

SAMPLE AGREEMENT

STANDARD AGREEMENT BETWEEN OWNER AND CONTRACTOR

for

University of Texas [System or Institution Name] Construction Projects

This Agreement is made as of _____, 20____ (the “Effective Date”), by and between

The Owner: The Board of Regents of The University of Texas System
c/o [Name of U.T. Entity entering into the Agreement]
[Street Address]
[City, Texas Zip Code]

and Contractor:

Texas Tax Account No. :

for the Project:

Project Number:

Contract Number:

UTUGC Version: 2013

Project Architect:

Owner Controlled Insurance Program (OCIP): Yes / No

Owner Provided Builder’s Risk Insurance: Yes / No

The Owner and the Contractor agree as follows:

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LIST OF EXHIBITS

The following Exhibits are incorporated into the Agreement as if set out verbatim.

- Ex.A 2013 Uniform General
Conditions for The University of
Texas System Building
Construction Contracts
(UTUGCs)
- Ex.B Owner's Special Conditions and
Specifications with the date they
were issued
- Ex.C Contractor's Proposal
(if incorporated into the Project)
- Ex.D List of Drawings, Specifications
Addenda, details and other
documents developed by Project
Architect that describe the Project
with the date they were issued.
- Ex.E Owner's Standard Front-End
Specifications
- Ex.F [*delete or Not Used*]
- Ex.G [*delete or Not Used*]
- Ex.H [*delete or Not Used*]
- Ex.I HUB Subcontracting Plan

ARTICLE 1 SCOPE OF WORK

The Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General Conditions for The University of Texas System Building Construction Contracts (UTUGC), applicable version identified, above;
- c. Special Conditions and Owner's Specifications;
- d. All Addenda issued before the Effective Date of this Agreement;
- e. All Alternate Bid Proposals accepted by the Owner before the Effective Date of this Agreement;
- f. All Change Orders issued after the Effective Date of this Agreement;
- g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
- h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
- i. The HUB Subcontracting plan submitted by the Contractor in response to the Request for Proposals issued by the Owner for this Project.
- j. Contractor's Proposal if incorporated into the Project. To the extent of any conflict between Contractor's Proposal and any other Contract Document, the Contract Document shall govern.

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

ARTICLE 3 THE CONTRACT SUM:

3.1 The Owner shall pay the Contractor for performance of the Contract, including the Base Proposal and Alternate Proposal(s), the sum of _____ (\$ _____), and make payment on account as provided in the UTUGCs.

3.2 The following Alternate Proposals, fully described in the Specifications and Drawings, are included as a part of the contract sum: _____.

ARTICLE 4 TIME OF COMPLETION:

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be 10 or more days after the date the notice is issued. The Contractor shall achieve substantial completion of the Work within _____ (____) calendar days after the commencement date, as such completion date may be extended by approved Change Orders. **THE TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT.**

ARTICLE 5 LIQUIDATED DAMAGES:

For each consecutive calendar day after the expiration of the substantial completion period set forth in Article 4 that any incomplete Work prevents or impairs the Owner's ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the amount of _____ (\$_____) will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

ARTICLE 6 HUB SUBCONTRACTING PLAN:

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

(OPTION – KEEP THIS ARTICLE 7 FOR OCIP/BR PROJECTS ONLY, DELETE IF NOT OCIP/BR)

ARTICLE 7 SAFETY

7.1 In accordance with the UTUGC and UTS Project Safety Requirements 01 35 23 (Exhibit E), Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970, all other applicable federal, state and local laws and regulations, and the UTS Project Safety Requirements 01 35 23.

7.2 Contractor shall provide information to the Owner regarding the assignment of responsibilities for oversight of the safety program, Contractor shall verify that appropriate safety provisions are included in the Construction Documents and distributed to all subcontractors. The existence or creation of any Owner Controlled Insurance Program in connection with the Work shall not lessen or reduce the Contractor's overall safety responsibilities.

(OPTION – KEEP THIS ARTICLE 7 FOR NON-OCIP/BR PROJECTS ONLY, DELETE IF OCIP/BR)

ARTICLE 7 SAFETY

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

7.2 Contractor shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 8 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

8.1 The Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

8.2 The Contractor shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

8.3 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos as required by the UTUGCs.

ARTICLE 9 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation was instrumental in preparing its Proposal to perform the Work. Contractor shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

(OPTION – KEEP THIS ARTICLE 10 FOR OCIP/BR PROJECTS ONLY, DELETE IF NOT OCIP/BR)

ARTICLE 10 BONDS AND INSURANCE

10.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UTUGCs. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

10.2 The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the UTUGCs and 00 73 16 Project Insurance Requirements (Exhibit E) and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

10.3 The Contractor shall refer to 00 73 16 Project Insurance Requirements (Exhibit E) for a complete listing of coverages provided by the OCIP and Builder's Risk. Any coverages required by the UTUGCs that is not provided through the OCIP or Owner Provided Builder's Risk shall be provided by the Contractor.

(OPTION – KEEP THIS ARTICLE 7 FOR NON-OCIP/BR PROJECTS ONLY, DELETE IF OCIP/BR)

ARTICLE 10 BONDS AND INSURANCE

10.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UTUGCs. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

10.2 The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the UTUGCs and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

(OPTIONAL SECTION FOR OCIP/BR PROJECTS ONLY or state NOT USED)

ARTICLE 11 OCIP INSURED PROJECT and OWNER PROVIDED BUILDER'S RISK

11.1 The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) and Owner Provided Builder's Risk for this Project. Refer to 00 73 16 Project Insurance Requirements (Exhibit E) for a complete listing of coverages provided by the OCIP and Owner Provided Builder's Risk. All other coverages required to be provided by the UTUGCs shall be provided by the Contractor.

11.2 Contractor's construction cost shall exclude the cost of premiums for insurance coverage provided through the OCIP and Owner Provided Builder's Risk. The cost shall only include the cost of premiums of all other insurance required by the Contract Documents.

11.2.1 Contractor shall include required OCIP insurance information in trade packages and indicate on proposal forms the insurance that proposers are to include and exclude in their base proposals.

11.2.2 To ensure compliance with Texas Insurance Code Sections 151.003 - .009, all bids/proposals shall contain the following language on the signature page, "By signing this document, I acknowledge that this project will use an Owner Controlled Insurance Program (OCIP) and I will participate in the program."

11.2.3 During construction, Owner may audit the Contractor's and Subcontractors' labor hours and certified payroll reports to determine actual insurance costs (audit not for return of cost savings).

11.3 The Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Contractor fails to obtain, maintain, or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.

11.4 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

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

11.6 The cost of premiums for any additional insurance coverage, subcontractor default insurance programs or subcontractor payment and performance bonds, desired by the Contractor more than that required by this Agreement, the UTUGC, or the Contract Documents shall be borne solely by the Contractor out of its fees.

ARTICLE 12

CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES

12.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

12.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

12.3 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

12.4 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

12.5 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

12.6 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

12.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

12.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

12.9 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

12.10 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

12.11 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, The University of Texas System, or of the components comprising The University of Texas System, or anyone claiming under Owner has or shall have any personal liability to

[*Street Address*]
[*City, State, Zip*]
[*Fax No.*]

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

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 Assignment. 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 the written consent of the Owner.

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

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

16.4 Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

16.5 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this 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.

16.6 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

16.7 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.

16.8 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Travis County, Texas or the county where the Project is located shall be the sole places of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

16.9 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

16.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

16.11 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

16.12 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

16.13 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

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

16.15 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

16.16 By signature hereon, Contractor certifies that no member of the Board of Regents of The University of Texas System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

16.17 Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/intl160.html>, University's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

16.18 Disclosure of Interested Parties. By signature hereon, Contractor certifies that, if the value of this agreement exceeds \$1 Million, 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 the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

16.19 Contractor Certification regarding Boycotting Israel. To the extent required by Chapter 2271, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) 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.

16.20 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.

16.21 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Service Provider certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project is produced in the United States.

16.22 Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate. [Note: This provision does not apply to: (1) contracts below \$100,000; (2) contracts with a sole-source provider; and (3) contracts with a non-profit entity, sole proprietorship, or a for-profit entity that has less than 10 full time employees. This provision should not be included in a contract if the University did not receive any bids from a company that is able to provide the written verification required above.

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

(Contractor)

By: _____
(original signature)

(name and title typed)

Date: _____

CONTENT APPROVED:
[*Supervising Construction Purchasing Officer*]

BOARD OF REGENTS
THE UNIVERSITY OF TEXAS SYSTEM
(Owner)

By: _____
(original signature)

Name:
Title:

By: _____
(original signature)

Name: [*Officer with Delegated Authority to
enter into Agreements*]

Title:

Date: _____

REVISIONS

Date	Paragraph Revised
08-23-2013	Original Issue Date
01/28/2016	16.18 Disclosure of Interested Parties added (ems)
05/24/2017	Removed Article 17 “Bonds and Insurance” from Table of Contents
08/29/2017	16.19 Contractor Certification regarding Boycotting Israel. added (ems) 16.20 Contractor Certification regarding Business with Certain Countries and Organizations. added (ems)
9/1/2017	16.21 Domestic Iron and Steel Certification. added (ems)
5/16/2019	16.19 Contractor Certification regarding Boycotting Israel. opening phrase edited (ems)
9/15/2021	16.22 Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations added (ems)
2/4/2023	Added Owner Provided OCIP and BR insurance provisions.
8/18/2023	Removed attestation portion of signature page