**THE TEXAS A&M UNIVERSITY SYSTEM**

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT** is made this \_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_ between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called the “Contractor,” and the Board of Regents of The Texas A&M University System, hereinafter called the “Owner.” Capitalized terms used in this Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Owner’s current Uniform General Conditions (UGC).

**WITNESSETH**, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

**ARTICLE I**

**SCOPE OF WORK**

The Contractor shall furnish all the materials and perform all the Work called for in the Contract Documents entitled:

Prepared by:

**ARTICLE II**

**TIME OF COMPLETION**

The Contractor shall begin Work on the date indicated in the Notice to Proceed to be issued by the Owner. The Work to be performed under the Contract shall be substantially completed by **\_\_\_\_\_\_\_\_\_ consecutive calendar days** plus any extended days approved by the Owner, in accordance with the UGC, and shall be fully and finally completed within thirty (30) days thereafter. For each consecutive calendar day after the date of Substantial Completion, plus any extensions of time granted by Change Order, that the Work is not substantially completed, Contractor shall pay to Owner liquidated damages in accordance with the UGC.

**ARTICLE III**

**THE CONTRACT SUM**

The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, the sum of ($ ).

**Contract Award Amount**

**ARTICLE IV**

**PROGRESS PAYMENTS**

The Owner shall make periodic payments as approved by the Owner in accordance with the UGC.

**ARTICLE V**

**ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be made after final acceptance of the Work, provided the Work is fully completed and the Contract fully performed as provided in the UGC.

**ARTICLE VI**

**LIENS**

No mechanic, contractor, subcontractor, supplier or other person can or will contract for or in any manner have or acquire any lien upon the buildings or works covered by the Contract, or the land upon which the same is situated.

**ARTICLE VII**

**THE CONTRACT DOCUMENTS**

The UGC, the Special Conditions, the Specifications, the Drawings, the Addenda issued prior to this Agreement, the Change Orders issued after this Agreement, the Historically Underutilized Business (HUB) Subcontracting Plan, this Agreement, and, to the extent not inconsistent with the foregoing documents, the Contractor’s Technical Proposal (including any unit prices stated therein), form the Contract Documents. This Agreement supersedes all prior agreements, written or oral, between the Contractor and the 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 authorized representatives of the Owner and the Contractor.

**ARTICLE VIII**

**MISCELLANEOUS PROVISIONS**

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

Child Support Certification. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or Owner with an Ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Family Code requires the following statement: “Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

Eligibility Certification. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Government Code requires the following statement: “Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

Franchise Tax Certification. If Contractor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Contractor certifies that it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of franchise taxes.

Payment of Debt or Delinquency to the State. Pursuant to Section 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. "Debt or delinquency" means a debt, tax delinquency, student loan delinquency, or child support delinquency that results in a payment law prohibiting the comptroller from issuing a warrant or initiating an electronic funds transfer.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractorand 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 Contractorand Owner.

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.

Governing Law and Venue. This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in the country in which the Project is located; however, mandatory venue for all legal proceedings against Owneris to be in the county in which the primary office of the chief executive officer is located.

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 this Agreement.

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

Records Availability and Retention. Records of Contractor’scosts, reimbursable expenses pertaining to the Project and payments shall be available to Owneror its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Ownerotherwise instructs Contractor in writing.

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.

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.

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 Contractor or Owner for whom it is intended; or sent by U.S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Agreement shall be sent to the persons and at the locations set forth below.

Names and Addresses for Notices:

If to Owner:

Billy C. Hamilton, Deputy Chancellor and Chief Financial Officer

Office of Facilities Planning & Construction

The Texas A&M University System

301 Tarrow Street, 2nd Floor

College Station, Texas 77840-7896

With Copies to:

Brett McCully, Chief Facilities Officer

Office of Facilities Planning & Construction

The Texas A&M University System

301 Tarrow Street, 2nd Floor

College Station, Texas 77840-7896

[Director Name], Director

Office of Facilities Planning & Construction

The Texas A&M University System

[Address]

If to Contractor:

[Name]

[Company Name]

[Address]

[City, State, Zip Code]

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

#### Party Representatives

The Owner’s Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

[Director Name], Director

Office of Facilities Planning & Construction

The Texas A&M University System

[Address]

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

[Name]

[Company Name]

[Address]

[City, State, Zip Code]

The parties may make reasonable changes in their designated representatives upon advance written notice to the other party and in accordance with Paragraph 22.15.

Public Information. Contractor acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

Upon Owner’s written request, Contractor will provide specified public information exchanged or created under this Agreement for or on behalf of A&M System to Owner in a non-proprietary format acceptable to Owner.

Contractor acknowledges that Owner may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to this project as provided by the records retention requirements applicable to the Ownerfor the duration of the contract, (2) promptly provide to the Ownerany contracting information related to the contract that is in the custody or possession of the Contractoron request of the Owner, and (3) on termination or expiration of the contract, either provide at no cost to the Ownerall contracting information related to the contract that is in the custody or possession of the Contractor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractoragrees that the contract can be terminated if the Contractorknowingly or intentionally fails to comply with a requirement of that subchapter.

Contractor Certification regarding Boycotting Israel**.** Contractor acknowledges that Owner is obligated to comply with Chapter 2270, *Texas Government Code*. By executing this Agreement, Contractor certifies it does not and will not, during the performance of this Agreement, boycott Israel. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

Contractor Certification regarding Business with Certain Countries and Organizations**.** Contractor acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas* *Government Code***.** By executing this Agreement, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

Prohibition on Contracts Related to Persons Involved in Human Trafficking. Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Respondent is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy [32.02, Section 4](http://policies.tamus.edu/32-02.pdf). Non-conformance to this requirement may be grounds for termination of any resultant agreement.

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.

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.

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.

Contractorcertifies that it does not require its customers to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor’sbusiness. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

Contractorrepresents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2276.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify Owner. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractorcertifies that the individual or business entity named in this Contractoror contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Contractorcertifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

Contractor represents and warrants that the goods it provides to Owner under this Agreement, if any, are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

**[SIGNATURES PROVIDED ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

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| --- | --- |
| BOARD OF REGENTS OF  THE TEXAS A&M UNIVERSITY SYSTEM  (THE OWNER) | CONTRACTOR |
|  |  |
| By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Deputy Chancellor and Chief Financial Officer  Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print or Type Name)  Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| APPROVAL RECOMMENDED:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Chief Facilities Officer  Office of Facilities Planning & Construction  Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name(s) of individual(s), sole proprietors, partner(s), shareholder(s) or owner(s) with an ownership interest of at least 25% of the business entity executing this Contract.  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| APPROVED AS TO FORM:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Assistant General Counsel  Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |