

CONTRACT
BETWEEN OWNER AND CONTRACTOR

This Contract is made as of _____, 20__ (the “Effective Date”), by and between:

The Owner: The Board of Regents of the Texas State University System
c/o Peter E. Graves, Vice Chancellor for Contract Administration
Texas State University System
Thomas J. Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
512-463-1808

and Contractor: _____

for the Project: _____

Project Architect/Engineer (A/E): _____

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract Documents consist of:

- a. This Contract and all exhibits and attachments listed, contained or referenced in this Contract;
- b. The referenced 2005 version of the Uniform General Conditions for Construction Contracts as published by the Texas Building and Procurement Commission (“Uniform General Conditions” or “UGC”);
- c. Owner’s Division 1 Specifications;
- d. The Drawings, Specifications, details and other documents developed by Architect/Engineer (A/E) and issued for construction with the Owner’s approval;
- e. The Drawings and Specifications developed and issued for construction with the Owner’s approval by Owner’s other consultants, if any;
- f. All Addenda issued prior to the Effective Date of this Contract;
- g. All other Change Orders issued after the Effective Date of this Contract; and
- h. The HUB Subcontracting plan submitted by the Contractor in response to the Request for Proposals issued by the Owner for this Project.

1.2 The term "Construction Manager (CM)" is interchangeable with the terms "Contractor" and "General Contractor" or other similar terms used in the various parts of these Contract Documents.

ARTICLE 2 SCOPE OF WORK

2.1 The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project and the Uniform General Conditions for Construction Contracts entitled _____. These drawings and specifications are prepared for the Texas State University System by _____ acting as the Architect/Engineer. The Contractor shall do everything required by this Contract (UGC), the Addenda, Owner's Division 1 Specifications, the Technical Specifications, the Drawings, any Change Orders issued for this Contract and the Historically Underutilized Business (HUB) Subcontracting Plan submitted by the Contractor and approved by the Owner.

[2.2 *ALTERNATES: The Alternate Proposal " _____," fully described in the Specifications, is included as a part of this Contract.*]

ARTICLE 3 TIME OF COMPLETION

The Owner shall provide a 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. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 4 THE CONTRACT SUM

The Owner shall pay the Contractor for performance of the Contract the sum of: _____ (\$ _____), and make payments as provided in UGC Article 10 and the Division 1 Specifications.

A 5% retainage fee is established through this Contract between the Contractor and the Owner and a subsequent maximum 5% retainage fee shall be established between the Contractor and any subcontractor(s) who performs work or provides materials for this Project.

ARTICLE 5 LIQUIDATED DAMAGES

Time needed for completion is an important factor in this Contract. The Contractor agrees to perform its services under this Contract in an expeditious and economical manner consistent with good business practices and the interests of Owner. For each consecutive calendar day after the Substantial Completion date, computed using the Commencement Date and the Time for Substantial Completion described in Article 3, that any of the Work is not completed the amount of: _____ (\$ _____) will be deducted from any money due the Contractor. Any sum so deducted will not be as a penalty but will be as Liquidated Damages that the parties have agreed to be a reasonable estimate of actual Owner damages due to late completion.

ARTICLE 6 HUB SUBCONTRACTING PLAN

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

ARTICLE 7 SAFETY

- 7.1 In accordance with UGCs and the Division 1 Specifications, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.
- 7.2 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.
- 7.3 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.

ARTICLE 8 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

- 8.1 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.
- 8.2 The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 8.3 The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.
- 8.4 All materials used on this Project shall be certified as not Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:
 - 8.4.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
 - 8.4.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

- 8.4.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection
- 8.5 The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.
- 8.6 The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector.
- 8.7 At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Chapter 295.34, paragraph c.1 that no ACBM was used during construction of the Project. Prior to issuing this certification, the Contractor shall cause every subcontractor to provide a notarized statement that no ACBM has been used, provided, or left on this Project.

ARTICLE 9 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site prior to signing this contract and that it has thoroughly investigated those conditions. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Sum or the Contract Time for Completion arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

ARTICLE 10 BONDS AND INSURANCE

- 10.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UGCs (Article 5). The penal sum of the payment and performance bonds shall be equal to the Contract Sum.
- 10.2 The Contractor shall not commence work under the Contract until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner's Designated Representative (see UGC 3.1.2 and 013100, paragraph 2). Contractor shall 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. All of this required coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage. Owner's review of the evidence of insurance provided by the Contractor shall not relieve nor decrease the liability of the Contractor.
- 10.3 The Contractor shall not cause or allow any of its required insurance to lapse or be canceled during the term of the Contract or as otherwise required in the Contract. If the Contractor fails to obtain, maintain or renew any insurance required by the Contract, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.
- 10.4 The Owner reserves the right to reevaluate the insurance requirements during the effective period of the Contract and to make reasonable adjustments to the insurance coverages and their limits

when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor. Such changes will be incorporated into this Contract by Change Order.

- 10.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

ARTICLE 11 SPECIAL WARRANTIES

- 11.1 Notwithstanding anything to the contrary contained in this Contract, Owner and Contractor agree and acknowledge that Owner is entering into this Contract 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 procedures.
- 11.2 The Contractor represents, and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its subcontractors, and any harm caused by the negligent or improper work or services.
- 11.3 The Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.
- 11.4 The Contractor represents and agrees that all persons who are directly in charge of Contractor Work or Services that require registration or licenses under the laws, rules and regulations of any authority having jurisdiction over the Project are duly registered or licensed as required.
- 11.5 The Contractor agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor under the provisions of this Contract that the Contractor considers unsuitable, improper, or inaccurate for the purposes intended.
- 11.6 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract.
- 11.7 Contractor represents and agrees that the individual executing this Contract on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.
- 11.8 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Contract, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Contract. 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 component institutions comprising Texas State University System, or anyone claiming to be affiliated with 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 Contract.

ARTICLE 12 INDEMNITY

- 12.1 SEE ARTICLE 3 OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.
- 12.2 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.
- 12.3 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

ARTICLE 13 PARTY REPRESENTATIVES

- 13.1 The Owner's Designated Representative (see UGC 3.1.2 and 013100, paragraph 2) authorized to act in the Owner's behalf to change the scope, cost, completion time or to represent the Owner in any disputes of the Project is:

Peter E. Graves, Vice Chancellor for Contract Administration
Texas State University System
Thomas Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
512-463-1808
peter.graves@tsus.edu

- 13.2 The Owner's Designated Site Representative (see 013100, paragraph 2) authorized to act in the Owner's behalf with respect to all other aspects of the Project other than those listed in 13.1, and to approve single construction contract change order(s) less than \$25,000.00, is:

[Name, Address, Phone, Email](#)

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

[Name, Address, Phone, Email](#)

13.4 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 14 NOTICES

Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations.

If to Owner: Peter E. Graves, Vice Chancellor for Contract Administration
Texas State University System
Thomas Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
512-463-1808
peter.graves@tsus.edu

With Copies to: [Name, Address, Phone, Email](#)

If to Contractor: [Name, Address, Phone, Email](#)

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

15.3 Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

15.4 Eligibility Certification. Pursuant to Section 2155.004, Texas Government Code, Service Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the

award of or payments under this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

- 15.5 Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 15.6 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Contract 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.
- 15.7 Entire Contract; Modifications. This Contract supersedes all prior contracts, written or oral, between Contractor and Owner and shall constitute the entire Contract and understanding between the parties with respect to the Project. This Contract 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.
- 15.8 Captions. The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 15.9 Governing Law and Venue. This Contract and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which the Owner is a party. This supersedes any interpretation otherwise of UGC Section 2.3.
- 15.10 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 Contract 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 Contract. Nothing in this Contract shall be construed to waive the constitutional, statutory, or common law rights or immunities of either party to this Contract.
- 15.11 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 15.12 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. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.
- 15.13 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and

shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

- 15.14 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.
- 15.15 Severability. Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included.
- 15.16 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.
- 15.17 Conflict of Interest. By signature hereon, Contractor certifies that no member of the Board of Regents of the Texas State University System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

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

(Contractor)

By: _____
(original signature)

(name and title typed)

Date: _____

CONTENT APPROVED:

FOR THE BOARD OF REGENTS
 TEXAS STATE UNIVERSITY SYSTEM
 (Owner)

By: _____
(original signature)

Name: Peter E. Graves
 Title: Vice Chancellor for
 Contract Administration

By: _____
(original signature)

Name: Brian McCall
 Title: Chancellor

Date: _____