

# UNIVERSITY of HOUSTON SYSTEM

## AGREEMENT FOR JOB ORDER CONTRACTING SERVICES

This **AGREEMENT FOR JOB ORDER CONTRACTING SERVICES** (“*Agreement*”) for the minor construction, repair, rehabilitation, and alteration of University of Houston System facilities is made as of May 1, 2021 (the “*Effective Date*”), by and between the **UNIVERSITY OF HOUSTON SYSTEM** (“*Owner*”), an institution of higher education and an agency of the State of Texas, and **[LEGAL NAME OF ENTITY]** (“*Contractor*”), a **[type of entity]** authorized to do business in the State of Texas.

### RECITALS

**WHEREAS**, on **[date]** Owner issued request for proposals no. **[number]** (the “*RFP*”) seeking proposals from qualified firms for the provision of job ordering contracting services for the minor construction, repair, rehabilitation, and alteration of facilities owned and/or leased by the University of Houston System; and

**WHEREAS**, Owner has determined that the proposal submitted by Contractor provides the best value and is most advantageous to Owner.

**NOW THEREFORE**, Owner and Contractor agree as follows:

### ARTICLE 1 – PARTIES

**1.1 Addresses.** The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

**Owner**

University of Houston System  
Attn: Executive Director,  
Facility Services  
4211 Elgin Street  
Houston, Texas 77204

**Contractor**

**[Name of Contractor]**  
Attn: **[Contractor Employee]**  
**[Street]**  
**[City]**, **[State]** **[Zip]**

**With a copy to**

University of Houston System  
Office of the General Counsel  
4302 University Drive, Suite 317  
Houston, Texas 77204

**With a copy to**

**[Name of Contractor]**  
Attn: **[Contractor Employee]**  
**[Street]**  
**[City]**, **[State]** **[Zip]**

**1.2 Table of Contents.** This Agreement consists of the following articles and exhibits:

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<b>Exhibits</b>	
A	Job Order Contracting Specifications
B	Proposal Request Form
C	Job Order Form
D	Texas Facilities Commission 2015 version of the Uniform General Conditions
E	Texas Facilities Commission 2018 Supplemental General Conditions
F	University of Houston System's Supplemental General and Special Conditions

**1.3 Parts Incorporated.** The above-described articles and exhibits are attached and incorporated into this Agreement.

## ARTICLE 2 – CONTRACT DOCUMENTS

**2.1** The Contract Documents consist of:

2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;

2.1.2 The Texas Facilities Commission 2015 version of the Uniform General Conditions set forth in **Exhibit D**, and the 2018 Supplemental General Conditions set forth in **Exhibit E**, and the University’s Supplemental General Conditions and Special Conditions set forth in **Exhibit E**;

2.1.3 All Addenda issued after to the Effective Date of this Agreement;

2.1.4 Each Job Order executed by the parties;

2.1.5 All Change Orders issued to previously executed Job Orders pursuant to this Agreement;

2.1.6 Drawings, specifications, details and other documents developed by Owner or a Professional Services Provider to describe a Project; and

2.1.7 The HUB Subcontracting Plan submitted by Contractor in response to the RFP or a Proposal Request.

**2.2** The Contract Documents form the entire and integrated Agreement between Owner and Contractor supersede all prior negotiations, representations or agreements, written or oral.

**2.3** To the extent the terms of this Agreement conflict with the UGCs, the terms of this Agreement will control.

**2.4** If there is an irreconcilable difference between or among the various documents that make up the Contract Documents, the interpretation that provides for a higher quality of material and/or workmanship will prevail over all other interpretations.

### **ARTICLE 3 – DEFINED TERMS**

**3.1 Definitions.** The following, terms, words, and phrases used in the Contract Documents shall have the following meanings, and if more specific than the definition given in the UGCs, the more specific definition given in this Agreement shall control:

3.1.1 “*Day*” or “*Days*” whether capitalized or not means calendar day, including weekends and University Holidays.

3.1.2 “*Board*” means the University of Houston System’s Board of Regents.

3.1.3 “*Coefficient Multiplier*” means the numerical factor applied to the Unit Price Book unit prices to cover all of Contractor’s other costs in performing the Work of a Project as set forth in **Section 7.2**

3.1.4 “*Contract Sum*” is defined in the UGCs as the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract. For purposes of this Agreement, a Contract Sum will be established in each Job Order.

3.1.5 “*Contract Time*” is defined in the UGCs as the period between the start date and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order. For purposes of this Agreement, the Contract Time will be established in each Job Order and will establish the date of Final Completion as opposed to a date of Substantial Completion for Projects under \$100,000.

3.1.6 “*Facility*” is defined in Section 51.776(5) of the Texas Education Code, as amended.

3.1.7 “*Notice to Proceed*” is defined in the UGCs as a written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion. For purposes of this Agreement, a NTP will be issued for each Job Order and will identify a date of Final Completion as opposed to a date of Substantial Completion for Projects under \$100,000.

3.1.8 “*Plans*” means the scope of work, task descriptions in UPB, drawings, sketches, illustrations, specifications or other pertinent information included on or attached to the Job Order.

3.1.9 “*Project*” is defined in the UGCs as all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations. For purposes of this Agreement, a Job Order will be issued for each Project.

3.1.10 “*Project Proposal*” means Contractor’s written response to a Proposal Request in accordance with **Section 6.2.2**.

3.1.11 “*Proposal Request*” means Owner’s written request to Contractor requesting a proposal in accordance with **Section 6.2.1**.

3.1.12 “*Job Order*” means a written document signed by Owner and Contractor describing the Work to be accomplished for a particular Project in accordance with **Section 6.2**.

3.1.13 “*Samples*” but is not limited to: materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the specifications and any other samples as may be required by determining whether the kind, quality, construction, finish, color and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristic. The various parts of Work shall be in accordance with the approved Samples.

3.1.14 “*Scope of Work*” means the description of a Project to be ordered under this Agreement that contains sufficient detail to determine quantities, quality, as well as, the time for performance.

3.1.15 “*Shop Drawings*” has the meaning set forth in the UGCs. The term also includes, but is not limited to: fabrication, erection, layout and setting drawings; manufacturers’ standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and piping; duct and conduit systems; and methods of construction as may be required to show that the materials, equipment or systems and the position thereof conform to the contract requirements. Shop Drawings shall establish the actual detail of all manufactured and fabricated items and indicate the proper relation to adjoining Work.

3.1.16 “*Term*” means the Initial Term and any Renewal Terms, collectively, during which this Agreement is in effect.

3.1.17 “*UGC*” means the Texas Facilities Commission 2015 version of the Uniform General Conditions.

3.1.18 “*Unit Price Book*” or “*UPB*” has the meaning set forth in **Section 10.2.1**.

3.1.19 “*University Holiday*” means any official University of Houston holiday as determined each year by the Board.

3.1.20 “*Working Day*” or “*Working Days*” whether capitalized or not means any business

day that is not a Saturday, Sunday, or University Holiday.

3.2 When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

3.3 The word “*shall*” is always mandatory and not merely permissive.

#### ARTICLE 4 – TERM AND TERMINATION

**4.1 Initial Term.** This initial term of this Agreement shall begin on the Effective Date and shall expire two years thereafter (the “*Initial Term*”) unless renewed or terminated in accordance with the terms of the Agreement.

**4.2 Renewal Option.** Owner has the option to renew the term of this Agreement on the same terms and conditions for three successive one-year terms (each a “*Renewal Term*”) by sending written notice to Contractor at least 30 days prior to the expiration of the then-current term.

**4.3 Completion of Work in Progress.** No additional Job Orders may be issued after expiration of this Agreement; however, for any Job Order issued prior to the expiration of this Agreement, Contractor shall complete the Work unless otherwise notified by Owner in writing.

**4.4 Termination.** Article 14 of the Uniform General Conditions is replaced in its entirety with the following suspension and termination provisions:

4.4.1 *Suspension of Work for Cause.* Owner may, at any time without prior notice, suspend all or any part of the Work under a Job Order, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work under a Job Order, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

4.4.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work under a Job Order or Job Orders that is suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

4.4.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work under a Job Order within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

4.4.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

4.4.2 *Suspension of Work for Owner's Convenience.* Upon seven days written notice to Contractor, Owner may at any time without breach of this Agreement suspend all or any portion of the Work under a Job Order or Job Orders for a period of up to 30 days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work or any portion thereof under a Job Order or Jobs Orders and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work under Job Order or Job Orders within the Contract Time established under each Job Order, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven days written notice to Contractor. If Owner suspends the Work under a Job Order or Jobs Orders for its convenience for more than 60 consecutive days, Contractor may elect to terminate the affected Job Order by sending written notice to Owner.

4.4.3 *Termination by Owner for Cause.*

4.4.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate this Agreement and take possession of any Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

4.4.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of Work authorized by Job Order or Job Orders under this Agreement, to supply enough properly skilled workmen or proper materials;

4.4.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including Owner's Contract Manager and Owner's Project Managers;

4.4.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in this Agreement;

4.4.3.1.4 Failure to remedy defective Work condemned by Owner;

4.4.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Ch. 2251;

4.4.3.1.6 Persistent endangerment to the safety of labor or of the Work;

4.4.3.1.7 Failure to supply or maintain statutory bonds or to maintain

required insurance, pursuant to this Agreement;

4.4.3.1.8 Any material breach of this Agreement;

4.4.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work; or

4.4.3.1.10 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

4.4.3.2 Should Owner decide to terminate this Agreement under the provisions of **Section 4.4.3**, it will provide to Contractor and its surety 30 days prior written notice.

4.4.3.3 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.

4.4.3.4 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within 30 days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

4.4.3.4.1 This amount includes the cost of additional Owner costs such as professional services, other consultants, and contract administration.

4.4.3.4.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.

4.4.3.4.3 This obligation for payment survives the termination of this Agreement.

4.4.3.4.4 Owner reserves the right in termination for cause to take assignment of all the contracts between Contractor and its Subcontractors, vendors, and suppliers. Owner will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.

4.4.4 *Conversion to Termination for Convenience.* In the event that any termination of

Contractor for cause under **Section 4.4.3** is later determined to have been improper, the termination shall automatically convert to a termination for convenience under **Section 4.4.5** and Contractor's recovery for termination shall be strictly limited to the payments allowable under **Section 4.4.5**.

4.4.5 *Termination for Convenience of Owner.* Owner reserves the right, without breach, to terminate a Job Order or the Agreement prior to, or during the performance of the Work under any existing Job Order, for any reason. Upon such an occurrence, the following shall apply:

4.4.5.1 Owner will immediately notify Contractor in writing, specifying the reason for and the effective date of the termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

4.4.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in this Agreement:

4.4.5.2.1 Stop all work under the terminated Job Order or all existing Job Orders as specified in Owner's notice of termination;

4.4.5.2.2 Place no further subcontracts or orders for materials or services under the terminated Job Order or all existing Job Orders as specified in Owner's notice of termination;

4.4.5.2.3 Terminate all subcontracts for convenience under the terminated Job Order or all existing Job Orders as specified in Owner's notice of termination;

4.4.5.2.4 Cancel all materials and equipment orders as applicable under the terminated Job Order or all existing Job Orders as specified in Owner's notice of termination; and

4.4.5.2.5 Take action that is necessary to protect and preserve all property related to this Agreement which is in the possession of Contractor.

4.4.5.3 When a Job Order or this Agreement is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

4.4.6 *Termination by Contractor*

4.4.6.1 If the Work under a Job Order is stopped for a period of 90 days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials

unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon 30 additional days written notice to Owner, terminate the Job Order and recover from Owner payment for all Work executed under the Job Order, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the 30 day notice period, Contractor may not terminate the Job Order.

4.4.6.2 Contractor may terminate its performance under this Agreement only if Owner defaults and fails to cure the default after receiving written notice of it. Default by the Owner occurs if the Owner fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate this Agreement, then Contractor must deliver a written notice to Owner describing the default and the proposed termination date. The date must be at least 30 days after Owner receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If Owner cures the default before the proposed termination date, then the proposed termination is ineffective. If Owner does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

4.4.7 *Settlement on Termination.* When a Job Order or this Agreement is terminated for any reason, at any time prior to 180 days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Agreement. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

## ARTICLE 5 – AUTHORIZED CONTRACT SUM

### 5.1 Maximum Contract Amount

5.1.1 The overall maximum value of this Agreement is \$[insert approved Board amount]. The maximum value of this Agreement is available for distribution among [ ] contracts, of which this is one. Owner is not obligated to issue the entire maximum value of this Agreement or the *prorata* estimated amount of compensation to any of the contracts. The overall maximum value is subject to change based on appropriations and allocations made by Owner's Board of Regents. Contractor will not be entitled to recalculate the prices in the unit price book or the Coefficient Multiplier because of the amount of the Work issued under this Agreement.

5.1.2 The cost of each specifically authorized project will be established in individual Job Orders issued by Owner and signed by Owner and Contractor. The established cost in each Job Order shall also mean the Contract Sum as set forth in the UGC; which shall not be increased except by written Change Order executed by Owner and Contractor.

**5.2 Limit of Appropriation.** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature or

allocation of funds by Owner's Board of Regents. If the Texas State Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

**5.3 No Minimum Amount of Work.** It is expressly understood that Owner is under no obligation to request any services from Contractor and no minimum amount of work is required under this Agreement. Owner will make any and all Proposal Requests on an as-needed basis, subject to future agreement on the scope of the work and its cost. However, as an inducement for Contractor to offer a lower pricing coefficient, Owner agrees to use its best efforts to issue Job Orders to Contractor with a cumulative value of at least \$500,000.00 during the Term.

## **ARTICLE 6 – SCOPE OF WORK; SPECIFIC JOB ORDER PROJECTS**

### **6.1 Generally**

6.1.1 During the term of this Agreement, Owner will identify individual maintenance, repair, alteration, renovation, remediation, or minor construction requirements and issue job order proposal requests for Contractor to meet those requirements.

6.1.2 Contractor will be required to: (a) schedule and attend a site visit, (b) develop a proposal and submit it to Owner for approval, and (c) create a line-item cost estimate using the unit price book (“UPB”) set forth in **Section 10.2.1** and a computerized cost estimating system. Once a proposal is approved and Owner issues a Job Order signed by Owner and Contractor, Contractor will provide all materials, labor, tools, equipment, supervision, project management, and quality control necessary and reasonably inferable to successfully complete the Job Order in the required time frame.

6.1.3 Owner may self-perform the development of plans and specifications or procure architectural and engineering services through professional services providers (the “*Professional Service Provider*” or “PSP”). The Professional Services Provider for each Project shall be as specified in the individual Job Order.

6.1.3.1 The PSPs are tasked to use the specifications set forth in **Exhibit A**, but may opt to develop project specific Construction Documents. In situations where PSP specifications differ from the specifications set forth in **Exhibit A**, the PSP's specifications shall govern. When a specification is missing from the PSP's specifications, specifications set forth in **Exhibit A** shall govern only for purposes of the missing specification from a PSP's Construction Documents.

6.1.4 Contractor shall do everything required by this Agreement, the Uniform General, and Supplementary Conditions, any Additional General or Special Conditions of this Agreement, the Drawings, and Specifications for each Job Order and any other requirements incorporated into this Agreement or a specific Job Order by reference.

**6.2 Job Orders.** The procedures for establishing each job order is as follows:

6.2.1 *Proposal Request.* Upon identifying a specific project, Owner will issue a proposal request substantially in the form set forth in **Exhibit A** (the “*Proposal Request*”) describing the work, proposed schedule, and other requirements for the project. For Projects with an anticipated cost over \$80,000, Owner shall determine whether subcontracting opportunities exist and require a HUB subcontracting plan as part of the Project Proposal.

6.2.2 *Contractor’s Proposal.* Within 10 working days of receiving a Proposal Request, Contractor shall provide a written proposal to Owner signed by a representative of Contractor, who is authorized to execute contracts and Proposals on behalf of Contractor (the “*Project Proposal*”). A Project Proposal shall, at a minimum, include the following:

6.2.2.1 A narrative description of Contractor’s understanding of the scope of work;

6.2.2.2 A description of particular phases of the scope of the work, if applicable;

6.2.2.3 A Cost Proposal prepared in accordance with **Article 10** detailing:

6.2.2.3.1 the cost of the ‘pre-priced’ items as taken from the Unit Price Book;

6.2.2.3.2 the cost of any ‘non-pre-priced’ items;

6.2.2.3.3 any other costs that the Contractor intends to charge to the project;

6.2.2.3.4 a statement that all Contractor fees, overhead expenses, and general conditions are included in the Cost Proposal; and

6.2.2.3.5 a lump sum figure for performing the work, if appropriate.

6.2.2.4 A proposed date to commence the work and construction schedule;

6.2.2.5 A list of all subcontractors that Contractor proposes to use in the performance of the work;

6.2.2.6 A HUB Subcontracting plan, if required;

6.2.2.7 Any qualifications or conditions applicable to the Project Proposal; and

6.2.2.8 A summary statement of the total dollar amounts of all previous Job Orders entered into under this Agreement to date.

6.2.3 *Project Proposal Review.* Owner and Contractor shall review the Project Proposal and negotiate any changes, clarifications, or modifications as required. Contractor shall submit a revised Project Proposal incorporating any changes, clarifications, or

modifications made in the review process. Owner may accept, reject, or seek further modification of any Project Proposal. Contractor is not authorized to perform any work until the specific Job Order is executed and a Notice to Proceed is issued by Owner. In any event, Owner reserves the right to reject any and all Proposals in its complete discretion and to perform the Work itself, or through another contractor or another delivery method.

6.2.4 *Project Proposal Acceptance and Notice to Proceed.* Upon execution of a specific Job Order, Owner shall issue a written Notice to Proceed. The Notice to Proceed authorizes Contractor to begin the work identified in the Job Order (the “*Work*”) on the date specified in the Notice to Proceed. Contractor shall complete the Work within the number of days specified in the Project Proposal accepted by Owner, subject to extensions of time approved by the Owner through a Change Order. The time set forth for completion of the Work for each Job Order is of the essence and is an essential element of the Job Order.

6.2.5 *Scope of Work.* The terms of a Job Order issued in response to a Proposal Request and acceptance of a Proposal will govern all of the Work issued for construction. It is Contractor’s obligation to perform the Work issued for construction within the time stated in the Job Order. The scope of work under a Job Order includes all Work specifically identified by Owner and reasonably inferable therefrom. Owner will endeavor to issue all required Work in one of its Facilities at a single time, but this may not be possible and it may not be possible for Contractor to perform all Work at a single Facility within a single mobilization.

6.2.6 *Quality Control.* Contractor will be responsible for quality control and must perform all Work in accordance with drawings, applicable codes, the construction documents, and the Contractor’s quality control and safety plans submitted with its proposal in response to the RFP. Owner will periodically observe the Work, prepare punch lists when required, and participate in a Substantial Completion and final inspection prior to acceptance and approval for final payment.

6.2.7 *Daily Reports.* Contractor shall prepare daily progress reports on each active Job Order and submit them electronically or in paper form to Owner at the end of each work day. Owner will provide the form to be used for the daily reports.

6.2.8 *Cost Estimating Software.* Contractor will obtain and use, at the Contractor’s sole cost and expense, for automation and estimation standardization purposes, its own access to RS Means Construction Database. Contractor must use the latest quarterly version of R.S. Means CostWorks Building Construction Cost Data © and R.S. Means CostWorks Estimator © software. Contractor must also submit all cost proposals electronically using this software.

6.2.9 *Professional Services.* In the event that professional services (e.g., registered professional land surveyors, professional architects, and professional engineers) are required in the limited context of a subsidiary component of the Work for any Job Order

(e.g., lay out the site of the Work or to provide a trench safety plan), Contractor shall secure such services pursuant to the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code, using the qualifications based selection process prescribed in that Chapter.

6.2.10 *Liquidated Damages.* Owner, Contractor, and Surety agree that failure to complete the Work under a Job Order within the Contract Time will cause damages to Owner and that actual damages from the harm are difficult to estimate accurately. Therefore, Owner, Contractor, and Surety agree that Contractor and Surety will be liable for and shall pay to Owner the amount stipulated in each Job Order as liquidated damages and that the amount of damages fixed therein is a reasonable forecast of just compensation for the harm to Owner resulting from failure to complete the work within Contract Time. The amount specified in each Work Order will be paid for each day of delay beyond the time for completion until the date of Substantial Completion for Job Orders over \$100,000 or the date of Final Completion for Job Orders under \$100,000, not to exceed \$200 per day for any Job Order under \$250,000. Liquidated damages will be deducted from the Contract Sum for each consecutive calendar day after the completion date established by the Notice to Proceed that any Work, including the correction of deficiencies found during the final testing and inspection, is not completed.

6.2.11 *Changes.* Job Orders may be amended by Change Order through the process set forth in Article 11 of the Uniform General Conditions. Notwithstanding the foregoing, no markup may be applied to any change order as pricing is established pursuant to Article 10 of this Agreement.

## **ARTICLE 7 – CONTRACTOR’S GENERAL RESPONSIBILITIES**

7.1 **Project Management.** Contractor shall manage the Work on any Job Order authorized pursuant to this Agreement.

### **7.2 Standard of Care**

7.2.1 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 expertise and special and unique abilities to provide the services set forth in this Agreement.

7.2.2 Contractor accepts the relationship of trust and confidence established between it and Owner by this Agreement.

7.2.3 Contractor covenants with Owner to use its best efforts, skill, judgment and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner’s requirements and procedures, in accordance with the usual and customary high standards of Contractor’s profession or business and in compliance with all Applicable Laws (the “*Standard of Care*”). If Contractor fails to comply with the Standard of Care, Contractor’s responsibilities under this Agreement or Applicable Laws,

Constructor hereby agrees to be responsible for the full cost of correcting Contractor's Work and services, those of its subcontractors and consultants, and those of any others who have acted in reliance thereon.

7.3 **Compliance with Laws.** Contractor shall perform the Work in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over each Project.

7.4 **Existing Conditions.** Contractor shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor by Owner, or any other party, that Contractor uses for a Project.

7.5 **Correction of Work.** Contractor shall promptly correct any known or discovered error, omission, or other defect in the Work without any additional cost or expense to Owner.

7.6 **Phasing.** Contractor shall not proceed beyond any previously authorized phase of the Work for a Job Order unless authorized by the Owner in writing, except at the Contractor's own financial risk. Applicable phases of the scope of work shall be identified in the Job Order.

7.7 **Designated Representative.** Contractor shall designate a representative primarily responsible for the Work under this Agreement. The designated representative shall act on behalf of Contractor with respect to all phases of the Work and shall be available as required for the benefit of any project and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

7.8 **Prevailing Wage Rates.** Contractor shall not pay less than the wage scale of the various classes of labor as shown in the prevailing wage schedule as established by the United States Department of Labor in accordance with the Davis-Bacon Act, as amended, in effect at the time a Job Order is fully executed. The prevailing wage rates in effect at the time a Job Order is issued may be any one or a combination of the following: (a) Construction and (b) Road and Bridge Construction for Harris County, Texas.

7.9 **Bonds.** Each year during the term of this Agreement, Contractor shall furnish a payment bond and performance bond for \$500,000 conditioned on Contractor's full and timely performance of the Agreement and payment of subcontractors. Prior to job orders in excess of the penal sum of the performance and payment bonds being issued, Contractor shall provide additional performance and payment bonds equal to or greater than the additional amounts. The payment and performance bond(s) must be in a form approved by Owner and issued by a corporate surety authorized and admitted to write surety bonds in Texas ("*Surety*"). If the amount of the bond exceeds \$100,000, the Surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list. Each bond must state that it may not be canceled, materially modified, or non-renewed unless the surety gives Owner 30 days' advance written notice. In such event, Contractor must provide an equivalent replacement bond before cancellation, modification, or nonrenewal of the original bond.

7.10 **Insurance.** Section 5.2 of the Uniform General Conditions is replaced in its entirety with the following insurance provisions:

7.10.1 *Required Coverage.* With no intent to limit Contractor’s liability or the indemnification provisions set forth herein, the Contractor shall, at a minimum, provide and maintain certain insurance coverage throughout the Term of this Agreement. Such insurance is described as follows:

7.10.1.1 Worker’s Compensation:

Statutory for Workers’ Compensation in the State of Texas
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7.10.1.2 Employer’s Liability:

\$1,000,000 Bodily Injury by Accident (each accident)
\$1,000,000 Bodily Injury by Disease (policy limit)
\$1,000,000 Bodily Injury by Disease (each employee)

7.10.1.3 Commercial General Liability:

\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury
\$2,000,000 Products and Completed Operations Aggregate
\$2,000,000 General Aggregate

7.10.1.3.1 This policy shall include an endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

7.10.1.3.2 This policy shall not include any exclusions pertaining to third party claims.

7.10.1.3.3 If the Work under any Project involves any activities within 50 feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

7.10.1.4 Asbestos Abatement Liability (if applicable):

\$1,000,000 Combined Single Limit
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7.10.1.4.1 Asbestos abatement liability is required if the Work under a Project includes asbestos containing materials (“ACM”).

7.10.1.5 Pollution Liability (if applicable):

\$1,000,000 Combined Single Limit

7.10.1.5.1 Pollution liability is required if the Work under a Project directly or indirectly involves pollution/environmental hazards.

7.10.1.5.2 Pollution liability insurance coverage which must include contractual liability coverage. Contractor must maintain continuous coverage or have an extended discovery period for a period of no less than (3) years.

7.10.1.6 Excess Liability:

\$1,000,000 General Aggregate

7.10.1.6.1 Underlying policies must include Commercial General Liability, Employer's Liability, and Automobile Liability.

7.10.1.7 Builder's Risk and/or Installation Floater:

100% of the value of equipment or material to be permanently installed

7.10.1.7.1 Builder's risk coverage or an installation floater is required for Projects in which the scope of Work includes the construction or remodeling of a building including installation of material and/or equipment. Coverage shall be "All Risk Form", including but not limited to: fire, extended coverage, vandalism and malicious mischief, theft, flood, earth movement, and named storm.

7.10.1.7.2 Builder's risk and installation floater limits shall be equal to 100% of the construction cost of the Project in each Job Order plus, if any, existing property and Owner-furnished equipment specified by Owner.

7.10.1.7.3 The builder's risk policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds.

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

- 7.10.1.7.5 Builder's risk insurance policy shall remain in effect until Substantial Completion or Final Completion, as appropriate, and shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site prior to Substantial Completion or Final Completion, as appropriate.
  - 7.10.1.7.6 Owner shall be named as loss payee and any loss shall be adjusted with and made payable to Owner.
  - 7.10.1.7.7 Limits of insurance for Flood, Earth Movement, and Named Storm shall be no less than the full value of the construction cost of a Project.
  - 7.10.1.7.8 For Owner furnished equipment or materials that will be in care, custody, or control of Contractor, Contractor will be responsible for damage and loss of such items.
- 7.10.2 *Evidence of Coverage.* Prior to beginning performance under this Agreement, and at any time upon Owner's request, or each time coverage is renewed or updated, Contractor shall furnish to Owner a current certificate of insurance, including any endorsements, demonstrating the coverage currently in force at that time. Certificates of insurance must be in compliance with the Texas Department of Insurance's requirements. If requested by Owner, Contractor must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them.
- 7.10.3 *Premiums and Deductibles.* Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts or self-insured retentions. Contractor waives any claim it may have for premiums, deductibles, or self-insured retentions against the Owner, its directors, officers, agents, or employees.
- 7.10.4 *Insurance Form.* All policies shall be written by companies authorized to do business in the State of Texas. The insurance company shall have a rating of at least A, and a Best's Financial Size Category of Class VII or better according to the most current Best's Key Rating Guide unless approved in writing by Owner.
- 7.10.5 *Notice.* Policies shall not be cancelled or non-renewed without 30 days' prior written notice by its issuer to Owner. If any of the aforementioned insurance policies are cancelled or non-renewed, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, Owner, at its sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

- 7.10.6 *Subcontractors.* Contractor shall require all subcontractors or consultants to provide insurance coverage meeting all requirements stated. Contractor shall also require that all subcontractors or consultants specifically name the University of Houston System as an additional insured on their General Liability and Automobile Liability policies.
- 7.10.7 *Additional Insured.* Owner shall be an Additional Insured under this Agreement, and all insurance policies, except worker's compensation and employer's liability, shall name Owner as Additional Insured for activities arising out of this Agreement for both ongoing and completed operations, on ISO CG2010 07/04 and CG2037 07/04 or equivalent form(s). Owner shall enjoy the same coverage as the Named Insured without regard to other provisions of this Agreement.
- 7.10.8 *Subrogation.* Contractor waives any claim or right in the nature of subrogation to recover against the City, its directors, officers, agents or employees. Each policy must contain an endorsement or equivalent policy language waiving such claim.
- 7.10.9 *Primary/Non-Contributory.* Each policy, except Workers' Compensation, must also contain an endorsement or equivalent policy language that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- 7.10.10 *Claims Made.* If a policy is written on a "claims-made" basis, the policy must remain in force for a minimum of two full years after the completion of a project. If the Contractor has their policy rewritten, they will maintain the same retroactive date as is in effect at the inception of this Agreement and also agrees to purchase an Extended Reporting Period Endorsement effective for two full years after the expiration or cancellation of this policy.
- 7.10.11 *Non-Waiver.* Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

7.11 **Documentation.** Contractor shall fully document its project activities, in drawings, reports, or other methods as appropriate to the scope of work and as identified in each Job Order. Contractor shall bear the cost of providing all plans, specifications, and other documents used by Contractor and its subcontractors and consultants.

7.12 **Subcontracting.** Contractor agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, Contractor must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses ("HUB") Subcontracting Plan is considered consent under this Section.

## ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.1 **Proposal Requests.** Owner shall provide a Proposal Request setting forth the Owner's description of a project's scope in drawings, specifications, and other appropriate documents, schedule, objectives, characteristics and constraints, and a description of the basic services to be provided by the Contractor for the project.

### 8.2 Designated Representatives

8.2.1 Owner designates the individual listed below as its Owner's Contract Manager which individual has the authority and responsibility for managing this Agreement, for issuing Proposal Requests, for reviewing Proposals, for reviewing Contractor's payment applications, for avoiding and resolving disputes under Section 9.1, and for performing other administrative tasks associated with Owner's job order contracting program:

Ahmad Shareef  
Assistant Vice President and Executive Director, Facility Services  
4211 Elgin Street  
Houston, Texas 77004  
Office: (713) 743-1534  
E-Mail: [azsharee@central.uh.edu](mailto:azsharee@central.uh.edu)

8.2.2 Owner will also designate a Project Manager as "Owner's Designated Representative" for each Job Order to carry out the responsibilities set forth in Section 3.1.2 of the Uniform General Conditions, including authorizing Contractor's payment applications.

8.3 **Special Information.** Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to any Project. Owner shall furnish other special investigations of a Project's site as requested by Contractor and as reasonably necessary for the Project. Contractor shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to the Contractor by Owner or by others.

8.4 **Entry on Land.** Owner shall assist Contractor in gaining entry to state owned or controlled property as necessary for Contractor to perform its services under this Agreement.

8.5 **Review of Work.** Owner will review the Work in progress as appropriate. Owner will notify Contractor in writing of any material error or omission or other defect in the Work or any conflict in the Contract Documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

8.6 **Time for Response.** Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Contractor's services and of the Work.

## ARTICLE 9 – ACCEPTANCE OF WORK

### 9.1.1 Owner's Satisfaction

9.1.1 All Work performed under this Agreement shall be completed to the satisfaction of Owner's Project Manager assigned to the Project. Owner's Project Manager shall decide all questions regarding Contractor's performance under the Agreement and such decisions shall be final and conclusive.

9.1.2 Should Contractor's Work not conform to the requirements of this Agreement and the specific Job Order as determined by the Owner's Project Manager, Owner may order Contractor to correct the Work at no additional expense to the Owner or deduct the cost of correcting the Work from any other monies payable to the Contractor.

9.1.2 **Liability.** Owner's approval or acceptance of Contractor's Work will not release Contractor from any liability for any defects in the Work.

## ARTICLE 10 – COST PROPOSALS

10.1 **Required for Each Project.** Contractor shall prepare a cost proposal for each Proposal Request issued by Owner. The cost proposal shall identify the pre-priced items, the non-pre-priced items, and any other costs proposed to be included in the cost of the Work for a Project.

10.2 **Pre-Priced Items.** Pre-priced items are pre-described and pre-priced tasks based on a unit price book and coefficient multiplier. The cost proposal for each Project should be based substantially on the use of pre-priced items.

10.2.1 The unit price book is a compilation of real property repair, rehabilitation, alteration, maintenance, and minor construction tasks, along with associated units of measure and unit prices designated or provided by Owner to be used in administration of this Agreement. Unit prices include direct material, labor, and equipment cost, but not indirect costs or profit. The unit price book for this Agreement is R.S. MEANS Facilities Construction Cost Data, Most Current Edition, for the City of Houston, TX which is hereby incorporated by reference. The most current edition of the unit price book shall be adopted for each renewal option exercised by Owner.

10.2.2 A coefficient multiplier is a numerical factor which is applied to the Unit Price Book unit prices to cover all of Contractor's other costs in performing the Work of a Project including, but not limited to, general and administrative and other overhead costs, insurance costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, Contractor's profit, and indirect costs (the "*Coefficient Multiplier*"). Separate coefficients may be used for Work performed during normal working hours and for Work performed during non-normal working hours. The Coefficient Multipliers for this Agreement are:

Year	Coefficient Multiplier		
	Normal Hours	Non-Normal Hours	Non-Pre-Priced Items
1			
2			
3			
4			
5			

10.3 **Non-Pre-Priced Items.** Non-Pre-priced items are the necessary, but incidental, parts of a Project that are not susceptible to unit pricing using the pre-priced tasks in the Unit Price Book. The proposed cost of all non-pre-priced items in the cost proposal shall include bare costs only (material, equipment, and labor) and be multiplied by the Contractor’s Coefficient for Non-Pre-Priced Items. Non-pre-priced items shall not exceed 10% of the total cost proposal for a Project unless otherwise expressly authorized or confirmed in writing by Owner.

10.4 **Other Costs.** Extraordinary costs that are unique to a specific Project and not generally or reasonably included in the Coefficient Multiplier may be added only if authorized or confirmed in writing by the Owner. Such extraordinary costs may be calculated as a lump sum for the Project or on a “Not to Exceed” basis.

## ARTICLE 11 – PAYMENT

11.1 **Method of Payment.** Unless Owner agrees to different method of payment terms for a specific Job Order, no moneys will be paid to Contractor until final completion and acceptance of the Job Order by Owner for Job Orders of less than \$100,000. For Job Order Assignments of \$100,000 or greater, Contractor will be paid in accordance with Article 14 of the Uniform General Conditions.

11.2 **Pay Applications.** Owner shall pay Contractor no more than once a month. The Contractor must submit individual pay applications for each separate Job Order. The amount to be paid shall be based on the Work completed at the applicable agreed upon Job Order line item costs extended for the quantities used or expended. Contractor's Coefficient Multiplier shall then be multiplied by the subtotal to determine the amount to be paid.

## ARTICLE 12 – DISPUTE RESOLUTION

12.1 **Alternative Dispute Resolution Process.** In accordance with Section 15.2 of the Uniform General Conditions, Owner has established the following dispute resolution procedures for this Agreement:

9.1.1 Owner and Contractor will attempt to settle any claim or controversy arising out of this Agreement or the subject matter hereof through consultation and negotiation in good faith in a spirit of mutual cooperation. Such matters will be initially addressed by Owner’s Contract Manager and [POC for Contractor], who shall use reasonable efforts to attempt to resolve the dispute through good faith negotiations by telephone or in person

as may be agreed. If they fail to resolve the dispute within 30 days after either party notifies the other of the dispute, then the matter will be escalated to Owner's Associate Vice President/Associate Vice Chancellor for Facilities Construction/Management and [POC for Contractor], or their designees for resolution. They will use reasonable efforts to attempt to resolve the dispute through good faith negotiations by telephone or in person as may be agreed. If they fail to resolve the dispute within thirty (30) days after it is referred to them and do not mutually agree to extend the time for negotiation, then the dispute will be submitted to arbitration in accordance with the procedure set forth in Section 15.1 of the Uniform General Conditions.

**12.2 Limitation of Liability.** Except for the obligation of Owner to pay Contractor in accordance with **Article 11** above, Owner shall have no liability to Service Provider or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Interest on any award against Owner in an adjudication for breach of an express provision of this Agreement shall accrue at the Prime Rate not to exceed 10% per annum. "*Prime Rate*" means the per annum interest rate publicly announced by a federally insured bank in the state of Texas selected by Owner as such bank's prime or base rate. 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 or of the components comprising The University of Houston 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.

### **ARTICLE 13 – HISTORICALLY UNDERUTILIZED BUSINESSES**

**13.1** Contractor, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan ("*HSP*") submitted with Contractor's Proposal. No changes to the HUB Subcontracting Plan can be made by Contractor without Owner's prior written approval accordance with the Policy.

**13.4** Contractor shall maintain business records documenting compliance with HSP and shall submit a monthly Progress Assessment Report ("*PAR*") through Owner's contract compliance system. The PAR is required as a condition for payment.

**13.3** Contractor shall report to Owner the identity and amount paid to each HUB and non-HUB subcontractor to whom Contractor has awarded a subcontract for labor, supplies, materials, and equipment under this Agreement.

### **ARTICLE 14 – CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

**14.1** 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 Proposal.

**14.2** 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.

14.3 Contractor shall provide at Substantial Completion for Projects over \$100,000 or at Final completion for Project under \$100,000, a notarize affidavit to the Owner and Professional Services Provider assigned to the Project (if any) stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

14.4 Contractor shall take whatever measures he deems necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

14.5 All materials used on any Project shall be certified as non-Asbestos Containing Building Materials (“ACBM”). Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

14.5.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

14.5.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

14.5.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

14.6 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on a Project.

14.7 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 Health licensed inspector or Professional Services Provider assigned to the Project (if any) who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

14.8 At final completion Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

## **ARTICLE 15 – STATE CONTRACTING REQUIREMENTS**

### **15.1 Texas Public Information Act**

15.1.1 Contractor shall:

15.1.1.1 preserve all “contracting information” (as defined in Section 552.003 of the Texas Government Code) related to the Agreement, as provided by the records retention requirements applicable to Owner for the duration of the Agreement;

15.1.1.2 provide to Owner any contracting information related to the Agreement that is in the custody or possession of Contractor on request of Owner no later than 10 business days after receiving such request from Owner; and on completion of the Agreement, either:

15.1.1.2.1 provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Contractor; or

15.1.1.2.2 preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

15.1.2 Furthermore, Contractor agrees that the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**15.2 Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Contractor agrees that 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.

**15.3 Ethics Matters.** Contractor and its employees, agents, representatives and subcontractors have read and understand Owner's Conflicts of Interest Policy available at [http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/02/2a9.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/02/2a9.pdf) State of Texas Standards of Conduct and Conflict of Interest Provisions available at <https://statutes.capitol.texas.gov/Docs/GV/pdf/GV.572.pdf>, and applicable state ethics laws and rules available Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy, provisions described by State of Texas Standards of Conduct and Conflict of Interest Provisions, or applicable state ethics laws or rules.

**15.4 Disclosure of Interested Parties.** If the value of this agreement exceeds \$1,000,000, Contractor certifies that it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by Contractor.

**15.5 Registration of Sex Offenders.** Contractor shall require any individual on Owner's property in satisfaction of Contractor's obligations under this Agreement to register with Owner's Department of Public Safety within seven days of beginning work on Owner's property in accordance with Section 62.153, *Texas Code of Criminal Procedure*, if such individual (a) is required to register as sex offenders with local law enforcement authorities in accordance with Chapter 62 of the *Texas Code of Criminal Procedure*, and (b) will be on Owner's property for 14 or more consecutive days or for more than 30 days in any calendar year.

## 15.6 Certifications

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

15.6.2 *Franchise Tax Certification.* If Contractor is 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 it 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.

15.6.3 *Eligibility Certification.* Pursuant to Section 2155.004, *Texas Government Code*, Contractor certifies that 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.

15.6.4 *Contractor Certification regarding Boycotting Israel.* Pursuant to Chapter 808, *Texas Government Code*, Contractor certifies Contractor (a) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.6.5 *Contractor Certification regarding Boycotting Energy Companies.* Pursuant to Chapter 809, *Texas Government Code*, Contractor certifies Contractor (a) does not currently boycott energy companies; and (b) will not boycott energy companies during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.6.6 *Contractor Certification regarding Boycotting Firearm Entities or Trade Associations.* Pursuant to Section 2274.001, *Texas Government Code*, Contractor certifies Contractor (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate against a firearm entity or firearm trade association during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.6.7 *Contractor Certification regarding Foreign Adversaries.* Pursuant to the Texas Governor's Executive Order No. GA-48, Contractor certifies that it and, if applicable, any of its holding companies or subsidiaries, is not (a) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); (b) listed in Section 1260H of the 2021 NDAA; (c) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. 791.4; or (d) controlled by any

governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. 791. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.6.8 *Contractor Certification regarding Business with Certain Countries and Organizations.* Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.6.9 *Financial Interest.* Contractor certifies that no member of the Owner's Board of Regents, or executive officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

## ARTICLE 16 – MISCELLANEOUS PROVISIONS

16.1 **Independent Contractor.** Contractor acknowledges that it is engaged as an independent contractor and that Owner shall have no responsibility to provide Contractor or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Contractor is responsible for all income taxes required by applicable law.

16.2 **Force Majeure.** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, pandemics or epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

16.3 **Confidentiality.** Owner and Contractor acknowledge that they or their employees may, in the performance of this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with Owner or Contractor, unless (a) required by law, (b) by order of any court or tribunal, (c) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (d) such information has been acquired from other sources.

16.4 **Successors and Assigns.** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.

16.5 **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.

16.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or

against any party on the basis that the party did or did not write it.

16.7 **Severability.** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

16.8 **Waivers.** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

16.9 **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas, excluding its choice of law principles. Should litigation arise concerning all or any part of this Agreement, venue shall lie solely and exclusively in Harris County, Texas.

16.10 **Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Agreement.

16.11 **Taxes.** Owner is a tax-exempt State of Texas Agency under Chapter 151, Texas Tax Code and a Texas public institution of higher education. Contractor shall avail itself of all tax exemptions applicable to Contractor's work or expenses.

16.12 **Authority to Act.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, and agrees that (1) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

### 16.13 **Audit**

16.13.1 *Owner and Owner's Representatives.* Owner and its representatives (including, but not limited to third-party auditing consultants, if any) may verify and audit the details set forth in Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (a) inspecting the pertinent books and records of Contractor during normal business hours; (b) examining any reports with respect to this Agreement; (c) interviewing Contractor's business employees; (d) visiting the project sites; and (e) other reasonable action.

16.13.2 *Texas State Auditor's Office.* Contractor acknowledges and stipulates that, notwithstanding anything to the contrary set forth in this Agreement, the Texas State Auditor's Office (collectively, with any successor agency thereto, the "*State Auditor*") is authorized under applicable Texas law (including, without limitation, Texas Education Code Sections 51.9335(c), 73.115(c) and 74.008(c)), in each case, as may be amended from time to time, to conduct an audit or investigation in connection with any of the funds or payments received and accepted by Contractor from Owner pursuant to this Agreement. Owner agrees to cooperate with the State Auditor in the conduct of any such audit or investigation, including, without limitation, providing the State Auditor with all records requested as may be required under applicable Texas law. All costs and expenses of any such audit or investigation by the State Auditor shall be Owner's sole responsibility, except and unless such audit and investigation determines that the amounts paid by Owner for the applicable period which are the subject of such audit or investigation were in excess of the amounts properly payable under this Agreement, in which event Contractor will pay to Owner the amount determined to be in excess of the correct amount. In addition, if the excess amounts are greater than five percent (5.0%) than the amounts properly payable under this Agreement, Contractor shall reimburse Owner for the actual and reasonable cost of such audit by the State Auditor.

16.14 **Illegal Dumping.** 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.

## 16.15 Notices

- 14.1.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may be delivered in person to the designated representative of the Contractor or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.
- 14.1.2 The initially designated representatives of the parties for receipt of notices are set forth in **Section 1.1**.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Owner and Contractor have executed this Agreement on the dates set forth below and effective as of the date identified above.

**CONTRACTOR:**

**OWNER:**

**[LEGAL NAME OF CONTRACTOR]**

**UNIVERSITY OF HOUSTON SYSTEM**

By: \_\_\_\_\_  
[Name]  
[Title]

By: \_\_\_\_\_  
[Name]  
[Title]

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

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

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Name]  
[Title]

By: \_\_\_\_\_  
[Name]  
[Title]

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

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

## EXHIBIT A

### JOB ORDER SPECIFICATIONS

#### 1. General

- 1.1 These specifications are referred to as Job Order Specifications and are developed on behalf of the Owner. For the life of this Agreement, these Job Order Specifications may be updated and revised through an amendment. No changes to Contractor's Coefficient Multiplier will be allowed when such changes occur.
- 1.2 While Owner may self-perform the development of plans and specifications, it also procures architectural and engineering services via Professional Service Providers ("*PSP*"). The PSPs are tasked to use these Job Order Specifications, but may opt to develop project specific specifications. In situations where PSP specifications differ from the Job Order Specifications, the PSP's specifications shall govern. When a specification is missing from the PSP's specifications, Job Order Specifications shall govern only the missing specification from a PSP's specifications.
- 1.3 Job Orders may proceed with or without plans and specifications at Owner's sole discretion. If plans and specifications are required, such are not intended to cover every detail of materials, equipment, labor, services, or construction. Contractor shall furnish all materials, equipment, and labor necessary and reasonably inferable to fully complete the individual Job Order whether or not said details are shown or specified, all at no additional cost to Owner.
  - 1.3.1 While Owner will endeavor to maintain the usage of Job Order Specifications, certain projects shall be of a specialty nature and require specifications, which relate to project specific item(s). In using these specifications, Contractor's Coefficient Multiplier will not be allowed any changes.
- 1.4 Before Contractor physically begins Work on a specific Job Order, Contractor shall check all plans and specifications, Contract Documents, any submittals, and any other documentation provided by Owner. Should any errors or omissions be found in such items or any discrepancy found between such items and the physical conditions at the Site or in any subsequent Contract Documents or submittals that may be provided thereafter, Contractor shall notify Owner immediately in writing. Contractor shall not take advantage of any error or omission contained in any of the Contract Documents.
- 1.5 Wherever the imperative form of address is used, such as "perform the excavating," "provide equipment required," "remove obstructions encountered," "furnish and install reinforcing steel bars," etc., it shall be understood and agreed that such address is directed to Contractor.

1.6 “Provide,” as used in these specifications means, “furnish and install.”

1.7 Unless a contrary meaning is specifically noted elsewhere, words “as required,” “as directed,” “as permitted,” and similar words mean that the requirements, directions and permission of Owner are intended; similarly the words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean “approved by,” “acceptable to,” or “satisfactory to” Owner. Words “necessary,” “proper,” or words of like import are used with respect to extent, conduct or character of Work specified shall mean that Work must be conducted in a manner, or be of character which is “necessary” or “proper” in the opinion of Owner. Owner’s judgment shall be considered as final and incontestable.

## **2. Reference Standards**

2.1 *Editions.* When reference is made to the standards of code and standards organizations (“*Standard*”), the edition in effect on the date of issuance of the Job Order shall govern unless another edition is indicated in the Job Order. If any such Standard is revised prior to completion of any part of the Work to which such revision would pertain, Contractor may, if accepted by Owner in writing, perform such Work in accordance with the revised Standards.

2.2 *Availability of Codes and Standards.* Codes and Standards, except as modified in the specifications for an individual Job Order, shall have full force and effect as though printed in the Agreement. Codes and Standards are not furnished with this Agreement because manufacturers and trades involved are expected to be familiar with these references. Upon Contractor’s request, Owner will use its best efforts to furnish information about where to obtain copies of such references.

2.3 *Scope of Reference.* When specific articles, divisions, sections, and headings are not given, such codes and Standards shall apply in full.

## **3. Working Hours**

3.1 *Normal Working Hours:* Normal working hours shall be considered 7:00 A.M. to 6:00 P.M. CST Monday thru Friday.

3.2 *Other-than-Normal Working Hours:* Other-than-Normal Working Hours shall be considered any time worked in excess of eight hours each normal workday (7:00 A.M. to 6:00 P.M. CST Monday thru Friday), and all time worked on weekends or Owner observed holidays. Owner must approve all Other-than-Normal Working Hours in writing in advance except in the event of an emergency. In the event of an emergency, Owner’s Project Manager may approve Other-than-Normal Working Hours verbally. Verbal authorization must be confirmed in writing within 24 hours of any such emergency work. Without this explicit authorization, Owner will not recognize any claim by Contractor for Other-than-Normal Working Hours or premium pay.

#### 4. Classification of Work

4.1 *Work Performed By Contractor.* Contractor shall perform on the site, with its own employees, a minimum of work equivalent to 25% of the total amount of work under this Agreement. Only 10% of the 25% shall be allowed to be counted by administrative and/or supervisor staff performance.

4.2 *Work Performed by Owner.* Owner reserves the right to undertake performance by Owner forces or other contractors, the same type or similar work as contracted for herein, as Owner deems necessary or desirable, and to do so will not breach or otherwise violate this Agreement.

#### 5. NPPI of Work

5.1 Non-Pre-Priced Items (“NPPI”) of work (i.e., line items tasks) not in the UPB shall be supported by a minimum of two vendor quotes, but three are preferred, for each non-pre-priced item. Non-pre-priced items shall be proposed in bare costs only (material, equipment, and labor) and multiplied by the Contractor’s Coefficient for Non-Pre-Priced Items. Non-pre-priced items will not be accepted without the minimum two vendor quotes with a cost breakdown for each item. Unless specifically authorized by Owner in writing, non-pre-priced work cannot exceed 10% per Job Order.

5.2 Items of work not covered by the unit price book but within its scope and general intent, may be negotiated with Owner and then incorporated into the unit price book by amendment to this Agreement or a Change Order to an individual Job Order. These items of work shall be considered and treated as pre-priced work as of the effective date of the contract amendment or Change Order.

#### 6. Commencement of Mobilization / Work (per individual Job Order)

5.1 Contractor shall commence any mobilization and familiarization activities prior to actual work on any Job Orders as soon after contract execution as practicable and in accordance with the individual Notice to Proceed. **No work shall commence without Owner’s issuance of a Notice to Proceed.**

#### 7. Pre-Work / Pre-Construction Conference

7.1 *Initial Conference.* When determined appropriate by Owner’s Contract Manager and before the issuance of the first Job Order under the Agreement, a conference shall be conducted by Owner’s Contract Manager to acquaint Contractor with Owner policies and procedures that are to be observed during the prosecution of the work and to develop a mutual understanding relative to the administration of the Agreement.

7.2 *Individual Job Order Conferences.* A conference for each Job Order will be held by Owner’s Project Manager and called a Pre-Work/Pre-Construction Conference. This meeting officially hands over the jobsite to the Contractor. After the Pre-Work/Pre-Construction Conference, Contractor has seven days to submit Subcontractors List,

Continuation Sheet, Project Schedule (GANTT format), and Submittals (for approval).

**8. Deviation from Proposed List of Subcontractors**

8.1 Contractor shall update the list of subcontractors monthly and submit the updated list to Owner's Contract Manager by the 10<sup>th</sup> day of each month. This list should contain all subcontractor deviations (increases/decreases) which vary from the original list of proposed subcontractors provided in Contractor's technical proposal to the RFP.

**9. University-Furnished Equipment / Materials (UFE/UFM)**

9.1 Contractor, with its own forces, shall transport all UFE/UFM, if any, required on a Job Order. The UFE/UFM shall be transported from Owner's storage area to the job site indicated on the Job Order. All items shall be inventoried daily, through established check-in/out procedures. Installation of UFE/UFM will be negotiated using the pre-priced items under the column of Labor only or the non-pre-priced items clause when pre-priced line items are not available.

9.2 Contractor shall assume the risk and responsibility for the loss or damage to UFE/UFM. Contractor shall follow the instructions of Owner's Project Manager regarding the disposition of all UFE/UFM not consumed in performance of a job order.

**10. Coordinating Work**

10.1 Before Commencement of the Work under any individual Job Order(s), Contractor shall confer with Owner's Project Manager and agree on a sequence of procedure; means of access to premises and building(s); space(s) for storage of materials and equipment; delivery of materials and use of approaches; use of corridors, stairways, elevators, and similar means of communications and the location of partitions, eating spaces, and restrooms for Contractor's employees and the like.

10.2 Furniture and portable office equipment in the immediate area will be moved or protected by Contractor and replaced to original positions. Sensitive equipment and personal computers shall be moved by Owner forces as arranged by Owner's Project Manager. If the work required by the Job Order(s) will not allow furniture and portable office equipment to be replaced to its original location, new locations will be designated by Owner's Project Manager for replacement by Contractor.

10.3 Delivery of materials and equipment shall be made with a minimum of interference to Owner operations and personnel. The work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas which shall be completed before work in other sections or divisions are begun. Contractor shall provide Owner's Project Manager a daily work schedule, by 3:00 p.m. the work day before, listing the Job Order(s) to be worked that day and the trades involved.

## 11. Owner Technology Requirements

- 11.1 Contractor must have access to standard office equipment and software programs, at their own expense, to develop proposals, communicate with Owner and provide documentation as needed, etc., both on and off site.
- 11.2 Contractor shall use the estimating software specified by Owner as a tool to assist with expedient preparation of cost proposals in response to Owner needs. This software will contain an electronic version (copy) of the unit price book, which can be accessed on the equipment utilized by Contractor to locate and select desired items from the unit price book. Once the desired items are selected, the software shall provide for selection of quantities and, based on the selected quantities, shall extend and total unit price book costs for each proposal. The software shall also permit introduction of NPPI and the application of the multiplier.

## 12. Waste and Excess Quantities included in the Completed-in-Place Performance Quantities

12.1 All prices in the Unit Price Book are for the complete-in-place work performance unless explicitly described otherwise. The unit prices include delivery of materials to the job site. Waste or excess material quantities are incidental costs, which are included within the Contractor's Coefficient Multiplier unless explicitly stated otherwise in the Unit Price Book. Quantities used on individual Job Order proposals shall be taken from field measurements or design plans, as appropriate, with **NO** allowance for waste and/or incidental extra materials used in performance of work. Incidental nails, screws, weldments, and connectors are included in the Unit Price Book's unit price items. Unless a connector or fastener is specifically stated as not being included, it is included in the price.

## 13. Coefficient Multiplier. Cost not associated to the line items must be included in the Contractor's Coefficient Multiplier, such as:

13.1 *Overhead* – Corporate office expenditures, site office establishment, equipping, office supplies and staffing. Daily cost of doing business, as associated to the life of this Agreement, inclusive of any and all similar items associated to subcontractor(s)/vendor(s)/supplier(s). While line items may or may not have subcontractor(s)/vendor(s)/supplier(s) markups included in their cost, Contractor's Coefficient Multiplier will consider them as included.

13.2 *Profit (prime and subcontractors)* – The applicable amount associated to the Coefficient Multiplier, as “mark-up” for all components related to Contractor and the subcontractor(s)/vendor(s)/supplier(s), per each Job Order.

13.3 *Insurance* – All associated insurance for doing business within the State of Texas, Builder's Risk, and indemnification, exclusive of cost associated to performance and payment bonds.

13.4 *Costs of performance and payment bonds* – Chapter 2253 of the Texas Government Code requires payment bonds on public work contracts in excess of will be required for all projects above \$25,000 and payments bonds on public work contracts in excess of, but below \$100,000. Each year during the Term, Contractor shall furnish a payment bond and performance bond for \$500,000 conditioned on Contractor’s full and timely performance of the agreement and payment of subcontractors. Prior to job orders in excess of the penal sum of the performance and payment bonds being issued, Contractor will be required to submit additional payment and performance bonds equal to or greater than the additional amounts.

13.5 *Compliance with environmental laws, protection and safety* – Corporate and site office staff training, development of procedures/protocol/processes associated to the protection of the office, Work, associated areas affected by the Work and final disposition of all items removed, exclusive of Job Order specific site conditions which would require barriers for prevention of incidents (i.e., storm water prevention, oil and hazardous material prevention).

13.6 *Tax Laws* – Owner will provide Contractor with a tax exemption certificate, for sales tax exemption for materials related to Work. Taxes associated to rental equipment will be considered as included within the Coefficient Multiplier. Any and all changes to tax laws, City, County, State, and Federal will be considered as included for the duration of the base period and each option year. No adjustments, beyond what is presented by Contractor on the day of submission will be allowed at any time, especially not during the start of any option periods.

13.7 *Protection and/or moving of Owner property* – Security of the project site will become the sole responsibility of Contractor from Notice to Proceed until Substantial Completion for Projects over \$100,000 or Final Completion for Projects under \$100,000. Any and all items left within a Work area, and the surrounding areas, will be within Contractor’s responsibility to maintain within their existing or better condition. Owner, prior to the Pre-Construction Meeting for all Job Orders, will perform a photographic inventory. Contractor must provide adequate protection of work in place and on-site during construction until project completion. Moving is defined as incidental, within a building, on the same floor, to rooms, or hallways with prior Fire Marshall approval, near or adjacent to the Work area. Contractor is expected to provide protection (dust, damage, etc.) and return the furniture upon project completion. Furniture (chairs, desks, file cabinets, shelves, etc.) is defined as NOT attached, fastened or part of the structure (walls, floor, ceiling, columns, etc.). Systems or landscape furniture is not considered under this provision and will require specific attention per each Job Order.

13.8 *Administrative Work* – Cost associated with day-to-day operations at both Corporate and job site offices, in order to maintain all relevant project information and the administering of support services to all Contractor associated personnel.

13.9 *Architectural and Engineering Services (preparation of As-Built Drawings)* – With

consideration to projects developed jointly by Owner and Contractor, Contractor is expected to have these services to meet the needs of projects that fall below the minimum requirements for architecture and engineering as determined by State of Texas law. As-Built drawings must be provided electronically for ALL projects, in a format compatible with Owner's systems and software.

13.9.1 Projects developed jointly is a project delivery method under job order contracting known as "joint scope" in which Owner's Project Manager, Owner's client, and Contractor meet on site to develop a job order project, by defining the needs of which shall be provided by a Job Order Proposal. Typically, this method will not have plans and specifications prepared by Owner, but may require Owner to provide architectural and/or engineering services through a professional services provider to support the preparation of the Job Order Proposal.

13.10 *Submittals and Samples* – As defined per each Job Order and its associated specifications, with no cost to Owner. Magnitude of project will NOT be of consideration. This includes shop drawings, mock-ups, the entire variety of samples and ALL significant and appropriate manufacturer's information as associated to materials and equipment being placed within any and all projects related to Owner, and defined by specifications. It is highly recommended that Contractor maintain a library of approved standard submittals.

13.11 *Proposal and Price Preparation (Quotations)* – All activities associated to the preparation of preliminary to final proposals, inclusive of Work scope development, prior to issuance of the Job Order will be considered as included within Contractor's Coefficient Multiplier.

13.12 *Contractor adjustments to the Owner's Line Items (Unit Prices)* – The only adjustments allowed are at the start of each contract year as stated within **Section 7.2.2** of this Agreement.

13.13 *Clean Up (Daily and Final)* – Each and every Project construction site will be given a daily cleaning, no later than prior to close of work on every day work is performed. Each Work site will be maintained in a safe and clean manner as the workday progresses in order to maintain a safe work environment. Final cleanup will be professional in appearance and only requiring the Owner to place institutional finishes to surfaces. Contractor will be solely responsible for this action, no matter, whether or not this work item has been contracted or delegated to subcontractor(s) / vendor(s) / supplier(s).

5.2.13.1 Contractor's Coefficient Multiplier must consider the cost of final clean-up and removal and hauling of trash, debris and rubbish. Owner will not pay nor accept line items for final clean-up or rubbish hauling, etc., on job orders, unless it is explicitly excluded by the line items in the UPB.

13.14 *All waste, shrink/swell, and excess materials* – Defined as losses during installation of specific materials (i.e., flooring, lumber, site work, etc.). When working

with any and all associated materials, no additional percentages or allowances will be granted in development of proposals and price quotations.

13.15 *Permits, licenses, and fees* – Work performed on Owner’s campus typically does not require permits, licenses, or fees. Work requiring such items, will depend on the Contractor for acquisition of these items at cost multiplied by the appropriate Coefficient Multiplier.

13.16 *Mobilization for any and all divisions, total contract and each Job Order* – Mobilization and de-mobilization as associated to contract and Job Order start up and close out will be considered as included within the Coefficient Multiplier. Any and all line items within the UPB in name or reference to mobilization and de-mobilization will not be allowed to be included in any proposals.

13.17 *Shipping and delivery cost (normal and expedited)* – All cost associated to this category will be considered as included within the coefficient, unless the Work is affected by delay on behalf of Owner or by Owner’s request.

13.18 *Close-out (process and documents), training, and warranty tags* – This will include all actions associated to commissioning of a project site, inclusive but not limited to: preparation of operation and maintenance manuals, training of appropriate Owner personnel per specific installation, identification of infrastructure items installed by Contractor and placement of warranty tags on equipment.

13.19 *Signs and barriers* – All Project sites will be identified for the appropriate hazards, by using OSHA/International Symbol signage. Barriers include: railing, caution tape, ropes/cables, cones, minor barriers and any other additional markings for the project site. Staging areas outside of the buildings will require to be barricaded by chain link fence, to contain vehicles, dumpsters, materials and equipment, which will be considered as part of the Contractor’s Coefficient Multiplier. Dust partitions requiring more than plastic and tape will be considered for line item development, but only with the consideration and approval of Owner per each Job Order.

13.20 *Project management and supervision* – Contractor must have a dedicated presence in managing and supervising all Job Orders. Persons supervising work will have no greater work load than 10 Job Orders per person or \$1,000,000 in aggregate value. Management is defined as on-site personnel, coordinating all efforts (i.e., meeting attendance, subcontractor management, etc.) other than supervision of the project and may require more than one person. Specific Job Order(s) may require dedicated personnel, per Owner’s request, at no additional cost to Owner. All scenarios associated to this category will be considered as included in the coefficient.

13.21 *Quality Control and Testing* – Contractor must have a pro-active quality control program, which minimizes Owner’s need for extensive construction inspection workforce. Routine testing and its associated cost will be considered as part of any associated line item and included (i.e., balancing of heating, ventilation and air conditioning systems, soaping of joints, hydrostatic testing, compaction testing for

backfill, etc.). Owner will identify specific Job Order needs which may require a certified, third party engineering/testing report. Existing materials, as identified by specification or by Owner, will be covered at Owner's expense, per prior approval.

13.22 *Parking (Jobsite and Compound)* – Contractor parking is available at each campus, and will be coordinated during design and construction. Staging areas are available and will also be designated during design and construction. Authorization will be coordinated with Owner's Project Manager and parking and security personnel. Space for a mobile office or trailer will be provided as needed and agreed upon by Owner. Available parking is typically not collocated with the project site.

13.23 *Safety Program and Personal Protective Equipment (PPE)* – Contractor must have a pro-active safety program, which is maintained on a weekly level and enforced daily. The program will incorporate training and implementation of all the Contractor's staff, and effective implementation to all subcontractor(s)/vendor(s)/ supplier(s). Hard hats will be considered mandatory for ALL personnel, while other PPE will be required per project specific activity.

13.24 *Office management equipment* – Contractor is expected to maintain equipment needed in managing office production and coordinating field operations (i.e., computers, copier, radios/cellular phones, etc.). Contractor will not be allowed to use any Owner equipment without prior approval. This category includes associated office supplies and accessories.

13.25 *Interest associated with funding of equipment and payroll* – Costs associated to this category are considered as included within Contractor's Coefficient Multiplier.

13.26 *Depreciation of mobile offices* – While Owner will provide a location for a mobile office; all cost associated to this office (i.e., utilities, telephone, etc.) will be the sole responsibility of Contractor and are to be considered as part of the overhead cost. Any space the Contractor deems necessary for operations away from the Owner provided location and its cost whether leased, rented, or purchased will be the sole responsibility of Contractor.

13.27 *Employee payroll taxes, insurance and fringe benefits* – All payroll taxes and mandated by law payments associated to labor and the individual worker, but not limited to, Worker's Compensation and Unemployment Insurance, Social Security, Medicare, and employee benefits.

11.28 *Risk of lower than expected contract dollar volume* – The anticipated maximum dollar value of this Agreement is merely an estimate, based on historical information on previous projects, and is provided for estimating purposes only.

11.29 *Risk of high inflation costs if coefficients are bid for future years (option years)* – This is associated to all components, which comprise a line item price within any given year of a UPB (i.e., labor, material, equipment and all related/associated accessories).

11.30 *Risk of poor subcontractor performance and re-performance* – Inclusive of loss of, and differences in productivity, corrective actions associated too, and Contractor imposed overtimes, inclusive of weekend and holiday work.

11.31 *Other risks of doing business* – Consideration, to be included but not limited to: *project size, location and complexity, adverse conditions, all types of weather conditions, building material shortages, Owner imposed delays, restrictions or security measures, site accessibility, etc.* Costs associated to this category are considered as included within Contractor's Coefficient Multiplier.

11.32 *Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.)* – Costs associated to this category are considered as included within Contractor's Coefficient Multiplier.

#### **14. Line Item Clarification**

14.1 The line items stated in the UPB include labor, materials, and equipment for a complete and in place installation associated with a specific project. Contractor shall assume all risk for labor, material, and equipment rate increases after award of this Agreement.

14.2 Division One line items of the UPB are NOT to be used by Contractor without Owner's expressed and written permission. No items within Division One that are associated to the Coefficient/Adjustment Factor and/or as identified within Section 11 of **Exhibit A** will be considered in any manner.

14.3 Line Items with the unit price designation of "Job", "Per Job", or any other unit measurement which expresses the word "Job" will not be used on any projects above \$25,000.00.

14.4 While the Contractor may find differences with the UPB, in comparison to local market cost, it is Contractor's sole responsibility to verify ALL items within the UPB and make the appropriate adjustment per Contractor's Coefficient Multiplier. At no time during the Term will increase adjustments be allowed to line items and/or Contractor's Coefficient Multiplier.

14.5 Working distances are standardized, and considered as included with the Contractor's Coefficient Multiplier: Up to 15 feet above finished floor, material handling for 150 feet in distance, inclusive of demolition debris, and within three stories of a building.

14.6 Ladder, scaffolding, and other similar equipment for any work less than 15 feet above any particular work surface will be consider at Contractor's cost and included within consideration of the Contractor's Coefficient Multiplier.

14.7 Square level and plumb, are the sole responsibility of Contractor, measuring,

layout and/or staking out in conjunction with drawing, specifications, and joint scope will be considered include within the Contractor's Coefficient Multiplier.

14.8 Activities associated to labor within the line items: manual loading, unloading, and storing of materials to vehicle and job site, tools of the trade, moving and storage of tools, material and equipment handling up to three stories of a building, and to 15 feet above finished floor height and up to 150 feet of the project site, material delivery, layout, assembly, and measuring and items as associated to Section 13 of this **Exhibit A**, which developed Contractor's Coefficient Multiplier.

14.9 Items associated to materials within the line items: All materials will be sales tax exempt, inclusive of all related/associated accessories necessary for proper manufacturer or specification installation, submittals, sample and shop drawings, and delivery of material 150 feet of the project site.

14.10 Items associated to equipment within the line items: loading, unloading, storage, handling up to three stories of a building, and to 15 feet above finished floor height and up to 150 feet of the project site and installation into its final location.

14.11 Demolition lines items do exist for each section of the UPB, but they are limited. Since the installation line items are more prevalent, they may be turned into demolition line items by removing all associated material and equipment and using only half of the labor cost. Unless a line item description states differently, demolition is the complete removal of a selected item, clean-up of the area, loading and handling of demolished material into a dumpster, truck or trailer within (150 feet of the project site. Smaller item(s) requiring removal during demolition that are attached to larger item(s) (i.e., toilet accessories to a toilet partition, insulation on ductwork, etc.) will be included in the larger items removal line item.

14.12 Owner requested salvaged material, will not cost any more than a demolition line item. Contractor will be held responsible for a salvaged items disposition until it is turned over to the Owner.

**[END OF EXHIBIT A]**

**EXHIBIT B**

**JOB ORDER PROPOSAL REQUEST FORM**

**Date:** \_\_\_\_\_ **Contract Number:** \_\_\_\_\_

**Account Number:** \_\_\_\_\_

**To:** [Name]  
[Position]  
[Contractor Name]

In accordance with the terms and conditions of the **AGREEMENT FOR JOB ORDER CONTRACTING SERVICES** (“*Agreement*”) dated [insert date] by and between the **UNIVERSITY OF HOUSTON SYSTEM** (“*Owner*”) and **[CONTRACTOR]** (“*Contractor*”), *Owner* is contemplating [insert project description/name] (the “*Project*”) and hereby requests your proposal to render the following:

Prior to submitting a Project Proposal in response to this request, you must coordinate and schedule a site visit with *Owner’s* Project Manager so that you can become familiar a site visit so that you can become familiar with general, local, and site conditions that may affect cost, progress, performance and furnishing of the Work.

Following the site visit and in accordance with Section 6.2.2 of the Agreement, your Project Proposal must, at a minimum, include:

1. A narrative description of your understanding of the scope of work;
2. A description of particular phases of the scope of the work, if applicable;

3. A Cost Proposal prepared in accordance with Article 7 of the Agreement detailing:
  - a. the cost of the 'pre-priced' items as taken from the Unit Price Book;
  - b. the cost of any 'non-pre-priced' items;
  - c. any other costs that the Contactor intends to charge to the project;
  - d. a statement that all Contractor fees, overhead expenses and general conditions are included in the Cost Proposal; and
  - e. a lump sum figure for performing the work, if appropriate.
4. A proposed date to commence the work and construction schedule;
5. A list of all subcontractors that Contractor proposes to use in the performance of the work;
6. A HUB Subcontracting plan, if required;
7. Any qualifications or conditions applicable to the Project Proposal; and
8. A summary statement of the total dollar amounts of all previous Job Orders entered into under this Agreement to date.

If I have not received your Project Proposal within 10 days of the date of this Proposal Request, Contractor will be deemed to have declined to submit a Project Proposal for this Project.

Sincerely,

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[Name]  
[Position]  
[Department]

**EXHIBIT C**

**JOB ORDER FORM**

This **JOB ORDER** (“*Job Order*”) is subject to all terms and conditions of the **AGREEMENT FOR JOB ORDER CONTRACTING SERVICES** by and between the **UNIVERSITY OF HOUSTON SYSTEM** (“*Owner*”) and **[NAME OF CONTRACTOR]** (“*Contractor*”) dated **[date]** (the “*Agreement*”).

<b>Contract Number:</b>	
<b>Job Order Number:</b>	
<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Project Manager:</b>	

Contractor is hereby directed to perform the Work as described below in accordance with Contractor’s Project Proposal dated **[date]** in accordance with the terms and conditions of the Agreement.

**SCOPE OF WORK:**

**CONTRACT SUM: \$[number]**

Contractor will invoice Owner  monthly or  upon completion of this Job Order for unpaid compensation earned. Invoices must reference contract number and job order.

**SCHEDULE:** Contractor shall achieve [**Substantial Completion** (use if cost of the project is over \$100,000) / **Final Completion** (use if cost of the Project is under \$100,000)] within **[duration]** days after the Date of Commencement of the Work specified the Notice to Proceed, subject to adjustments of Contract Time as provided in the Agreement.

**LIQUIDATED DAMAGES:** Contractor shall pay to Owner liquidated damages in the amount of **\$[number]** for each day completion is delayed beyond the date of [**Substantial Completion** (use if cost of the project is over \$100,000) / **Final Completion** (use if cost of the Project is under \$100,000)].

**CONTRACT TOTALS:**

Cost of this Job Order	\$ _____
Cost of Job Orders Issued to Date	\$ _____
Aggregate Total	\$ _____

Owner and Contractor have executed and delivered this Job Order on the dates set forth below.

**CONTRACTOR:**

**[NAME OF CONTRACTOR]**

By: \_\_\_\_\_  
[Name]  
[Title]

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

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

**OWNER:**

**UNIVERSITY OF HOUSTON SYSTEM**

By: \_\_\_\_\_  
\*[Name]  
[Title]

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

By: \_\_\_\_\_  
\*[Name]  
[Title]

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

By: \_\_\_\_\_  
\*\*[Name]  
[Title]

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

\*Non-binding signatory

\*\*Binding signatory

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NOTE: When invoicing, please refer to Contract No. [number] and Account No. [number].

**EXHIBIT D**

**TEXAS FACILITIES COMMISSION 2015 VERSION  
OF THE UNIFORM GENERAL CONDITIONS**

The Texas Facilities Commission's Uniform General Conditions appears on the following 65 pages.

**EXHIBIT E**

**TEXAS FACILITIES COMMISSION 2018 VERSION  
OF THE SUPPLEMENTAL GENERAL CONDITIONS**

The Texas Facilities Commission's 2018 Version of the Supplemental General Conditions appears on the following two pages.

## **EXHIBIT F**

### **UNIVERSITY OF HOUSTON SYSTEM'S SUPPLEMENTAL AND SPECIAL CONDITIONS**

The University of Houston System's Supplemental and General Conditions are **not** incorporated by reference into this Agreement. Specific supplemental and special conditions have been created for the job order contract delivery method and included in **Exhibit A**.