

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
(Competitive Sealed Proposal)

This Agreement (the “Agreement”) is made as of [REDACTED], 20 [REDACTED] (the “Effective Date”), by and between:

The Owner (the “Owner”):

The Board of Regents of The Texas State University System
c/o Vice Chancellor and Chief Financial Officer
601 Colorado Street
Austin, TX 78701

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

Firm Name [REDACTED]
Address [REDACTED]
City, State, Zip [REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]

Texas Tax Account No.: [REDACTED]

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

Name of Project [REDACTED]
Campus [REDACTED]
City, Texas [REDACTED]

Component: [REDACTED]

Owner’s Project Number: [REDACTED]

Architect/Engineer (the “A/E”):

Firm Name [REDACTED]
Address [REDACTED]
City, State, Zip [REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]

The Owner and Contractor agree as follows:

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ARTICLE 1 SCOPE OF WORK

1.1 In General. 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 of the Project as it is 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 of the Contract and Owner's Specifications;
- 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 of the Contract (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 Contract 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 final Drawings and Specifications developed by the A/E and such other consultants of the Owner incorporated into the Contract Documents; (5) the preliminary Drawings and Specifications incorporated into the Contract Documents, with those bearing the latest date taking precedence and (6) 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, those applicable laws as further identified in the TSUS UGC.
- 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 UGC, 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** “**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.
- 3.8** “**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.
- 3.9** “**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.
- 3.10** “**Owner’s Designated Site Representative**” or “**ODSR**” means the person, if any, designated by the Owner to act as the Owner’s Designated Site Representative pursuant to Paragraph 5.3. Also see Paragraph 18.4.2 herein if the ODSR has been selected at the time the Agreement is executed.
- 3.11** “**Owner’s Specifications**” means the construction and contract administration requirements and standards detailed in the Owner’s Construction Project Division 1 Specifications, if any, attached to the Specifications, and incorporated fully herein.
- 3.12** “**Project Schedule**” (also referred to as the “Owner’s Project Schedule”) means the schedule incorporated into the Contract Documents for the design and construction of the Project initially prepared by the Owner and attached hereto as Exhibit D -1, 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.
- 3.13** “**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.

- 3.14** “**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.
- 3.15** “**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).
- 3.16** “**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.
- 3.17** “**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 December 1, 2021, 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.
- 3.18** “**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.
- 3.19** “**Work Progress Schedule**” means the CPM Schedule prepared and maintained in accordance with the Critical Path Method and the requirements of the Agreement, the Special Conditions (if any), 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 and updated as required in Paragraph 7.3.

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 18.4.3) 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 not change their assignments without the Owner's written consent, which consent shall not be unreasonably withheld. 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 “HUBs”) and all applicable administrative rules and statutes relating to utilization of HUBs 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 to transact, 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 UGC, the Owner’s Specifications (if any), 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 and A/E 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 considerations and provisions are 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. At each meeting, the Contractor shall report on all agenda items and metrics outlined in Exhibit F.
- 4.13 Interim Progress Meetings.** In addition to regularly scheduled Project progress meetings, Contractor shall attend and participate in 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 (if any).
- 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.
- 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 will identify in writing a person as its Owner Designated Representative (“ODR”) who is 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; however, single, bilateral construction contract change orders that do not exceed Seventy-Five Thousand Dollars (\$75,000) may be authorized by the ODSR. 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 Designation of ODSR.** The Owner will identify in writing a person as its Owner Designated Site Representative (“ODSR”) who is authorized to take all actions and render all decisions necessary to facilitate a fast, efficient, and safe project development on the construction site. The ODSR will serve as the single point of contact for the Contractor on matters concerning the site, use of the site, and integration of the construction activities into the Campus policies, procedures, rules, and regulations. The ODSR will make materials and color selections on behalf of the Owner. The ODSR will also be authorized to inspect the Work for quality considerations and accept the Work from the Contractor, determining Substantial Completion and Final Completion. The ODSR will have the authority to reject defective or improper work and to direct its correction. The ODSR will have authority to approve all Applications for Payment except the final. The ODSR will not have authority to negotiate project scope, cost, time or Contract terms and conditions issues with the Contractor but will be authorized to direct the start of Contractor work needed in response to emergency situations or critical conditions on the site. Notwithstanding the foregoing, the ODSR shall have authority to approve any single construction change order proposal that does not exceed Seventy-Five Thousand Dollars (\$75,000).
- 5.4 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.
- 5.5 Testing.** Except as otherwise provided in this Agreement or elsewhere in the Contract Documents, 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.

- 5.6 Services.** The Owner shall furnish all legal, accounting, auditing, and insurance counseling services for itself as may be necessary for the Project.
- 5.7 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.
- 5.8 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 ODSR. 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.
- 5.9 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 CONTRACT.

- 7.2 Timeliness of Performance.** Unless otherwise approved, the Contractor shall perform its 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.** Attached hereto as Exhibit D-2, is the Contractor's initial CPM Schedule for the performance of construction services that is consistent with and meets the Contract Time Requirements and the Owner's Project Schedule requirements and provides for the expeditious and practicable execution of the Work. The CPM Schedule shall include reasonable periods of time for the Owner's and A/E's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project. The Contractor's initial CPM Schedule attached as Exhibit D-2 shall become the baseline for evaluating performance of the Contractor. The Contractor shall monitor the progress of the Work in relation to the CPM Schedule and the Contract Time Requirements and the Owner's Project Schedule requirements and shall provide the Owner with at least monthly updates and status reports as required by the Contract Documents. The CPM Schedule shall be revised in accordance with the Work Progress Schedule requirements of the UGC at appropriate intervals as required by the conditions of the Work and Project to reflect the current status of completed or in-progress activities, with thorough updates to the CPM Schedule prepared at least monthly and furnished to Owner upon request. The time periods established by the Contract Time Requirements and the Owner's Project Schedule requirements shall not be changed without the written consent from the Owner. Whenever significant changes to the Project approved by the Owner do occur, such as added or deleted activities, must be reflected on an updated CPM Schedule to be submitted to Owner. However, any 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 (if any), for Liquidated Damages amounts.
- 8.1.2 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

- 8.1.3 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.
- 8.1.4 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:
- 8.1.4.1 Contractor persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default under this Agreement;
 - 8.1.4.2 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;
 - 8.1.4.3 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;
 - 8.1.4.4 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;
 - 8.1.4.5 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;
 - 8.1.4.6 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;
 - 8.1.4.7 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
 - 8.1.4.8 Contractor fails to obtain, maintain, or renew insurance coverage as required by this Agreement.
- 8.1.5 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.

- 8.1.6 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 and in the Owner's Specifications (if any), 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 Owner 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 Subcontractors who perform work or provide 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

- 11.2 Bonds.** The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UGC (Article 5) and 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 or any other activities at the Project site until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Without limiting the requirements of the UGC or the Special Conditions (if any), Contractor shall obtain and provide evidence of the insurance coverage for: Workers' Compensation, Employer's Liability, Comprehensive General Liability, Builder's Risk and Business Automobile Liability in the amounts as set forth in the UGC and Special Conditions. ODR's or Owner's review and approval 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 Consultants.** Contractor shall require its 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 Contract 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 the Vice Chancellor and Chief Financial Officer 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 CONTRACT, INCLUDING ITS USE BY OWNER.
- 14.3 Survival.** The indemnities contained herein shall survive any termination of this Contract.

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 by the Owner or otherwise 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 furnished.

- 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 and conditions 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 Building Materials (“ACBM”) or work is included within the scope of the proposed submittal. All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (“non-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 adheres 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 Contract, 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 Agreement 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 written 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 in writing 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 Contract.
- 17.20 Non-Boycott Israel Verification.** Pursuant to Chapter 271 of the *Texas Government Code*, by executing this Agreement, Contractor hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. “Boycott Israel” shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 17.21 Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Section 2252.152, *Texas Government Code*, by executing this Agreement, Contractor hereby 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.
- 17.22 Domestic Iron and Steel Certification.** Pursuant to Sections 2252.201-2252.205 of the *Texas Government Code*, and except as otherwise expressly authorized in writing by Owner, 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.
- 17.23 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.

- 17.24 Cybersecurity Training Program.** Pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its Subcontractors, consultants, officers, and employees who are granted 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.
- 17.25 Non-Discrimination of Firearm Industry Verification.** Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 19 in the 87th Regular Legislative Session [2021]), by executing this Agreement, Contractor hereby certifies that either (i) it has less than ten (10) full time employees or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, *Texas Government Code*) and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- 17.26 Anti-Boycott Energy Companies Verification.** Pursuant to Section 2274.002, *Texas Government Code* (as enacted in SB 13 in the 87th Regular Legislative Session [2021]), by executing this Agreement, Contractor hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not “boycott energy companies” (as defined under Section 809.001, *Texas Government Code*) and will not “boycott energy companies” during the term of this Agreement.
- 17.27 Vaccine Passport Prohibition.** Pursuant to Section 161.0085, *Texas Health and Safety Code* (as enacted in SB 968 in the 87th Regular Legislative Session [2021]), by executing this Agreement, Contractor hereby certifies that it does not require its customers to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor’s business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract and shall be grounds for termination of this Contract for cause.
- 17.28 Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102, *Texas Government Code*, by executing this Agreement CM hereby certifies that neither it nor its parent company, nor any affiliate of CM or its parent company, is majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other

country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

17.29 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:

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

17.29.2 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 THIS CONTRACT. 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.

18.2 Liquidated Damages.

18.2.1 Except as may otherwise be provided in the Special Conditions, for each consecutive calendar day after the Substantial Completion date that the Work is not substantially completed, the Owner may deduct the amount of:

 Dollars per day (\$ /day) from any money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties’ estimate at the time of contract execution of the “loss of use” damages that the Owner will sustain for late completion.

18.2.2 The parties stipulate and agree that calculating Owner’s actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is based on a reasonable estimate of the actual “loss of use” damages as determined and agreed by the parties at the time of the negotiation of this Agreement.

18.3 Notices. Notices required or permitted to be given under this Agreement shall be sent to the following persons at the indicated locations.

18.3.1 If to Owner: Daniel Harper
Vice Chancellor and Chief Financial Officer
The Texas State University System
601 Colorado Street
Austin, Texas 78701

18.3.2 With Copies to: Name
Title
University/College
Address
City, Texas Zip

18.3.3 If to Contractor: Name of Contractor Contact
Title
Name of Contractor
Address
City, State Zip

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

18.4 Party Representatives.

18.4.1 The Owner’s Designated Representative or “ODR” authorized to act in the Owner's behalf with respect to the Project is:

Peter Maass
Director of Capital Projects Administration
The Texas State University System
601 Colorado Street
Austin, Texas 78701
Phone: (512) 463-1808
Fax No.: (512) 463-1816
Email: peter.maass@tsus.edu

18.4.2 The Owner’s Designated Site Representative or “ODSR” authorized to act in the Owner's behalf pursuant to and subject to the limitations of Paragraph 5.3 with respect to the Project is:

Name

Title
University/College
Address
City, Texas Zip
Phone:
Fax:
Email:

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

Name of Contractor Contact
Title
Name of Contractor
Address
City, State Zip
Phone:
Fax:
Email:

18.4.4 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 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 of the Contract
- B. Forms for Surety Bonds
- C. Prevailing Wage Rates
- D-1. Project Schedule
- D-2. Contractor’s Initial CPM Schedule
- E. HUB Subcontracting Plan
- F. Regular Project Meeting Agenda

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 Contractor

By: _____
Signature

Name: _____
Type or Write Name

Title: _____

Date: _____

For Owner:

Brian McCall, Ph.D., Chancellor
The Texas State University System

Date

Reviewed and Recommended:

Daniel Harper
Vice Chancellor and Chief Financial Officer
The Texas State University System

Date

Approved as To Legal Form:

Nelly R. Herrera
Vice Chancellor and General Counsel
The Texas State University System

Date

EXHIBIT "A"

SPECIAL CONDITIONS OF THE CONTRACT

The following terms and conditions, if any, 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.

>> INSERT ANY SPECIAL CONDITIONS – OR STATE: "NONE" (IF THERE ARE NO SPECIAL CONDITIONS FOR THIS CONTRACT.<<

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

The Texas State University System
Board of Regents
Attn: Vice Chancellor and Chief Financial Officer
601 Colorado Street
Austin, Texas 78701

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

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

EXHIBIT “C”

PREVAILING WAGE RATE

Texas Prevailing Wage Law will be administered in accordance with the policies and procedures set forth in the Prevailing Wage Schedule for [REDACTED] County, can be found on the following website at:

<https://beta.sam.gov/>

EXHIBIT “D - 1”

PROJECT SCHEDULE

Notice to Proceed for Construction Phase issued	XX	XX	/20	XX
<<Insert other Interim Milestones – if required>>				
Owner accepts Substantial Completion of Construction	XX	XX	/20	XX
Occupancy	XX	XX	/20	XX
Final Completion.....	XX	XX	/20	XX

EXHIBIT “D - 2”

CONTRACTOR’S INITIAL CPM SCHEDULE

(see attached)

EXHIBIT “E”

HUB SUBCONTRACTING PLAN

(see attached)

EXHIBIT “F”

REGULAR PROJECT MEETING AGENDA

The following topics shall be presented and discussed at each regular project meeting, reference Paragraph 4.12. The Contractor may rearrange the order in which the agenda items are reported, however, all agenda items must be included at each meeting.

Project Name:

Date:

Reporting Month:

Milestones/Decisions/Activities Reached this Month:

Provide narrative or bullet summary and photo images

Upcoming Activities/Look Ahead Schedule:

Provide narrative, bullet summary, or schedule

Issues/New Business:

Provide narrative or bullet summary

Schedule Status:

Schedule Milestone

Schedule Date

Actual Date

List key upcoming milestones

Enter schedule date

Enter actual date

List key upcoming milestones

Enter schedule date

Enter actual date

*Substantial Completion**

Enter schedule date

TBD

*Final Completion**

Enter schedule date

TBD

* Required entry every month.

Schedule Float Days:

Original Float:

X Days

Remaining Float:

Y Days

Provide brief explanation for days consumed

Financials Status:

Original Contract Amount:

\$00,000,000.00

Approved Changes:

\$000.00

Current Contract Amount:

\$000.00

****Provide Cash Flow Tracking Graph****

Change Proposal (CP)

Status:	Count	Value
Pending CPs:	0	\$000.00
Critical Pending CPs:	0	\$000.00
Approved CPs:	0	\$000.00

HUB Status:

Original HSP Goal	
Percentage:	0.0%
Current Paid Percentage:	0.0%
HUB Payments – to last Pay Application:	\$0,000.00

Safety Summary:

	Current Month	Total to Date
Man Hours:	0	0
Average Daily Work Population:	0	0
Average Number of Trade Contractors on Site:	0	0
Builder’s Risk of GL incidents:	0	0
OSHA Recordable Incidents:	0	0
Number of Lost Workdays:	0	0

Architect’s Supplemental Instructions (ASI)

Status:	
Total ASIs Issued to Date	0

Requests for Information (RFI) Status:

Total RFIs to Date	0
Total RFI’s Closed	0
Total RFI’s Open	0
Average No. of Days to Close	0

RFI Metrics:

Response Time	Count	%
<5Days	0	0%
<10 Days	0	0%
<15 Days	0	0%
<20 Days	0	0%
<25 Days	0	0%
+26 Days	0	0%

Submittal Status:

Total Submittals to Date	0
Total Submittals Complete	0
Total Submittals Open	0
Average No. of Days to Close	0

Submittal Metrics:

Response Time	Count	%
<5Days	0	0%
<10 Days	0	0%
<15 Days	0	0%
<20 Days	0	0%
<25 Days	0	0%
+26 Days	0	0%