment due the Contractor or at Owner's option and without invalidating the performance bond, Owner may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method Owner shall deem expedient. If the expense incurred by Owner in finishing the Work exceeds the unpaid balance of the Contract Lump Sum, Contractor shall be liable for such deficiency and Contractor shall, immediately upon demand, pay such amount to Owner. If the expense incurred by Owner in finishing the Work does not exceed the unpaid balance of the Contract Lump Sum, the remaining unpaid balance of the Contract Lump Sum shall be paid to Contractor.

ARTICLE VII
AUDITOR'S CERTIFICATION

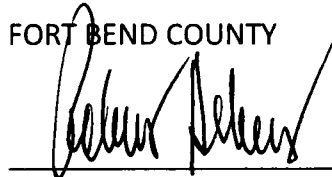
This Article VII shall prevail over any other provision of this Agreement which might be interpreted to the contrary. Owner shall not be required by this Agreement to expend sums in excess of the amounts certified by the Fort Bend County Auditor as available for paying the obligations of Owner under this Agreement. Obligations of Owner under this Agreement are limited to the sum certified as available in the Auditor's Certificate attached hereto below plus such other sums as may be specifically certified by the Fort Bend County Auditor as available to pay obligations hereunder , and no Change Order requiring the Owner to expend funds in excess of funds previously certified as available by the County Auditor shall be effective unless and until, in addition to any other requirements for the effectiveness of such Change Order, the County Auditor has certified the availability of funds to pay the Owner's obligations thereunder.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

ARTICLE VIII
EXECUTION

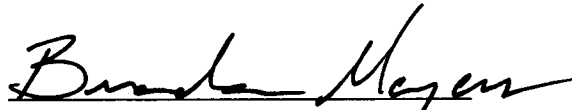
This Agreement shall become effective on the date executed by Owner.

FORT BEND COUNTY



Robert E. Hebert, County Judge

SPAWGLASS CONSTRUCTION CORPORATION



Brandon Meyers, President, Houston Division


8-14-2018

Date

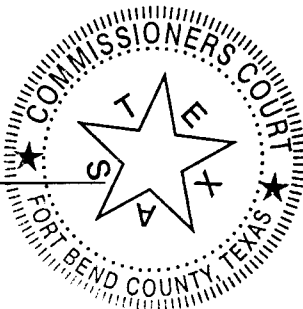
August 8, 2018

Date

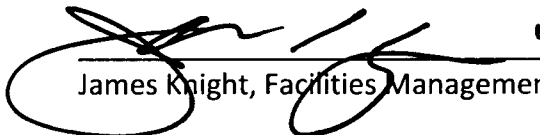
ATTEST:



Laura Richard, County Clerk



APPROVED:



James Knight, Facilities Management/Planning Director

APPROVED AS TO LEGAL FORM:



Marcus D. Spencer, First Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 21,084,067 to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Ed Sturdivant, County Auditor

EXHIBIT A

GENERAL DESCRIPTION OF WORK

A.1. PRECONSTRUCTION WORK. Contractor shall do the following as "Preconstruction Work":

A.1.1. Prepare, and amend from time to time, a broad scale program for the implementation and completion of the Work (the "Project Construction Program"). The Project Construction Program shall be in such detail and shall cover such matters as may be required by Owner, and (without limiting the generality of the foregoing) shall be comprised of the following: (a) the Critical Path Schedule, (b) the Critical Milestones, and the other segments of the Work for which Contractor will be entitled to receive progressive payments of the Contract Lump Sum, and (c) construction programs indicating the expected dates of commencement and expected duration and expected completion for each major element of the Work. Contractor shall be paid as provided in C.2.1.

A.1.2. Within ten (10) business days of receipt of a Notice to Proceed from Owner, Contractor shall provide a project schedule for Owner's approval. The project schedule shall utilize the critical path method (CPM) with activities broken down to be no more than two (2) weeks in duration including critical milestones necessary to complete the Project on time. The Project Schedule shall include, but not be limited to the following (a) Owner furnished item requirements; (b) long lead item and significant procurement milestones; and (c) commissioning and closeout activities.

A.1.3. On an as needed basis as determined by Owner Representative, cause Contractor's personnel and Contractor's Project Manager to meet with Owner Representative and Program Manager, and the representatives of the Design Engineer to discuss the status of the Work.

A.1.4. Carefully and diligently study and compare all drawings, specifications, and instructions and shall at once report to the Design Engineer and Owner's Representative any error, inconsistency, or omission which Contractor may discover. It is understood that Contractor's review of drawings and specifications is for the purpose of executing the Work.

A.1.5. Complete the process of obtaining the Owner's permits pursuant to Exhibit B.7.

A.2. CONSTRUCTION WORK. Contractor shall do the following as "Construction Work":

A.2.1. Perform all preparatory work at the Construction Site required for compliance with all laws and regulations as to actions to be taken by contractors before construction begins.

A.2.2. Construct and install the Project on the Construction Site in accordance with the Contract Documents.

A.2.3. Furnish all materials, supplies, equipment, tools, labor, supervision, utilities, transportation and other materials and services as and when required to perform the portion of the Construction Work described in Exhibit A.2.

A.2.4. Continue the progress meetings described in Exhibit A.1.3.

A.2.5. Schedule and comply with Owner's contracted Materials Testing requirements necessary for the Construction Work as approved by the Owner Representative and this Agreement; the frequency of testing shall be approved by the Owner Representative.

EXHIBIT B

GENERAL TERMS AND CONDITIONS

| TABLE OF CONTENTS | Page |
|---|------|
| B.1. COMMENCEMENT AND COMPLETION OF WORK; SITE ACCESS. | B-4 |
| B.1.1 Commencement of Construction Work | B-4 |
| B.1.2. Schedule of Values..... | B-4 |
| B.1.3. Completion of Work | B-4 |
| B.1.4. Site Access | B-4 |
| B.2. RELATIONSHIP OF PARTIES. | B-4 |
| B.2.1. Independent Contractor and Fiduciary Role. | B-4 |
| B.2.2. Contractor's Project Manager. | B-5 |
| B.2.3. Familiarity with Project..... | B-5 |
| B.3. OBLIGATIONS OF OWNER..... | B-5 |
| B.3.1 Title to Construction Site | B-5 |
| B.3.2. Owner Representative..... | B-6 |
| B.3.3. Project Completion Coordination | B-6 |
| B.3.4. Standards for Owner's Review and Approval..... | B-6 |
| B.3.5. Expedited Approvals | B-7 |
| B.4. OBLIGATIONS OF CONTRACTOR..... | B-7 |
| B.4.1. Laws and Regulations | B-7 |
| B.4.2. Project Construction Program | B-7 |
| B.4.3. Records | B-7 |
| B.4.4. Record Drawings and Specifications..... | B-7 |
| B.4.5 Record Copy of Contract Documents..... | B-8 |
| B.4.6. Staffing Plan and Prevailing Wage Rates..... | B-8 |
| B.4.7. Confidential and Proprietary Information..... | B-8 |
| B.4.8. Reporting Obligations..... | B-9 |
| B.5. CONDUCT OF THE WORK..... | B-10 |
| B.5.1. Familiarity; Rights and Obligations. | B-10 |
| B.5.2. Standard of Performance | B-10 |
| B.5.3. Document Deliver | B-11 |
| B.5.4. Ownership of Documents..... | B-11 |
| B.5.5. Contractor's Personnel..... | B-11 |
| B.5.6. Inspection..... | B-11 |
| B.5.7. Protection Against Risks | B-12 |
| B.5.8. Claims..... | B-12 |
| B.5.9. Correlation and Intent of Contract Documents..... | B-12 |
| B.6. EQUIPMENT AND MATERIALS. | B-13 |

| | |
|--|----------|
| B.6.1. Equipment | B-13 |
| B.6.2. Materials | B-13 |
| B.6.3. Procurement Procedures..... | B-13 |
| B.7. PERMITS | B-13 |
| B.7.1. General Contractor Permits..... | B-13 |
| B.7.2. Permits Generally | B-13 |
| B.8. CHANGES | B-13 |
| B.8.1. General | B-13 |
| B.8.2. Change Order Procedure | B-13 |
| B.8.3. Change Order Authorization..... | B-14 |
| B.8.4. Contract Lump Sum Adjustments..... | B-14 |
| B.9. DEFAULT AND TERMINATION | B-15 |
| B.9.1. Default by Owner..... | B-15 |
| B.9.2. Default by Contractor. | B-15 |
| B.9.3. Officers and Employees | B-16 |
| B.10. PAYMENT OF BILLS AND LIENS. | B-17 |
| B.10.1. Payment of Bills | B-17 |
| B.10.2. Liens | B-17 |
| B.11. TAXES | B-17 |
| B.11.1. Unemployment Taxes..... | B-17 |
| B.11.2. Corporate and Income Taxes..... | B-17 |
| B.11.3. Sales and Use Taxes | B-17 |
| B.12. COMPLETION, TRANSFER AND ACCEPTANCE..... | B-18 |
| B.12.1 Substantial Completion | B-18 |
| B.12.2. Transfer and Acceptance | B-18 |
| B.12.3. Partial Occupancy..... | B-18 |
| B.13. GUARANTEES, WARRANTIES AND INSURANCE. | B-18 |
| B.13.1. General | B-18 |
| B.13.2. Supervision of Warranty Work | B-18 |
| B.14. SUBCONTRACTS, ASSIGNMENTS AND OTHER AGREEMENTS. | B-18 |
| B.14.1. Subcontracts | B-18 |
| B.14.2. Assignment. | B-19 |
| B.15. INDEMNIFICATION..... | B-19 |
| B.15.1. Bodily Injury and Property Damage Liability | B-19 |
| B.15.2. Protection of Work | B-19 |
| B.15.3. Limitations | B-19 |

| | |
|--|----------|
| B.16. FORCE MAJEURE..... | B-19 |
| B.16.1. Force Majeure as applicable to Contractor..... | B-19 |
| B.16.2. Force Majeure as applicable to Owner..... | B-20 |
| B.16.3. Excluded Events..... | B-20 |
| B.16.4. Additional Grounds..... | B-20 |
| B.17. APPLICABLE LAW | B-20 |
| B.18. CERTAIN THIRD PARTIES BENEFITED | B-20 |
| B.19. NOTICES | B-20 |
| B.20. CONSENTS | B-21 |
| B.21. ENTIRE AGREEMENT | B-21 |
| B.22. NON-WAIVER | B-21 |
| B.23. CAPTIONS | B-22 |
| B.24. SEVERABILITY | B-22 |
| B.25. CLAIMS FOR CONSEQUENTIAL DAMAGES..... | B-22 |
| B.26. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS..... | B-22 |
| B.27. STATE LAW REQUIREMENTS FOR CONTRACTS WITH GOVERNMENTAL ENTITIES..... | B-22 |
| B. 28. FEDERAL CLAUSES..... | B-23 |
| <u>SCHEDULES:</u> | |
| Schedule 1 - PREVAILING WAGE RATES..... | B-37 |

EXHIBIT B

GENERAL TERMS AND CONDITIONS

B.1. COMMENCEMENT AND COMPLETION OF WORK; SITE ACCESS.

B.1.1. Commencement of Construction Work. Contractor shall not be obligated to commence performance of the Construction Work and the commencement of the time period for determining the Scheduled Substantial Completion Date shall not commence until the issuance of a Notice to Proceed from Owner, which shall not be issued until at least the following conditions are satisfied:

(a) Written approval by Owner of the Project Construction Program as defined in Exhibit A.1.1 and approval by the Owner of the Preliminary Schedule of Values; and

(b) Required building permits are available to Contractor.

B.1.2. Schedule of Values. On or before the expiration of 15 days after the effective date of this Agreement, Contractor shall prepare or cause to be prepared and Contractor shall deliver the Preliminary Schedule of Values to the Owner Representative. Owner and Contractor shall review and refine the Preliminary Schedule of Values and when the parties have refined such schedule and upon approval of the Owner Representative, it shall become the Schedule of Values.

B.1.3. Completion of Work. Subject to adjustments to the Scheduled Substantial Completion Date due to delays beyond the control of Contractor or delays caused by Owner, Contractor shall pay the sum of \$500 for each day after the date required for Substantial Completion that Substantial Completion is not achieved. Owner and Contractor recognize the difficulty, inconvenience and uncertainty of ascertaining the actual damages that could be sustained by Owner as a consequence of delays in the occurrence of the Substantial Completion Date, and the parties agree that the monetary damages owed by Contractor as a consequence of any such delay in the Substantial Completion Date shall be limited to the liquidated damages described in the preceding sentence; while these liquidated damages shall be Contractor's sole and complete liability to Owner for any and all damage claims based on or arising from delays in the Substantial Completion Date, the foregoing limitation shall not be construed to prevent Owner from exercising its remedies under Exhibit B.9.2. or from obtaining injunctive relief or other equitable relief or remedies. Such sum is agreed upon as a reasonable and proper measure of the damages Owner will sustain.

B.1.4. Site Access. Prior to the Transfer Date, Owner and Contractor shall have uninterrupted access to the Construction Site. Subsequent to the Transfer Date, Owner will permit Contractor and Design Engineer and their representatives and subcontractors to enter upon the Project at times reasonably necessary to complete the Punchlist Items. Contractor agrees to provide sufficient office space at the Construction Site for the Program Manager.

B.2. RELATIONSHIP OF PARTIES.

B.2.1. Independent Contractor and Fiduciary Role. Contractor shall be an independent contractor and any provisions of this Agreement that may appear to give Owner or the Owner Representative the right to direct Contractor as to the details of the manner of doing the Work shall be deemed to mean that Contractor shall follow the desires of Owner or the Owner Representative in the results of the Work only and not in the means whereby the Work is to be

accomplished. Contractor shall be responsible as to the details of doing the Work. Neither the agents, representatives, nor employees of Contractor and its subcontractors shall be deemed to be the agents, representatives, or employees of Owner. Contractor further represents that it accepts a fiduciary role and responsibility with respect to Owner and shall, to its best abilities, act in the best interests of Owner and the timely completion of the Work. Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of Owner except and unless specifically authorized in writing by Owner to do so. Contractor shall furnish construction administration and management services and use Contractor's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of Owner.

B.2.2. Contractor's Project Manager. Owner recognizes and agrees that Contractor will perform the Work under the direction of Contractor's Project Manager.

B.2.3 Familiarity with Project. Contractor represents and accepts that it has: (a) visited the property, (b) taken such other steps as may be necessary to ascertain the nature and location of the Project and the visible general and local conditions which affect the Project or the cost thereof, (c) investigated the labor situation in regards to the Project, (d) examined the property, the obstacles which may be encountered and all other visually observable conditions having a bearing upon the performance of the Project, the superintendence of the Project, the time of completion and all other relevant matters, and (e) reported to Owner the results of all of the foregoing.

B.3. OBLIGATIONS OF OWNER.

B.3.1. Title to Construction Site. Owner is the owner in fee simple of the Construction Site.

B.3.1.1. Owner shall be responsible for providing surveys to Contractor upon execution of the Agreement. The surveys and legal information shall include grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade. All of the information in the survey shall be referenced to a Project benchmark. Owner shall provide the results and reports of prior tests, inspections or investigations conducted, if any, for the Project involving chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Owner shall furnish the services of geotechnical engineers for subsoil and water conditions. Such services may include test borings, test pits, determinations of soil bearing values, percolation tests, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations. Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program. Contractor shall be entitled to rely upon the accuracy and completeness of the services, information, surveys and reports required to be provided by the Owner.

B.3.2. Owner Representative. The Owner Representative is authorized to act on behalf of Owner under this Agreement in the administration of the Work, the granting of all consents and approvals of Owner under this Agreement (including, without limitation, the approval of changes in the Work and Proposed Change Orders pursuant to Exhibit B.8), and the processing and approval of the Applications for Payment of the Contract Lump Sum pursuant to Exhibit D. The Owner Representative's review or approval of or agreement to the performance of Work or any portion thereof shall, subject to the terms of this Agreement, in no way relieve Contractor of full responsibility for the performance of the Work. All matters requiring approval or consent by Owner under this Agreement (including, without limitation, Proposed Change Orders) shall be considered to be submitted to Owner when the same are received by the Owner Representative. Copies of this Agreement shall be furnished by Owner to the Owner Representative. The Owner Representative shall have free access to any portion of the Construction Site where any portion of the Work is being performed. Contractor acknowledges that any change orders and/or any budgetary matters require approval from the Fort Bend County Commissioners Court.

B.3.3. Project Completion Coordination. Owner shall cause the Owner Representative and other members of the staff of the Owner Representative, and/or Program Manager to be available to coordinate with all agencies and departments of Owner and all other governmental authorities required in the prosecution of the Work and required for the compliance of the Work and the completed Project with all applicable laws and regulations. Owner shall also cause the Owner Representative and the authorized employees and staff members of the Owner Representative to (a) promptly review all elements of the Project Construction Program in order to promptly advise Contractor of those elements that are acceptable or objectionable to Owner, (b) attend the progress meetings described in Exhibits A.1.3 and A.2.4, (c) review any Proposed Change Orders and (if required) the final working drawings and specifications pursuant to Exhibit B.3.4.4, (d) review the Applications for Payment submitted to Owner for progress payments of the Contract Lump Sum pursuant to Exhibit D, (e) review the progress of the Work to the extent necessary to determine the Substantial Completion Date for the Project and (f) review any aspects of the Project requiring review and approval by Owner prior to the final payment of the Contract Lump Sum pursuant to Exhibit D.2.3.

B.3.4. Standards for Owner's Review and Approval.

B.3.4.1. Owner acknowledges that in order to meet the deadlines established by the Project Construction Program for the performance of the Work, and in order to accomplish the efficient performance of the Work, Contractor may submit matters to Owner, represented by the Fort Bend County Director of Facilities Management and Planning, or his designee, in stages for approval or consent. Upon receipt of any matter submitted by Contractor for review and approval, whether a Proposed Change Order described in Exhibit B.8, a change to the final Drawings and Specifications as described in Exhibit B.3.4.4 or otherwise, Owner shall review the same and shall diligently and promptly within 14 days for any such matter other than a Proposed Change Order, and within 28 days for a Proposed Change Order, give Contractor notice of Owner's approval or disapproval, setting forth in detail reasons for any disapproval. Owner's right to disapprove any such matter submitted (other than a Proposed Change Order) shall be limited to the elements thereof (a) which do not conform substantially to matters previously approved, (b) which are new elements not previously presented and approved and Contractor is unable to demonstrate that such new element is reasonably necessary for performance of the Work, or (c) which depict matters that are violations of this Agreement or applicable laws and regulations.

B.3.4.2. If Owner disapproves of a particular matter or Proposed Change Order, Contractor shall have the right to resubmit such matter or Proposed Change Order to Owner, altered to satisfy Owner's basis for disapproval. Any resubmission shall be subject to review and approval by Owner in accordance with the procedures described in Exhibit B.3.4.1.

B.3.4.3. Owner and Contractor shall attempt in good faith to resolve any disputes concerning the approval of any aspect of the Work expeditiously, so as not to delay the performance of the Work in accordance with this Agreement.

B.3.5. Expedited Approvals. Owner recognizes the importance of expeditious action upon all matters submitted to Owner (or Owner's Representative) for review and approval and of expeditious response to those aspects of the Work requiring approval by governmental authorities having jurisdiction thereover. Owner agrees to exercise its rights of review and approval hereunder with due diligence, reasonableness, and good faith. Owner shall use its reasonable efforts to expedite any required review of the Project or other matters by any Governmental Authority.

B.4. OBLIGATIONS OF CONTRACTOR.

B.4.1. Laws and Regulations. Contractor shall in its performance of the Work comply with all applicable laws and regulations. Any delays in the prosecution of the Work caused by any changes in the laws and regulations may entitle Contractor to an extension of time if such delay affected the Critical Path Schedule.

B.4.2. Project Construction Program. Contractor shall deliver to Owner periodically, but at least once each month, a schedule showing the status of the Work with reference to the Project Construction Program, as amended, and showing the then expected schedule for completion of the Work and showing any delays in the Work and the party responsible for such delays. Contractor shall promptly inform Owner by means of a Proposed Change Order (as provided for in Exhibit B.8.2) of any anticipated or actual delays or accelerations that may cause the Work to be completed before or after the Scheduled Substantial Completion Date.

B.4.3. Records. The Contractor agrees to comply and will require all subcontractors of any tier to comply with the record retention requirements in accordance with 2 C.F.R. 200.333. The Contractor agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, all books, records, accounts, statistics, leases, subcontracts, arrangements other third party arrangements of any type, reports, and supporting materials related to those records required under the Agreement for a period of not less than three years after the date of termination or expiration of the Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case Contractor agrees to maintain same until Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

B.4.4. Record Drawings and Specifications. Within thirty (30) days after from the Substantial Completion Date, Contractor shall furnish Owner with a full set of As-Built marked-up Drawings and Specifications for the Project as actually constructed. On the Final Completion Date, Contractor shall furnish Owner with copies of all subcontractors' and suppliers' warranties

and all operating manuals. Such Drawings and Specifications shall be marked to show all approved changes and modifications that have been incorporated into the Work as performed.

B.4.5. Record Copy of Contract Documents. Contractor shall maintain at the site one (1) up-to-date record copy of all contracts, drawings, specifications, addenda, Change Orders or other modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, product data, samples and similar required submittals, and requests for information ("RFIs"). These items shall be available to Owner, Design Engineer and Contractor, and will be delivered to Owner upon completion of the Project.

B.4.6. Staffing Plan and Prevailing Wage Rates. Contractor shall develop a proposed supervisory staffing plan for approval by Owner. In accordance with Chapter 2258 of the TEXAS LOCAL GOVERNMENT CODE, all persons employed by the Contractor shall be compensated at not less than the rates shown in Schedule 1 to Exhibit B. Contractor shall keep detailed records of each of its workers and said records shall be made available to Owner for inspection at all reasonable times in accordance with Section 2258.024 of the TEXAS GOVERNMENT CODE.

B.4.7. Confidential and Proprietary Information.

B.4.7.1. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents from Owner in the performance of this Agreement shall be deemed to be confidential information of Owner ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

B.4.7.2. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Owner hereunder, unless disclosure is required by law or court order, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise Owner immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner or Contractor against any such person. Contractor agrees that, except as directed by Owner, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at Owner's request,

Contractor will promptly turn over to Owner all documents, papers, and other matter in Contractor's possession which embody Confidential Information; provided however, that Contractor may retain one (1) copy of all work produced which incorporates Confidential Information for internal record-keeping purposes, subject to the terms of this Agreement.

B.4.7.3. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to Owner that is inadequately compensable in damages. Accordingly, Owner may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Owner and are reasonable in scope and content.

B.4.7.4. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

B.4.7.5. Contractor expressly acknowledges that Owner is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, Owner will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Owner by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

B.4.8. Reporting Obligations. Contractor understands the Owner is utilizing federal, state and local funds to complete the Project. Therefore, certain reports and documentation shall be required during the term of this Agreement both separately and as supporting documentation submitted with invoicing. Contractor shall submit all required documentation and reports to Owner by the dates designated as due by the Owner. Failure to submit required reports and documentation will delay processing of invoices submitted by the Contractor until the all required reports are received by the Owner. Owner agrees to notify the Contractor of all required reports and documentation to be provided to the Owner pursuant to this Agreement within thirty (30) days of execution of this Agreement.

B.4.8.1. Reports of Accidents. Within twenty-four (24) hours after the occurrence of any accident or other event which results in or might result in injury to the person or property of any third person, Contractor shall send a written report of such accident or event to the County, setting forth a full and concise statement of the facts pertaining thereto.

B.4.8.2. Legal Action. Contractor shall immediately send County a copy of any summons, subpoena, notice, or other documents served upon Contractor, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Contractor's performance under this Agreement.

B.5. CONDUCT OF THE WORK.

B.5.1. Familiarity; Rights and Obligations. Contractor represents that it is familiar with all phases of the Work and the matters that may affect the Work or its prosecution under this Agreement. Neither any oral representation by or oral agreement with any officer, agent, or employee of Owner or Contractor, either before or after the execution of this Agreement, nor any written representation by or written agreement with any officer, agent, or employee of Owner or Contractor before execution of this Agreement shall affect or modify any of parties' rights or obligations hereunder.

B.5.2. Standard of Performance. Contractor shall prosecute the Work in accordance with the best efforts for the construction and development of projects similar to the Project in the State of Texas, using qualified, careful, and efficient contractors and workers and in conformity with the provisions of this Agreement. If the law imposes an obligation upon Contractor to perform the Work in a "good and workmanlike manner," the parties agree that such term shall be synonymous with the standard of care specified in this Exhibit B.5.2 and Exhibit B.2.1.

B.5.2.1. Warranty of Contractor. Contractor warrants to Owner that: (i) the Contractor possesses the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Contractor will use its best efforts to ensure that the services provided under this Agreement will be performed, delivered, and conducted in accordance with the best professional standards and in accordance with industry standards, and (ii) Contractor is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work, and (iii) following the date of acceptance of this Agreement, the services provided by Contractor to Owner will conform to the representations contained in this Agreement, including all attachments, schedules and exhibits. All warranties provided by Contractor in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to Owner.

B.5.2.2. Contractor shall provide, during construction, continuous on-site construction observation, to familiarize itself with the progress and quality of the completed work, and to determine if the work is proceeding in such a way as when it is complete it will be in accordance with the Contract Documents. Field Reports shall be prepared daily by Contractor and submitted to Owner Representative. Contractor shall submit a report which shall constitute a representation by Contractor to Owner, based on observations at the site that to the best of Contractor's knowledge, information and belief, the quality of the completed work is in accordance with the Contract Documents.

B.5.2.3. Contractor shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard Owner against defects and deficiencies in the completed work of the Trade Contractors. Contractor shall be responsible for the construction means, methods, techniques, sequences of procedures, and for the safety precautions and programs employed in connection with the work. However, Contractor will promptly inform the Owner's Representative in writing whenever defects and deficiencies in the completed Work are observed and whenever any defects or discrepancies are observed within the Contract Documents, or when any observed actions or omissions are undertaken by the Trade Contractors that are not in the best interest of Owner and the Project.

B.5.3. Document Delivery. During the progress of the Work, Contractor shall provide Owner with both hard copy (one original and two copies) and electronic format any design, engineering, procurement and construction documents produced by Contractor.

B.5.4. Ownership of Documents. Drawings, specifications, and other documents, including those in electronic form, prepared by the Design Engineer and furnished to Contractor are Instruments of Service. All design and instruments of service under this Agreement, including, but not limited to, tracings, drawings, estimates, specifications, studies and other documents, completed or partially completed, shall be the property of Owner. Contractor specifically waives and releases any proprietary rights or ownership claims therein. Contractor may retain a reproducible copy of all Instruments of Service; however, Owner reserves the right, so long as such instruments of service exist, to obtain copies, reproducible or otherwise, from Contractor at Owner's expense, but without any additional fee or charge by Contractor.

B.5.4.1. Contractor shall be liable to Owner for any loss or damage to any such documents while they are in the possession of, or while being worked upon, by the Contractor or anyone connected with Contractor, including agents, employees, consultants or subcontractors. All documents damaged shall be replaced or restored by Contractor without cost to the Owner.

B.5.5. Contractor's Personnel. Contractor shall employ only competent, skilled personnel for the Work. Prior to the Final Completion Date, Contractor shall maintain a "Project Manager" who shall be authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times. Contractor's Project Manager shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld or delayed); provided, however, Contractor's Project Manager shall not be assigned solely to the Work and shall be entitled to spend reasonable time working on matters unrelated to the Work or the Project so long as such work on other matters does not render Contractor's Project Manager unavailable to the Work or unavailable to Owner's Representative. However, such obligation to furnish Contractor's Project Manager and such staff personnel shall not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of Contractor if any person assigned to the Work (including, without limitation, Contractor's Project Manager) leaves Contractor's employment. If Contractor's Project Manager is transferred from the Work, Owner shall have the right to approve any replacement (which approval will not be unreasonably withheld or delayed). Contractor and Contractor's subcontractors shall comply with all applicable health, safety, and loss prevention rules of applicable Governmental Authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him. Owner may, upon written notice to the Contractor, require Contractor to remove an individual immediately from providing services for the following reasons: violation of the terms and conditions of this Agreement; violation of the Owner's or Contractor's work rules and regulations; criminal activity; or violation of state, federal, or municipal statutes. Owner may, upon thirty (30) days written notice to Contractor, require the removal of any individual from providing services without cause.

B.5.6. Inspection. The Work and all parts thereof shall be subject to inspection from time to time by inspectors designated by the Owner Representative and Design Engineer. No such inspections shall relieve Contractor of any of its obligations hereunder. Neither failure to inspect

nor failure to discover or reject any of the Work as not in accordance with the Drawings and Specifications or any provision of this Agreement shall be construed to imply an acceptance of such Work or to relieve Contractor of any of its obligations hereunder. Owner agrees that its right of inspection shall be used reasonably and in a timely manner so as not to delay orderly completion of the Work.

B.5.7. Protection Against Risks. Contractor shall take all precautions which are necessary and adequate, against conditions created during the progress of the Work which involve a risk of bodily harm to persons or a risk of damage or loss to any property. Contractor shall regularly inspect all Work, materials and equipment for the purpose of discovering and determining any such conditions and shall be responsible for correction of any such conditions. Contractor shall comply with all federal, state and local occupational hazard and safety standards, codes and regulations applicable in the jurisdiction where the Work is being performed. Contractor shall include the substance of this clause in its entirety in all subcontracts for any work to be performed at the Construction Site.

B.5.8. Claims. Claims made by any party must be submitted in writing within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognized the condition giving rise to the claim, whichever is later.

B.5.9. Correlation and Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

B.5.9.1. The most recently issued document takes precedence over previously issued forms of the same document. Figures given on drawings govern scale measurement, and large scale details govern smaller scale drawings. If an item is shown one place in the drawings, but not on another, or called for in a schedule or the specifications but not shown on the drawings, it is to be included. Existing conditions take precedence over Drawings and Specifications for dimensions and shall be verified by Contractor. The order of precedence is as follows with the highest authority listed first:

- A. The Agreement
- B. Addendum
- C. Supplemental Conditions
- D. General Conditions
- E. Specifications and
- F. Drawings

B.5.9.2. In the event of discovered inconsistencies, if any, within or between parts of the Contract Documents Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with Design Engineer's interpretation. The terms and conditions of this section, however, shall not relieve Contractor of any other obligations of this Agreement.

B.6. EQUIPMENT AND MATERIALS.

B.6.1. Equipment. Except as expressly provided herein to the contrary, Contractor shall furnish all construction, transportation, installation, tools, and other equipment and facilities required for the performance of the Work within the times specified herein. Such equipment and facilities shall be serviceable and kept fit for the uses intended. Defective items shall be removed from the Construction Site promptly and at Contractor's cost. Contractor shall schedule (or cause to be scheduled) its other operations so as to not interfere with its duty to timely furnish the necessary equipment and facilities and personnel to operate the same at the times necessary for the orderly completion of the Work within the times allotted in the Project Construction Program.

B.6.2. Materials. Except as may be specifically provided otherwise in the Agreement or approved in advance by Owner, Contractor shall provide the Owner Representative with copies of material testing reports and to cause all materials, equipment, and fabricated items incorporated in the Project to be new and of a suitable grade of their respective kinds for their intended use.

B.6.3. Procurement Procedures. Procurement requisition, purchase order, inspection and expediting reports shall follow Contractor's standard reporting format whenever such standard reporting format exists, and if no such format exists, Contractor shall devise a format with the Owner's Representative and/or Program Manager.

B.7. PERMITS.

B.7.1. Contractor Permits. Contractor shall obtain all permits, licenses, governmental consents and approvals which may be necessary for the lawful performance of the Work on or before the date when such permits, licenses, Texas Department of Licensing and Regulation requirements, governmental consents or approvals are required by law or are necessary for the lawful performance of the Work. Owner shall provide any required easements.

B.7.2. Permits Generally. Each party shall cooperate with the other in obtaining all permits required to be obtained as provided in this Agreement.

B.8. CHANGES.

B.8.1. General. Owner may make changes in the Work by altering, adding to, or deducting from the Work. All changes in the Work which (a) require an adjustment in the Contract Lump Sum or an adjustment in the Scheduled Substantial Completion Date or (b) involve a material change in the overall scope or function of the Project shall be requested and authorized before commencing such changes by use of written Change Order Notices, Proposed Change Orders and Change Orders, as described in Exhibit B.8.2, which Change Order procedure shall be the exclusive means to effect such changes in the Work. There shall be a presumption against the need for Change Orders that increase the Contract Lump Sum. Change Orders that increase the Contract Lump Sum shall include Contractor's overhead and profit. Change Orders funded through Owner Contingency shall also include Contractor's overhead and profit.

B.8.2. Change Order Procedure.

B.8.2.1. Owner Initiated Change Orders: If at any time Owner desires to make any change in the Work requiring the issuance of a Change Order pursuant to Exhibit B.8.1, Owner shall so advise Contractor in writing by delivery to Contractor of a written notice (the "Change

Order Notice”), describing the change. Upon receipt of a Change Order Notice initiated by Owner, Contractor shall within a reasonable period of time advise Owner of Contractor's proposal for the adjustments, if any, in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change by delivering a written notice thereof (the "Proposed Change Order") to Owner. Such Proposed Change Order shall contain a description of the proposed change and shall set forth Contractor's estimate of the increase or decrease, if any, in the Contract Lump Sum and the change, if any, in the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such change.

B.8.2.2. Contractor Initiated Change Orders: If Contractor desires to make a change in the Work requiring the issuance of a Change Order or if Contractor receives any drawings, specifications, interpretations or instructions from Owner or Design Engineer which are inconsistent with the Contract Documents, or encounters unanticipated conditions which may result in a change in cost, scope or Substantial Completion Date, Contractor shall deliver to Owner a Proposed Change Order and shall not proceed with the affected work until further written instructions are received from Owner. Upon execution by the Owner Representative on behalf of Owner (and the approval of Fort Bend County Commissioner's Court for any change resulting an amount in an increase to the Contract Lump Sum), a Proposed Change Order shall constitute (and be defined herein as) a “Change Order” for purposes of this Agreement. Contractor shall forthwith perform the Work as changed in accordance with such Change Order. All Work performed pursuant to a Change Order shall be performed in accordance with the terms of this Agreement. All Proposed Change Orders shall be submitted for approval by Owner, represented by the Fort Bend County Director of Facilities Management and Planning or his designee, in compliance with Exhibit B.3.4. No action, acquiescence or inaction by Owner or any representative of the Owner shall be construed to be a waiver of requirements set forth in this Agreement in regard to Change Orders or ratification of a violation of such requirements, and all acts in violation of this provision shall be considered void.

B.8.3. Change Order Authorization. Each Change Order shall be signed by the Owner Representative and an authorized representative of Contractor.

B.8.4. Contract Lump Sum Adjustments. The Contract Lump Sum and the Schedule of Values shall be adjusted only as a result of a Change Order requiring such adjustment. Any adjustment resulting in an increase of the Contract Lump Sum shall require approval of the Fort Bend Commissioners Court. Any extra work performed without a proper Change Order shall be considered voluntary and not subject to additional compensation. Contractor shall not be entitled to an adjustment in the Contract Lump Sum (or a Change Order permitting such adjustment) or to damages as a result of any delays in the Work caused by the acts or omissions of Owner, provided that such delays do not delay the Critical Path nor fall outside of any time limits established under this Agreement. This sentence is not applicable to delays that constitute more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 90 days through no fault of Contractor.

B.8.4.1. When Owner and Contractor agree upon the adjustments in the Contract Lump Sum, the Project Construction Program, the Schedule of Values and the Scheduled Substantial Completion Date attributable to such adjustment, such agreement will be documented by preparation, and if approved by the Fort Bend County Commissioners Court,

execution of an appropriate Change Order and effective thereafter in accordance with Section B.8.2 above.

B.9. DEFAULT AND TERMINATION

B.9.1. Default by Owner.

B.9.1.1. Each of the following shall be an "Act of Default" by Owner and a material breach of this Agreement:

(a) Owner's failure to disburse installments of the Contract Lump Sum to Contractor as required under this Agreement;

(b) If Owner materially defaults under this Agreement (other than a default described in clause (a) of this Exhibit B.9.1.1) and Owner fails to remedy such default within 30 days after written notice from Contractor or, if such default is of a nature that it cannot be remedied within 30 days, if Owner fails to initiate action within 30 days after such notice and thereafter to proceed diligently and continuously to remedy same; or

(c) If repeated suspensions, delays or interruptions of the Work by Owner constitute in the aggregate more than 90 days in any 365-day period or cause the Work to be interrupted for a continuous period of 45 days, both through no act or fault of Contractor.

B.9.1.2. If any Act of Default by Owner shall occur, Contractor shall have the right to deliver a written notice at any time prior to the curing of such Act of Default which terminates Contractor's duty to complete the Work, and upon any such termination, Owner shall pay to Contractor the portion of the Contract Lump Sum owed to Contractor for Work completed as of the date of termination by Contractor in accordance with the approved Schedule of Values, and additional compensation for demobilization and other costs and expenses incurred by Contractor as a consequence of the termination, including reasonable overhead, profit and damages.

B.9.2. Default by Contractor.

B.9.2.1. Each of the following shall be an "Act of Default" by Contractor and a material breach of this Agreement:

(a) If Contractor materially defaults under this Agreement and Contractor fails to remedy such default within 15 days after written notice from Owner or, if such default is of a nature that it cannot be remedied within 15 days, if Contractor fails to initiate action within 15 days after such notice and thereafter to proceed diligently and continuously to remedy same; or

(b) If Contractor shall (i) file or consent to any petition for bankruptcy or insolvency or similar remedy; (ii) fail to cause any bankruptcy, insolvency, or similar proceeding to be stayed or dismissed within 90 days after the filing thereof; (iii) be adjudged a bankrupt or make a general assignment for the benefit of creditors; or (iv) seek, consent to or acquiesce in the appointment of a trustee, conservator, custodian, liquidator or receiver of a significant portion of Contractor's assets.

B.9.2.2. If any Act of Default by Contractor shall occur, Owner shall have the right to deliver written notice at any time prior to the curing of such Act of Default which terminates Contractor's right to proceed with the Work and Owner shall have no obligation to make any further payments to Contractor except for the portion of the unpaid Contract Lump Sum, if any, that exceeds Owner's cost of completion and other damages recoverable hereunder and such

unpaid Contract Lump Sum shall become due once all remaining expenses associated with the Work have been incurred and paid. In the event of such termination, Owner may finish the Work by whatever means it may deem expedient, including (without limitation) the hiring of any Contractor or Contractors under such form of contract as Owner may deem desirable, and Owner shall have the right but not the obligation, for the purposes of completing the Work, to take over and assume the rights and obligations of the Contractor under any or all subcontracts and purchase orders. Contractor and Contractor's performance bond surety shall be responsible for all damages recoverable under this Agreement arising from Contractor's breach.

B.9.3. Officers and Employees. None of the officers, directors, constituent partners, members, employees, elected officials, agents or affiliates of Owner or Contractor shall ever be personally liable for, or obligated to pay, or to satisfy any judgment for, any damages or any other monetary obligation whatsoever under any theory of action or recovery, on account of an Act of Default by Owner or Contractor under this Agreement or otherwise.

B.9.4. Notification of Disputes, Breaches, Defaults or other Litigation

B.9.4.1. FTA Interest - Contractor understands and agrees that FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the award of the Agreement, the accompanying Agreement, and any amendments thereto including, but not limited to, a default, breach, major dispute, or litigation involving the Project.

B.9.4.2. Notification to FTA - Contractor understands that if a current or prospective legal matter that may affect the Federal Government emerges, the Owner must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the County is located.

(a) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(b) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the award of the Agreement, the accompanying Agreement, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

B.9.4.3. Federal Interest in Recovery - Contractor is aware that the Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery.

B.9.4.4. Enforcement - Contractor agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

B.9.4.5. FTA Concurrence - Contractor is aware that FTA reserves the right to concur in any compromise or settlement of any claim involving the Project.

B.9.4.6. Alternative Dispute Resolution - Contractor is aware that the FTA encourages the use of alternative dispute resolution procedures, as may be appropriate.

B.9.4.7. Dispute Resolution Process - The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Underlying Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to mediation. The party requesting mediation shall notify the other

party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation. Each party shall be responsible for its own costs associated with the mediation.

B.9.4.8. False Claims - If the Owner has credible evidence that Contractor or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Owner must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Owner is located.

B.10. PAYMENT OF BILLS AND LIENS.

B.10.1. Payment of Bills. Contractor shall pay no later than thirty (30) days after the Contractor's receipt of payment for Work and all amounts owed by Contractor to all subcontractors performing portions of the Work pursuant to a direct contract with Contractor have been paid to such subcontractors (expressly excluding any subcontractors not directly contracting with Contractor). Contractor shall indemnify and hold Owner harmless from and against all liens, costs, claims, suits, actions, debts and damages (including, without limitation, reasonable attorneys' fees) arising as a consequence of Contractor's failure to comply with this Exhibit B.10.1 so long as Owner makes payment to Contractor as required by this Agreement.

B.10.2. Liens. Contractor shall indemnify and hold harmless the Indemnified Parties from all liens and other encumbrances against the portions of the Work and any claims or actions on account of debts or claims with respect to the Work alleged to be performed by Contractor or its subcontractors or suppliers to any person, and will defend any claim or litigation in connection therewith.

B.11. TAXES.

B.11.1. Unemployment Taxes. Contractor shall, and shall require its subcontractors to, pay any and all taxes and contributions for sickness and unemployment insurance, retirement benefits, life pensions, annuities, and similar benefits which may now or hereafter be imposed by law or agreement with respect to persons employed by Contractor or any of its subcontractors for performance of the Work. Contractor shall comply with all Laws and Regulations applicable to the compensation paid to its employees.

B.11.2. Corporate and Income Taxes. Notwithstanding anything else herein to the contrary, it is not intended that Owner be liable to Contractor for the reimbursement of any corporate franchise taxes or any taxes levied directly or indirectly on or measured by income or chargeable gains.

B.11.3. Sales and Use Taxes. Contractor shall pay any and all sales or use taxes imposed by the State of Texas or any municipality or other entity incorporated thereunder or created thereby; provided, however, Owner agrees to reasonably assist in obtaining the appropriate certificates from the appropriate Governmental Authorities reflecting the exemption of the Project from all sales and use taxes.

B.12. COMPLETION, TRANSFER AND ACCEPTANCE.

B.12.1. Substantial Completion. Upon the occurrence of the Substantial Completion Date, the Punchlist Items shall be promptly commenced and thereafter completed within thirty (30) days after Substantial Completion by Contractor.

B.12.2. Transfer and Acceptance. Upon the occurrence of Substantial Completion, care, custody and control of the Project shall pass to Owner. As referenced herein, the "Transfer Date" shall mean the date on which the care, custody and control of the Project passes to the Owner pursuant to this Exhibit B.12.2. Subsequent to the Transfer Date all risk of loss with respect to the Project shall be by Owner and Contractor shall not be thereafter obligated to cover the Project with the Builder's Risk Insurance described in the Exhibit F.

B.12.3. Partial Occupancy. Owner may obtain beneficial use and occupancy of any completed or partially completed portion of the Work at any stage, provided such use and occupancy is authorized by public authorities having jurisdiction over the Work.

B.12.3.1. Inspection. Immediately prior to such partial use and occupancy, Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

B.12.3.2 Effect. Partial use and occupancy of a portion or portions of the Work shall not constitute acceptance of Work not complying with requirements of the Contract Documents.

B.13. GUARANTEES, WARRANTIES AND INSURANCE.

B.13.1. General. Generally, all guarantees, warranties and insurance coverage to be provided by Contractor to Owner are set forth in Exhibit F.

B.13.2. Supervision of Warranty Work. Contractor shall, without any compensation in addition to the Contract Lump Sum, coordinate and supervise the completion of the corrective Work in the manner required for the original Work as a result of a Defect in the Work or the failure of the Work or the Project to meet the standards designated in Exhibit E.

B.14. SUBCONTRACTS, ASSIGNMENTS AND OTHER AGREEMENTS.

B.14.1. Subcontracts. When used in this Agreement, the terms "subcontract" and "subcontractor" shall mean and include both subcontracts and purchase orders and both subcontractors and purchase order vendors, respectively. Contractor shall be entitled to enter into subcontracts with subcontractors as required by Contractor to perform the Work. The Owner has approval rights over the use and/or removal of all subcontractors and/or vendor(s). Subcontractors shall conform to all Fort Bend County policies. Except as expressly provided herein to the contrary, Contractor shall remain responsible for performance of all Work subcontracted by Contractor. Contractor shall be responsible for inspecting subcontractors' work, for measuring progress and maintaining schedules, and for notifying Owner of subcontract awards and status. Contractor shall manage, schedule and coordinate the work of its subcontractors at whatever tier so as to meet the Scheduled Substantial Completion Date. Contractor shall include in each subcontract, provisions (a) recognizing that the subcontract does not bind Owner, and (b) permitting Owner, Owner's Representatives and their designees to conduct the inspections permitted herein. Further, Contract shall include the requirements for compliance with each federal statute as provided in Section B. 28. Federal Clauses, below. Any

dispute between the Contractor and subcontractors, including any payment dispute, will be promptly remedied by the Contractor. Failure to promptly remedy or to make payment to subcontractor no later than thirty (30) days after the Contractor's receipt of payment for Work may result in the withholding of funds from the Contractor by the Owner for any payments owed to the subcontractor.

B.14.2. Assignment. Contractor may not assign this Agreement or any portion hereof except with the prior written consent of Owner; provided, however, this Exhibit B.14.2 shall not be construed to prohibit Contractor from entering into subcontracts in order to perform the Work.

B.15. INDEMNIFICATION.

B.15.1. Bodily Injury and Property Damage Liability. As set forth in Exhibit D, Section D.9., Contractor is obligated to defend, indemnify and hold harmless the Indemnified Parties from any and all claims, damages, liabilities and expenses (including, without limitation attorneys' fees) for injury to or death of any person or for damage to or destruction of any property resulting directly or indirectly from any and all acts or omissions of Contractor, its officers, agents and employees, any of Contractor's subcontractors' subcontractors, their officers, agents and employees or anyone employed by any of them or anyone for whose acts any of them may be liable.

B.15.2. Protection of Work. As set forth in Exhibit D, Section D.9., Subsection 9., Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site and all materials and equipment incorporated into the Work prior to the Transfer Date unless the loss occurs after Substantial Completion and is solely caused by Owner or its separate contractors. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work performed and of Owner's and Contractor's property located at the Construction Site. Contractor shall be obligated to replace or repair any materials, equipment or supplies which are (or are to become) a permanent part of the Work or any temporary or existing facilities at the site.

B.15.3. Limitations. Contractor shall have no obligation to Owner or any other party with respect to any damage or loss to the Work or property on the Construction Site (including loss of use) caused by the perils of war, insurrection, revolution, or nuclear reaction.

B.16. FORCE MAJEURE.

B.16.1. Force Majeure as applicable to Contractor. If Contractor shall be unable to perform or shall be delayed in the performance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder affecting performance of the Work; (iii) power or other utility failure preventing the performance of the Work or substantial portions of same; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for completing the affected portions of the Project (and the entire Project, if applicable) shall be extended for such reasonable period of time as the delay has affected the performance of the Work hereunder. Contractor shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Owner in writing of any event allowing for excuse or delay not later than seven (7) days after the event Contractor first

becomes aware of the event; or may have become aware, of the event; otherwise Contractor will be deemed to have waived the excuse or delay.

B.16.2. Force Majeure as applicable to Owner. If Owner shall be unable to comply or shall be delayed in the compliance of any of the terms and provisions of this Agreement as a result of (i) governmental preemption of materials in connection with a national emergency declared by the President of the United States; (ii) riot, insurrection, or other civil disorder; (iii) power or other utility failure; (iv) fire or other unavoidable casualty; or (v) unusual and extreme weather conditions, then, and in any such event, such inability or delay shall be excused, and the time for compliance with the Agreement shall be extended for a reasonable period of time. Owner shall take all reasonable actions to minimize the delay caused by any of the above factors, and shall notify Contractor in writing of any event allowing for excuse or delay not later than seven (7) days after the event Owner first becomes aware of the event; or may have become aware, of the event; otherwise Owner will be deemed to have waived the excuse or delay.

B.16.3. Excluded Events. Contractor understands that delays occasioned by the events and occurrences set forth below are not included in Exhibit B.16.1, do not constitute reason for extending the date for Substantial Completion and that it is Contractor's responsibility to make adequate provision in scheduling the Work for the following:

B.16.3.1. Normal Weather Conditions. Weather conditions other than those that substantially vary from the normal climatology conditions that prevailed at the Site.

B.16.3.2. Late Deliveries. Late deliveries of materials and/or equipment for any cause other than those specified in Exhibit B.16.1. No claim will be approved if materials and equipment are delayed due to Contractor's tardy procurement or expediting.

B.16.4. Additional Grounds. The provisions of this Exhibit B.16.1 are in addition to other grounds for extension of time as set forth in the Contract Documents.

B.17. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for all actions regarding this Agreement shall be in Fort Bend County, Texas.

B.18. CERTAIN THIRD PARTIES BENEFITED. This Agreement shall be for the sole benefit of Owner and Contractor and not for any other third party.

B. 19. NOTICES. All notices, requests, directions, or other communications permitted or required hereunder (collectively "notices"), other than routine Work related communications, shall be in writing and shall be delivered in person or by certified mail, return receipt requested to the appropriate party at the address specified below, with copies to such other parties as specified below, unless a different address for notice or copy thereof is changed by notice. Notice sent by personal delivery to the authorized representative designated by a party shall be effective on the date the authorized representative actually receives such delivery. Notice sent by properly addressed mail, certified or registered with return receipt requested, and postage prepaid shall be effective three days after being deposited in the mail. Notice sent by telegraph, telex, telecopy, or cable, charges prepaid and confirmed by copy thereof sent by registered or certified mail shall be effective upon the date of such telegraph, telex, telecopy, or cable. Notice sent in any other manner shall be effective only if and when received by the parties.

| | |
|--------------------------|--|
| To Owner: | Fort Bend County Attn: County Judge 401 Jackson St., 1 st Floor Richmond, Texas 77469 |
| Copy to: | Facilities Management and Planning Department Attn: James Knight, Director 301 Jackson Street, Suite 301 Richmond, Texas 77469 Public Transportation Department Attn: Paulette Shelton 12550 Emily Court, Suite 400 Sugar Land, Texas 77478 |
| To Contractor: | SpawGlass Construction Corporation Attn: Brandon Meyers, President Houston Division 13800 West Road Houston, Texas 77041 |
| To Design Engineer: | Lockwood, Andrews & Newnam, Inc. 2925 Briarpark Drive, Suite 719 Houston, Texas 77042 |
| Copy to Program Manager: | Huitt-Zollars, Inc. Attn: Gregory R. Wine 1500 South Dairy Ashford, Suite 200 Houston, Texas 77077 |

B.20. CONSENTS. Without limiting the generality of Exhibits B.3.4 and B.3.5, in each and every instance where Owner or Contractor is required in this Agreement to obtain, or Owner or Contractor has elected to obtain, the consent or approval of the other party to any act or circumstance, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless otherwise expressly permitted in this Agreement.

B.21. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations, and agreements with respect thereto and unincorporated herein are hereby cancelled. Except as otherwise provided in this Agreement, this Agreement may be modified or amended only by a document duly executed on behalf of the parties hereto.

B.22. NON-WAIVER. No waiver or waivers by either party hereto of any breach or default of any provision hereunder shall be deemed a waiver of any other provision hereof or a waiver of any subsequent breach or default. No payment made under this Agreement (a) shall be, or be construed to be, final acceptance or approval of that part of the Work to which such payment relates or any other part of the Work, (b) shall relieve Contractor of any of its obligations hereunder with respect thereto, or (c) shall constitute a waiver of or otherwise affect the covenants and warranties of Contractor.

B.23. CAPTIONS. The captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of this Agreement or any part thereof.

B.24. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy or render ineffective the basis of the bargain between the parties hereto, the remainder of this Agreement and the application of the provision to the other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

B.25. CLAIMS FOR CONSEQUENTIAL DAMAGES.

B.25.1. Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

B.25.1.1. Damages incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

B.25.1.2. Damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

B.25.2. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the terms of this Agreement. Nothing contained in this Exhibit B.25 shall be deemed to preclude an award of liquidated damages pursuant to Exhibit B.1.3 hereof.

B.26. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or reports furnished by Owner to Contractor or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, shall negotiate with Contractor an equitable adjustment in the Contract Lump Sum or Substantial Completion Date, or both. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of this Agreement is justified, Owner shall so notify Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within five (5) days after Owner has given notice of the decision.

B.27. STATE LAW REQUIREMENTS FOR CONTRACTS WITH GOVERNMENTAL ENTITIES.

B.27.1. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

B.27.2. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

B.28. FEDERAL CLAUSES.

B.28.1. Fly America: The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

B.28.2. Buy America: The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. Absent such waiver, the Contractor agrees to include the requirements of this section in all subcontracts.

B.28.3. Cargo Preference-Use of United States-Flag Vessels: The Contractor agrees: (a) to use privately owned US -Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for US-Flag commercial vessels; and (b) to furnish within 20 working days following the date of loading for shipments originating within the US or within 30 working days following the date of loading for shipments originating outside the US, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading).

B.28.4. Seismic Safety: The Contractor agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, "Seismic Safety," 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117, and agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under the Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

B.28.5. Environmental Protections: The Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

B.28.6. National Environmental Policy Act: An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees to:

B.28.6.1. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Agreement, and any Amendments thereto.

B.28.6.2. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013 (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Agreement, and any Amendments thereto.

B.28.7. Environmental Justice: The Contractor agrees and assures that it will, promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) the most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

B.28.8. Energy Conservation: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

B.28.9. Use of Certain Public Lands: The Contractor agrees to comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

B.28.10. Historic Preservation: The Contractor agrees to:

B.28.10.1 Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places;

B.28.10.2. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108;

B.28.10.3. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq;

B.28.10.4. Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. part 800; and

B.28.10.5. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

B.28.11. Indian Sacred Sites: The Contractor agrees to facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note.

B.28.12. Clean Water: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

B.28.13. Clean Air: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

B.28.14. Resource Recovery: The Contractor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6962), including but not limited to the 40 CFR Part 247, and Executive Order 12873. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an

affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

B.28.15. Other Environmental Federal Laws: The Contractor agrees to comply or facilitate compliance will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

B.28.16. Lobbying: Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Contractor, by execution of the Agreement, hereby certifies to the best of his or her knowledge and belief that:

B.28.16.1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence any officer or employee of an agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B.28.16.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the Agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B.28.16.3. The undersigned shall require that the language of this certification be included in the award documents at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements that all subrecipients shall certify and disclose accordingly.

B.28.16.4. The certification made herein is a material representation of fact upon which reliance was placed when this Agreement is being entered into. Submission of the required certification is a prerequisite for making and entering into this Agreement imposed by Section 1352, Title 31 USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B.28.17. Access to Records and Reports: The Contractor agrees to provide Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to comply and will require all subcontractors of any tier to comply with the record retention requirements in accordance with 2 C.F.R. 200.333. The Contractor agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, all books, records, accounts, statistics, leases, subcontracts, arrangements other third party arrangements of any type, reports, and supporting materials related to those records required under the Agreement for a period of not less than three years after the date of termination or expiration of the Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case Contractor agrees to maintain same until Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

B.28.18. No Government Obligation to Third Parties: Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to Owner, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B.28.19. Program Fraud and False or Fraudulent Statements and Related Acts: Program Fraud and False or Fraudulent Statement and Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA assisted project for which the Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

B.28.20. Government-wide Debarment and Suspension:

B.28.20.1. The Contractor hereby certifies that it and its principals have not presently or within a three (3) year period been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal agency; and the Contractor hereby certifies that it and its principals have not presently or within a three (3)-year period been convicted of or had a civil judgement rendered against them for the commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, state or local) transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property

B.28.20.2. Further, Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549.

B.28.20.3. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

B.28.21. Privacy Act: The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

B.28.22. Civil Rights Requirements:

B.28.22.1. Non-Discrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity, age, status as a parent or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B.28.22.2. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B.28.22.3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B.28.22.4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

B.28.23. Disadvantaged Business Enterprise (DBE): The Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs including 49 C.F.R. Part 26, Section 1101(b) of MAP-21 (23 U.S.C. § 101 note). The national goal for

participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this DOT-assisted contract. The Contractor must comply with 49 C.F.R. Part 26. Failure by the Contractor to carry out these requirements is a material breach of the Agreement, which may result in the termination of the Agreement or such other remedy as Owner deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to the Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from Owner. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to the Agreement is satisfactorily completed.

The Contractor must promptly notify Owner whenever a DBE subcontractor performing work related to the Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of Owner.

B.28.24. Incorporation of Federal Transit Administration Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

B.28.25. Prompt Payment: The Contractor is required to pay its subcontractors performing work related to the Agreement for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from Owner. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to the Agreement is satisfactorily completed.

B.28.26. Access for Individuals with Disabilities: The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section

504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

B.28.26.1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B.28.26.2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

B.28.26.3. Joint U.S. Architectural and Transportation Barriers Compliance board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

B.28.26.4. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

B.28.26.5. Joint U.S. Architectural and Transportation Barriers Compliance board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

B.28.26.6. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

B.28.26.7. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

B.28.26.8. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101 19;

B.28.26.9. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

B.28.26.10. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

B.28.26.11. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;

B.28.26.12. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. Part 39;

B.28.26.13. FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and

B.28.26.14. Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

B.28.27. Veterans Employment: The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

B.28.28. Flood Insurance: The Contractor agrees and assures that it will agree to comply with flood insurance laws and guidance as follows:

B.28.28.1. It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.

B.28.28.2. Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001 et seq., whichever is less.

B.28.28.3. It will follow FTA guidance, except to the extent FTA determines otherwise in writing.

B.28.29. Bonding: As provided in federal regulations and modified by FTA guidance for construction related contracts, Contractor, for each Project or related activities implementing the Agreement that involve construction, will provide bid guarantee bonds, contract performance bonds, and payment bonds in accordance with the requirements listed in Exhibit E.

B.28.30. Prevailing Wage and Anti-Kickback: The Contractor shall comply with the Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 - 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person

employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

B.28.31. Contract Work Hours and Safety Standards Act: The Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5).

B.28.31.1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B.28.31.2. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

B.28.31.3. Withholding for unpaid wages and liquidated damages – Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

B.28.31.4. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses regarding (1) overtime requirements, (2) violation; liability for unpaid wages; liquidated damages, and (3) withholding for unpaid wages and liquidated damages as set forth in the preceding paragraphs of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these clauses.

B.28.31.5. Payrolls and basic records - Payrolls and related basic records shall be maintained by the Contractor during the course of the work and preserved for three years thereafter for all laborers and mechanics working at the worksite (or under the United States Housing Act of 1937 or the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each worker,

his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records showing that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records of the costs anticipated or actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of registration of apprenticeship programs, certification of trainee programs, registration of the apprentices and trainees, and ratios & wage rates prescribed in applicable programs.

B.28.31.6. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. A federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.

B.28.32. National Intelligent Transportation Systems Architecture and Standards: Contractor ensures that they will conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

B.28.33. Transit Asset Management Plan: Contractor assures that it and will comply with FTA regulations "Transit Asset Management; National Transit Database," 49 C.F.R. parts 625 and 630, and follow applicable federal guidance.

B.28.34. Seat Belt Use: Contractor shall encourage their employees and other personnel that operate company-owned vehicles, company rented-vehicles, or personally operated vehicles to adopt on-the-job seat belt policies and programs.

B.28.35. Project Labor Agreements: The Owner may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, 41 U.S.C. chapter 39, Refs. & Annos.

B.28.36. Federal Changes: The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Owner and FTA, as they may be amended or promulgated from time to time during the term of the Agreement. Contractor's failure to so comply shall constitute a material breach of the Agreement.

In addition, these state requirements extend to all third party contractors and their contracts at every tier and their subcontracts at every tier that meet or exceed the required

acquisition threshold. Contractor shall require that the clauses below shall be included in each covered transaction at any tier:

B.28.36.1. Child Support: Per Texas Family Code 231.006, a child support obligor or business entity remains ineligible to receive payments from state funds under a contract to provide property, materials, or services; or a state funded loan until: (1) All arrearages have been paid; (2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or (3) the court of continuing jurisdiction over the child support order has granted the obligor an exemption from ineligibility as part of a court-supervised effort to improve earnings and child support payments.

Before payment can be released Contractor will supply Owner with the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity.

Under Section 231.006, Family Code, the Contractor 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.

B.28.36.2. Debt to State: The State shall not be responsible for the debts of the Subrecipient or Subcontractor.

B.28.37. Required Assurance: The Contractor, or Sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26" Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Contractor from future bidding as non-responsible."

B.28.38. Drug-Free Workplace: Contractor shall provide any and all notices as may be required under the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, to their employees and all sub-contractors to insure that the Owner maintains a drug-free workplace.

B.28.39. Required Clauses for FTA-funded Subcontracts pursuant to TxDOT Consolidated Certification Form PTN-130: Contractor certifies to abide by, and include the following clauses in each subcontract financed in whole or in part with FTA funds. Contractor is certifying by reference the entire list of FTA FY 2017 Certifications and Assurances, and shall download the same at: <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/fta-fiscal-year-2017-certifications-and>

B.28.39.1. Interest of Members of or Delegates to Congress (All contracts): Contractor certifies that no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

B.28.39.2. Prohibited Interest (All contracts): Contractor certifies that no member, officer or employee of the Owner of a local public body, during his or her tenure or one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B.28.39.3. Application of Federal, State, & Local Laws, Regulations, & Directives (Federal Changes) (All contracts): Contractor agrees that Federal laws and regulations control project award and implementation. The Contractor understands and agrees that unless the Owner requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations or this Agreement, if it implements an alternative procedure or course of action not approved by the FTA. The Contractor understands and agrees that Federal laws, regulations, and directives applicable on the date on which Federal assistance is awarded may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date the Agreement is effective, and might apply to that Agreement. The Contractor agrees that the most recent versions of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time.

B.28.39.4. Right of the State to Terminate (All contracts): Upon written notice, the Contractor agrees that the State may suspend or terminate all or any part of State assistance if terms of the Agreement are violated, if the State determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of the State assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the Agreement that engenders substantial performance of the Project, or if the State determines that State assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. The State reserves the right to require the refund of the entire amount of State assistance provided for the Project or a lesser amount.

SCHEDULE 1 TO EXHIBIT B
STAFF PREVAILING WAGE RATES

The following prevailing wage rates shall be utilized by Contractor's staffing of the Project during the course of the Work. Contractor shall be responsible for payment of not less than the wages detailed below for the duration of the Project.

This project is subject to the prevailing wage rate requirements of Chapter 2258 of the Government Code. The Contractor shall pay Fort Bend County sixty dollars (\$60.00) for each worker employed by the Contractor for the provision of services described herein for each calendar day or part of the day that the worker is paid less than the below stated rates. Contractors may also visit www.wdol.gov/dba.aspx.

General Decision Number: TX170297 01/12/2018 TX297
Superseded General Decision Number: TX20160297

State: Texas
Construction Type: Building
County: Fort Bend County in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 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, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 01/05/2018 |
| 1 | 01/12/2018 |

ASBE0022-009 06/01/2017

| | Rates | Fringes |
|--|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation) | \$ 23.26 | 12.92 |

BOIL0074-003 01/01/2017

| | | |
|-------------|----------|-------|
| BOILERMAKER | \$ 28.00 | 22.35 |
|-------------|----------|-------|

CARP0551-008 04/01/2016

| | | |
|--|----------|------|
| CARPENTER (Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work and Metal Stud Installation) | \$ 23.05 | 8.78 |
|--|----------|------|

ELEC0716-005 08/28/2017

| | | |
|--|----------|------|
| ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms) | \$ 32.25 | 9.14 |
|--|----------|------|

* ELEV0031-003 01/01/2018

| | | |
|-------------------|----------|------------|
| ELEVATOR MECHANIC | \$ 41.28 | 32.645+a+b |
|-------------------|----------|------------|

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0450-002 04/01/2014

| | | |
|------------------------------------|----------|------|
| POWER EQUIPMENT OPERATOR Cranes | \$ 34.85 | 9.85 |
|------------------------------------|----------|------|

IRON0084-002 06/01/2017

| | | |
|--|----------|------|
| IRONWORKER (ORNAMENTAL AND STRUCTURAL) | \$ 23.27 | 7.12 |
|--|----------|------|

PLAS0079-004 01/01/2015

| | | |
|-----------|----------|------|
| PLASTERER | \$ 19.92 | 1.00 |
|-----------|----------|------|

PLUM0068-002 10/01/2017

| | | |
|------------------------------------|----------|-------|
| PLUMBER PLUM0211-010 10/01/2017 | \$ 34.90 | 10.54 |
|------------------------------------|----------|-------|

| | | |
|---|----------|-------|
| PIPEFITTER (Including HVAC Pipe Installation) | \$ 34.10 | 11.71 |
|---|----------|-------|

SHEE0054-003 07/01/2017

| | | |
|---|----------|-------|
| SHEET METAL WORKER (Excludes HVAC Duct and Unit Installation) | \$ 27.72 | 13.70 |
|---|----------|-------|

SUTX2014-023 07/21/2014

| | | |
|---|----------|------|
| ACOUSTICAL CEILING MECHANIC | \$ 16.41 | 3.98 |
| BRICKLAYER | \$ 19.86 | 0.00 |
| CAULKER | \$ 15.36 | 0.00 |
| CEMENT MASON/CONCRETE FINISHER | \$ 13.82 | 0.00 |
| DRYWALL FINISHER/TAPER | \$ 16.30 | 3.71 |
| DRYWALL HANGER AND METAL STUD INSTALLER | \$ 17.45 | 3.96 |
| ELECTRICIAN (Alarm Installation Only) | \$ 17.97 | 3.37 |
| ELECTRICIAN (Low Voltage Wiring Only) | \$ 18.00 | 1.68 |
| FLOOR LAYER: Carpet | \$ 20.00 | 0.00 |
| FORM WORKER | \$ 11.87 | 0.00 |
| GLAZIER | \$ 19.12 | 4.41 |
| INSULATOR – BATT | \$ 14.87 | 0.73 |
| IRONWORKER, REINFORCING | \$ 12.10 | 0.00 |
| LABORER: Common or General | \$ 10.79 | 0.00 |
| LABORER: Mason Tender – Brick | \$ 13.37 | 0.00 |
| LABORER: Mason Tender - Cement/Concrete | \$ 10.50 | 0.00 |
| LABORER: Pipelayer | \$ 12.94 | 0.00 |
| LABORER: Roof Tearoff | \$ 11.28 | 0.00 |
| LABORER: Landscape and Irrigation | \$ 9.49 | 0.00 |
| LATHER | \$ 19.73 | 0.00 |
| OPERATOR: Backhoe/Excavator/Trackhoe | \$ 14.10 | 0.00 |
| OPERATOR: Bobcat/Skid Steer/Skid Loader | \$ 13.93 | 0.00 |
| OPERATOR: Bulldozer | \$ 20.77 | 0.00 |
| OPERATOR: Drill | \$ 16.22 | 0.34 |

| | | |
|---|----------|------|
| OPERATOR: Forklift | \$ 15.64 | 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 | \$ 16.00 | 0.00 |
| PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping | \$ 16.77 | 4.51 |
| ROOFER | \$ 15.40 | 0.00 |
| SHEET METAL WORKER (HVAC Duct Installation Only) | \$ 17.81 | 2.64 |
| SHEET METAL WORKER (HVAC Unit Installation Only) | \$ 16.00 | 1.61 |
| SPRINKLER FITTER (Fire Sprinklers) | \$ 22.17 | 9.70 |
| TILE FINISHER | \$ 12.00 | 0.00 |
| TILE SETTER | \$ 16.17 | 0.00 |
| TRUCK DRIVER: 1/Single Axle Truck | \$ 14.95 | 5.23 |
| 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 |
| WATERPROOFER | \$ 14.39 | 0.00 |

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

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 www.dol.gov/whd/govcontracts.

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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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.

EXHIBIT C
COMPENSATION

C.1. CONTRACT LUMP SUM.

C.1.1. Total Compensation. As full and complete compensation for Contractor's performance of the Work in accordance with the terms and conditions of this Agreement, Owner shall pay to Contractor the Contract Lump Sum. The Contract Lump Sum constitutes the entire compensation due Contractor for all of the Work and all of Contractor's obligations under this Agreement regardless of difficulty, hours worked, or materials or equipment required and includes, but is not limited to, compensation for all applicable taxes (excluding sales and use taxes, as set forth in Exhibit B.11.3), fees, overhead, profit, mobilization and demobilization costs, overtime premiums and payments, and all other direct and indirect costs and expenses incurred or to be incurred by Contractor under this Agreement. The Contract Lump Sum shall be increased or decreased only in accordance with Change Orders issued pursuant to Exhibit B.8.

C.1.1.2. The Contract Lump Sum for this Agreement is Twenty-one million eighty-four thousand sixty seven and no/100 Dollars (\$21,084,067.00) or as such may be adjusted from time to time pursuant to Exhibit B.8, which includes a four percent (4%) Owner Contingency.

C.1.2. Current Payments. Contractor hereby warrants to and covenants with Owner that neither Contractor nor any of its subcontractors and suppliers have performed any of the Work at the Construction Site or delivered any material or supplies to the Construction Site or ordered any specially fabricated materials prior to the effective date of this Agreement, and that all of Contractor's rights hereunder are subject and subordinate to all liens, mortgages, assignments, and security interests granted by Owner in and to the Construction Site, all improvements, fixtures, equipment and personal property (including removables) now or hereafter constructed thereon or therein, securing any indebtedness or obligation of Owner now or hereafter existing, and all renewals, extensions and rearrangements thereof.

C.1.3. Schedule of Values. The Contract Lump Sum listed in the Schedule of Values will be paid for the Construction Work on a percentage of completion basis based upon the amounts set forth in the Schedule of Values as approved by Owner. The breakdown of the Schedule of Values is for the purpose of invoicing and progressive payment only. Owner shall be obligated to make progress payments of such amount invoiced by Contractor in accordance with Exhibit D.2.2; provided, however, in no event will Owner be obligated to pay to Contractor the amounts allocated to any line item of the Schedule of Values that exceeds the total of such Value.

C.2. METHOD OF PAYMENT.

C.2.1. Applications for Payment. Contractor shall submit all "Applications for Payment" (as herein defined) for installments of the Contract Lump Sum for approval and processing to Owner on a monthly basis in accordance with the Schedule of Values on or before the tenth (10th) day of each calendar month during the progress of the Work. Each Application for Payment shall be in a form acceptable to the Fort Bend County Auditor and shall reflect any amount representing the proportionate part of the Work performed during the previous month. As support for each Application for Payment, Contractor shall submit the following in a form acceptable to the County Auditor:

- (a) A statement in the form attached as Exhibit G executed by Contractor certifying that (i) the proportionate part of the Work described in such Application for Payment has been performed, (ii) Contractor's amount included in the Application for Payment attributable to the Schedule of Values is due and owing, (iii) there are no known mechanics' or materialmen's liens outstanding as of the date of the Application for Payment or if such liens are known, such have been adequately bonded, (iv) all due and payable bills with respect to the Work have been paid to date in the current Application for Payment, and (v) there is no known basis for the filing of any mechanics' or materialmen's liens on the Work.
- (b) A partial lien waiver and release in the form attached as Exhibit G effective through the date of Contractor's preceding Application for Payment, executed by Contractor with a statement certifying those matters set forth in clauses (i) through (v) of subparagraph (a) of this Exhibit C.2.1., certifying that waivers from all subcontractors and materialmen have been obtained in such form so as to constitute an effective waiver of liens under the laws of the State of Texas.
- (c) An affidavit executed by Contractor that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all trade contractors, suppliers, material men, or other third parties that provided labor, services, equipment, or material to the Project, satisfying the requirements for such releases set forth the TEXAS PROPERTY CODE §53.085.
- (d) A fully updated Critical Path Schedule.

C.2.2. Progress Payments and Retainage. Within 30 days after receipt of each uncontested Application for Payment together with the supporting materials specified in Exhibit C.2.1., Owner shall release to Contractor the uncontested amount requested in such uncontested Application for Payment except five percent (5%) of the amount requested in each Application for Payment shall be held by Owner.

C.2.2.1. The retainage shall be withheld until the Contractor provides all documents required to be provided to the Owner by the Contractor, and certification by Design Engineer that said Work is finally complete and satisfactory, unless grounds exist for withholding payment on account of other defaults by Contractor, including Work performed by its Trade Contractors.

C.2.3. Final Payment to Contractor. Payment, constituting the entire unpaid balance of the Contract Lump Sum, less fifty percent (50%) of the retainage then held by Owner and such amount as the Owner Representative determines is reasonably necessary for all incomplete Work (including, without limitation, the Punchlist Items) and for all unsettled claims, as provided in this Agreement, shall be released by Owner to Contractor upon the Substantial Completion Date. Owner shall pay all outstanding and withheld portions of the Contract Lump Sum to Contractor upon the later to occur of (i) 30 days after the Final Completion Date or (ii) the date that Contractor causes all mechanics' and materialmen's liens filed against the Project to be removed. Owner shall have received from Contractor a lien waiver or an affidavit to the effect that it and all its Trade Contractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to

dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, Contractor shall have provided to Owner the Final Certificate of Occupancy for the building.

C.2.3.1. Upon payment of the entire balance of the Contract Lump Sum and all other amounts withheld by Owner pursuant to this Exhibit C.2.3, Contractor shall execute and deliver to Owner a release discharging Owner from all liabilities, obligations and claims to pay the Contract Lump Sum pursuant to this Agreement.

SCHEDULE 1 TO EXHIBIT C
CRITICAL PATH SCHEDULE/CRITICAL MILESTONES

EXHIBIT D
WARRANTY, INSURANCE AND INDEMNITY

D.1 MATERIALS AND EQUIPMENT.

D.1.1. Contractor shall, for the protection of Owner, obtain from all vendors and subcontractors guarantees with respect to the machinery, equipment, and materials, used and installed as a part of the Work, which guarantees shall be in form and content consistent with those prevailing in the applicable industry and which shall be made available to Owner to the full extent of the terms thereof. Contractor shall use its best efforts to obtain guarantees which extend to the expiration of the Defects Period or for such longer period of time as may be obtainable from such vendors and subcontractors and shall specify that same shall be enforceable by and for the benefit of Owner.

D.1.2. All materials and equipment are subject to inspection by Owner at all times. No inspection or other action by Owner shall release any vendor or subcontractor from its duty to conform to final specifications nor shall any inspection or other action or lack thereof release any vendor or subcontractor from any warranty or guarantee. The failure of Owner to inspect shall not constitute a waiver of the right to reject the material or equipment for defective workmanship or material.

D.2. WORKMANSHIP. Subject to the provisions of Exhibit E.6. herein below, Contractor guarantees that the Work will be free from any Defect in the workmanship of Contractor or any subcontractor or other party engaged by Contractor in connection with the Work. Provided Owner notifies Contractor of such a Defect prior to the end of the Defects Period, Contractor will promptly correct at no cost to Owner, any Defect in or damage to the Work or any part thereof arising or resulting, directly or indirectly, from any Defect in the workmanship of Contractor (or its subcontractors or suppliers) and Contractor shall itself correct or, as deemed feasible by Owner, have another correct any such Defect where such is attributable to any subcontractor or other party engaged by Contractor in connection with the Work.

D.3. POST CONSTRUCTION WORK; TRAINING. Within fourteen days (14) days of Substantial Completion of the Project, Contractor shall provide or cause to be provided to Owner multiple copies of all training and repair manuals, and warranty documentation for all equipment, systems and machinery installed by Contractor (or its subcontractors or suppliers) in the Project, and training services with respect to the operation and maintenance of the equipment, systems and machinery within the Project, to the extent the same has been installed by Contractor (or its subcontractors or suppliers) pursuant to the Agreement. Such services shall include, but not be limited to, training of maintenance personnel of Owner with respect to proper maintenance procedures for the initial startup and continued operation of the equipment, systems and machinery within the Project, training of operation personnel of Owner with respect to proper use, operation and maintenance of the equipment, machinery and systems within the Project and such other services as may be mutually agreed upon between Owner and Contractor after the date hereof.

D.4. EXCEPTIONS TO GUARANTEES. Contractor shall not be obligated to provide corrective or remedial services and shall have no other obligation for Defects in the Work which occur as a result of (a) improper maintenance or operation by Owner or (b) normal wear, tear, erosion, and

corrosion after the Transfer Date.

D.5. INSURANCE COVERAGES. Contractor shall obtain and keep (or cause to be obtained and kept) in full force and effect until the expiration of the Defects Period (except for the Builder's Risk Insurance, which shall be kept in effect only until the Transfer Date) the insurance coverages specified in Exhibit E.

D.6. DEFECTS AND REMEDIAL ACTION.

D.6.1. If, at any time during the prosecution of the Work, Contractor determines that there is an error, omission or defect in the Drawings and Specifications, Contractor shall notify Design Engineer and Owner of such error, omission or defect and Contractor shall suspend the portion of the Work that is based on the portion of the Drawings and Specifications containing such error, omission or defect. Contractor shall meet with Design Engineer within three (3) days of such notice to discuss remedial action. When Owner, Contractor, and Design Engineer have agreed upon the appropriate remedial action, Design Engineer has corrected the error, omission or defect in the Drawings and Specifications, and Contractor has approved such curative action, Contractor shall proceed with the affected Work and any delay occasioned thereby may be subject to any additional compensation to Contractor, as approved by Owner.

D.6.2. With respect to replacement equipment and materials supplied and services reperformed in accordance with the provisions of this Agreement, the Defects Period shall automatically be extended to apply to the replacement equipment or material or the reperformed service for a period of twelve calendar months from the later of (i) the Transfer Date or (ii) the date Contractor notifies Owner of the completion of the installation of the replacement equipment or material or the reperformance of service.

D.6.3. Remedial Action.

D.6.3.1. Subject to the terms of Exhibit E.4, if, during the Defects Period, Owner determines that there is a Defect in a portion of the Work, Owner shall notify Contractor and Contractor shall take remedial action acceptable to Owner without delay.

D.6.3.2. If Contractor's remedial action is not commenced without delay or having so commenced is not prosecuted with all due dispatch to completion, Owner, after giving notice to Contractor, may proceed with another Contractor or contractors to perform such remedial action, in which case Contractor shall reimburse Owner upon demand for all costs incurred in performing such remedial action.

D.7. PERFORMANCE OF SUPPLIER'S OBLIGATIONS.

D.7.1. In the case of Defects in materials, machinery or equipment which arise from the failure of a supplier to Contractor of materials for the Project, or defects in services provided in a specialty or sole source subcontract with a subcontractor of Contractor (in this subparagraph any such subcontract of supply or service is herein called "subcontract" and the party providing such service is called "subcontractor"):

D.7.2. Contractor shall secure full performance of the supplier's or subcontractor's obligations under Agreements of supply or under subcontracts by repair, replacement or otherwise to the satisfaction of the Owner. Contractor, upon the request of the Owner, shall assign any of its rights under subcontracts or purchase agreements for machinery, equipment or

material or under such Agreements of supply to the Owner and shall at such time be automatically relieved of the obligations relative to the matters covered by such contracts.

D.7.3. Contractor shall undertake such other or additional action as the Owner may require to achieve prompt correction of, or to overcome or offset, or to remedy or repair, the Defect.

D.8 PATENTS.

D.8.1. Contractor hereby indemnifies each of the Indemnified Parties against, and agrees to hold each of the Indemnified Parties harmless from, all claims, demands, liabilities, damages, losses, costs, and judgments arising from assertions by third parties that Contractor or any subcontractor (except any subcontractor selected by Owner to which Contractor objects) or all or any of the Indemnified Parties are infringing upon any patent, copyright, trademark, or service mark or are misappropriating any proprietary information. If any action or proceeding relating to any such assertion is brought against any one or more of the Indemnified Parties, then, unless Owner directs otherwise, Contractor shall conduct in due diligence and in good faith, the defense of such action or proceeding, whether or not Contractor is joined therein; provided, however, Contractor shall not admit the validity or infringement of any patent, copyright, trademark, or service mark without the express written consent of Owner. In connection with Contractor's defense of any such action or proceeding, the Indemnified Parties shall render such assistance as Contractor may require in such defense. Without relieving Contractor of any of its obligations hereunder, any one or more of the Indemnified Parties, at its election, may participate in the defense of any such action or proceeding at its sole cost. Contractor shall pay all liabilities, damages, losses, fees (including but not limited to attorneys' fees), costs, settlement sums, judgments, and other expenses incurred by the Indemnified Parties in connection with any such assertions, actions, or proceedings. Contractor hereby warrants and represents to the Indemnified Parties that Contractor has no actual knowledge of any patent, copyright, trademark, service mark, or proprietary information that is or will be alleged to be infringed upon or misappropriated by the proposed activities under this Agreement or the maintenance, repair, use, or sale of the Project.

D.8.2. Contractor shall use its diligent, good faith efforts to obtain from all suppliers a patent indemnity in the form set forth in Exhibit E.8.1. If any prospective supplier refuses to grant such patent indemnity, Contractor shall promptly notify Owner and, unless authorized by Owner in writing, shall select an alternate supplier.

D.9. INDEMNIFICATION

D.9.1. CONTRACTOR SHALL INDEMNIFY AND DEFEND OWNER AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

D.9.2 Contractor shall timely report all such matters to Owner and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide Owner with a written report on each such matter, setting forth the

status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of Owner required by Contractor in the defense of each matter.

D.9.3. Contractor's duty to defend indemnify and hold Owner harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of the Agreement unless otherwise agreed by Owner in writing. The provisions of this section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.

D.9.4. In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Contractor, Contractor shall nevertheless fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Contractor are not at issue in the matter.

D.9.5. Contractor's indemnification shall cover, and Contractor agrees to indemnify Owner, in the event Owner is found to have been negligent for having selected Contractor to perform the work described in this request.

D.9.6. The provision by Contractor of insurance shall not limit the liability of Contractor under this Agreement.

D.9.7. Contractor shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this request, to agree to indemnify Owner and to hold it harmless from all claims for bodily injury and property damage that arise may from said Contractor's operations. Such provisions shall be in form satisfactory to Owner.

D.9.8. Loss Deduction Clause - Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Contractor and/or trade contractor providing such insurance.

D.9.9. Contractor shall be responsible for all risk of loss to all materials delivered to the Construction Site and all materials and equipment incorporated into the Work prior to the Transfer Date. Contractor shall, prior to the Transfer Date, provide continuous and adequate protection of the Work, the property and adjacent property of Owner or Contractor constituting the Construction Site. Contractor shall be obligated to replace or repair any (a) materials, equipment or supplies which are, or are to become, a permanent part of the Work or temporary or existing facilities whether Contractor owned or leased or furnished by Contractor or Owner or (b) construction supplies and materials which are lost from the Construction Site, damaged or destroyed on the Construction Site prior to the Transfer Date, however such loss or damage may occur unless the same results from the negligence or willful misconduct of Owner or its officers, directors, employees or agents.

EXHIBIT E

INSURANCE REQUIREMENTS, PERFORMANCE AND PAYMENT BONDS, WARRANTY OF THE WORK AND MAINTENANCE BONDS

A. INSURANCE COVERAGE. Contractor shall obtain and keep in full force and effect until Completion of the Work the insurance coverages hereinafter specified in this Exhibit E; such coverages shall be in primary form as to the liabilities assumed hereunder or excess form with limits not less than those set out below.

1. Commercial General Liability Insurance. Commercial general liability insurance or a comparable policy form, naming Contractor as the named insured and Owner as additional insured with the following coverages and limits:

| | | |
|-----|---|-------------|
| (A) | General Aggregate | \$2,000,000 |
| (B) | Products Completed Operation– Aggregate | \$2,000,000 |
| (C) | Personal Advertising Injury Limit | \$1,000,000 |
| (D) | Each Occurrence Limit | \$1,000,000 |
| (E) | Fire Damage Limit (any one fire) | \$50,000 |
| (F) | Medical Expense Limit (any one person) | \$5,000 |

2. Such insurance shall contain blanket contractual coverage, shall be written on Insurance Services Offices approved occurrence form and shall also provide the following protection:

- (A) Premises/operations coverage;
- (B) Broad form property damage liability coverage;
- (C) Completed operations coverage for a period of 2 years following the date of substantial completion of the Work;
- (D) XCU coverage;
- (E) Independent contractors and employees as additional insureds;
- (F) Contractual liability coverage.

3. Business Automobile Liability Insurance. Automobile liability and property damage insurance covering all owned, non-owned and hired vehicles used in connection with the Work, with Contractor as the named insured and Owner as additional insured, insuring against liability for bodily injury and death and for property damage in an amount not less than \$1,000,000 per occurrence.

4. Worker's Compensation Insurance. Worker's compensation insurance providing statutory Texas coverage for all persons or entities employed by Contractor and all subcontractors in connection with the Work, with employer's liability insurance of not less than \$1,000,000 per occurrence and in the aggregate and a waiver of subrogation in favor of Owner.

5. Umbrella Liability Insurance. Umbrella liability insurance naming Contractor as the named insured and Owner as additional insured, in an amount not less than \$5,000,000 per occurrence and in the aggregate.

6. Worker's Compensation Special Requirements. In regard to Worker's Compensation Insurance the following special requirements shall apply. All parties working on the Project shall maintain Worker's Compensation as required by Texas law.

(A) Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(B) Duration of the project - includes the time from the beginning of the Work on the project until the Contractor's work on the project has been completed and accepted by the Owner.

(C) Persons providing services on the project. ("Subcontractor" in section 406.096 of the TEXAS LABOR CODE) includes all persons or entities performing all or part of the services Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent General Contractors, Subcontractors, leasing companies, motor carriers, owner operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(D) Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all employees of Contractor providing services on the project, for the duration of the project.

(E) Contractor must provide a certificate of coverage to Owner prior to the commencement of the Work.

(F) If the coverage period shown on Contractor's current certificate of coverage ends during the duration of the project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with Owner showing that coverage has been extended.

(G) Contractor shall obtain from each person providing services on a project, and provide to Owner:

- i. a certificate of coverage, prior to that person beginning work on the project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- ii. no later than seven days after receipt by Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(H) Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(I) Contractor shall notify Owner in writing by certified mail or personal delivery, within 10 days after Contractor knows or should know, of any change that materially affect the provision of coverage of any person providing services on the project.

(J) Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage. (This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population:

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Worker's Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

(K) Contractor shall contractually require each person with whom it agrees to provide services on a project, to:

- i. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of TEXAS LABOR CODE, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- ii. provide to Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- iii. provide to Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- iv. obtain from each other person with whom it contracts, and provide to Contractor:
 - a) a certificate of coverage, prior to the other person beginning work on the project; and
 - b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- v. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- vi. notify Owner in writing by certified mail or personal delivery, within 10 days after the person knows or should know, of any change that materially affects the provision of coverage of any person providing services on the project; and
- vii. contractually require each person with whom it contracts, to perform as required by Section 6(a) through 6(j) hereof, with the certificates of coverage to be provided to the person for whom they are providing services.

(L) By signing this Agreement or providing or causing to be provided a certificate of

coverage, Contractor is representing to Owner that all employees of Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(M) Contractor's failure to comply with any of these provisions is a breach of Agreement by Contractor which entitles Owner to declare the Agreement void if Contractor does not remedy the breach within ten days after receipt of notice of breach from Owner.

B. POLICIES. Every policy referred to in this Exhibit E shall (i) provide that no material change, cancellation or termination shall be effective until at least 30 days after written notice thereof has been received by Contractor and Owner; (ii) provide that such insurance shall not be invalidated by any act or negligence of Contractor or Owner, or any subcontractors or any person or entity having an interest in the Project, nor by any foreclosure or other proceedings or notices thereof relating to the Project, nor by any change in title to or ownership of the Project; and (iii) include a waiver of all rights of subrogation in favor of Contractor and Owner.

C. BUILDERS RISK INSURANCE. Contractor shall obtain and keep in full force and effect until the Transfer Date, Builders Risk Insurance, subject to policy terms and conditions, of direct physical loss or damage to property, materials, equipment and supplies which are to become an integral part of the Project, whether owned by Contractor, or subcontractors of every tier, and in which one or more of same has an insurable interest, while in transit, while at the Construction Site awaiting construction, during construction, and until the Transfer Date. Such insurance shall be maintained to cover, as nearly as practicable, the insurable value of such property, materials, equipment and supplies at risk, and shall contain a waiver of subrogation in favor of Contractor, Design Engineer, subcontractors of any tier and Owner for loss or damage occurring during the Work and shall name Contractor as the named insured and Owner as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Contractor.

D. RESPONSIBLE COMPANIES. All insurance required by any provision of this Exhibit E shall be in such form and shall be issued by such responsible companies licensed and authorized to do business in the State of Texas as are acceptable to Contractor. Any insurance company rated at least "A" as to management and at least "Class XII" as to financial strength in the latest addition of Best's Insurance Guide, published by Alfred M. Best Co., Inc., 75 Fulton Street, New York, New York (or any successor publication of comparable standing) shall be deemed a responsible company and acceptable to Contractor.

E. COPIES. Prior to commencement of the Work, Contractor shall furnish insurance certificates evidencing the coverages required under this Exhibit E to Owner, which shall clearly indicate that the insurance required to be obtained hereunder has been obtained in the type, amount and classification as herein required. Owner shall have the right, upon prior notice and during business hours, to review certified true copies of the insurance policies maintained pursuant to this Exhibit E.

F. PERFORMANCE BOND AND PAYMENT BOND. Contractor shall furnish a payment bond

with good and sufficient surety or sureties payable to Owner and intended for the use and protection of all Trade Contractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the Construction Work. Contractor shall also provide a performance bond with good and sufficient surety or sureties for the faithful performance of the Agreement and indemnification of Owner for damages occasioned by a failure to perform the Construction Work or for failure to perform the Construction Work within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of Owner.

1. The surety must be one that is licensed to do business in the State of Texas, and must be acceptable to Owner. Each bond shall be in an amount equal to one hundred percent (100%) of the Contract Lump Sum.

2. Bond Requirements. The performance bond and payment bond shall identify the Principal (Contractor) and Surety with Owner. The Principal and Surety shall be identified by their full legal names, addresses, full telephone numbers, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of Owner will be for informational purposes only. The Principal and the Surety must separately sign the bond. The parties executing the bond should indicate their companies, print their names and titles, and impress the corporate seals, if any. The bonds must be payable to Owner, and shall be delivered to the Owner's Representative within ten (10) days after execution of this Agreement. The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under §§521.051 - 521.056 of the TEXAS INSURANCE CODE, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

3. Surety Companies. Any performance bond obtained hereunder must be executed by a duly authorized Surety company satisfactory to Owner, which in any event, must be a surety company listed in "Circular 570 Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury" and authorized to do business in the State of Texas in accordance with Chapter 3503 of the TEXAS INSURANCE CODE. No surety will be accepted by Owner who is now in default or delinquent on any bonds or who is interested in any litigation against Owner. Each Surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

G. WARRANTY OF THE WORK AND MAINTENANCE BOND. The Contractor warrants to the Owner, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the recipient, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum

period of one (1) year after final payment by the recipient and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the recipient. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance bonds written by the same corporate surety that provides the payment and performance bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum of one (1) year after payment and shall be written in an amount equal to one hundred percent (100%) percent of the total lump sum price.

EXHIBIT F

WORK PERFORMED TO DATE

In support of Periodical Estimate for Partial Payment No.

For the period from _____, through _____ inclusive.

Project No.

Name and location of Project

Contractor's Name and Address

WORK INCLUDED IN ORIGINAL CONTRACT

| DETAILED ESTIMATE | | | | WORK PERFORMED TO DATE | | | |
|--|-------------------------------|-------------------|-----------------------|------------------------|---------------------------------|------------------------------------|----------------------------|
| Item No. (1) | No. & Kind of Units (2) | Unit Price (3) | Estimated Cost (4) | No. of Units (5) | Amount Earned to Date (6) | Value of Incomplete Work (7) | Percent Complete (8) |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| A. Total Amount of original contract | | | | | | | |
| B. Plus or minus total previously approved C. O.'s -----incl. | | | Nos.-- | | | | |
| C. Plus or minus C. O.'s Nos.-----incl. approved period covered by this est.----- | | | during | | | | |
| D. Total Net Adjusted Amt. | | | | | | | |

| SUMMARY OF MATERIALS STORED | |
|-----------------------------|-----|
| 1 | ... |
| 2 | ... |
| 3 | ... |
| 4 | ... |
| 5 | ... |
| 6 | ... |
| 7 | ... |
| 8 | ... |
| 9 | ... |
| 10 | ... |
| 11 | ... |
| 12 | ... |
| 13 | ... |
| 14 | ... |
| 15 | ... |
| 16 | ... |
| 17 | ... |
| 18 | ... |
| 19 | ... |
| 20 | ... |
| 21 | ... |
| 22 | ... |
| 23 | ... |
| 24 | ... |
| 25 | ... |
| 26 | ... |
| 27 | ... |
| 28 | ... |
| 29 | ... |
| 30 | ... |
| 31 | ... |
| 32 | ... |
| 33 | ... |
| 34 | ... |
| 35 | ... |
| 36 | ... |
| 37 | ... |
| 38 | ... |
| 39 | ... |
| 40 | ... |
| 41 | ... |
| 42 | ... |
| 43 | ... |
| 44 | ... |
| 45 | ... |
| 46 | ... |
| 47 | ... |
| 48 | ... |
| 49 | ... |
| 50 | ... |
| 51 | ... |
| 52 | ... |
| 53 | ... |
| 54 | ... |
| 55 | ... |
| 56 | ... |
| 57 | ... |
| 58 | ... |
| 59 | ... |
| 60 | ... |
| 61 | ... |
| 62 | ... |
| 63 | ... |
| 64 | ... |
| 65 | ... |
| 66 | ... |
| 67 | ... |
| 68 | ... |
| 69 | ... |
| 70 | ... |
| 71 | ... |
| 72 | ... |
| 73 | ... |
| 74 | ... |
| 75 | ... |
| 76 | ... |
| 77 | ... |
| 78 | ... |
| 79 | ... |
| 80 | ... |
| 81 | ... |
| 82 | ... |
| 83 | ... |
| 84 | ... |
| 85 | ... |
| 86 | ... |
| 87 | ... |
| 88 | ... |
| 89 | ... |
| 90 | ... |
| 91 | ... |
| 92 | ... |
| 93 | ... |
| 94 | ... |
| 95 | ... |
| 96 | ... |
| 97 | ... |
| 98 | ... |
| 99 | ... |
| 100 | ... |

| |
|---|
| In support of Periodical Estimate for Partial Payment No. |
|---|

Project No. _____ Period Ending: _____

Contractor: _____

[illegible]

Prepared by _____ for _____
(Contractor)

Date _____, and certified by him to be a true and accurate statement.

Checked and concurred in:

By: _____ Resident Engineer Inspector

Date: _____

Date: _____

CONTRACTOR & SUBCONTRACTOR AFFIDAVIT, LIEN WAIVER AND RELEASE (PARTIAL)

Subcontractor: _____

Owner: Fort Bend County, Texas

Owner Representative: Fort Bend County Director
of Facilities Management & Planning

Design Engineer: Lockwood, Andrews & Newnam, Inc.

Contractor: SpawGlass Construction Corporation

Project: _____

Construction Agreement: Construction Agreement dated _____,
_____, between Owner and Contractor

Property: _____

1. Subcontractor has heretofore submitted to Contractor its Application for labor and services performed and materials supplied to the Project pursuant to the Agreement through and including _____, 20__ (the "Application Date"). Subcontractor represents and certifies to Contractor and Owner that Subcontractor has received the amount stated to be due in the Application for Payment (exclusive of required retainage pursuant to Exhibit C.2.2 to the Agreement or such lesser amount as may have been approved by the Owner Representative in accordance with the terms of the Agreement). Subcontractor hereby forever waives and releases any and all liens and rights or claims of liens of every kind against the Property and the Project, including but not limited to all statutory or constitutional mechanic's liens or bond claims and all contractual or tort claims that Subcontractor may be entitled to and releases Contractor and Owner and their successors and assigns from any claim, liability, or debt by reason of labor and services performed and equipment and materials furnished by Subcontractor to or for the Project through the Application Date, but not otherwise. Notwithstanding the foregoing, this document shall not operate to discharge or release Subcontractor's right to receive payment of required retainage held pursuant to Exhibit C.2.2 to the Agreement.

G-1

work at the Property such that there exists no other claim by, through or under Subcontractor, and that it is entitled to no other claims against the Owner or Contractor and Property through the date noted above.

3. For and in consideration of Ten and No/100 Dollars (\$10.00) and the payment of the sums due to Subcontractor as set forth above, Subcontractor hereby agrees to indemnify and hold harmless Contractor and Owner, their successors and assigns, from and against any and all losses, costs, liabilities, judgments, damages and expenses (including, without limitation, attorneys' fees) incurred as a result of any claim, demand, suit, action, proceeding or cause of action brought by or instituted on account of any party for sums due to such party on account of furnishing labor, services, equipment, rentals or materials to or for the Project and by, through or under Subcontractor through the Application Date, but not otherwise.

IN WITNESS WHEREOF, the Subcontractor has by its duly authorized representative set his hand and seal thereto this ____ day of _____, 20__.

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the ____ day of _____, 20__,
by _____ of _____, a _____
corporation, on behalf of such corporation.

[Stamp or Seal]

Notary Public in and for the State of Texas

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2018-386931

Date Filed:
08/01/2018

Date Acknowledged:
08/14/2018

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

SpawGlass Construction Corp.
Houston, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

18-055

New ground up public transportation center. Administration building, maintenance building, 2 bus barns, and a fuel and wash station. Also approximately 410,000 square feet of paving.

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) | |
|---|--------------------------|--|--|--------------|
| | | | Controlling | Intermediary |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)