

**AGREEMENT**  
**BETWEEN OWNER AND CONTRACTOR**  
(Competitive Sealed Proposal – Delegated Projects)

Please note that this document is a draft contract and that modifications should be expected.

This Agreement (the “Agreement”) is made as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between:

**The Owner (the “Owner”):**

The Board of Regents of the Texas State University System  
c/o Name \_\_\_\_\_  
Title \_\_\_\_\_  
Component \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

and the **General Contractor (the “Contractor”):**

Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Texas Tax Account No.: \_\_\_\_\_

for the following **Project (the “Project”):**

Name of Project \_\_\_\_\_  
Component’s Campus \_\_\_\_\_  
City, Texas \_\_\_\_\_

Component: \_\_\_\_\_

Owner’s Project Number: \_\_\_\_\_

**Architect/Engineer (the “A-E”):**

Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

The Owner and Contractor agree as follows:

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## ARTICLE 1 SCOPE OF WORK

1.1 The Contractor has overall responsibility for and shall furnish all of the materials, equipment, tools and labor as necessary and reasonably inferable to complete the work (the “Work”) of the Project as depicted and described in the Contract Documents for the Project, providing its best efforts to complete the Project in an expeditious and economical manner consistent with the Owner’s interests.

*[1.2 ALTERNATES: The following Alternates fully described in the Drawings and Specifications, are included as a part of this Agreement and included in the Contract Sum.*

*1.2.1 Add/Deduct Alternate No. X “ ”]*

## ARTICLE 2 CONTRACT DOCUMENTS

2.1 Contract Documents. The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement and expressly incorporated herein, including but not limited to any Special Conditions;
- b. The Uniform General Conditions for Construction Contracts of The Texas State University System (“TSUS UGC” or “UGC”) as modified by this Agreement and the Special Conditions (the “Special Conditions”), attached hereto as Exhibit A;
- c. The Drawings, Specifications, details and other documents developed by A-E and issued for construction with the Owner’s approval;
- d. The Drawings and Specifications developed and issued for construction with the Owner’s approval by Owner’s other consultants, if any;
- e. All Addenda issued prior to the Effective Date of this Agreement;
- f. All other Change Orders issued after the Effective Date of this Agreement; and
- g. The Contractor’s HUB Subcontracting Plan, and any amendments thereto, when accepted by the Owner, attached hereto as Exhibit E.

2.2 The Contract / Integration. These Contract Documents form the entire and integrated Agreement between Owner and Contractor and supersede all prior negotiations, representations, or agreements, written or oral. Neither this Agreement nor any of its provisions can be waived, modified, amended or altered except by a written document signed by Contractor and Owner.

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

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

- 2.5 Terms Interchangeable. The term “Contractor” is interchangeable with the terms “Construction Manager” (“CM”) and “General Contractor” or other similar terms used in the various parts of the Contract Documents, including the UGC and Special Conditions.
- 2.6 Conflict Between Contract Documents. If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written amendments to this Agreement entered into in accordance with the requirements hereof after execution of this Agreement with the amendment bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein; (3) the UGC; (4) the Drawings and Specifications developed by the A-E and such other consultants of the Owner incorporated into the Contract Documents; and (5) any proposals submitted by the Contractor in the procurement for the Project and other documents identified in the Agreement as Contract Documents which have not been incorporated into the Agreement. To clarify the foregoing, the terms of the Agreement (and its Exhibits) shall control over the UGC and the terms of the Agreement (and its Exhibits) and the UGC shall control over any terms in the Drawings or Specifications developed by the A-E and such other consultants of the Owner inconsistent therewith

### **ARTICLE 3. DEFINITIONS**

The terms, words and phrases used in the Contract Documents shall have the following meanings, as supplemented by any other definitions provided in the UGC. In the event of a conflict between a definition as set forth below and a definition in the UGC, the definition set forth below shall control.

- 3.1 “Applicable Law” or “applicable laws” means all laws, statutes, ordinances, regulations, guidelines or requirements now in force or hereafter enacted by any applicable local, state or federal governmental authority relating to or affecting the Project or arising from this Agreement, including, if and as applicable (1) the United States Occupational Safety and Health Administration requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (2) the Americans with Disabilities Act requirements (and similar state and local governmental statutes and requirements in the jurisdiction in which the Project is located), (3) requirements under Title VII of the Civil Rights Act of 1964, as amended, (4) the Age Discrimination in Employment Act requirements, (5) requirements of the Fair Labor Standards Act and applicable state wage and hour laws, (6) applicable local, state, and published Texas State University System or System Components building codes and requirements, (7) storm water, street, utility and other related infrastructure requirements, and (8) requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials.
- 3.2 “Component” means the higher education institution member of The Texas State University System identified on page one of this Agreement and on whose campus the Project is to be located.
- 3.3 “Construction Documents” means, collectively, the UGCs, Owner’s Special Conditions and Specifications, the Drawings, Specifications, details, Change Orders and other documents



- prepared by the A-E, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Work that are acceptable to the Owner.
- 3.4 “Contract Sum” means the total amount of all compensation payable to the Contractor for the Contractor's performance of the Agreement. The Contract Sum shall be the stipulated sum set forth in Article 9 hereto, subject to adjustment for Change Orders. Any costs that exceed the Contract Sum shall be borne solely by the Contractor without reimbursement by Owner.
- 3.5 “Contract Time Requirements” means the requirements for the achievement of any major or “Critical” Milestones and Substantial Completion and Final Completion of designated portions of the Work or the entire Work of the Project as may be expressly required in the Project Schedule or any Owner-approved CPM Schedule or as otherwise expressly required by the Contract Documents.
- 3.6 “CPM Schedule” means the Critical Path Method Schedule which the Contractor is required to prepare and update in accordance with Paragraph 7.3 for Owner's approval.
- 3.7 “Final Completion” means the actual completion of the Work (the entire Work or the designated portion thereof), including any extras or Work authorized by Change Orders reasonably required or contemplated under the Contract, other than warranty work or replacement or repair of the Work (after the initial acceptance by the Owner) performed under the Contract. References to “Final Completion of the Work” in the Contract Documents shall mean the Final Completion of the entire Work required under the Contract, except as otherwise expressly provided therein.
- 3.8 “Owner's Designated Representative” or “ODR” means the person designated by the Owner to act as the Owner's Designated Representative pursuant to Paragraph 5.2 and identified in Paragraph 18.4.1.
- 3.9 “Project Schedule” means the schedule incorporated into the Contract Documents for the construction of the Project prepared by the Contractor and attached hereto as Exhibit D, reflecting various milestone and completion dates, and which may be subsequently modified by mutual agreement between the Owner and Contractor to reflect any refinement in its requirements.
- 3.10 “Project Team” means the Owner, Contractor, A-E and its consultants, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by Owner and may be modified from time to time by Owner.
- 3.11 “Record Documents” mean the drawing set, Specifications, and other materials maintained by the Contractor that documents all addenda, A-E's Supplemental Instructions, Change Orders and postings and markings that record the “as-constructed” conditions of the Work and all changes made during construction. Record Documents is distinguishable from “Record Drawings” which, if required by the Contract Documents, are prepared by the A-E as part of its Construction Administration Services and reflect the on-site changes the Contractor noted in the “As-Built” drawings.

- 3.12 “Subcontractor” means a person or entity that has an agreement with or through the Contractor to perform any portion of the Work. The term Subcontractor includes what is commonly referred to as a “trade contractor” and a “supplier” (who furnishes materials or equipment only) and Sub-Subcontractors, except to the extent clearly not applicable in the context of its use in the Contract Documents. The term Subcontractor does not include the A-E or any person or entity hired directly by the Owner for design or construction services. The term “Sub-subcontractor” refers to a trade contractor, subcontractor, or supplier contracting under or directly with a Subcontractor or another Sub-subcontractor (of any tier).
- 3.13 “Substantial Completion” shall have the meaning as set forth in UGC, except as otherwise provided in the Special Conditions. References to “Substantial Completion of the Work” in the Contract Documents shall mean the Substantial Completion of the entire Work required under the Contract, except as otherwise expressly provided therein.
- 3.14 “The Uniform General Conditions of the Texas State University System” or “TSUS UGC” or “UGC” shall mean the Uniform General Conditions for Construction Contracts issued by the State of Texas, published date of August 17, 2005, a copy of which is published on the Owner’s website (Capital Projects webpage), and as may be modified by this Agreement and the Special Conditions attached to this Agreement as Exhibit A.
- 3.15 “Work” means the provision of all services, labor, materials, supplies, and equipment that are required of the Contractor to complete the Project in accordance with the requirements of the Contract and the Contract Documents. The Work includes the required construction described in the Contract Documents, additional work required by any Change Orders, and any other work reasonably inferable from the Contract Documents. The term “reasonably inferable” includes the understanding of the parties that some minor details of the Work may not be shown on the Drawings or included in the Specifications, but they are included in the Work if they are usual and customary components of the Work for a project of the type depicted in the Contract Documents and they are needed to produce a complete and useable facility.
- 3.16 “Electronic Copy” means a copy of the document in the software medium in which the document was created for initial approval and subsequent required updates.
- 3.17 “Work Progress Schedule” means the schedule prepared and maintained in accordance with the Critical Path Method and the requirements of the Special Conditions, and the UGC, reflecting the Contractor’s actual progress of the construction of the Work and the scheduled activities and current plans for completing the Work.

#### **ARTICLE 4. CONTRACTOR’S GENERAL RESPONSIBILITIES**

The Contactor shall perform the following tasks:

- 4.1 In General. All services specifically allocated to the Contractor by the Contract Documents as well as those services reasonably inferable from the documents that are necessary for

- completion of the Work of the Project. The Contractor was selected by the Owner based on its stated qualifications and experience, and therefore, the Contractor agrees to perform all of its services using its best efforts, skills, judgments and abilities.
- 4.2 Cooperation. Cooperate with all members of the Project Team and endeavor to further the interests of the Owner and the Project. The Contractor shall furnish its services and provide its best efforts to complete the Project in an expeditious and economical manner consistent with the Owner's interests.
- 4.3 Designation of Representatives. Designate in writing to the Project Team those representatives who are authorized to act on the Contractor's behalf with respect to the Project. Such written designations shall include the limitations of each representative's authority. Without limiting the foregoing, Contractor shall designate in writing (see Paragraph 18.4.2) a representative who is responsible for the day-to-day management of the Work and who will be the Owner's primary contact during construction and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be authorized to act on behalf of and bind the Contractor in all matters related to the Contract including, but not limited to, execution of Change Orders and submission of Applications for Payment.
- 4.4 Procedures. Establish procedures for effective communication and coordination among the Project Team, Subcontractors, separate contractors, and others regarding the construction of the Project, and implement and continuously modify such procedures as necessary.
- 4.5 Tracking System. Establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplemental instructions and provide updated records at each Owner's meeting and at other times when requested.
- 4.6 Multiple Completion Times. Cooperate fully if Owner decides to "Fast Track" and establish "Multiple Completion Times". If the Owner elects these approaches, Contractor shall organize and perform its services to be most appropriate and efficient for each stage of Project development. In these circumstances, each stage of the Project may have a unique schedule for completion and a separate specific cost as agreed to in writing by the Contractor and Owner.
- 4.7 Partnering. Attend and participate in Owner's "Partnering" program, if applicable.
- 4.8 Employees and Consultants. Identify to the Owner all of the employees, other personnel and consultants that it will assign to the Project. Contractor shall promptly notify the Project Team if these assignments change for reasons beyond the control of the Contractor. Contractor shall not assign or retain on the Project any person or entity to whom Owner reasonably objects.
- 4.9 HUB Compliance. Proactively comply with the Owner's established policies regarding the utilization of Historically Underutilized Businesses ("HUB" or "HUB's") and all applicable administrative rules and statutes relating to utilization of HUB's by Owner for the Project and adhere to the HUB Subcontracting Plan, and any amendments thereto,

- submitted by Contractor and approved by Owner. No changes to the HUB Subcontracting Plan can be made by the Contractor without the written approval of Owner.
- 4.10 Computer Project Management Software. Contractor shall use the Owner's designated project management software system "e-Builder" to correspond and maintain project related correspondence and documentation throughout the life of the Project including Project close-out and final payments.
- 4.11 Safety.
- 4.11.1 Contractor shall plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project. The Contractor's safety program shall comply with all applicable requirements of the UGCs, the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations. The Contractor shall be solely responsible for on-site safety. Neither Owner, nor A-E, nor any other member of the Project Team shall have responsibilities for on-site safety except for safety issues arising solely from their own negligent acts or omissions.
- 4.11.2 Contractor shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety precautions and provisions have been included in the Construction Documents and that the Work envisioned does not include any unnecessary safety risks.
- 4.11.3 The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.
- 4.12 Regular Project Meetings. Contractor shall attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes.
- 4.13 Interim Progress Meetings. In addition to regularly scheduled Project progress meetings, Contractor shall direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress. Contractor shall record and distribute the minutes of each such meeting to each Project Team member. The minutes shall identify critical activities that require action, the person/entity responsible to complete the action and the dates by which each action must be completed.
- 4.14 Owner-Procured Material and Equipment. Contractor shall coordinate delivery and installation of Owner-procured material and equipment.
- 4.15 Performance and Payment for the Work. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in accordance with the requirements of the Contract Documents, including this Agreement, the UGC and Special Conditions.

- 4.16 Permits and Approvals. Contractor shall obtain building permits and special permits for permanent improvements as required by law, regulation or the Construction Documents. Contractor shall assist Owner or A-E in obtaining all approvals required from authorities having jurisdiction over the Project.
- 4.17 Testing. Contractor shall coordinate and oversee all testing operations at the site and coordinate the receipt and proper distribution of all testing results. The Owner will pay for all initial testing required by the Specifications for the purpose of determining whether the materials or systems tested meet the requirements of the Contract Documents. All testing initiated by the Contractor, including all corrective measures necessary for a product or system to meet the requirements of the Contract Documents and any necessary re-testing, shall be paid by the Contractor. To the extent that this provision conflicts with UGC Article 8.2 (Testing), this provision shall control.
- 4.18 Coordination of the Work. Contractor shall coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Contract Documents.
- 4.19 Contractor's Means and Methods. Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall keep the Owner informed of the progress and quality of the Work.
- 4.20 Warranties and Guarantees. Contractor shall warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Contract Documents. Contractor shall be responsible for correcting Work that does not comply with the Contract Documents at its sole expense without cost to the Owner. Contractor shall provide warranties and guarantees to Owner that the Contractor is required to provide Owner under the Contract Documents.
- 4.21 Record Documents. Contractor shall continuously maintain and deliver the Record Documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work. Contractor shall revise and update such "As-Built" drawings and other Record Documents to correct such incompleteness or non-compliance as may be identified by the A-E. Two sets of the corrected and complete Record Documents shall be furnished to the Owner in Adobe Acrobat (PDF) format or such other format and medium acceptable to the Owner. See UGC for other Record Document requirements.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

- 5.1 Designation of A-E. The Owner has retained and designated an Architect/Engineer ("A-E") for the Project who is the "Architect of Record" or "Engineer of Record" and is primarily responsible for the design of the Project and provides construction administration services required of the A-E (except for such design professionals contracting directly with the Owner for specific scopes of design services). References to the Project Architect or Architect shall mean the A-E, except as otherwise specifically provided in the Contract Documents. The A-

- E is required by agreement to work closely with the Contractor, which should facilitate performance of Contractor's duties and responsibilities under this Agreement. Upon request, Owner will provide Contractor with relevant sections of the A-E's agreement with Owner.
- 5.2 Designation of ODR. The Owner's Designated Representative ("ODR") is the person authorized to administer this Agreement on behalf of the Owner, including final determination of fees and costs earned by the Contractor and equitable back charges against the Contractor, if any. The ODR represents Owner in any negotiations involving project scope, cost, time, and Agreement terms and conditions where called for in the Agreement or as otherwise necessary. In all matters Contractor shall act only upon instructions from ODR unless otherwise specifically notified to the contrary in writing. Also see UGC Article 3.1.2.
- 5.3 Surveys. The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, environmental surveys or other special studies to develop such additional information as may be necessary for completion of the construction activities at the site.
- 5.4 Testing. The Owner will pay for all testing required by the Specifications, but the Contractor will coordinate and oversee all testing operations at the site and coordinate the receipt and proper distribution of all testing results. This specifically supersedes UGC Article 8.2 (Testing).
- 5.5 Services. The Owner shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.
- 5.6 Furnishing of Required Information and Services. The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Contractor's services and of the Work.
- 5.7 Inspectors. The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. Such inspectors, if assigned, will be designated in writing and will be under the direct supervision of the ODR. The provision of inspection services by Owner shall not reduce Contractor's responsibility for the Work. The Contractor is fully and solely responsible for constructing the Project in accordance with the Contract Documents.
- 5.8 Rejection of Work. Owner shall have the right to reject any defective Work on the Project. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected by other means and recover all expenses incurred from Contractor through a reduction of funds otherwise due to the Contractor under this Agreement.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

- 6.1 Contractor's Limited Authority to Use Documents. Drawings, specifications and other documents prepared by each A-E, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the Contractor (the "Design



Documents”) are instruments of service and shall remain the property of their authors (or the Owner as may be provided in the respective contractual agreements between the Owner and the respective design professional) whether the Project for which they are made is executed or not. The Contractor shall be permitted to retain one record set of the Design Documents. All other copies of the Design Documents shall be returned to their respective authors or suitably accounted for. The Contractor and its Subcontractors are authorized to reproduce and use portions of the Design Documents as necessary and appropriate for the execution of the Work. The Contractor and its Subcontractors shall not use the Design Documents on any other projects.

- 6.2 Use of Documents to Meet Regulatory Requirements. Submission or distribution of the Design Documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the A-E’s or other author’s rights.

## **ARTICLE 7 TIME**

- 7.1 Essential Element. Time limits stated in the Contract Documents are an essential element of this Agreement.
- 7.2 Standard of Care. Unless otherwise approved, the Owner and the Contractor shall perform their respective obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work and any applicable standard of care. Notwithstanding the foregoing, with regard to construction services, Contractor shall perform its obligations consistent with any Contract Time Requirements set forth in the Contract Documents.
- 7.3 CPM Schedule. Prior to commencement of construction, the Contractor shall submit an up-to-date CPM Schedule for the performance of construction services as specified. The CPM Schedule shall include reasonable periods of time for the Owner’s and A-E’s review and approval of shop drawing submissions and for the approval of other authorities having jurisdiction over the Project. The Contractor shall monitor the progress of the Project in relation to the CPM Schedule and provide the Owner with at least monthly updates and status reports as required by the Contract Documents. The time periods established in the CPM Schedule and the overall duration of the Project and shall not be changed without the written consent from the Owner. Modifications to the CPM Schedule logic, coding, layouts and filters, detail, and activity durations shall be in accordance with any scheduling requirements set forth in the Contract Documents or as otherwise approved by the Owner.

## **ARTICLE 8 PAYMENTS**

- 8.1 General Requirements.
- 8.1.1 This Agreement is subject to the assessment of Liquidated Damages against Contractor. Amounts anticipated to be assessed as Liquidated Damages, and other amounts to which Owner is entitled by way of offset or recovery, may be deducted from any monies due Contractor pending complete resolution of the underlying

issues. See Section 18.2 and the Special Conditions, for Liquidated Damages amounts.

- 8.1.2 Owner shall have the right to withhold from payments due Contractor such sums as are reasonably necessary to protect Owner against any loss or damage which may result from negligence by Contractor or any Subcontractor or failure of Contractor or any Subcontractor to perform their obligations under this Agreement.
- 8.1.3 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make full payment to Contractor under circumstances listed in the UGC and any of the following additional circumstances:
  - 8.1.3.1 Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;
  - 8.1.3.2 The payment request includes services that are not performed in accordance with the Contract Documents; provided, however, Owner shall pay for those services performed in accordance with the Contract Documents;
  - 8.1.3.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;
  - 8.1.3.4 Contractor is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Contractor;
  - 8.1.3.5 Owner, in its good faith judgment, determines that the unpaid balance of the Contract Sum is not sufficient to complete the Work in accordance with the Contract Documents;
  - 8.1.3.6 Contractor has persistently failed to complete the Work in accordance with the current, Project Schedule or Owner-approved CPM Schedule or there is reasonable evidence that the remaining Work will not be completed within the Contract Time Requirements, which would make the Contractor subject to Liquidated Damages. In such cases Owner may withhold payments sufficient to cover Contractor's expected exposure to Liquidated Damages;
  - 8.1.3.7 Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or
  - 8.1.3.8 Contractor fails to obtain, maintain or renew insurance coverage as required by this Agreement.
- 8.1.4 No partial payment made by the Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of



the documentation provided in support of the partial payment. No partial payment made by the Owner shall constitute, or be construed to constitute, a release of Contractor from any of its obligations or liabilities with respect to the Work.

- 8.1.5 Owner shall have the right to verify and audit the details of Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Contractor during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Contractor's employees; (4) visiting the Project site; and (5) any other reasonable action. Contractor's records shall be organized and maintained in its files by each Application for Payment period and shall be kept on the basis of generally accepted accounting principles in accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board. Contractor should anticipate that Owner will audit the entire Agreement record before making final payment under the Agreement. This provision shall survive any termination of the Agreement.

## 8.2 Construction Payments.

- 8.2.1 Payments for the Work shall be made as provided for in the UGC, subject to the conditions and terms of this Agreement. All payment requests shall be submitted on an Application for Payment with a Schedule of Values approved by the ODR and shall include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of the Contractor's Application for Payment. Change Orders shall be listed separately on the Application for Payment form. Failure to submit "HUB Progress Assessment Report Documentation of Subcontracted Work" form with each Application for Payment Application will cause rejection of the pay application by the Owner and its return to the Contractor.
- 8.2.2 A five percent (5%) retainage fee is established through this Agreement between the Contractor and the Owner and a subsequent maximum five percent (5%) retainage fee shall be established between the Contractor and any Subcontractor(s) who performs work or provides materials for this Project.
- 8.2.3 Payments for Subcontractor work shall not exceed the percentage of Work allocated to that Subcontractor for any particular work classification and shall not exceed the total value of the subcontract amount.
- 8.2.4 Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of surety to release of Final Payment; and an affidavit stating that the release includes and covers all materials and services over which Contractor has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Contractor may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Contractor shall reimburse Owner for all damages and costs Owner may incur in



Special Conditions. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

- 11.3 Insurance. The Contractor shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the ODR (see UGC 3.1.2 and 013100, paragraph 2). Contractor shall obtain and provide evidence of the insurance coverage for: Workers' Compensation, Employer's Liability, Comprehensive General Liability, Builder's Risk and Comprehensive Automobile Liability in the amounts as set forth in the UGCs and Special Conditions. ODR's or Owner's review of the evidence of insurance provided by the Contractor shall not relieve nor decrease the liability of the Contractor.
- 11.4 Insurance to be Kept in Effect. The Contractor shall not cause or allow any of the insurance required by this Agreement to lapse or be canceled during the term of the Agreement or as otherwise required by the Agreement. If the Contractor fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain replacement insurance coverage directly and recover the cost of that insurance from the Contractor.
- 11.5 Owner's Right to Make Adjustments. The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of this Agreement and to make reasonable adjustments to the limits of coverages it deems necessary and prudent based upon changes in applicable law, court decisions, or the claims history of the industry as well as the Contractor. If Owner makes material changes to the insurance requirements of this Agreement, then Owner shall also allow reasonable premium adjustments and such changes will be incorporated into this Agreement by Change Order.
- 11.6 Contractor to Provide Copies of Policies. Within five (5) business days of Owner request, and without cost to Owner, Contractor shall provide complete copies of the Contractor's required insurance policies with all their endorsements to the Owner.
- 11.7 Cost of Additional Coverage to be Borne by Contractor. The cost of premiums for any additional insurance coverage desired by the Contractor, in excess of that required by this Agreement, shall be borne solely by the Contractor out of its costs and shall not be invoiced to Owner.
- 11.8 Insurance Required of Subcontractors. Contractor shall require its Subcontractors and consultants to maintain Commercial General Liability and Business Auto Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

## ARTICLE 12 DISPUTE RESOLUTION

All disputes against the Owner that arise from this Agreement or the Project shall be resolved in accordance with the procedures and limitations of *Texas Government Code* Chapter 2260, the Special Conditions, and Article 15 of the UGC. The Owner designates                      as its officer for examining, negotiating and resolving claims and counterclaims under Chapter 2260 of the *Texas Government Code*.

## ARTICLE 13 PROJECT TERMINATION AND SUSPENSION

- 13.1 Termination for Convenience by Owner. This Agreement may be terminated by the Owner for its convenience (at its sole discretion and that is not the fault of the Contractor) at any time upon at least five (5) business days written notice to the Contractor in the event that the Project is to be temporarily or permanently abandoned.
- 13.2 Recovery upon Termination (other than for fault of the Contractor). In the event of termination that is not the fault of the Contractor, the Contractor shall be entitled to compensation for all services performed to the termination date, provided however, that Contractor has delivered to Owner such statements, accounts, reports and other materials as required below together with all reports, documents and other materials prepared by/through the Contractor (including but not limited to the A-E) prior to termination. Upon such payment, Owner shall have no further obligation to the Contractor.
- 13.3 No Release of Liability. Termination of this Agreement shall not relieve Contractor or any of its employees, Subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Contractor. In the event of a termination, Contractor hereby consents to employment by Owner of a substitute Contractor to complete the services under this Agreement, with the substitute Contractor having all rights and privileges of the original Contractor of the Project.
- 13.4 Rights to Use Documents, Ideas, and Designs. As of the date of any termination of this Agreement, Contractor shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Contractor in connection with Contractor's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise.
- 13.5 Suspension or Abandonment. If the Project is suspended or abandoned in whole or in part for more than three (3) months, the Contractor shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment then due. If the Project is resumed after being suspended for more than three (3) months, the Contractor's compensation shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.
- 13.6 Other Grounds of Suspension or Termination. Except as otherwise set forth herein and in any Special Conditions, the UGC governs any termination or suspension during the term of the Project

## ARTICLE 14 INDEMNITY

- 14.1 In General. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS REGENTS, ITS COMPONENTS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES AS PROVIDED IN ANY SPECIAL CONDITIONS AND ARTICLE 3 OF THE UGC.

- 14.2 Patent or Copyright Infringement. WITHOUT LIMITING THE INDEMNITY REQUIRED ABOVE, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS REGENTS, AND COMPONENTS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM LIABILITY OF ANY NATURE OR KIND, INCLUDING COST AND EXPENSE, FOR OR ON ACCOUNT OF INFRINGEMENT OR USE OF ANY PATENTED OR OTHERWISE PROTECTED INVENTION, PROCESS, DOCUMENT, OR ARTICLE IN THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ITS USE BY OWNER.
- 14.3 Survival. The indemnities contained herein shall survive any termination of this Agreement.

#### **ARTICLE 15 SPECIAL WARRANTIES**

- 15.1 Reliance of Owner. Notwithstanding anything to the contrary contained in this Agreement, Owner and Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and using Owner's prescribed procedures.
- 15.2 Standard of Care. The Contractor represents and warrants that it will perform its services in conformance with the highest standards of the Contractor's profession or business and in compliance with all Applicable Law, including all regulations, codes, ordinances, and orders of third parties having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting negligent or improper work or services whether performed by itself or by its Subcontractors or consultants.
- 15.3 No Diminution by Reason of Owner's Review. Contractor agrees that Owner's observation, review, or approval of Contractor's work or services will not diminish Contractor's duties, responsibilities or liabilities under this Agreement, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the work and services required hereunder.
- 15.4 Licensing and Registration. The Contractor represents and warrants that all persons who are directly in charge of Contractor's Work or services under this Agreement are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project or the services to the extent such licensure or registration is required .
- 15.5 Duty to Advise Owner. The Contractor represents and warrants that it will advise Owner of anything of any nature discovered in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor under the provisions of this Agreement that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is intended.
- 15.6 Good Business Practices. The Contractor represents and warrants that it will perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and with the interests and objectives of Owner. Contractor further warrants

that there are no existing obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

- 15.7 Authority to Execute Agreement. Contractor represents and warrants that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.
- 15.8 Limitation of Owner's Liability. Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or Regent of Owner, The Texas State University System, or of the Components comprising The Texas State University System, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
- 15.9 No Waiver. Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by the Owner of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.
- 15.10 Survival. The warranties contained herein shall survive any termination of this Agreement.

## **ARTICLE 16 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

- 16.1 In General. Contractor shall comply with the requirements of the UGC (see Article 13) concerning Asbestos Certification. The following requirements set forth below shall also apply.
- 16.2 Certification Statement with Submittals. The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal. All materials used on this Project shall be certified as not Asbestos Containing Building Materials ("ACBM"). The Contractor shall ensure compliance with the following acts from all of its Subcontractors and assigns:
- 16.2.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
- 16.2.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos);
- 16.2.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection).
- 16.3 Licensing. The Contractor shall ensure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work



- including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 16.4 Affidavit Required. The Contractor shall provide at Substantial Completion, a notarized certification statement in accordance with Texas Administrative Code, Rule §295.34(c) (1) certifying that no ACBM was used during construction of the Project. Prior to submitting this affidavit, every Subcontractor and supplier shall have provided a notarized statement to Contractor that no ACBM has been provided, used, or left on this Project (which shall be provided to Owner upon request). Contractor shall take whatever measures that may be necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns comply with this requirement.
- 16.5 Provision of SDS. The Contractor shall provide, in hard copy and electronic form, all necessary Safety Data Sheets (“SDS”) of all products used in the construction of the Project to the Texas Department of State Health Services licensed inspector or to the A-E who will compile the information from the SDS and, finding no asbestos in any of the products, make a certification statement.

#### **ARTICLE 17 MISCELLANEOUS PROVISIONS**

- 17.1 Public Information Pertaining to the Official Business of Governmental Bodies and to Contracts by Certain State Governmental Entities that Involve the Exchange or Creation of Public Information. The Texas State University System and its Component institutions adhere to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to Owner, Contractor is required to make any information created or exchanged with Owner pursuant to this Agreement, that is not otherwise excepted from disclosure under the TPIA, available in a format reasonably requested by Owner that is accessible by the public. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
- 17.2 No Assignment or Delegation by Contractor. This Agreement creates a personal service contract for the services of general contractor. Neither Contractor’s interest in this Agreement, nor duties, nor fees due hereunder may be assigned or delegated to a third party. Any attempted assignment or delegation by Contractor shall be null and void.
- 17.3 Records and Accounting Standards and Principles. Records of costs and expenses reimbursable to Contractor as actual cost of the Work and other costs and expenses pertaining to the Project, reimbursable under the Contract on the basis of actual cost incurred, including additional services performed on the basis of a worker wage rate, shall be kept on the basis of generally accepted accounting principles, and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board, and shall be maintained and made available for audit by the Owner or the Owner's authorized representative for a period of four (4) years after Final Completion of the Project. Owner will give reasonable notice prior to undertaking such an audit.

- 17.4 Family Code Certification. By signing this Agreement Contractor is certifying, pursuant to Section 231.006 of the *Texas Family Code*, that it is not ineligible to receive the award of or payments under this Agreement by reason of its Family Support requirements and acknowledges that this Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.
- 17.5 Eligibility Certification. By signing this Agreement Contractor is certifying that, pursuant to Section 2155.004 of the *Texas Government Code*, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 17.6 Franchise Tax Certification. By signature hereon, Contractor hereby certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 17.7 Debts Owed to State. By signing this Agreement Contractor agrees that, pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code*, any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 17.8 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.
- 17.9 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Travis County, Texas shall be the exclusive venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.
- 17.10 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Contract shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.
- 17.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.



- 17.12 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Such designations will include the limits of that representative's authority. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.
- 17.13 Method of Giving Notices. All notices, consents, approvals, demands, requests or other communications permitted or required to be given under this Agreement shall be given to the party's representative designated pursuant to the Paragraph 18.3 and shall be in writing. Written notice shall be deemed to have been given when delivered in person; sent by U. S. Mail; or transmitted by fax machine. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.
- 17.14 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.
- 17.15 Conflict of Interest Certification. By signing this Agreement Contractor is certifying that no member of the Board of Regents of The Texas State University System, or its executive officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.
- 17.16 Ethics Matters, No Financial Interest. Contractor and its employees, agents, representatives and Subcontractors under this agreement have read and understand The Texas State University System Conflicts of Interest Policy available at <http://www.tsus.edu/about-tsus/policies.html> and The Texas State University System Rules and Regulations, Chapter VIII. Neither Contractor nor its employees, agents, representatives or Subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy as stated in The Texas State University System Rules and Regulations. Contractor represents and warrants that no previously undisclosed member of The Texas State University System Board of Regents, The Texas State University System's Chancellor or any of its executive officers, or any president or executive officers of its respective Components has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 17.17 Disclosure of Interested Parties. Contractor certifies that, if the value of this Agreement exceeds One Million Dollars (\$1,000,000), it has complied with Section 2252.908 of the *Texas Government Code* and Part 2 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission ("TEC"), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.
- 17.18 State Auditor's Office. Contractor understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it

- awards. Additionally, the State Auditor’s Office shall at any time have access to and the right to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of Contractor relating to this Agreement.
- 17.19 Nondiscrimination. In their execution of this Agreement, the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.
- 17.20 Non-Boycott Verification. Pursuant to Section 2270.002 of the *Texas Government Code*, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. Contractor shall state in this Agreement any facts that make it exempt from the boycott certification. “Boycott Israel” shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 17.21 Cybersecurity Training Program. Pursuant to Section 2054.5192, *Texas Government Code*, the Contractor and its subcontractors, officers, and employees, who are provided credentials granting access to Component’s computer system also known as Component’s information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Contractor shall verify in writing completion of the program to the Component within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the Agreement.
- 17.22 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Section 2252.152, *Texas Government Code*, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 17.23 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the *Texas Government Code*, Contractor shall require that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States. Contractor will require that each subcontract includes this same requirement.
- 17.24 179D Benefit Allocation. Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the “Code”) through this Agreement with Contractor.

If the Owner and the Internal Revenue Service determine that Contractor is eligible to receive the 179D deduction allocation as a “Designer” for the purposes of Section 179D of the Code or that Contractor could otherwise profit financially from the monetization of the benefit (separately and collectively, the “Rebate”), Contractor hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on

mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Contractor. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Contractor fees or both.

Owner reserves the right to retain a third-party consultant (the “Consultant”) to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s). Contractor agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner’s 179D Consultant.

17.25 Other Provisions Required by Applicable Law. In accordance with Section 51.9335(h), *Texas Education Code*, the parties acknowledge and agree that any other provision required by Applicable Law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

17.25.1 Whether the provision appears on the face of the Agreement or Contract; or

17.25.2 Whether the Agreement or Contract includes any provision to the contrary.

## ARTICLE 18 OTHER TERMS AND CONDITIONS

### 18.1 Schedule and Time Completion.

18.1.1 The Owner shall provide a notice to proceed (“Notice to Proceed”) in which a date for commencement of the Work shall be stated. The Contractor shall achieve Substantial Completion (UGC Article 12) of the Work within                      ( ) calendar days after such commencement date.

18.1.2 The Work shall be deemed to commence on the date specified in the Notice to Proceed.

18.1.3 The Contractor shall achieve Substantial Completion of the Work on or before the dates stated on the Notice to Proceed, subject to time extensions granted by Change Order. It is anticipated that Final Completion will occur no later than two (2) months after the Substantial Completion date.

18.1.4 **THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE NOTICE TO PROCEED WITH CONSTRUCTION ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT.** The Owner may elect, at its option, to stage or “fast-track” portions of the work. The Owner shall issue a separate Notice to Proceed or Change Order for each such stage and each such stage shall have a separate Substantial Completion date and a separate liquidated damages amount, all as contained in the Change Order issued for that stage.



18.4.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Name of Contractor Contact

Title

Name of Contractor

Address

City, State Zip

Phone:

Fax:

Email:

18.4.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 4.8.

18.5 Construction Document Sets. The A-E shall coordinate the printing, binding and distribution of Construction Documents to all Subcontractors requesting documents. A maximum of [redacted] ( ) sets will be furnished at the expense of the Owner. Any additional sets shall be provided by the Contractor. The Contractor shall first utilize all construction documents returned to the A-E from the unsuccessful proposers.

18.6 Interim Record Drawings and Specifications. As a requirement for acceptance of Substantial Completion, Contractor shall reproduce two (2) copies of the current As-Built Drawings and Specifications maintained at the job site and provide these copies to the Owner. These documents shall be labeled "Interim Record Drawings and Specifications", and are required to assist the Owner in the operation of the facility until Final Completion is accomplished and the final As-Built Drawings and Specifications are provided to the A-E to prepare the final "Record Drawings" and "Record Specifications".

## **ARTICLE 19 EXHIBITS**

List of Exhibits. The following exhibits are attached to this Agreement and fully incorporated herein by reference

- A. Special Conditions
- B. Forms for Surety Bonds
- C. Prevailing Wage Rates
- D. Project Schedule
- E. HUB Subcontracting Plan

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement, to be effective on the day and year first above written:

**For Firm:**

<<Name of Firm>>

**For Owner:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
[Name], President  
[Component]

Name: \_\_\_\_\_  
*Type or Write Name*

\_\_\_\_\_  
Date

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

Date: \_\_\_\_\_

**EXHIBIT “A”**

**SPECIAL CONDITIONS**

The following terms and conditions shall supplement the terms and conditions set forth in the Agreement and the TSUS UGC, but the terms and conditions below shall control over any inconsistent terms and conditions in the TSUS UGC.

**A. MODIFICATIONS AND CHANGES TO THE TSUS UGC:**

1. The definition of “Owner” in Paragraph 1.16 of the UGC is replaced to as follows:

Owner means the Board of Regents of the Texas State University System acting through the responsible entity of the Texas State University System or one of its institutions (Components) as identified in the Contract with the Owner.

2. The definition of the term “Supplementary General Conditions” in Paragraph 1.27 of the UGC is hereby deleted; the terms “Supplementary General Conditions” and “Supplemental Conditions” as used in the TSUS UGC shall refer to and mean the Special Conditions that have been attached as an Exhibit to the Agreement.

3. Paragraph 3.3 of the UGC is revised by adding the following at the end of the first paragraph:

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

4. A new Subparagraph 3.3.4.1 of the UGC is added to read as follows:

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

5. Paragraph 3.3.10 of the UGC with regard to the Indemnification of Owner is replaced to read as follows:

*3.3.10 Indemnification of Owner.*

*3.3.10.1 To the fullest extent permitted by Applicable Law, the Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected and appointed officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not*

*limited to, personal or bodily injury, death or property damage, made upon the Owner and such other indemnified parties identified herein directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, or any agent, officer, director, representative, employee, consultant or Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner or such other indemnified parties identified herein or their officers or employees, separate contractors, design professionals, or consultants, to the extent such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE OR OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.*

*3.3.10.2 Contractor shall protect and indemnify the Owner from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the work performed by the Contractor or the use by Contractor, or by Owner at the direction of Contractor, of any article or material. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. Contractor does not warrant against infringement by reason of Owner's or A/E's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Contractor and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.*

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

*3.3.10.4 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract. In the event that Contractor defends the Owner with regard to any claim subject*



*to this indemnification, any such defense shall be coordinated with the Office of the Attorney General or its designated outside counsel and Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General.*

*3.3.10.5 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.*

6. Paragraph 4.1 of the UGC with regard to Historically Underutilized Business is replaced to read as follows:

4.1. *General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.284.*

4.1.1 *State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. §20.281-298 outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender-neutral means.*

4.1.2 *A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.285 by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.*

7. Sub-Paragraphs 4.2.5 and 4.2.6 of the UGC are replaced to read as follows:

4.2.5 *Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates Contractor's performance of the HUB subcontracting plan.*

4.2.5.1 *Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).*

4.2.6 *Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of*

*Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 285.*

8. Paragraph 4.3 of the UGC is replaced to read as follows:

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

9. Sub-Paragraph 5.1.1 of the UGC is replaced to read as follows:

5.1.1. *A Performance Bond is required if the Contract Price is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The Performance Bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Attorney General of Texas. The Performance Bond shall be effective through the Contractor's the Call-Back Warranty Period established in Paragraph 13.2.*

10. Paragraph 5.2.2 of the UGC is revised to read as follows:

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

11. Sub-Paragraph 5.2.2.1.1 of the UGC is revised to read as follows:

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

<i>Worker's Compensation (Coverage A):</i>	<i>Statutory limits</i>
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*Employers Liability:*

<i>Bodily Injury by Accident:</i>	<i>\$1,000,000</i>
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<i>Bodily Injury by Disease (each employee):</i>	<i>\$1,000,000</i>
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<i>Bodily Injury by Disease (policy limit):</i>	<i>\$1,000,000</i>
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*Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner and the respective Component.*

12. Sub-Paragraph 5.2.2.1.2 of the UGC is revised to read as follows:

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

*\$1,000,000 per occurrence*

*\$2,000,000 general aggregate*

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

*Coverage shall be on an "occurrence" basis.*

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

13. Sub-Paragraph 5.2.2.1.4 of the UGC is revised to read as follows:

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

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

*Contractor or any subcontractor responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.*

14. Sub-Paragraph 5.2.2.1.5 of the UGC is revised to read as follows:

*5.2.2.1.5 All Builder's Risk Insurance (or All-Risk Installation Floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be all-risk, including, but not limited to, fire and extended coverage, vandalism, malicious mischief, theft and, if applicable, flood, earth movement, windstorm (including named storm), terrorism coverage per TRIA 2002, collapse, and damage resulting from faulty workmanship, design or materials. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. Losses*

*or claims not paid by such insurance because such losses or claims fall within the deductible shall be borne by the Contractor.*

**<<VARIABLE INFORMATION>>.**

*The policy shall have endorsements or include coverage as follows:*

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

*5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.*

*5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.*

*5.2.2.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Special Conditions for possible additional builder's risk insurance requirements.*

*5.2.2.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.*

*5.2.2.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.*

*5.2.2.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.*

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

*The party required to furnish the Builder's Risk insurance in accordance with Article 17 of the Agreement and Article 5 of the TSUS UGC is*

**<<Name of Firm>>**

**15.** Sub-Paragraph 5.2.2.1.6 of the UGC is revised to read as follows:

*5.2.2.1.6. "Umbrella" or "Excess" Liability Insurance. The Contractor shall obtain, pay for and maintain umbrella or excess liability insurance during the contract term, insuring the Contractor (or Subcontractor) with limits of not less than:*

*\$10,000,000 (each occurrence)*

*\$10,000,000 (aggregate).*

*Such coverage shall be in excess of Contractor's Commercial General Liability, Business Automobile Liability, and Employer's Liability and shall "follow form" with regard to the primary coverage) to the full extent such primary coverage's limits are designated to the Project and for such period that such primary coverage provides for coverage, including any extended period for Products / Completed Operations coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. Such excess minimum limits can be met with a combination of primary and excess coverage (if such primary coverage has minimum limits in excess of those required above).*

*If this contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required.*

- 16.** Sub-Paragraph 5.2.3.3 of the UGC is revised to read as follows:

*5.2.3.3. The Owner and the respective Component institution and their officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.*

- 17.** A new Sub-Paragraph 6.1.6.7 of the UGC is added to read as follows:

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

- 18.** A new Sub-Paragraph 9.1.11 of the UGC is added to read as follows:

*9.1.11 If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.*

- 19.** A new Sub-Paragraph 9.4.1 of the UGC is added to read as follows:

*9.4.1 Before Contractor uses any portion of the float Contractor must submit a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.*

20. Paragraph 9.7 of the UGC is replaced to read as follows:

9.7 *No Damages for Delay. An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.*

21. Paragraph 13.2 of the UGC is changed to read as follows:

13.2. *Warranty Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work (the "Call-Back Warranty Period"). If Substantial Completion occurs by phase, then the Call-Back Warranty Period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work. Establishment of the Call-Back Warranty Period relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the nonconforming or defective Work that was discovered or reasonably discoverable during the Call-Back Warranty Period.*

22. Paragraph 16.1 of the UGC is replaced to read as follows:

16.1 *Owner's Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Owner's Special Conditions that relate to the Project which are attached as an Exhibit to the Agreement. In the event of a conflict between the TSUS UGCs and the Special Conditions, the Special Conditions will govern.*

**EXHIBIT B**

**FORMS FOR SURETY BONDS**

Payment and performance bonds required under Article 11 of the Agreement shall be drafted on forms provided by the Owner based on the forms posted on The Texas State University System (TSUS) website or as otherwise approved in advance by the Owner and the Attorney General of the State of Texas. Such bonds shall be furnished within ten (10) calendar days after the Contractor executes this Agreement.

The Oblige for the bonds shall be the “Board of Regents of The Texas State University System”. The Oblige’s address is as follows:

The Texas State University System  
Board of Regents  
Attn: [Name],[Title]  
[Component]  
Address  
City, State Zip

Visit the TSUS website to download and print the current forms at:

<https://www.tsus.edu/offices/finance/capital-projects.html>





**EXHIBIT D**

**PROJECT SCHEDULE**

*(see attached)*

**EXHIBIT E**

**HUB SUBCONTRACTING PLAN**

*(see attached)*