



The Cooperative Purchasing Network

April 23, 2010

Jamail & Smith Construction
ATTN: Mr. Gregory Smith, P.E.,
Executive Vice President/Partner
16875 Diana Lane
Houston, TX 77058

Dear Mr. Smith:

The Cooperative Purchasing Network (TCPN) is pleased to announce that Jamail & Smith Construction has been awarded an annual contract for the following services based on the proposal submitted to TCPN:

Commodity

Job Order Contracting Services

Contractor

Jamail & Smith Construction

The contract is effective immediately and will expire on March 31, 2011. The contract may be renewed annually for up to an additional four years, if mutually agreed to by TCPN and Jamail & Smith Construction.

Please be advised, you will be required to attend a TCPN vendor training that will be setup in the near future. You will be advised of this meeting by email well in advance.

The partnership between Jamail & Smith Construction and TCPN can be of great help to participating agencies. Please feel free to provide copies of this letter to your sales representatives to assist in their work.

If you have any questions or concerns, please feel free to call Matthew Mackel at the TCPN office at 713-744-6349.

Sincerely,

Jason Wickel
TCPN, Director

Robert A. Pechacek
Region 4 ESC, Deputy Director, Financial Services/CFO

ACCEPTANCE FORM

Company Name: Jamali & Smith Construction

Address: 16875 Diana Lane

City/State/Zip: Houston, TX 77058

Accepted by The Cooperative Purchasing Network:

Term of contract 4-23-10 to 4-30-11

Unless otherwise stated, all contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years if agreed to by TCPN and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a TCPN contract whether renewed or not.



Director of TCPN

4/20/10

Date

JASON WICKER

Print Name



Authorized Signature

4/20/10

Date

ROBERT A. PENECHAL

Print Name

TCPN Contract Number R4957

COMPANY INFORMATION

The following information is required by TCPN in order to comply with provisions of state law. Texas Revised Civil Statutes Article 601g, State or Political Subdivision Contracts for Construction, suppliers, Services, Proposals by Non-resident, defines a "Nonresident Proposer" as a proposer whose principal place of business is not in this state.

A "Texas Resident Proposer" is defined as a proposer who has a principal place of business in this state.

The State Controller's Office defines Principal Place of Business as follows: Principal Place of Business in Texas means, for any type of business entity recognized in the State of Texas, that the business entity:

"has at least one permanent office located within the State of Texas, from which business activities other than submitting proposals to governmental agencies are conducted and from which the proposal is submitted, and has at least one employee who works in the Texas office."

Name of Firm: Jamall & Smith Construction

Principal Place of Business

16875 Diana Lane

Address:

Houston, Texas 77058

City, State, Zip

Phone No. 281-461-7075 Fax No. 281-461-7260

Email: gsmith@jasmith.com Web site: www.jasmith.com

The above firm (is/is not) a Texas Resident Proposer.

Signature

Gregory Smith, P.E.

Name

Executive Vice President/Partner

Title



The Cooperative Purchasing Network

7145 West Tidwell ~ Houston, Texas 77092-2096
Phone (713) 744-6356 ~ Fax (713) 744-0648 ~ Toll-free (888) 884-7695
Website: www.tcpn.org ~ email: tcpn@tcpn.org

Publication Date: March 18, 2010

NOTICE TO RESPONDENT

SUBMITTAL DEADLINE: Thursday April 15, 2010 @ 10:00 AM CDT

Questions regarding this solicitation must be submitted in writing no later than *April 8, 2010*. All questions and answers will be posted to http://www.tcpn.org/default.aspx?name=QA_10-01

Request for Proposal (RFP) for

Job Order Contracting Services

Solicitation Number 10-01

It is the intention of TCPN to establish a contract that satisfies the needs of participating governmental entities in the procurement of Job Order Contracting Services. This contract will enable agencies to procure these services on an "as needed" basis from competitively awarded contracts.

While this solicitation specifically covers Job Order Contracting Services, respondents are encouraged to submit an offering on any and all products or services available that they currently perform in their normal course of business.

Responses shall be received no later than the deadline in the offices of The Cooperative Purchasing Network (TCPN). Immediately following the deadline, all responses will be publically opened and the respondents recorded. Any response received later than the specified deadline, whether delivered in person or mailed, will be disqualified. Faxed or electronically submitted responses cannot be accepted.

Responses must be sealed and plainly marked with the company name and the opening date and time. Two (2) bound and signed copies of the proposals and two electronic copies on CD, DVD or flash drives (i.e. pin or jump drives) shall be provided.

Jason Wickel
Director TCPN

INTRODUCTION

The Cooperative Purchasing Network (TCPN)

TCPN is a governmental entity, established in 1997, tasked with assisting public entities to increase efficiency and economy when procuring goods and services. Our contracts are available for use, and benefit, all entities that must comply with state procurement laws and regulations (public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities).

TCPN is a national purchasing cooperative, leveraging one of the largest pools of purchasing potential. TCPN competitively bids and awards contracts for commonly purchased products and services. Our unique contracts cover Facilities, Food Service, Furniture, Office Supplies & Equipment, Security Systems, and Technology to name a few.

Purpose of TCPN

- Provide governmental agencies opportunities for greater efficiency and economy in procuring goods and services.
- Take advantage of state-of-the-art purchasing procedures to insure the most competitive contracts.
- Provide competitive price and bulk purchasing for multiple government agencies that yields economic benefits unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services.
- Equalize purchasing power for smaller agencies that are unable to command the best contracts for themselves.
- Help in assisting with use of best business practices.

Customer Service

- TCPN is dedicated to making our contracts successful for both our members and our awarded vendors.
- TCPN is committed to providing our members and awarded vendors with high quality service.
- TCPN has dedicated staff available to answer questions, offer guidance and help in any way possible.

Purchasing Procedures

- Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO "Per TCPN Contract"
- Awarded vendor delivers goods/services directly to the participating agency.
- Awarded vendor invoices the participating agency directly.
- Awarded vendor receives payment directly from the participating agency.
- Awarded vendor reports sales monthly/quarterly to TCPN.

INFORMATION FOR OFFERORS

1. The Cooperative Purchasing Network (TCPN) intends to procure Cooperative Job Order Contracts for the State of Texas to provide indefinite delivery, indefinite quantity minor construction, renovations, repairs, and alterations services for use by all public and private schools, colleges, universities, cities, counties, and other government entities that have, or execute in the future, an interlocal agreement with TCPN. TCPN's previous contracts were valued over \$100,000,000 for five years. These services will be priced based upon a coefficient (multiplier e.g. .95 or 1.10) applied to pre-described and pre-priced tasks contained in a Unit Price Book (UPB). This coefficient factor applied to each Job Order task and may be further modified by adjustment factors for Davis-Bacon wage rates, if required
2. **TCPN is soliciting offers from regional contractors. A contractor does not need to have statewide coverage to respond to this solicitation.**
3. TCPN will receive a fee of 2.5% of the total cost of each Task Order excluding any costs of bonds.
4. It is the intent of TCPN to award without discussions. However, TCPN reserves the right to conduct discussions and negotiation with the apparent successful offerer(s). If these negotiations are not successful, there will be no more negotiations with that offerer and negotiations will be made with the offerer providing the second best offer, etc.
5. TCPN reserves the right to award multiple contracts.
6. The Unit Price Book (UPB) for this contract is the current edition of the RS MEANS Facilities Construction Cost Data and Facilities Maintenance & Repair Cost Data books. Contractors will be responsible for providing, at their expense, printed or electronic copies of this database for their use, and for making copies available for customers' use. The prices in the "Total, including Overhead & Profit" column will be used. The total value of the applicable line items and their quantities will be multiplied by the City Cost Index, the applicable coefficient, any adjustment factor to determine the total cost of a Job Order. Once the applicable line items and the quantities thereof have been agreed upon by the customer and the contractor; the Job Order will be handled as though it were a lump sum fixed price contract for the specified scope of work. The current version of RS MEANS Facilities Construction Cost Data will apply upon execution of any options.

Contractors may, at their option, also include a coefficient applied to the Xactmate estimating program

7. This contract will be for one year. At its sole discretion, TCPN may renew this contract for up to four (4) additional one year periods. The contractor will be notified in writing at least 60 days in advance of the expiration of each year term whether TCPN intends to exercise the next option. If TCPN has notified the contractor of their intent to renew, and the contractor does not desire to have his option exercised, he must notify TCPN at least 45 days before expiration of the option.
8. If operational reasons require it, TCPN may extend the term of any contract upon 30 days written notice to the contractor. If the contractor refuses to accept the extension, he must provide written notice of his refusal within 14 days.
9. There is no guaranteed minimum or maximum annual volume. Proposers are responsible for determining their anticipated volume for each state by considering their level of performance, their opinion of potential work in each area, and their marketing plan.

10. Items that cannot be found in the UPB are considered "non-pre-priced". If an item basically the same in "form, fit, and function" can be found in the price book, it can be used to price the line item if appropriate rationale and documentation is provided. If a like item cannot be found, the contractor and the customer will negotiate an equitable price. Once negotiated, this price may be added to the UPB and will no longer be considered non pre-priced for that customer. These prices will be adjusted annually, if an option is exercised, based upon the differences in the MEANS Historical Cost Indices for the current and past year.
11. In the event of disputes between contractors and customers, TCPN will examine the particulars, determine the relevant facts, and render a decision.
12. The CSI Master Text Specifications and all current national and local codes will apply to the work done under this contract.
13. At this time TCPN does not plan on holding a Pre-bid Conference. All questions concerning this solicitation shall be addressed in writing to Doug Rupe, Contract Consultant at drupe@tcpn.org. The questions and answers will be posted on the TCPN website at www.tcpn.org. TCPN reserves the right to schedule a Pre-bid Conference in Houston, Texas if there is sufficient need.
14. Proposals will consist of two volumes, Past Performance Volume, and a Technical and Cost Volume. The Past Performance Volume will provide information on the Contractor's past performance and relevant experience. The Technical and Cost Volume will provide information on the Proposer's plan to manage a TCPN Cooperative Job Order Contract and the contractor's base co-efficient. **INFORMATION OBTAINED FROM ANY VOLUME OF THE PROPOSAL, OR ANY OTHER RELEVANT SOURCE, MAY BE USED IN EVALUATION.**
23. This is a "best value" solicitation. Awards will be made to those offerers whose performance and technical scores, as determined by the evaluation team in accordance with the evaluation criteria, combined with their coefficient (price) provide, in the sole judgment of TCPN, the overall "best value" to TCPN and its customers.
25. TCPN reserves the right to award to other than the lowest price, reject any or all proposals in whole or in part, and to waive technical defects, irregularities, and omissions, if in its sole judgment the best interest of TCPN and its customers will be served.
26. TCPN intends to award without discussions. However, if it appears that oral presentations and/or discussions are required to select the best value contractors or obtain competitive pricing, TCPN reserves the right to do so.
27. Performance bonds will be required on all Job Orders over \$100,000. and Payment Bonds on all Job Orders over \$25,000. A letter from a surety, licensed to do business in the State of Texas, attesting to their willingness to bond you up to \$5 million per year for this contract is required. Your plan for providing additional bonding if your annual volume exceeds \$5 million must be included the Technical Volume. The awarded contractor may be asked to provide the same information for any other states that they wish to offer services in under this contract.
28. The contractor will maintain, at his expense, adequate insurance coverage to protect him, TCPN, and the customers from: claims arising under the Workers Compensation Act; from claims for damages resulting from bodily injuries and damage to the property of others; and from claims for damages resulting from the operation of motor vehicles. Please provide certificates for your insurance coverage in the Cost Volume. Within 10 days after award, TCPN/Region 4 ESC must be added as an additional insured.

Minimum Insurance Requirements are as follows:

Workers' Compensation - statutory benefits.

Employer's Liability - \$1,000,000 each accident, each employee.

Commercial General Liability - \$1,000,000 per occurrence and in aggregate annually.

Business Auto Liability Insurance - \$1,000,000 per occurrence.

29. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless TCPN, Region 4 ESC, and their respective trustees, officers, employees, representatives, agents, and customers from and against all suits, demands, claims, causes of action, damages, losses, fines, penalties, costs and expenses (including legal fees and court costs) caused by, resulting from, arising out of, or occurring in connection with the performance of the Work or compliance (or failure to comply) with the terms of this Agreement, even though such loss, cost, damage, injury, claim, demand, suit or expense may be attributable to the joint, concurrent, comparative, contributory, or sole negligence of any party indemnified hereby.
30. The completed proposal of the successful offeror will be incorporated in the Contract and the Contractor will be bound by the terms thereof.

PROPOSAL INSTRUCTIONS

1. Proposals will consist of a Past Performance Volume, (original and one copy) and a Technical and Cost Volume (original and one copy) plus an electronic copy.
2. The Past Performance Volume will provide information on the Contractor's past performance and relevant experience. The Technical Volume will provide information on the Bidders plan to manage the TCPN Cooperative JOC should he be awarded a contract. The Cost portion will provide the Contractor's coefficients for normal hours (M – F, 7 am to 5 PM), a brief explanation of the rationale for these coefficients, the Contractor's history for submitting claims and change orders, and financial and bonding information. **INFORMATION OBTAINED FROM ANY VOLUME OF THE PROPOSAL, OR ANY OTHER RELEVANT SOURCE, MAY BE USED IN THE EVALUATION.**
3. Each volume should be placed in loose-leaf binders, securely wrapped, and marked: "Cooperative Job Order Contract RFP 08-14, Past Performance Volume and Technical and Cost Volume, as appropriate. Each volume must arrive at the TCPN offices in the Region IV Education Service Center, 7145 West Tidwell Road, 77092 by the date and time specified.
4. All Proposals must be delivered in person, or by delivery services, or by United States mail. No faxed or electronically transmitted proposals will be accepted. **Late proposals will not be accepted and will be returned unopened.**
5. The Past Performance Volume should contain the following:
 - a. Past Performance Information. Provide a list of contracts completed within the last five years, or currently in progress, involving the simultaneous use of multiple subcontractors on multiple projects. List any other cooperative JOC programs you are or may have participated in. The following information should be provided on each contract:
 - (1) Customer name and location of contract
 - (2) Type of project and total value of work done
 - (3) Start date and completion date
 - (4) Names and phone numbers of major subcontractors
 - (5) Name, Phone Number, Address, Fax Number, Email address, and position of primary point of contact (You may provide a secondary point-of-contact, if desired.)
 - b. Relevant Experience. Provide a matrix showing each contract completed within the last five years, or currently in progress, along the vertical axis; and across the horizontal axis list indicate those contracts involving the following functions by checking, or filling in the applicable blocks:
 - (1) JOC, SABER, DOC, IDIQ and other Job Order, task order, or job order, type construction services.
 - (2) Work on governmental, educational or other non-profit facilities
 - (3) Work on multiple projects simultaneously
 - (4) Working with multiple subcontractors simultaneously
 - (5) Partnering as a member of a team consisting of the client, the contractor, and his employees and subcontractors
 - (6) Working on IDIQ contracts with multiple customers where marketing was necessary to obtain work.
 - (7) Successfully met goals for subcontract of work to small businesses and MWBE's.
6. The Technical and Cost Volume should briefly explain how you plan to staff and operate the

TCPN Cooperative JOC in Texas. Present your team, organization, staffing, project management, customer service and marketing plan, and subcontracting procedures in the same order and providing the information indicated in the applicable evaluation criteria found in the **EVALUATION** section.

7. The Technical and Cost Volume must present the rationale you used in computing your coefficient your claims, and change order history:
 - a. It should show how you computed the cost of doing the work and the various elements that made up your coefficient, to include G & A, profit, overhead, labor and burden, contingencies, etc. Show the values used and the computations.
 - b. Remember that the bid coefficient **must include** all costs other than those contained in the pre-priced unit prices, including, but not be limited to: direct cost of doing the work; labor burden; overhead; G & A; profit; project office expenses; mobilization and close-out costs; insurance; compliance with environmental laws; protective clothing and equipment; contractor computer equipment and software; vehicles, maintenance, and fuel; a program administration and assistance fee of 2.5% and all contingencies in connection with performing the work. **NO ADDITIONAL PAYMENT WILL BE ALLOWED FOR ANY OF THESE ITEMS.**
 - c. The following Line Items in Division 1 of the UPB may not be used for the pricing of Job Orders, as these items are to be included in the bidder's coefficients:
All line items in Sections 01100-200CM, 01300 except 01300-700 only if requested by client, 01400 (less 1450), 01500 (except for those line items in 01510-800, 01530, 1540-500, 550,700-780, 01550, 01560, 01580, and 01590-600,) 01700, & 01800.
 - d. The Contractor is responsible for obtaining all required permits. The customer will reimburse the Contractor for the actual cost charged by the permitting agency of the permits, therefore do not include the cost of permits in your coefficient.
 - e. Fill out the Bid Schedule and include it in your cost volume. It must be signed by an officer of your company.
 - f. Provide a list of the contracts used in the Past Performance Volume and the change orders and claims for each contract showing the date, amount, whether owner or contractor generated, and any remarks desired.
 - g. Provide a letter from a surety authorized to do business in the State of Texas attesting to their willingness to provide you bonding for up to \$5 million per year.
 - h. Describe how you will meet additional bonding requirements if your annual volume exceeds \$5 million per year..
 - i. Provide copies of your insurance certificates from companies with a rating of B++ or better and licensed to do business in Texas.
 - j. Provide an audited latest available financial statement.
 - k. Provide a Company Information Statement.
 - l. Provide a completed Felony Conviction Notice. This will also be required of all subcontractors in Texas.

EVALUATION

1. Selection of the successful offerer(s) will be based upon the evaluation and scoring of the following factors to determine the proposer who offers the overall best value, price and other factors being considered:
 - a. PAST PERFORMANCE (the reputation of the vendor and the vendor's goods and services; the quality of the vendor's goods and services; the vendor's past relationship with customers; and any other relevant factor that a private entity would consider in selecting a vendor to include: **(30 point)**
 - (1) The overall reputation of the offerer and his business operations;
 - (2) The quality of the offerer's construction and other relevant services and his ability to meet schedules, operate with a minimum of disruption, and adhere to a budget;
 - (3) The past relationship of the offerer with school districts and other customers with particular emphasis on teamwork, communication, and cooperation;
 - (4) The offerer's ability to work with multiple small business subcontractors and provide technical assistance as needed;
 - (5) The offerer's performance in meeting agreed upon goals for utilization of small businesses, MWBE's, and other businesses that are disadvantaged by social, economic, or physical factors ;
 - (6) The offerer's performance in managing multiple projects with multiple subcontractors simultaneously;
 - (7) The offerer's performance in paying subcontractors promptly and mentoring and assisting them;
 - (8) The offerer's performance in working with architects and engineers; and,
 - (9) The offerer's safety record.
 - b. RELEVANT EXPERIENCE (the extent to which the offerer is experienced in providing goods or services that can meet a government agency's) **(20 points)**
 - (1) The experience of the offerer in performing JOC, SABER, DOC, and other Job order type construction services as measured by total volume of work done, number of contracts, and total years;
 - (2) The experience of the offerer in working on school or other governmental facilities as measured by number of projects and total volume;
 - (3) The experience of the offerer in working on multiple projects simultaneously as measured by total number of projects;
 - (4) The experience of the offerer in working with multiple subcontractors as measured by the number of projects with multiple subcontractors and the average number of subcontractors on a project;
 - (5) The experience of the offerer in working as a part of a design-build team as measured by the number of projects; and,
 - (6) The experience of the offerer in partnering as a member of a team consisting of the client, its customers, the contractor, and his employees, subcontractors, and other team members as measured by the number of contracts;
 - c. PROJECT MANAGEMENT ABILITY (proposed personnel and methodology) **(20 points)**
 - (1) Corporate organization and overall project control, their interface and support with this Cooperative JOC project office;
 - (2) Any proposed teaming arrangements and their operational procedures;
 - (3) Project Organization Chart, to include organization; staffing to include their functions, roles, and responsibilities; and use of team members personnel, if applicable;
 - (4) Position Descriptions and resumes of the proposed project organization;
 - (5) Interface of Contractor's staff with customers and TCPN;

- (6) Job Order Management, to include: response to customer request for job order proposals; planning and preparation of job order documentation, design, plans, scope of work, negotiation with customers over applicable line items and necessary quantities to perform the desired scope of work, trades packages, construction details, estimating, site supervision, turn-over packages, and close-out;
- (7) Procedures for providing up-front assistance to customers in defining their scope of work, value engineering, etc.;
- (8) Communication procedures with TCPN, customers, and subcontractors, to include the use of web sites and Internet;
- (9) Procedures to facilitate the ordering of JOC work by customers;
- (10) Procedures for keeping TCPN and customers informed of project status and schedule;
- (11) Quality Control procedures; and,
- (12) Safety procedures.

d. **CUSTOMER SERVICE AND MARKETING PLAN (20 points)**

Provide a plan for providing quality service to your customers and marketing your Cooperative JOC to potential customers. **An inadequate marketing plan in TCPN's view, may disqualify a contractor from consideration.**

The plan should include, but is not limited to:

- (1) Participating in local school forums and educating potential customers on the advantages of using your Cooperative JOC to meet their facility needs;
- (2) Identifying potential customers;
- (3) Training interested customers on the "how" of using your Cooperative JOC;
- (4) Procedures to facilitate the ordering of JOC work by customers, to include providing an user-friendly interface for ordering work;
- (5) Procedures for providing up-front assistance to customers in defining their scope of work, value engineering, etc, to include the use of team A/E's to assist customers in performing necessary design and monitoring of their Cooperative JOC to produce safe and functional facilities.;
- (6) Communication procedures with TCPN, customers, and subcontractors, to include the use of web sites and Internet;
- (7) Keeping customers informed of the status of their projects;
- (8) Coordinating and communicating with customers before, during, and after projects to ensure them of your desire and ability to start on time, operate with minimal disruptions, provide a clean and safe work area, finish on time, provide the proper documentation, and invoice on schedule;
- (9) Obtaining feedback from customers; and,

e. **SUBCONTRACTOR MANAGEMENT ABILITY (10 points)**

- (1) Plan for identifying, selecting, managing, mentoring, and assisting subcontractors;
- (2) List of proposed subcontractors to include the mix of trades, size, location, and diversity;
- (3) Procedures for encouraging and assisting small businesses, MWBE's, and other businesses that may be socially, economically, or physically disadvantaged;
- (4) Use of professional/technical service subcontractors or team members such as architects, engineers, and testing companies; and,
- (5) Contingency planning for unsatisfactory subcontract work.

f. **PROJECT PRICE AND TOTAL COST (30 points)** will be compared to performance and technical scores to determine the overall best value to TCPN and its customer(s), all factors being considered. Factors considered include:

- (1) The value of the bid coefficient;
- (2) The reasonableness and soundness of the rationale used in its computation; and,
- (3) The record of the contractor for change orders and claims and its effect, if any, upon actual costs.
- (4) The contractor's ability to meet bonding requirements.

- g. **COMPANY INFORMATION.** This information will be used to determine if a proposer is a Texas Resident Proposer or not. If a proposer is a non-resident proposer, his proposal will be treated in the same manner that proposals from Texas Resident Proposers would be in their state.
 - h. **FELONY CONVICTION NOTICE.** If an owner or operator has been convicted of a felony, this information must be made available to any school district potential customers. This will apply to all subcontractors that must be registered and qualified via TCPN or similar forms.
2. TCPN reserves the right to award to other than the lowest price, reject any or all proposals in whole or in part, and to waive technical defects, irregularities, and omissions, if in its sole judgment the best interest of TCPN and its customers will be served.
 3. TCPN reserves the right to consider a contractor that currently holds a cooperative job order contract if the terms and pricing offered are substantially better for the TCPN membership than the existing contract.
 4. TCPN reserves the right to make additional awards within 360 days of the original contract and award for any reason.. TCPN reserves the right to cancel the contract or approve an ownership change.
 5. In signing the contract documents, the proposers are certifying that the proposal is being made without any previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, supplies, equipment, and/or services, and is in all respects fair and without collusion and fraud.
 6. Requests for additional information or clarification of specifications should be directed in writing to: Doug Rupe at: drupe@tcpn.org.

SCOPE OF SERVICES TO BE PROVIDED

1. GENERAL INFORMATION

This is a fixed unit price, indefinite delivery indefinite quantity contract for the performance of a broad range of construction services to include minor construction, repair, renovations, alterations, and maintenance projects, to include limited design (if allowed by law) and professional supervision on an as-needed basis as may be required by school districts and other entities served either directly or through interlocal agreement by TCPN. The specific work requirements will be identified in Job Orders to be issued by the customers.

2. DOCUMENTS

The following documents shall be used in the execution of work under this Contract:

- a. The Unit Price Book, the current edition of the RS MEANS Facility Construction Cost Data, which contains pricing information for the description of work to be accomplished and specifies the unit of measure.
- b. CSI MASTERTEXT Specifications, current edition.
- c. The TCPN JOC contract which contains the applicable Terms and Conditions.
- d. The Contractor's proposal.
- e. All relevant National, State, and Local laws, codes, and regulations.

3. JOB ORDERS

With the exceptions of emergencies, any work required under this Contract shall be ordered by issuance of formal written Job Orders containing the approved Job Order Proposal and the customer's Purchase Order. The process will occur as follows:

- a. As the need exists for performance under the terms of this Contract, the customer's representative will notify the Contractor of a requirement for JOC services. This notification may be by Email, phone, fax, or via the Contractor's web site.
- b. Upon the receipt of this notification, the Contractor shall respond within two (2) working days, or as otherwise instructed by TCPN, (two hours in emergencies) by:
- c. Visiting the proposed site in the company of the customer's representative; or,
- d. Establishing contact with the customer to further define the scope of the requirement.
- e. Upon establishment of the scope of the individual requirement, the customer shall request a Job Order Proposal, the Contractor shall then prepare a Job Order Proposal further defining and restating the scope, to include providing limited design as required, and providing a line item proposal of the individual tasks, quantities, and costs using the applicable City Cost Index, his bid coefficient, and any applicable adjustment factors. The Unit Price Book shall serve as the basis for establishing the value of the work to be performed. The Contractor's proposal shall be submitted as negotiated with the Customer.
- f. Upon receipt of the Contractor's proposal, the customer's representative will review the proposal for completeness and will reach agreement with the Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order and Purchase Order.
- g. The customer will issue a formal Job Order that will contain the Job Order Proposal and the Purchase Order; establish the Statement of Work, Start Date, the Price, and the Schedule; and will be the Contractor's Notice to Proceed. This Job Order will be signed by both the customer and the Contractor and serves as evidence of agreement as to the scope of work and the lump sum total price for it.
- h. In the event of emergency requirements for service, the procedures above will be expedited upon receipt of a verbal Job Order by the customer or his designated representative. Work will commence as required and documentation will be provided as soon as possible.

4. SCHEDULING OF WORK

- a. For each project, the customer will issue a Job Order that will serve as a "Notice to Proceed" and will contain the approved Purchase Order based upon the negotiated and approved Job Order Proposal. The first day of performance shall be the effective date specified in the Job Order. Any preliminary work started or materials ordered or purchased before receipt of the Job Orders shall be at the risk and expense of the Contractor. The Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization; holidays; weekend days; normal, as based upon climatological data, inclement weather; and cleanup; therefore, claims for delay based on these elements will not be allowed. When the Contractor considers the Work complete and ready for its in-

tended use, the Contractor shall request the customer to inspect the Work to determine the status of completion. When the customer determines the Work to be substantially complete, he will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Purchase Order. The Contractor shall proceed promptly to complete and correct items on the list.

- b. Purchase and storage of materials and equipment shall be made without interference to the customer's operations and personnel.
- c. Furniture and portable office equipment in the immediate work area will be moved by the Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, the customer will designate new locations.
- d. The Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by the Contractor at no cost to the customer. The Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Purchase Order. Proposed traffic control methods shall be submitted to the customer for final approval.
- e. The Contractor shall be responsible for obtaining all required permits. He will include the actual cost in his invoice.
- f. The TCPN Administrator will be available to assist in coordination and resolution of disputes. Either the Contractor or the customer may request dispute assistance.
- g. The TCPN Administrator may inspect any project, audit contractor files and documentation, and assist in education, marketing, and training.

5. QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

The Contractor shall submit, for TCPN approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after Contract Award. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with the customer's inspectors.

6. SAFETY PLAN

The Contractor shall submit, for TCPN approval, a Safety Plan within fifteen (15) calendar days after Contract Award. This plan should address all aspects of safety procedures including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and interface with TCPN inspectors.

7. CUSTOMER SERVICE AND MARKETING PLAN

The Contractor shall submit, for TCPN approval, a Customer Service and Marketing Plan, within fifteen (15) calendar days after Contract Award. This plan should address the Contractor's outreach, education, networking, communication, coordination, customer surveys, feedback, and other procedures to market his services to potential customers and provide quality customer service to existing customers.

8. CONTRACTOR'S PROJECT GENERAL MANAGER

The Contractor's Project General Manager shall be knowledgeable in multiple disciplines including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing. The Project General Manager's background and credentials must be acceptable to TCPN. Registration as a Professional Engineer or Architect, in the State of Texas is desirable, but not required.

10. CUSTOMER FURNISHED UTILITIES

Customers shall provide free of charge to the Contractor utilities and toilet facilities that are available at each site for work performed under this Contract as follows:

- a. Water for Project Sites:
 1. Customer shall furnish to the Contractor from existing customer facilities and without cost to the Contractor, a supply of water necessary for the performance of work under this Contract.
 2. Contractor will furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. It is the responsibility of the Contractor to determine the extent to which existing customer water supply sources are adequate for the needs of this Contract.
 3. Taps, connections, and accessory equipment required in making the water supply source available may be furnished and the necessary work therewith done by the Contractor at customer expense, or by the customer. If the connection work is to be done by the Contractor, it shall be coordinated, scheduled, and performed as directed and approved by customer. Said taps, connections, and

accessory equipment shall be maintained by the Contractor in a workmanlike manner in accordance with the rules and regulations of the applicable jurisdictions.

- a. Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by the Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of customer.
- b. Electricity for Project Sites:
 1. Customer shall furnish to the Contractor from existing customer facilities and without cost to the Contractor, electricity necessary for the performance of work on customer's projects. Customer will in no case furnish or install any electrical facility or accessory for the purpose of this Contract.
 2. It is the responsibility of the Contractor to determine the extent to which existing customer electrical facilities are adequate for the needs of the project.
 3. All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of the Contractor. All work in connection therewith shall be coordinated, scheduled and performed as directed and approved by customer. Said taps, connections, and accessory equipment shall be maintained by the Contractor in a workmanlike manner in accordance with the rules and regulations of the applicable jurisdictions.
 4. Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of the Contractor so as to leave the electrical power source and facility in its original condition.
 5. Such removal shall also be subject to the approval of customer.
- c. Toilet Facilities:
 1. If toilet facilities are reasonably available, customer will make them available to Contractor.
 2. If toilet facilities are not reasonably available, Contractor will arrange for portable toilets as needed.

11. WORK BY CUSTOMER

TCPN and its customers reserve the right to undertake or award contracts for the performance of the same or similar type work as contemplated herein, and to do so will not breach or otherwise violate this Contract.

COMPANY INFORMATION

The following information is required by TCPN in order to comply with provisions of state law. Texas Revised Civil Statutes Article 601g, State or Political Subdivision Contracts for Construction, suppliers, Services; Proposals by Non-resident, defines a "Nonresident Proposer" as a proposer whose principal place of business is not in this state.

A "Texas Resident Proposer" is defined as a proposer who has a principal place of business in this state.

The State Controller's Office defines Principal Place of Business as follows: Principal Place of Business in Texas means, for any type of business entity recognized in the State of Texas, that the business entity:

"has at least one permanent office located within the State of Texas, from which business activities other than submitting proposals to governmental agencies are conducted and from which the proposal is submitted, and has at least one employee who works in the Texas office."

Name of Firm: _____

Principal Place of Business

Address: _____

City, State, Zip _____

Phone No. _____ **Fax No.** _____

Email: _____ **Web site:** _____

The above firm _____ (is/ls not) a Texas Resident Proposer.

Signature

Name

Title

FELONY CONVICTION NOTICE

State of Texas Senate Bill 1, Section 44.034, Notification of Criminal History, Subsection (a) states: "a person or business entity that enters into a contract with a school district must give advance to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must give a general description of the conduct resulting in the conviction of a felony."

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY HELD CORPORATION

I, the undersigned authorized agent for the firm named below, certify by my signature below, that the following information is true.

FIRM'S NAME: _____

AUTHORIZED AGENT'S NAME: _____

TITLE: _____

1. This firm is a publicly held corporation, therefore this reporting requirement is not applicable.

Signature: _____

2. This firm is not owned nor operated by anyone who has been convicted of a felony.

Signature: _____

3. This firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

Names of felon(s): _____
Attach additional sheets if necessary

Details of Conviction(s): _____
Attach additional sheets if necessary

Signature: _____

BID CO-EFFICIENT SCHEDULE

Coefficient for Work during Normal Hours.

Contractor will provide JOC services during normal working hours (M – F, 7 am to 5 pm, except for designated holidays), for the line item unit prices in the "Total, incl. O & P" column of the current edition of the R.S. Means Facility Construction Cost Data, adjusted by the specified City Cost Index, relevant adjustment factors found in Paragraph 10 of "Information to Offerors", and multiplied by the bid coefficient of:

_____ Facilities Construction Cost Data

_____ Facilities Maintenance & Repair Cost Data

_____ Xactamate (optional)

List any modifications or exceptions (i.e. Davis Bacon wage rates)

The undersigned hereby agrees to provide the services in accordance with our proposal and at the bid coefficient as indicated above and adjusted by the relevant factors. We understand that there is no guarantee of receiving any work.

Company Name

Authorized Agent

Signature (in ink)

Title

Address

City, State, Zip

Phone Number

Date

SAMPLE CONTRACT

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**THE COOPERATIVE PURCHASING NETWORK
JOB ORDER CONTRACTING
CONTRACT**

THIS CONTRACT, entered into and made effective the ____ day of _____, 2010 by and between the The Cooperative Purchasing Network (hereinafter referred to as TCPN) and _____, a _____ corporation (or other legal entity) with offices at _____ (hereinafter referred to as Contractor).

WITNESSETH:

THAT IN CONSIDERATION of the mutual promises and covenants hereinafter contained in this Contract by these presents do agree, as follows:

ARTICLE 1

DEFINITIONS

The following is a list of definitions that are used throughout the request for proposal and in the pricing process. All of the definitions will as a whole be included in the contract for this program. This list includes established definitions from the Center for Job Contracting Excellence.

ASSIGNMENT, Any award made as a result of this solicitation, may not be transferred, assigned, subcontracted, mortgaged, or pledged, or otherwise disposed of or encumbered in any way by the contractor.

ADDENDUMS, Additions to the contract or delivery order as agreed to by TCPN, the client member, and the contractor to meet specific or special contract requirements.

BEST VALUE is determined with multiple parameters of past performance, previous experience, references, and price. Each comprises part of "best value" price is only one parameter as is past performance.

BUYER is the independent school district (ISD), institute of higher learning, government entity, or non-profit agency that uses this contract. (See Client Member)

CITY COST INDEX, Defined pricing indices published by R.S. Means (see R.S. Means) as local modifiers to the national cost data.

CLIENT MEMBER, any ISD, ESC, University, Municipality, County, Federal or State Agency or non-taxed entity empowered to enter into a agreement with TCPN via their governing boards or trustees. For ISD's, ESC's, Cities and Counties in Texas an inter-local agreement must be signed.

COEFFICIENT is the contractors' coefficient multiplier that is applied to the local city cost index and the unit price book R.S. Means. It will include all of the direct costs in doing the work to complete any task order. It will include all overhead items such as office, safety equipment, vehicles and fuel, computers, printers, programs, insurance maintenance, two and ½ percent (2.5%) TCPN management fee, final site cleanup and all contingencies program project management and administration, and sufficient jobsite supervision.

CONTRACTOR is the awarded Job Order Contractor, (or any substitute Job Order Contractor as designated by TCPN) and its senior manager or other duly authorized representative which means any person specifically authorized to act for the Job Order Contractor by executing the Contract, and any modifications thereto. The Contractor's duties include execution of the Contract and performance of the Work in accordance with any Job Orders that may be issued. The term "Contractor" includes the prime

contractor, managing partner, or other designated party who is authorized to commit all members of any team or other entity and is contractually responsible for performance of the Contract.

CONTRACT as used herein means this agreement including its attachments, the Contractor's Proposal, and any Job Orders that may be issued by Customer to Contractor. The overall contract is executed by TCPN on behalf of its Customers. Customers issue Job Orders in accordance with this Contract and become Parties to it thereby. Once a Job Order has been successfully negotiated and the Scope of Work, schedule, applicable line items, quantities, and adjustment factors agreed to by Customer and Contractor, said Job Order becomes a lump-sum fixed price contract subject to the terms and conditions of this Contract for performance of the Work as agreed.

CUSTOMER means a member of The Cooperative Purchasing Network who has contracted for services from the Contractor through the use of this contract and subsequent Job Orders issued by Customer. It also means Customer's Director, Purchasing Officer, Facility Director, Contract Administrator, or any other duly designated representative specifically authorized to act for Customer in executing the Contract, and any modification thereto. Customer's duties include implementation of the Contract through their Job Orders; including the negotiation of change orders and modifications applicable to their Job Orders; assessing the Contractor's technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance to TCPN; and, certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract documents.

DELIVERY ORDER (DO) is the scope of services approved from the Job Order Proposal and reviewed and approved by the Client Member for the PO.

DELIVERY ORDER MANAGER reports to the PGM and is the day to day field supervisor working with the Job Orders, proposals (estimates), subcontractors and interfacing with the client members.

EDUCATION SERVICE CENTER (ESC) is part of a Texas governmental agency (Texas Education Agency) providing services within their defined regions to school districts and other governmental entities.

JOB ORDER, a line item estimate taken from a job order proposal using the coefficient and R.S. Means which once agreed to by the client member becomes a lump sum fixed price contract and a notice to proceed for the stated scope attached to the purchase order.

JOB ORDER CONTRACTING (JOC), a variable term indefinite delivery, indefinite quantity (IDIQ) contract for construction services on an on call basis through negotiated line item delivery orders (job orders) to include under State of Texas minor construction, repair, renovation, alterations, maintenance projects and limited design for architectural and engineering services. It is based upon the contracts priced coefficient applied to the city cost index and the line items in the unit price book (R.S. Means). When the line items are agreed to it becomes a lump sum firm fixed price contract for that negotiated scope of services. (Texas Education Code TEC Sub B 44.041).

JOB ORDER PROPOSAL is the response from the contractor to the client member from the clients request for a specific project. It will contain the line item estimate for the project as defined in the UPB and include a written scope of work for services to be performed.

KEY STAFF MEMBERS are considered to be critical to the quality, implementation and successful support and execution of the program. The past performance and experience of the key staff that has been committed to the program will be evaluated. These are considered by TCPN to include the PGM, Delivery Order Managers, Business Manager, Safety/Environmental Manager, QA/QC Manager, and Marketing Manager.

MULTI-AWARD NON-COMPETE, while the TCPN JOC is a multi-award contracting program no client member may compete delivery orders with other TCPN contractors.

NON PRE-PRICED ITEMS are those items that cannot be found or reasonably compared to listed line items in the UPB.

PUBLIC INFORMATION ACT AND PROPRIETARY MATERIALS, under the Public Information Act certain materials may be requested by the public. Contractors should not submit proprietary materials as part of their proposal. TCPN is subject to the Public Information Act, as are all public entities.

PROJECT GENERAL MANAGER (PGM) is the senior member of the contractor's team and will be the ultimate interface between TCPN and the client members.

PURCHASE ORDER (PO) is the client member's approval providing the authority to proceed with the negotiated delivery order under the contract and inter-local agreement. Special terms and conditions as agreed to between the contractor and the client member will be added as addendums to the PO. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

PREMIUM HOURS are defined as those hours not included in regular hours or recognized holidays. Premium hours are to be approved by the client member for each delivery order and noted in the delivery order proposal as a line item during negotiations.

REGULAR HOURS are defined as those hours between the hours of 7 AM and 6 PM Monday thru Friday.

JOB ORDER PROPOSAL REQUEST is originated from the client member and provides a general scope of project services or architectural drawings, a requested schedule and any special addendum requirements. From this information the contractor will develop the scope of work for his job order proposal.

SCOPE OF WORK (SOW) is the specific work that has been agreed to be undertaken and accomplished under the JOC contract via the delivery order process.

SUBCONTRACT as used herein means any Contract including purchase orders (other than one involving an employer-employee relationship) entered into by the Job Order Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

TCPN is The Cooperative Purchasing Network, its Director, and other authorized employees or agents.

UNIT PRICE BOOK (UPB) R.S.Means will be the unit price book for this contract using the R.S. Means right hand column and the most recent edition including any quarterly updates provided. All line items provided in DO proposals are to be carried out to R.S. Means 12-digit line number. Contractors at their expense will make copies of the UPB available to the client member upon request via electronic or printed media.

ARTICLE 2

WORK TO BE PERFORMED

2.1 In response to Job Orders that may be mutually agreed upon and issued periodically by Customer, the Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work (hereinafter called "the **Work**") which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in the Bid Coefficient Schedule and any adjustment factors both of which are incorporated herein and made a part hereof.

2.2 This Contract embodies the agreement of Customer and the Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Customer and agreed to by the Contractor. Nothing herein shall be construed as requiring Customer to issue any Job Order, nor requiring the Contractor to accept same, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

ARTICLE 3

JOB ORDERS

3.1 Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Customer. Job Orders shall be in accordance with the requirements specified in Attachment "B," Scope of Services, and will set forth, with the necessary particularity, the following:

- a. Contract number along with the Job Order Contractor's name;
- b. Job Order number and date;
- c. The agreed Scope of Work and applicable technical specifications and drawings;
- d. The agreed period of performance and, if required by Customer, a work schedule;
- e. The place of performance;
- f. The agreed total price for the Work to be performed;
- g. Submittal requirements;
- h. Customer's authorized representative who will accept the completed Work;
- i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
- j. Such other information as may be necessary to perform the Work.

3.2 Job Orders may be amended by Customer in the same manner as they are issued.

3.3 The minimum Job Order value is \$1000.00 unless waived by Job Order Contractor.

ARTICLE 4

SPECIFICATIONS AND DRAWINGS

4.1 The proposal coefficient should provide reasonable oversight for engineering and architectural (A&E) design to meet both local and Texas state requirements. The contractor should expect as part of his coefficient those services that are required to obtain building permits and meet local and state standards for design and oversight. They may be provided via his own staff, subcontractor, or working with the client's managers, architects and engineers wherever such professional architectural and engineering services are required.

4.2 A&E selection and fees for this service will meet the requirements of the State of Texas for such selections and fee negotiations. The TCPN job order contracting program will follow the Texas State Statutes, as applicable, for the requirement of and selection for A/E services as of the date of this contract. Where possible design services will be approved by the client member's engineer or architect. If the client member does not have these services on staff or under direct contract, then the client member must make the selection per state law. TCPN reserves the right to modify this section per future changes or clarifications in the code.

4.3 Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Customer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Customer, unless otherwise expressly stated.

4.4 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

4.5 Shop drawings means drawings submitted to Customer by Contractor showing in detail:

- a. The proposed fabrication and assembly of structural elements and,
- b. The installation (i.e., form, fit and attachment details) of materials or equipment.
- c. The construction and detailing of elements of the Work.

It includes sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules,

performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the Work. Customer may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

4.6 Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Customer without evidence of Contractor's approval may be returned for resubmission. Customer will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Customer's reasons therefore. Any work done before such approval shall be at Contractor's risk. Approval by Customer shall not relieve Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with paragraph 4.6 below.

4.7 If shop drawings show variations from the Job Order requirements, Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Customer approves any such variation, Customer shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

4.8 Contractor shall submit to Customer for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Customer and one set will be returned to Job Order Contractor.

4.9 Omissions from Customer provided drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

4.10 Contractor shall check all Customer furnished drawings immediately upon receipt and shall promptly notify Customer of any discrepancies. Likewise, Customer shall review all Contractor furnished drawings immediately upon receipt and promptly notify Contractor of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

ARTICLE 5

USE OF SPECIFICATIONS, DRAWINGS AND NOTES

5.1 All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to, or developed by, Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Customer and may be used by Customer without any claim by Contractor for additional compensation, unless such material developed by Contractor does not result in an issued Job Order. In addition, Customer agrees to hold the Contractor harmless to the extent permitted by law from any legal liability arising out of the Customer's use of such materials.

ARTICLE 6

PERMITS AND RESPONSIBILITIES

6.1 Contractor shall be responsible for processing of drawings for: approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and, for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Customer will reimburse Contractor for the actual, documented costs of construction permits required for the performance of the Work. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the

entire Work, except for any completed unit of Work which may have been accepted under the Contract.

ARTICLE 7

MATERIAL AND WORKMANSHIP

7.1 All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Job Order. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Customer, is equal to that named in the specifications, unless Customer has prior to negotiation of Job Order notified Contractor that certain standard items of material and equipment are required for standardization of maintenance and spares and reduction of life cycle costs. If this standardization should require the use of more expensive material or equipment than would otherwise be required by the specifications, Contractor will be entitled to an equitable adjustment equal to the verified difference between standard items and those proposed which meet the specifications.

7.2 Contractor shall obtain Customer's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, Contractor shall furnish to Customer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Contract or by Customer, Contractor shall also obtain Customer's approval of the material or articles which Contractor contemplates incorporating into the Work. When requesting approval, Contractor shall provide full information concerning the material or articles. When directed to do so, Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

7.3 All work under the Contract shall be performed in a skillful and workmanlike manner.

ARTICLE 8

TESTING OF MATERIALS

8.1 Unless otherwise specified in a Job Order, the Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

ARTICLE 9

LAYOUT OF WORK

9.1 Contractor shall lay out its work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Contractor shall also be responsible for maintaining and preserving all control points established by Customer.

ARTICLE 10

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

10.1 Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. The conformation and conditions of the ground; and
- e. The character of equipment and facilities needed preliminary to and during work performance.

10.2 Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Customer, as well as from the drawings and specifications made a part of this Contract.

ARTICLE 11

DIFFERING SITE CONDITIONS

11.1 Contractor shall promptly, and before the conditions are disturbed, give a written notice to Customer of:

- a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
- b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

11.2 Customer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

11.3 No request by Contractor for an equitable adjustment to the Job Order under this Article shall be allowed, unless Contractor has given the written notice required.

11.4 No request by Contractor for an equitable adjustment to the Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

ARTICLE 12

CONTRACT TERM

12.1 The term of the Contract shall commence on the date it is executed by both parties and shall terminate one year later, or else in accordance with the terms and conditions of this Contract. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order.

ARTICLE 13

COMPENSATION

13.1 As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract, Customer shall pay Job Order Contractor the amounts specified in the individual Job Orders. Amounts specified in the Job Orders will be determined by Customer and Contractor agreeing upon the Scope of Work, the applicable Line Items and quantities thereof, the Adjustment Factors which should apply, and the extended total price. Once negotiated this price is handled as a lump-sum fixed-price contract for the agreed upon Scope of Work in that Job Order. Nothing in this Contract, however, prevents the Contractor from negotiating lower prices in consideration of the Customer guaranteeing to contract for specific volumes of work within a set time, or other similar inducements which would result in lower adjustment factors to the Bid Coefficient.

ARTICLE 14

INVOICING AND PAYMENTS

14.1 Customer shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Customer, on estimates of Work completed submitted by the Contractor and approved by Customer. Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Customer will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

14.2 In the processing of progress payments, Customer may retain five percent (5%) of the estimated amount until final completion and acceptance of all Work performed under the Job Order. Retention applicable to each Job Order shall be released within sixty days after final completion of the Job Order and acceptance of the Work under the Job Order. However, if Customer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Customer may authorize payment to be made in full without retention.

14.3 All material and work covered by progress payments made shall, at the time of payment, become the sole property of Customer, but this provision shall not be construed as:

- a. Relieving Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- b. Waiving the right of Customer to require the fulfillment of all of the terms of the Contract.

14.4 An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Customer or Customer's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this contract. The Customer may withhold an amount from the progress payment sufficient to pay the expenses the Customer reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Customer on submission to any person designated by the Customer for the submission, review or approval of the estimate of the Work.

14.5 Customer shall pay all unpaid amounts due Contractor under this Contract within sixty (60) days,

after:

- a. Completion and acceptance of the Work;
- b. Presentation of a properly executed invoice; and
- c. Presentation of release of all claims against Customer arising by virtue of the Contract, other than claims, in stated amounts, that Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Contractor's claim to amounts payable under this Contract has been assigned. Contractor shall complete a Contractor's release form acceptable to Customer.
- d. Consent of The Contractor's surety, if any.

14.6 Contractor shall submit invoices to the Customer's address. A copy of the invoice shall also be submitted to TCPN.

14.7 Upon payment of the invoice by the Customer, Contractor shall notify TCPN that the invoice has been paid. TCPN then will invoice Contractor for the two & one half percent (2.5%) fee due to TCPN for the use of the cooperative network and its services.

ARTICLE 15

CONSTRUCTION SCHEDULE

15.1 If required, the Contractor will submit for approval with the signed Job Order a practicable schedule showing the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In both case the basic information should be the same and the schedule chart must contain as a minimum:

- a. A list of the different types of work activities or work elements.
- b. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin.
- c. Show proposed start and complete dates or time frames for each work activity or work element.
- d. Calculate the "weighting" or relative worth each work activity or work element is of the total project either as a percent or dollar amount.

If the Contractor fails to submit a schedule with the Job Order, Customer may withhold approval of progress payments until Contractor submits the required schedule.

15.2 Job Order Contractor shall submit a progress report every thirty (30) days, or as directed by Customer, and upon doing so shall immediately deliver a current schedule to Customer. If Contractor falls behind the approved schedule, Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Customer, without additional cost to Customer, Customer may require Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Customer deems necessary to demonstrate how the approved rate of progress will be regained.

15.3 Emergency Work: Contractor will give top priority to any emergency work Customer may have and will allocate all resources necessary to accomplish such work in accordance with Customer's schedule requirements. To the extent that the Contractor incurs additional cost, expense or schedule delay in performing Customer's emergency work, Customer will equitably adjust the Contract under Article 22.

15.4 Failure of Contractor to comply with the requirements of Customer under this clause shall be grounds for a determination by Customer that Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Customer may terminate Contractor's right to proceed with the Work, or any separable part of it, in accordance with Article 27.

ARTICLE 16

SUPERINTENDENCE BY CONTRACTOR

16.1 At all times during performance of a Job Order and until the Work is completed and accepted, Contractor shall directly superintend the Work or assign and have on the site a competent superintendent who is satisfactory to Customer and has authority to act for Contractor.

ARTICLE 17

INSPECTION OF CONSTRUCTION AND ACCEPTANCE

17.1 Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Contractor shall maintain complete inspection records and make them available to Customer. All work shall be conducted under the general direction of Customer and is subject to inspection and test by Customer at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

17.2 Customer inspections and tests are for the sole benefit of Customer and do not:

- a. Relieve Contractor of responsibility for providing adequate quality control measures;
- b. Relieve Contractor of responsibility for damage to or loss of the material before acceptance;
- c. Constitute or imply acceptance; or
- d. Affect the continuing rights of Customer after acceptance of the complete work under paragraph 17.8 below.

17.3 The presence or absence of an inspector does not relieve Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Customer's written authorization.

17.4 Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Customer. Customer may charge to Contractor any additional cost of inspection or test when Work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Customer shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

17.5 Contractor shall, without charge, replace or correct Work found by Customer not to conform to Job Order requirements, unless Customer consents to accept the Work with an appropriate adjustment in Contract price. Contractor shall promptly segregate and remove rejected material from the premises.

17.6 If Contractor does not promptly replace or correct rejected Work, Customer may:

- a. By Contract or otherwise, replace or correct the Work and charge the cost to Contractor or
- b. Terminate for default Contractor's right to proceed.

17.7 If, before acceptance of the entire Work, Customer decides to examine already completed Work by removing it or tearing it out, Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Customer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

17.8 Substantial Completion means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Customer can occupy and use the Work or a portion thereof for its intended purposes.

Unless otherwise specified in the Job Order, Customer shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work Customer

determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Customer's rights under any warranty or guarantee.

ARTICLE 18

OPERATIONS AND STORAGE AREAS

18.1 Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Customer.

18.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Contractor only with the approval of Customer and shall be built with labor and materials furnished by Contractor without expense to Customer. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon the completion of the Work. With the written consent of Customer, the buildings and utilities may be abandoned and need not be removed.

18.3 Contractor shall use only established roadways or temporary roadways constructed by Contractor when and as authorized by Customer. Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.

ARTICLE 19

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS

19.1 Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the site, which are not to be removed and which do not unreasonably interfere with the Work required under the Job Order. Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workmen, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Customer.

19.2 Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Customer may have the necessary repair work performed and charge the cost to Contractor.

ARTICLE 20

CLEANING UP AND REFUSE DISPOSAL

20.1 Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Customer. Upon completing the Work, Contractor shall leave the site in a clean and orderly condition satisfactory to Customer. Final cleanup of the premises shall be included in the period of performance of the Job Order. Contractor shall be responsible for all construction refuse disposal containers and their removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Customer unless Customer requires Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

ARTICLE 21

WARRANTY OF CONSTRUCTION

21.1 In addition to any other warranties in any Job Orders, the Contractor warrants, except as provided in paragraph 21.10 of this Article, that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier.

21.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Customer takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

21.3 Contractor shall remedy at Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Contractor shall remedy at Contractor's expense any damage to Customer's real or personal property, when that damage is the result of:

- a. Contractor's failure to conform to requirements; or
- b. Any defect of equipment, material, workmanship, or design furnished by the Contractor.

21.4 Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

21.5 Customer shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

21.6 If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Customer shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Contractor's expense.

21.7 With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Contractor shall:

- a. Obtain all warranties required by the Job Order;
- b. Require all warranties to be executed, in writing, for the benefit of Customer; and
- c. Enforce all warranties for the benefit of Customer;

21.8 In the event Contractor's warranty under paragraph 21.2 of this Article has expired, Customer may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

21.9 Unless a defect is caused by the negligence of Contractor or subcontractor or supplier at any tier, Contractor shall not be liable for the repair of any defects of material or design furnished by Customer or for the repair of any damage that results from any defect in Customer-furnished material or design.

21.10 Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Contractor except as modified by the Job Order.

21.11 This warranty shall not limit Customer's rights under Article 17 of this Contract with respect to latent defects, gross mistakes, or fraud.

ARTICLE 22

CHANGES

22.1 Customer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:

- a. In the specifications (including drawings and designs);
- b. In Customer-furnished facilities, equipment, materials, services, or site; or
- c. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

22.2 Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Customer that causes a change shall be treated as a change order under this Article; provided, that Contractor gives Customer timely written notice stating the date, circumstances, and source of the order and that Job Order Contractor regards the order as a change order.

22.3 Except as provided in this Article, no order, statement, or conduct of Customer shall be treated as a change under this Article or entitle Contractor to an equitable adjustment hereunder.

22.4 If any change under this Article causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Customer shall make an equitable adjustment and modify the Job Order in writing.

22.5 Contractor must submit any proposal under this Article within thirty (30) calendar days after:

- a. Receipt of a written change order under Paragraph 22.1 above or;
- b. The furnishing of a written notice under Paragraph 22.2 above,

by submitting to Customer a written statement describing the general nature and amount of the proposal, unless this period is extended by Customer. The statement of proposal for adjustment may be included in the notice under Paragraph 22.2 above.

22.6 No proposal by Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

ARTICLE 23

PRICING CHANGES

23.1 Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by Customer. Pricing for such changes shall be based on quantities mutually agreed to by Job Order Contractor and Customer and the rates contained in the Unit Price Book, modified by the appropriate city cost index, as adjusted by the applicable coefficient, and adjustment factors.

23.2 The Contractor shall furnish to the Customer a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

ARTICLE 24

SUSPENSION OF WORK

24.1 Customer may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that Customer determines appropriate.

24.2 If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Customer in the administration of a Job Order, or by Customer's failure to act within the time specified in

the Job Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of overtime for performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

24.3 A claim under this Article shall not be allowed for any costs incurred more than thirty (30) calendar days before Contractor shall have notified Customer in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

ARTICLE 25

DISPUTES

25.1 The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, The Contractor and Customer each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

The Contractor and Customer will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein.

The Contractor shall continue to perform the Work and Customer shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreements between the parties.

If the Parties cannot reach agreement in a dispute, either Party may refer the dispute to TCPN JOC Coordinator who shall determine the relevant facts and positions of the Parties, and recommend a resolution of the dispute.

If either Party is not satisfied with the resolution proposed by the Administrator, they may appeal the recommended resolution to the TCPN Director. The Director may confirm or modify the proposed resolution. The decision of the Director is final.

25.2 Any dispute which is not disposed of by agreement or the resolution process above, may be brought before state courts of the State of Texas and adjudicated in accordance with the laws of Texas.

ARTICLE 26

TERMINATION FOR CONVENIENCE OF CUSTOMER

26.1 Customer may terminate performance of the Work under this Contract in whole or, from time to time, in part if Customer determines that termination is in Customer's interest. Customer shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.

26.2 After receipt of a Notice of Termination, and except as directed by Customer, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- a. Stop work as specified in the notice;
- b. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete any Work not terminated;
- c. Assign to Customer, as directed by Customer, all right, title, and interest of Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Customer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Customer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for

purposes of this Article;

- d. As directed by Customer, transfer title and deliver to Customer:
 - i. The fabricated or non-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
 - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Customer;
- e. Complete performance of the Work not terminated;
- f. Take any action that may be necessary, or that Customer may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which Customer has or may acquire an interest;
- g. Use its best efforts to sell, as directed or authorized by Customer, any property of the types referred to in paragraph 26.2(c) above; provided, however, that Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Customer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Customer under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Customer.

26.3 After termination, Contractor shall submit a final termination settlement proposal to Customer in the form and with the certification prescribed by Customer. Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

26.4 Contractor and Customer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The Contract shall be amended, and Contractor paid the agreed amount.

26.5 If Contractor and Customer fail to agree on the whole amount to be paid Contractor because of the termination of work, Customer shall pay Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 26.4 above:

- a. For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - i. The cost of this Work;
 - ii. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and
 - iii. A markup, including overhead and profit, on (i) above as is determined for pricing changes.
- b. The reasonable costs of settlement of the Work terminated, including:
 - i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

26.6 Except for normal spoilage, and except to the extent that Customer expressly assumed the risk of loss, Customer shall exclude from the amounts payable to Contractor under Paragraph 26.5 above, the fair value, as determined by Customer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Customer or to a buyer.

26.7 In arriving at the amount due Contractor under this Article, there shall be deducted:

- a. All unliquidated advances or other payments to Contractor under the terminated portion of the Job Order;
- b. Any claim which Customer has against Contractor under the Contract; and
- c. The agreed price for, or the proceeds of sale of, materials, supplies, or other things

acquired by Contractor or sold under the provisions of this Article and not recovered by or credited to Customer.

26.8 If the termination is partial, Contractor may file a proposal with Customer for an equitable adjustment of the price(s) of the continued portion of the Job Order. Any proposal by Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Customer. Customer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Contractor of the terminated portion of the Job Order, if Customer believes the total of these payments will not exceed the amount to which Contractor will be entitled.

26.9 If the total payments exceed the amount finally determined to be due, Contractor shall repay the excess to Customer upon demand.

26.10 Unless otherwise provided in this Contract or by statute, Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) years after final settlement. This includes all books and other evidence bearing on Contractor's costs and expenses under this Contract. Contractor shall make these records and documents available to Customer, at Contractor's office, at all reasonable times, without cost. If approved by Customer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 27

DEFAULT

27.1 If Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Customer may terminate the Contractor's right to proceed with the Work (or separable part of the Work), upon thirty (30) days written notice to the Contractor. In this event, Customer may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

27.2 Contractor's right to proceed shall not be terminated under this Article, if:

- a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include:
 - i. acts of God or acts of a public enemy,
 - ii. acts of Customer in its Contractual capacity,
 - iii. acts of another Contractor in the performance of a Contract with Customer,
 - iv. fires,
 - v. floods,
 - vi. epidemics,
 - vii. quarantine restrictions,
 - viii. strikes,
 - ix. freight embargoes,
 - x. unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or
 - xi. delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and the subcontractors or suppliers; and
- b. Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Customer), notifies Customer in writing of the causes of delay. The Customer shall ascertain the facts and the extent of delay. If, in the judgment of Customer, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Customer shall be final and conclusive on the parties, but subject to appeal and review under Article 25.

27.3 If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the

termination had been issued for the convenience of Customer.

27.4 The rights and remedies of Customer in this Article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 28

SAFETY

28.1 Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Contractor shall indemnify Customer for fines, penalties, and corrective measures that result from the acts of commission or omission of Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

28.2 Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

28.3 Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations.

28.4 Contractor shall provide warning signs, barricades and verbal warnings as required.

28.5 Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

28.6 Contractor shall promptly notify Customer of any accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Customer.

28.7 Contractor shall maintain a set of OSHA articles at the jobsite as they apply to the Work being performed. Copies shall be provided to Customer when requested.

28.8 Contractor shall submit to Customer a copy of its' safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Contractor within fourteen (14) calendar days after issuance of a Job Order and prior to the commencement of the Work.

28.9 Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Customer by Contractor along with its safety policies and program procedures.

28.10 Contractor shall provide and maintain on the jobsite, at all times, a completely stocked first aid kit which contains all standard emergency medical supplies.

28.11 Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

28.12 Customer reserves the right to approve and monitor Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Customer, shall be cause for the termination of the Job Order in accordance with Article 27.

ARTICLE 29

USE AND POSSESSION PRIOR TO COMPLETION

29.1 Customer shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, Customer shall furnish Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Customer intends to take possession of or use. However, failure of Customer to list any item of work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Customer possession or use shall not be deemed an acceptance of any work under this Contract.

29.2 While Customer has such possession or use, Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Customer's possession or use, notwithstanding the terms of Article 6. If prior possession or use by Customer delays the progress of the Work or causes additional expense to Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

ARTICLE 30

OTHER CONTRACTS

30.1 Customer may undertake or award other Contracts for additional work at or near the site of Work under this Contract. Contractor shall fully cooperate with the other general Contractors and with Customer's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Customer. Contractor shall not commit or permit any act that will interfere with the performance of work by any other general Contractor or by Customer's employees.

ARTICLE 31

DISSEMINATION OF CONTRACT INFORMATION

31.1 Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Customer.

ARTICLE 32

PERFORMANCE AND PAYMENT BONDS

32.2 Job Order Contractor shall furnish Performance Bonds for Job Orders greater than \$100,000 and Payment Bonds for Job Orders greater than \$25,000 in Texas. Other states may have different requirements. The total amount to be bonded over the term of the Contract, however, is a penal amount equal to the aggregate price of all Job Orders over the applicable limits of \$100,000 and \$25,000 issued to the Contractor. The Performance and Payment Bonds must be submitted to Customer within ten (10) calendar days after issuance of a Job Order. A Notice to Proceed will not be issued until properly executed bonds are received and accepted by Customer. If bonds are required, Customer shall reimburse Job Order Contractor the premium cost after submission of proof of premium payment. If required by TCPN, increases in the penal sum of the bonds will be provided promptly by Job Order Contractor.

ARTICLE 33

INSURANCE

33.1 Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from claims which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

- a. **WORKERS' COMPENSATION INSURANCE** providing statutory benefits in accordance with the laws of the State of Texas or any Federal statutes as may be applicable to the Work being performed under this Contract.

EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than:

\$1,000,000	Each Accident
\$1,000,000	Each Employee for Disease
\$1,000,000	Policy Limit for Disease

- b. COMMERCIAL GENERAL LIABILITY INSURANCE including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Each Occurrence

- c. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Contract with limits of liability not less than:

\$1,000,000	Each Person for Bodily Injury
\$1,000,000	Each Accident for Bodily Injury
\$1,000,000	Each Occurrence for Property Damage

33.2 The policies providing Commercial General Liability and Automobile Liability insurance as required in Paragraphs A.2 and A.3 shall be endorsed to name the Customer and TCPN as Additional Insureds. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Customer.

33.3 All policies providing Contractor's insurance as required in Paragraph 33.1 above shall be endorsed to provide the following:

- a. Thirty days written notice of cancellation or non-renewal given to Customer at the address designated in Article 36.
- b. Waiver of subrogation in favor of Customer.

33.4 The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

33.5 Proof of compliance with these insurance requirements shall be furnished Customer in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this agreement. Renewal or replacement certificates shall be furnished Customer not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies).

33.6 Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Contractor shall deem appropriate and adequate for the Work being performed. Contractor shall obtain and make available for inspection by Customer upon request current certificates of insurance evidencing insurance coverage carried by such subcontractors.

ARTICLE 34

INDEMNIFICATION

34.1 The Contractor agrees to indemnify and save harmless the Customer, TCPN, their officers, agents and employees, and any jurisdiction or agency issuing permits for any Work, its officers, agents and employees, from all suits, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the Work done in fulfillment of a Job Order issued under this Contract or on account of any act, claim or amount arising or recovered under Workmen's Compensation Law or arising out of the failure of the Contractor to conform to any statutes, ordinances, regulation, law or court decree.

ARTICLE 35

CONTRACT ORDER OF PRECEDENCE

35.1 In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. Contract Modifications, if any;
- b. The Contract Articles including Attachments;
- c. The Request for Sealed Proposals including Attachments and addenda (if any);
- d. The Contractor's Proposal;
- e. Job Orders;
- f. Drawings; and,
- g. Specifications.

ARTICLE 36

NOTICES

36.1 All notices to either party by the other shall be delivered personally or sent by first class United States mail, registered or certified mail, postage prepaid, addressed to such party at their respective addresses, as provided upon execution of this contract and any subsequent Job Orders, and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change their address by sending written notice of such change of address to the other in the manner provided for above.

ARTICLE 37

SEVERABILITY

37.1 If any provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

ARTICLE 38

WAIVERS

38.1 Neither Customer's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and Contractor shall be and remain liable to Customer in accordance with applicable law and the terms of this Contract for all damages to Customer caused by Job Order Contractor's negligent act, error or omission in the performance of any of the Work.

38.2 The waiver by Customer of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

ARTICLE 39

MERGER

39.1 This Contract and all procurement documents incorporated by reference set forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Work, including an action in tort.

ARTICLE 40

NON-AVAILABILITY OF FUNDS

40.1 Every payment obligation of the Customer under this Contract's Job Orders is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract with a Customer, this Contract may be terminated by the Customer at the end of the period for which funds are available.

ARTICLE 41

AUDIT OF RECORDS

41.1 Pursuant to applicable laws, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books, and other records ("records") relating to this Contract for a period of five years after completion of this Contract. All records shall be subject to inspection and audit by TCPN at reasonable times. Upon request, the Contractor shall produce the original of any or all such records. If approved by TCPN, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 42

NON-DISCRIMINATION AND USE OF MWBE'S

42.1 The Contractor shall comply with all laws mandating that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulation, including the Americans With Disabilities Act. The Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, color, religion, sex, national origin or disability.

42.2 TCPN will encourage the use of HUBs, MWBEs and SBEs both as prime and subcontractors. However they must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify their subcontractors. Some client members will have a set goal for subcontracting requirements and will require that a plan be attached as an addendum to the PO outlining how the contractor will endeavor to meet their goal. Specific plans as part of the contractors' business plan to meet these goals will be part of the overall contractors evaluation process as well as selection process for certain client members as a requirement for there delivery orders

ARTICLE 43

THIRD PARTY ANTITRUST VIOLATIONS

43.1 The Contractor assigns to the Customer any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Contractor toward fulfillment of this Contract.

ARTICLE 44

INTERPRETATION, JURISDICTION AND VENUE

44.1 This Contract shall be construed and interpreted solely in accordance with the laws of the State of Texas. Jurisdiction and venue for any suit, right or cause of action arising under or in connection with this Contract shall be exclusively in Texas.

IN TESTIMONY OF WHICH, this instrument has been executed by and on behalf of the Job Order Contractor on the ___ day of _____ 2010, and has been executed by and on behalf of TCPN the day of _____, 2010.

CONTRACTOR

The Cooperative Purchasing Network

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____