

MASTER SERVICES AGREEMENT

BETWEEN

Texas Southern University

and

Mechanical Electrical Plumbing (MEP) Contractor

THIS AGREEMENT, entered into and made effective the ___ day of _____, 20___ (“Effective Date”) by and between Texas Southern University, an agency of the State of Texas and institution of higher education pursuant to Chapter 106 of the Texas Education Code, and located at 3100 Cleburne, Houston, Texas 77004, (hereinafter referred to as “Owner”) and _____ with mailing address _____ (hereinafter referred to as “Contractor”) and collectively referred to as “Parties”), for the certain work and job orders to be assigned as needed as set out in Paragraph 2.1.

THAT IN CONSIDERATION of the mutual promises and covenants hereinafter contained in the Agreement by the parties do agree, as follows:

ARTICLE 1

DEFINITIONS:

- 1.1 The term “Owner” means Texas Southern University. Texas Southern University may designate a duly authorized representative to act on its behalf by executing the Agreement, and any modification thereto. Owner’s duties include administration of the Agreement, including the negotiation of change orders and modifications and assessing Job Order Contractor’s technical performance and progress, inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Agreement documents.
- 1.2 The term “Job Order Contractor” or “Contractor” means the Job Order Contractor. The Job Order Contractor may designate a duly authorized representative to act on its behalf and who is specifically authorized to act for Job Order Contractor by executing the Agreement and any modifications thereto. Job Order Contractor’s duties include administration of the Agreement and performance of the Work.
- 1.3 The term “Contract” or “Agreement” as used herein means this Agreement including its attachments, modifications or amendments thereto, and any Job Orders that may be issued.
- 1.4 The term “Subcontract” as used herein means a business or person that has a contractual relationship with the Contractor, including purchase orders (other than one involving an employer-employee relationship) calling for equipment, supplies or services required for contract performance, including any modifications thereto.
- 1.5 The term “Job Order” means a specific written agreement between the Owner and the Job Order Contractor for Work to be performed under this Agreement.
- 1.6 The term “Notice to Proceed” means a notice from Owner that contains certain formality elements specified in this Agreement.
- 1.7 The term “Work” means each necessary and required operation for survey, design, construction (except new construction), repair or maintenance to be performed under this Agreement on a job order basis. Work includes a broad range of as-needed services as

specified under any Job Order that Owner issues. Work further includes furnishing any necessary labor, material, tool, supply, equipment, transportation, supervision and management. Each Job Order defines and further describes the Work with respect to any specific project requirement, unless this Agreement specifies elsewhere otherwise.

ARTICLE 2

WORK TO BE PERFORMED:

- 2.1 In response to Job Order(s) that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor agrees to provide general and specific construction services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. Job Order Contractor shall, except as may be specified elsewhere in the Agreement, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design and construction work (hereinafter called “the Work”) which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order.
- 2.2 This Contract embodies the agreement of Owner and Job Order Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order, nor requiring Job Order Contractor to accept same, it being the intent that both parties must mutually agree to any specific Work before a Job Order and Notice to Proceed may be issued.
- 2.3 This Agreement is for the provision of specified construction contracting services, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Contractor represents and warrants that he has the knowledge, ability, skills and resources to provide the services.
- 2.4 Any Work required under this Agreement shall be authorized by issuance of formal, written Job Orders, as follows:
 - 2.4.1 Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed by:
 - 2.4.1.1 Visiting the proposed site in the company of Owner, or
 - 2.4.1.2 Establishing contact with Owner to further define the scope of the requirement.
 - 2.4.2 After mutual agreement on the scope of the individual requirement, Job Order Contractor shall then prepare a proposal for accomplishment of the task unless Job Order Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, Job Order Contractor will so notify Owner in a timely manner.

- 2.4.3 To the extent feasible or applicable, the Unit Price Book shall serve as the basis for establishing the value of the Work to be performed.
- 2.4.4 Job Order Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.
- 2.4.5 Upon receipt of Job Order Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order or Notice to Proceed.
- 2.4.6 In the event Owner does not issue a Job Order or Notice to Proceed after receipt of Job Order Contractor's proposal, Owner is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal.

ARTICLE 3

JOB ORDERS:

- 3.1 Performance of the Work shall be undertaken only upon the issuance of a written Job Order and Notice to Proceed by Owner. Job Orders shall set forth, with the necessary particularity, the following:
 - a. Contract number along with Job Order Contractor's name,
 - b. Job Order number and date,
 - c. The agreed Work and applicable technical specifications and drawings,
 - d. The agreed period of performance and, if required by Owner, a work schedule,
 - e. The place of performance,
 - f. The agreed total price for the Work to be performed,
 - g. Submittal requirements,
 - h. Owner's authorized representative who will accept the completed Work,
 - i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order, and
 - j. Such other information as may be necessary to perform the Work.
- 3.2 Job Orders may be amended by Owner in the same manner as they are issued.
- 3.3 It is expressly understood between Owner and Job Order Contractor that the cost of each specifically authorized project will be established in the Job Order and Notice to Proceed issued by Owner. Established cost amounts shall not be increased except by written change order to a previously issued Notice to Proceed executed by the Owner and Job Order Contractor and in compliance with established law and policy. Owner is under no obligation to request any services from Job Order Contractor and no minimum amount of work is required under this Agreement. Job Order Contractor's performance shall meet the highest possible standards of quality, responsiveness, customer satisfaction and cost reasonableness.

- 3.4 Job Order Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's inspectors.
- 3.5 Projects or job orders in excess of One Hundred Thousand Dollars (\$100,000.00) must be approved by the Owner's Board of Regents. The maximum job order value of this Agreement is subject to the authority delegated by Owner's Board of Regents.

ARTICLE 4

SCHEDULING OF WORK:

- 4.1 For each Job Order, Owner will issue a Notice to Proceed or other notification document the Owner requires. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Job Order Contractor. Job Order Contractor shall diligently perform the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed. When Job Order Contractor considers the Work complete and ready for its intended use, Job Order Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be substantially complete, Owner will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Job Order. Job Order Contractor shall proceed promptly to complete and correct items on the list.
- 4.2 Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.
- 4.3 Furniture and portable office equipment in the immediate work area will be moved by Job Order Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Job Order Contractor for any such transportation and storage costs incurred.
- 4.4 Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Job Order Contractor at no cost to Owner.
- 4.5 Job Order Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for approval.

- 4.6 Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, a supply of water necessary for the performance of work under this Agreement. Owner will in no case furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner water supply source is adequate for the needs of the Contract.

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Job Order Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of this Agreement the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

- 4.7 Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Job Order Contractor. All work in connection therewith shall be coordinated, scheduled and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor so as to leave the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

SPECIFICATIONS AND DRAWINGS:

- 4.8 Job Order Contractor's duties under the Agreement include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans.
- 4.9 Job Order Contractor shall provide to Owner at the time of execution of the Job Order Contract and shall keep on the Work site a copy of the drawings and specifications and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall

be promptly submitted to Owner, who shall promptly make a determination in writing within 14 days after submission. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense and may be cause for immediate termination of the Job Order Contract. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

4.10 Wherever in the specifications or upon the drawings the words “directed,” “required,” “ordered,” “designated,” “prescribed,” or words of like import are used, it shall be understood that the “direction,” “requirement,” “order,” “designation,” or “prescription,” of Owner is intended; and similarly the words “approved,” “acceptable,” “satisfactory,” or words of like import shall mean “approved by,” or “acceptable to,” or “satisfactory to” Owner, unless otherwise expressly stated.

4.11 Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed.”

4.12 Shop drawings means drawings submitted to Owner by Job Order Contractor showing in detail:

- a. The proposed fabrication and assembly of structural elements,
- b. The installation (*i.e.*, form, fit and attachment details) of materials or equipment, and
- c. The construction and detailing of elements of the Work.

It includes sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Agreement.

4.13 Job Order Contractor shall use reasonable efforts to coordinate all shop drawings (to include 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 the Project), review and verify them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Job Order Contractor’s approval may be returned for resubmission. Owner will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such approval shall be at Job Order Contractor’s risk. Approval by Owner shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with paragraph 4.6 below.

- 4.14 If shop drawings show variations from the Job Order requirements, Job Order Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.
- 4.15 Job Order Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Job Order Contractor.
- 4.16 Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.
- 4.17 Job Order Contractor shall check all Owner furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

ARTICLE 5

USE OF SPECIFICATIONS, DRAWINGS AND NOTES:

- 5.1 All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever.
- 5.2 Job Order 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 Job Order Contractor by Owner, or any other party, that Job Order Contractor uses for the project.

ARTICLE 6

PERMITS AND RESPONSIBILITIES:

- 6.1 Job Order Contractor shall be responsible for processing of drawings for: approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and, for complying with any Federal, State and municipal laws, codes, and regulations. Owner will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the Contract.
- 6.2 The Job Order Contractor shall fully document its project activities, in drawings, reports, or other methods as appropriate to the Scope of Work. The Job Order Contractor shall bear the cost of providing all plans, specifications and other documents used by Job Order Contractor and its consultants.
- 6.3 Owner shall furnish information and services relevant to the project and as reasonably necessary for the project. Job Order 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 Job Order Contractor by the Owner or by others. Owner and Job Order Contractor shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Job Order Contractor's services and of the Work.
- 6.4 Owner shall assist Job Order Contractor, as reasonably necessary, in gaining entry to property as necessary for Job Order Contractor to perform its services under this Agreement.
- 6.5 Job Order Contractor shall perform all Work in compliance with all applicable federal, state, municipal and State of Texas laws, regulations, codes, ordinances, orders and with those of any body having jurisdiction over the Work or project. Job Order Contractor shall also be responsible for compliance with Owner's rules, regulations and policies as they currently exist or as they may be amended or revised in the future.

ARTICLE 7

MATERIAL AND WORKMANSHIP:

- 7.1 The Contractor shall provide all labor and material necessary and reasonably inferable for the complete performance of any Work authorized pursuant to this Agreement. All equipment, material, and articles incorporated in the Work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Agreement. References in the specifications to equipment,

material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that, in the sole judgment and prior written approval of the Owner, is equal to that named in the specifications.

- 7.2 Job Order Contractor shall obtain Owner's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, Job Order Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Agreement or by Owner, Job Order Contractor shall also obtain Owner's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection. Contractor agrees to use its best efforts, skill judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with the orderly progress of any project authorized pursuant to this Agreement. Contractor shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in the schedule.
- 7.3 All work under the Agreement shall be performed in a skillful and workmanlike manner.
- 7.4 If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

ARTICLE 8

TESTING OF MATERIALS:

- 8.1 Unless otherwise specified in a Job Order, the Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

ARTICLE 9

LAYOUT OF WORK:

- 9.1 Job Order Contractor shall lay out its work in accordance with the Agreement plans and specifications and shall be responsible for all measurements in connection with the layout of the work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

ARTICLE 10

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK:

- 10.1 Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:
- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
 - b. The availability of labor, water, electric power, and roads;
 - c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
 - d. The conformation and conditions of the ground; and
 - e. The character of equipment and facilities needed preliminary to and during work performance.
- 10.2 Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract.

ARTICLE 11

DIFFERING SITE CONDITIONS:

- 11.1 Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:
- a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
 - b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- 11.2 Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.
- 11.3 No request by Job Order Contractor for an equitable adjustment to the Job/Work Order for differing site conditions shall be allowed unless Contractor has given the written notice required.

- 11.4 No request by Job Order Contractor for an equitable adjustment to the Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

ARTICLE 12

AGREEMENT TERM:

- 12.1 The base term of this Agreement shall begin on the Effective date and shall expire three (3) years after that date unless renewed or terminated in accordance with the terms and conditions of this Agreement. At the sole discretion of Owner, it may exercise up to two additional one-year (1) options upon written notice to the Job Order Contractor at least sixty (60) days prior to the expiration of the base or any subsequent term. For termination clause, see Article 26.1. The Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Contractor to complete work on any project or Job Order approved by the Owner prior to the expiration of the Agreement.

ARTICLE 13

COMPENSATION:

- 13.1 As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Agreement, Owner shall pay Job Order Contractor the amounts specified in the individual Job Orders, subject to the terms and conditions of this Agreement.

ARTICLE 14

INVOICING AND PAYMENTS:

- 14.1 Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates of Work completed submitted by the Job Order Contractor and approved by Owner. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.
- 14.2 In the processing of progress payments, Owner may retain five percent (5%) of the estimated amount until final completion and acceptance of all Work performed under the Job Order. Retention applicable to each Job Order shall be released within sixty days after final completion of the Job Order and acceptance of the Work under the Job Order. However, if Owner finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Owner may authorize payment to be made in full without retention.

- 14.3 All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:
- a. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
 - b. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.
- 14.4 An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the Owner or Owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this Contract. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before thirty days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the Work.
- 14.5 Owner shall pay all unpaid amounts due Job Order Contractor under this Contract within thirty (30) days, after:
- a. Completion and acceptance of the Work;
 - b. Presentation of a properly executed invoice;
 - c. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Job Order Contractor's claim to amounts payable under this Contract has been assigned. Job Order Contractor shall complete a Contractor's release form acceptable to Owner; and
 - d. Consent of Job Order Contractor's surety, if any.
- 14.6 Job Order Contractor shall submit three (3) original invoices to the following address:
- Attn: Facilities Maintenance
Texas Southern University
3100 Cleburne
Houston, TX 77002
- 14.7 Pursuant to Texas Family Code Section 231.006, Texas Government Code Sections 2155.004 and 2155.006, Contractor certifies that it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this representation and warranty is inaccurate.

- 14.8 Contractor certifies that it is not indebted to the State of Texas and is current on all taxes owed to the State of Texas. Contractor agrees that any payments owing to Contractor under the 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.

ARTICLE 15

CONSTRUCTION SCHEDULE:

- 15.1 If required, the Job Order Contractor will submit for approval with the signed Job Order a practicable schedule showing the sequence in which Job Order Contractor proposes to perform the Work, and the dates on which Job Order Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case the basic information should be the same or the schedule chart must contain as a minimum:
- a. A list of the different types of work activities or work elements,
 - b. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin,
 - c. Show proposed start and complete dates or time frames for each work activity or work element, and
 - d. Calculate the “weighting” or relative worth each work activity or work element is of the total project either as a percent or dollar amount. If the Job Order Contractor fails to submit a schedule with the Job Order, Owner may withhold approval of progress payments until Job Order Contractor submits the required schedule.
- 15.2 Job Order Contractor shall submit a progress report every week (documenting its project activities as appropriate to the scope of work), or as directed by Owner, and upon doing so shall immediately deliver a current schedule to Owner. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Job Order Contractor shall not proceed beyond any previously authorized phase of the Work unless authorized by Owner in writing, except at the Job Order Contractor’s own financial risk. Without additional cost to Owner, Owner may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.
- 15.3 Emergency Work: Job Order Contractor will give top priority to any emergency work Owner may have and will allocate all resources necessary to accomplish such work in accordance with Owner’s schedule requirements. To the extent the Job Order Contractor

incurs additional cost, expense or schedule delay in performing Owner's emergency work, Owner will equitably adjust the Contract under Article 22.

- 15.4 Failure of Job Order Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Job Order Contractor's right to proceed with the Work, or any separable part of it, in accordance with Article 27.

ARTICLE 16

SUPERINTENDENCE BY JOB ORDER CONTRACTOR:

- 16.1 During the performance of a Job Order and until the Work is completed and accepted by owner, Job Order Contractor shall superintend the Work throughout the project and designate a superintendent or representative satisfactory to Owner who has authority to act on behalf of the Job Order Contractor with respect to all phases of the Work. The designated superintendent or representative shall not be changed without prior approval of Owner, which approval shall not be unreasonably withheld.

ARTICLE 17

INSPECTION OF CONSTRUCTION AND ACCEPTANCE BY OWNER:

- 17.1 Job Order Contractor shall maintain an adequate inspection system and perform such inspections, as well as ensure that the Work called for conforms to and is consistent with Job Order requirements. Job Order Contractor shall maintain complete inspection records and make them available to Owner upon Owner's request. All work is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Agreement. Owner will review work in progress as appropriate and notify the Job Order 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.
- 17.2 Owner inspections and tests are for the sole benefit of Owner and do not:
- a. Relieve Job Order Contractor of responsibility for providing adequate quality control measures,
 - b. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance,
 - c. Constitute or imply acceptance, or
 - d. Affect the continuing rights of Owner after acceptance of the complete work under paragraph 17.8 below.

- 17.3 The presence or absence of an inspector does not relieve Job Order Contractor from any Agreement requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.
- 17.4 Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size and performance tests shall be performed as described in the Job Order.
- 17.5 Job Order Contractor shall, without charge, replace or correct Work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises. Owner's approval or acceptance of Job Order Contractor's Work will not release Job Order Contractor from any liability for any defects, omissions, errors in the work.
- 17.6 If Job Order Contractor does not promptly replace or correct rejected Work, Owner may:
- a. By Contract or otherwise, replace or correct the Work and charge the cost to Job Order Contractor, or
 - b. Terminate for default Job Order Contractor's right to proceed.
- 17.7 If, before acceptance of the entire Work, Owner decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its Subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.
- 17.8 Substantial Completion means the date on which the Work, or an agreed upon portion of the Work is sufficiently complete so that Owner can occupy and use the Work or a portion thereof for its intended purposes. Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work Owner determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

ARTICLE 18

OPERATIONS AND STORAGE AREAS:

- 18.1 Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.
- 18.2 Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities may be erected by Job Order Contractor only with the approval of Owner and shall be built with labor and materials furnished by Job Order Contractor without expense to Owner. The temporary buildings and utilities shall remain the property of Job Order Contractor and shall be removed by Job Order Contractor at its expense upon the completion of the Work. With the written consent of Owner, the buildings and utilities may be abandoned and need not be removed.
- 18.3 Job Order Contractor shall use only established roadways or temporary roadways constructed by Job Order Contractor when and as authorized by Owner. Job Order Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.

ARTICLE 19

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS:

- 19.1 Job Order Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the site, which are not to be removed and which do not unreasonably interfere with the Work required under the Job Order. Job Order Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workmen, Job Order Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Owner.
- 19.2 Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to Job Order Contractor.

ARTICLE 20

CLEANING UP AND REFUSE DISPOSAL:

- 20.1 Job Order Contractor shall at all times keep the site, including storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly condition satisfactory to Owner. Final cleanup of the premises shall be included in the period of performance of the Job Order. Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Job Order Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

ARTICLE 21

WARRANTY OF CONSTRUCTION AND WORKMANSHIP:

- 21.1 In addition to any other warranties in any Job Orders, Job Order Contractor warrants, except as provided in paragraph 21.10 of this Article that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Job Order Contractor or any of its subcontractors or suppliers at any tier.
- 21.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Owner takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.
- 21.3 Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Owner's real or personal property, when that damage is the result of:
- a. Job Order Contractor's failure to conform to requirements; or
 - b. Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.
- 21.4 Job Order Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. Job Order Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 21.5 Owner shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. Job Order Contractor has thirty (30) days to repair any discrepancies, defects or damage.

- 21.6 If Job Order Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Job Order Contractor's expense.
- 21.7 With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:
- a. Obtain all warranties required by the Job Order;
 - b. Require all warranties to be executed, in writing, for the benefit of Owner; and
 - c. Enforce all warranties for the benefit of Owner.
- 21.8 In the event Job Order Contractor's warranty under paragraph 21.2 of this Article has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 21.9 Unless a defect is caused by the negligence of Job Order Contractor or subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage that result from any defect in Owner-furnished material or design.
- 21.10 Job Order Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.
- 21.11 This warranty shall not limit Owner's rights under Article 17 of this Contract with respect to latent defects, gross mistakes, or fraud.

ARTICLE 22

CHANGES:

- 22.1 Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:
- a. In the specifications (including drawings and designs);
 - b. In Owner-furnished facilities, equipment, materials, services, or site; or
 - c. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.
- 22.2 Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Owner that causes a change shall be treated as a change order under this Article; provided, that Job Order Contractor gives Owner timely written notice stating the date, circumstances, and source of the order and that Job Order Contractor regards the order as a change order.

- 22.3 Except as provided in this Article, no order, statement, or conduct of Owner shall be treated as a change under this Article or entitle Job Order Contractor to an equitable adjustment hereunder.
- 22.4 Job Order Contractor must submit any proposal under this Article within thirty (30) calendar days after:
- a. Receipt of a written change order under Paragraph 22.1 above; or
 - b. The furnishing of a written notice under Paragraph 22.2 above, by submitting to Owner a written statement describing the general nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under Paragraph 22.2 above.
- 22.5 No proposal by Job Order Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

ARTICLE 23

PRICING CHANGES:

- 23.1 Job Order Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by Owner. Pricing for such changes shall be based on quantities mutually agreed to by Job Order Contractor and Owner. To reach such an agreement regarding pricing, the Parties may utilize the rates contained in the Unit Price Book, with modifications by the appropriate city cost index and applicable coefficient(s).
- 23.2 Job Order Contractor shall furnish to the Owner a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

ARTICLE 24

SUSPENSION OF WORK:

- 24.1 Owner may order Job Order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that Owner determines appropriate.
- 24.2 If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Owner in the administration of a Job Order, or by Owner's failure to act within the time specified in the Job Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of overtime for performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.
- 24.3 A claim under this Article shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Owner in writing of

the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

ARTICLE 25

DISPUTES:

- 25.1 The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Job Order Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

Job Order Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives named herein.

The Job Order Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties.

Owner designates the individual listed below as its representative, which individual has the authority and responsibility for avoiding and resolving disputes under this Agreement:

Vice President for Finance / CFO	
Texas Southern University	Office: (713) 313-7302
3100 Cleburne Street	Fax: (713) 313-7070
Houston, TX 77004	

Owner designates the individual listed below as its representative of its Job Order Contract Program, which individual will endeavor to avoid and resolve disputes under this Contract at the field level:

Executive Director, Facilities Maintenance	Office: (713) 718-1810
Texas Southern University	Fax: (713) 718-7944
3100 Cleburne Street	
Houston, TX 77004	

Job Order Contractor designates the individual listed below as its representative, which individual will endeavor to avoid and resolve disputes under this Contract at the field level.

Contractor Name:	_____
Contact Person:	_____
Address:	_____

City State Zip Code: _____
Office Phone # _____
Facsimile: _____
E-mail: _____

- 25.2 Any dispute which is not disposed of by agreement will be decided by the Owner, who will reduce its decision to writing and mail or otherwise furnish a copy thereof to the Job Order Contractor.
- 25.3 Job Order Contractor's claims for breach of this Agreement that are not resolved informally are governed by Texas Government Code, Chapter 2260. The submission, procession and resolution of Contractor's claims are governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, as currently effective or subsequently amended

ARTICLE 26

TERMINATION FOR CONVENIENCE OF OWNER:

- 26.1 Owner may, with or without cause, terminate performance of the Work under this Agreement in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.
- 26.2 After receipt of a Notice of Termination, and except as directed by Owner, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
- a. Stop work as specified in the notice;
 - b. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete any Work not terminated;
 - c. Assign to Owner, as directed by Owner, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Article;
 - d. As directed by Owner, transfer title and deliver to Owner:
 - i. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and
 - ii. The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to Owner;

- e. Complete performance of the Work not terminated;
 - f. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Agreement that is in the possession of Job Order Contractor and in which Owner has or may acquire an interest; and
 - g. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in paragraph 26.2(c) above; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Agreement, credited to the price or cost of the Work, or paid in any other manner directed by Owner.
- 26.3 After termination, Job Order Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Job Order Contractor shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination.
- 26.4 Job Order Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The Contract shall be amended, and Job Order Contractor paid the agreed amount.
- 26.5 If Job Order Contractor and Owner fail to agree on the whole amount to be paid Job Order Contractor because of the termination of work, Owner shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 26.4 above:
- a. For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - i. The cost of this Work; and/or
 - ii. A reasonable markup for overhead and profit on work already performed through the effective date of termination.
- 26.6 Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Job Order Contractor under Paragraph 26.5 above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.
- 26.7 In arriving at the amount due Job Order Contractor under this Article, there shall be deducted:
- a. All un-liquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;
 - b. Any claim which Owner has against Job Order Contractor under the Agreement; and

- c. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this Article and not recovered by or credited to Owner.
- 26.8 If the termination is partial, Job Order Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of the Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of the Job Order, if Owner believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.
- 26.9 If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Owner upon demand.
- 26.10 Unless otherwise provided in this Agreement or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Owner, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 27

DEFAULT:

- 27.1 If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Owner may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon fifteen (15) days written notice to the Job Order Contractor. In this event, Owner may take over the Work and complete it by Agreement or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.
- 27.2 Job Order Contractor's right to proceed shall not be terminated under this Article, if:
- a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Job Order Contractor. Examples of such causes include:
 - i. acts of God (*e.g.*, fires, floods) or of the public enemy,
 - ii. acts of Owner in its Contractual capacity,
 - iii. acts of another Contractor in the performance of a Contract with Owner,

- iv. epidemics,
 - vii. quarantine restrictions,
 - viii. strikes,
 - ix. freight embargoes,
 - x. unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or
 - xi. delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the subcontractors or suppliers.
- b. Job Order Contractor, within thirty (30) calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal and review under Article 25.
- 27.3 If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.
- 27.4 The rights and remedies of Owner in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 28

SAFETY:

- 28.1 Job Order Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Job Order Contractor, its subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.
- 28.2 Job Order Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

- 28.3 Job Order Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations.
- 28.4 Job Order Contractor shall provide warning signs, barricades and verbal warnings as required.
- 28.5 Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.
- 28.6 Job Order Contractor shall promptly notify Owner of any accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Owner.
- 28.7 Job Order Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of a Job Order and prior to the commencement of the Work.
- 28.8 Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Job Order Contractor along with its safety policies and program procedures.
- 28.9 Job Order Contractor shall provide and maintain on the jobsite, at all times, a completely stocked first aid kit which contains all standard emergency medical supplies.
- 28.10 Job Order Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.
- 28.11 Owner reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order in accordance with Articles 26 or 27.

ARTICLE 29

USE AND POSSESSION PRIOR TO COMPLETION:

- 29.1 Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, Owner shall furnish Job Order Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Agreement. Owner possession or use shall not be deemed an acceptance of any work under this Agreement.

- 29.2 While Owner has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of Article 6. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

ARTICLE 30

OTHER CONTRACTS:

- 30.1 Owner may undertake or award other Contracts for additional work at or near the site of Work under this Agreement. Job Order Contractor shall fully cooperate with the other general Contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this Agreement to accommodate the additional work, heeding any direction that may be provided by Owner. Job Order Contractor shall not commit or permit any act that will interfere with the performance of work by any other general Contractor or by Owner's employees.

ARTICLE 31

DISSEMINATION OF CONTRACT INFORMATION:

- 31.1 Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Agreement, any Job Order or the work performed under this Agreement, without the prior written consent of Owner.

ARTICLE 32

PERFORMANCE AND PAYMENT BONDS:

- 32.1 If the work request value is in excess of \$25,000.00, a Payment Bond is required for the amount of the work request, and shall be submitted to TSU before the commencement of any work.
- 32.2 If the work request is in excess of \$100,000.00, a Performance Bond is required for the amount of work request, and shall be submitted to TSU before the commencement of any work.
- 32.3 Job Order Contractor shall provide any other bonds relevant to the Work or project as may be required by law, or as may be hereafter amended.

ARTICLE 33

INSURANCE:

- 33.1 Job Order Contractor shall purchase and maintain in effect during the term of this Agreement insurance of the types and with minimum limits of liability as stated below.

Such insurance shall protect Job Order Contractor from claims which may arise out of or result from Job Order Contractor's operations whether such operations are performed by Job Order Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

a. WORKERS' COMPENSATION INSURANCE providing statutory benefits in accordance with the laws of the State of Texas or any Federal statutes as may be applicable to the Work being performed under this Agreement.

b. EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than:

\$1,000,000	Each Accident
\$1,000,000	Policy Limits
\$1,000,000	Each Employee

c. COMMERCIAL GENERAL LIABILITY INSURANCE including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$1,000,000 CSL	Occurrence / Personal Injury / Advertising / Products / Completed Operations
\$2,000,000 CSL	Annual Aggregate
\$2,000,000 CSL	Products Aggregate
\$1,000,000 CSL	Fire, Lightning or Explosion
\$5,000 Per Person	Medical Expense

d. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Agreement with limits of liability not less than:

\$1,000,000	Bodily Injury / Property Damage
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33.2 The policies providing Commercial General Liability and Automobile Liability insurance as required shall be endorsed to name Owner as Additional Insured. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.

33.3 All policies providing Job Order Contractor's insurance as required in Paragraph 33.1 above shall be endorsed to provide the following:

a. Ninety (90) days written notice of cancellation or non-renewal given to Owner at the address designated in Article 36,

b. TSU be named as Additional Insured on all policies except the Workers' Compensation (Prohibited by Law), and

c. Waiver of Subrogation added by endorsement on all policies.

- 33.4 The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.
- 33.5 Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this agreement. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy (ies).
- 33.6 Job Order Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Job Order Contractor shall deem appropriate and adequate for the Work being performed. Job Order Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverage carried by such subcontractors.

ARTICLE 34

INDEMNIFICATION:

- 34.1 The Job Order Contractor shall defend, indemnify and hold harmless the Owner, its regents, officers, employees and agents from and against any and all claims, demands, liabilities, damages, actions and causes of action arising from or related to the acts or omissions of Job Order Contractor, its employees, agents, and sub-contractors.

ARTICLE 35

AGREEMENT ORDER OF PRECEDENCE:

- 35.1 In the event of an inconsistency between provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order:
- a. The Agreement's Provisions including any Attachments,
 - b. Agreement Modifications, if any,
 - c. Each Applicable Job Order,
 - d. Any Applicable Drawings, and
 - d. Any Applicable Specifications.

and Job Order Contractor shall be and remain liable to Owner in accordance with applicable law and the terms of this Agreement for all damages to Owner caused by Job Order Contractor's negligent act, error or omission in the performance of any of the Work.

- 38.2 The waiver by Owner of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.
- 38.3 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.

ARTICLE 39

MERGER:

- 39.1 This Agreement and all procurement documents incorporated by reference set forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Work.

ARTICLE 40

NON-AVAILABILITY OF FUNDS:

- 40.1 Every payment obligation of the Owner under this Agreement is conditioned upon the availability of funds appropriated or allocated by the Texas State Legislature and or the Board of Regents of Texas Southern University for the payment of such obligation. If the Texas State Legislature fails to appropriate or allot the necessary funds, or the Board of Regents of Texas Southern University 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.

ARTICLE 41

AUDIT OF RECORDS:

- 41.1 Pursuant to applicable laws, the Job Order Contractor shall retain and shall contractually require each subcontractor to retain all data, books, and other records (“records”) relating to this Agreement for a period of five years after completion of this Contract. All records shall be subject to inspection and audit by the Owner at reasonable times. Upon request,

the Job Order Contractor shall produce the original of any or all such records. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 42

CANCELLATION FOR CONFLICT OF INTEREST:

- 42.1 Pursuant to applicable law, the Owner may cancel this Agreement, without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Owner was at any time while this Agreement or extension of this Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or consultant to any other party of this Agreement. A cancellation made pursuant to this provision shall be effective when the Job Order Contractor receives written notice of the cancellation unless the notice specifies a later time.

ARTICLE 43

NON-DISCRIMINATION:

- 43.1 The Job Order Contractor shall comply with all laws mandating that all persons regardless of race, color, religion, sex, age, national origin, sexual orientation, or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulation, including the Americans With Disabilities Act. The Job Order Contractor shall ensure that applicants for employment and employees are not discriminated against due to race, color, religion, sex, national origin or disability.

ARTICLE 44

THIRD PARTY ANTITRUST VIOLATIONS:

- 44.1 The Job Order Contractor assigns to the Owner any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Job Order Contractor toward fulfillment of this Contract.

ARTICLE 45

CERTIFICATIONS, TERMS AND CONDITIONS:

- 45.1 Job Order 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, asbestos plans/specifications, asbestos project management and third-party asbestos monitoring. Job Order contractor shall provide at Substantial Completion and Final Completion, a notarized affidavit to the Owner and/or the Architect stating that no asbestos containing material or work was provided, installed, furnished or added to the Project, along with all necessary material safety data sheets of

all products used in the constructions of the Project. Job Order Contractor shall take whatever measures necessary to ensure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement. Job Order contractor shall ensure that all materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM) and shall ensure compliance with such from his subcontractors and any assigns. Job Order Contractor shall ensure compliance with all applicable laws relating to asbestos and hazardous pollutants. Job Order contractor shall further ensure that every subcontractor shall provide a notarized statement that no asbestos or asbestos containing materials have been used, provided, or left on this Project and shall provide all material safety data sheets on all products used in the Work or Project.

- 45.2 Job Order Contractor agrees to allocate work and procurement to underutilized businesses in accordance with the Owner's Historically Underutilized Business guidelines. No changes to the Plan may be made unless approved in writing by the Owner. While the Contract is in effect and until the expiration of one year after final completion, the Owner may require information from the Contractor, and may conduct audits, to assure that the guidelines are being followed/were followed.
- 45.3 Job Order 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. Job Order contractor is responsible for all income taxes required by applicable law.
- 45.4 Owner and Job Order Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of 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.
- 45.5 Job Order Contractor agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, Job Order Contractor must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized businesses (HUB) Sub Contractor Plan is considered consent under this Agreement.
- 45.6 All information, documentation and other material submitted by the Contractor may be subject to public disclosure under the Public Information Act, Texas Government Code Chapter 552.
- 45.7 Job Order 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.

- 45.8 Pursuant to Sections 2107.008 and 2252.093, Texas Government Code, Job Order Contractor agrees that any payments owing to Job Order Contractor under this Agreement may be applied directly toward any debt or delinquency that Job Order 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.
- 45.9 Owner is a tax-exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education. Job Order Contractor shall avail itself of all tax exemptions applicable to Job Order Contractor's work or expenses.
- 45.10 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.
- 45.11 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 modifications, 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.
- 45.12 By signature hereon, Job Order Contractor certifies that no member of the Board of Regents of Texas Southern University or Executive Officers has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.
- 45.13 If contractor is a corporation or a limited liability company, Job Order Contractor warrants, represents, and agrees that (1) it is duly organized, validly existing and in good standings 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 Job Order Contractor has been duly authorized to act for and bind Job Order Contractor.
- 45.14 The Job Order Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with applicable law.
- 45.15 Job Order Contractor and its employees, agents, representatives and subcontractors have read and understand Texas Southern University's Ethics and Conflicts of Interest Policy which has been made available to Job Order Contractor and is also available at www.tsu.edu. Neither Job Order Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Ethics and Conflicts of Interest Policy or applicable state ethics laws or rules.
- 45.16 The Contracting Party verifies and agrees that verification from the company that it does not boycott Israel and will not boycott Israel during the term of this Agreement in accordance with Texas Government Code, Section 2270.002.

45.17 Contracting Party represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Texas Government Code, Section 2252.152.

ARTICLE 46

INTERPRETATION, JURISDICTION AND VENUE:

46.1 This Agreement shall be construed and interpreted solely in accordance with the laws of the Texas. Jurisdiction and venue for any suit, right or cause of action arising under or in connection with this Contract shall be exclusively in Harris County, Texas.

The person signing below on behalf of Owner and contractor warrants that he/she has the authority to execute this agreement according to its terms on behalf of University and contractor.

TEXAS SOUTHERN UNIVERSITY
(OWNER)

By: _____ Date: _____
Kenneth Huewitt
Vice President for Administration & Finance/CFO

CONTRACTOR

By: _____

(Name)

(Title)