

**EXHIBIT A**  
**SAMPLE AGREEMENT**

**JOB ORDER CONTRACTING AGREEMENT**

This Job Order Contracting Agreement (this “**Agreement**”) is made as of January 1, 2018 (the “**Effective Date**”),

By and between

The **Owner**:               The University of Texas at San Antonio

and **Contractor**:

for the **Project**:           Miscellaneous Job Order contracting services for minor construction and renovation projects

**Current Uniform General and Supplementary General Conditions Version:**    2013

This Agreement is for the provision of specified construction contracting work, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Each specific construction contracting work may be referred to herein as a “**Job Order**.” Contractor represents that he has the knowledge, ability, skills and resources to provide such work in accordance with the terms and requirements of this Agreement.

**Contractor** and **Owner** agree as follows:

## ARTICLE 1 TERM OF AGREEMENT

1.01 **Initial Term:** This initial term (“**Initial Term**”) of this Agreement shall begin on the Effective date and shall expire two (2) years after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 **Renewal Option:** The Owner has the option to renew the term of this Agreement for three (3) successive two (2) year periods (each a “**Renewal Term**”).

1.03 The term “**Contract Year**” means that period of time beginning on the Effective Date and ending January 1, 2019, and each twelve (12) month period thereafter during the Initial Term or any Renewal Term.

1.04 **Completion of Work in Progress:** Upon expiration or termination of the Agreement, no new Job Order Contracts (ref. Section 2.01) may be issued under the terms of this Agreement; provided however, that the terms of the Agreement shall survive as to any Job Order Contract in progress, any unfinished work or defective work, and any warranty and indemnification obligations of the Contractor on or after such expiration or termination date.

## ARTICLE 2 AUTHORIZED CONTRACT SUM

2.01 **Contract Sum:** The overall maximum value of this Agreement is indefinite, subject to the contractual authority delegated by the Board of Regents of The University of Texas System to the Owner’s delegated signatories (ref. Section 2.03). The cost of each specifically authorized project will be established in a Job Order Contract (“**Job Order Contract**”) issued by the Owner in a form substantially similar to the Job Order Contract attached and incorporated as Exhibit 1. Established cost amounts shall not be increased except by written change order (“**Change Order**”) to a previously issued Job Order Contract executed by the Owner and the Contractor. Each Change Order will be in a form substantially similar to the Change Order attached and incorporated as Exhibit 2.

2.02 **No Minimum Amount of Work:** It is expressly understood that the Owner is under no obligation to request any services from Contractor and no minimum amount of work is required under this Agreement. All service requests will be made by the Owner on an as-needed basis, subject to future agreement on the scope of the work and its cost.

2.03 **Board of Regents Approval:** This Agreement is not effective for value exceeding One Million Dollars (\$1,000,000) in the aggregate until approved by the Board of Regents of The University of Texas System (the “**Board**”).

## ARTICLE 3 SCOPE OF WORK—SPECIFIC JOB ORDER PROJECTS

3.01 **In General:** The 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 (collectively, the “**Work**”). The Contractor shall furnish all of the materials and perform all of the Work shown on the drawings and described in the specifications associated with any Job Order. The Contractor shall do everything required by (i) this Agreement, (ii) the 2013 Uniform General and Supplemental General Conditions (“**UGC**”) of The University of Texas System Building Construction Contracts or its successor UGC located at <https://www.utsystem.edu/documents/docs/general-counsel/construction-contracts-and-solicitation-procurement-agreements>; (iii) the Owner’s Special Conditions located at <http://facilities.utsa.edu/wp-content/uploads/2018/05/Owners-Special-Conditions.pdf>; (iv) the Owner’s Design and Construction Standards located at

[https://facilities.utsa.edu/wp-content/uploads/2017/02/UTSA-DaCS-Edition17-Iss2-3\\_1\\_2017.pdf](https://facilities.utsa.edu/wp-content/uploads/2017/02/UTSA-DaCS-Edition17-Iss2-3_1_2017.pdf); (v) the requirements of Owner's Request for Proposal number 743-18-052318CM issued on May 23, 2018, and (vi) and any requirements of a specific Job Order Contract, all of which are incorporated into this agreement by reference.

3.02 **Project Scope:** The specific scope of Work for each Job Order project shall be determined in advance and established in writing between the Owner and the Contractor in a Job Order Contract.

3.03 **Project Proposal:** To enable Owner to make a determination whether to request certain Job Order work from Contractor, Contractor shall, upon request of Owner and at a mutually convenient time and place, meet with specified Owner representatives to discuss the general nature and scope of a proposed Job Order. Following such meeting, Owner may request that Contractor provide a general project plan and work schedule for completion of work related to the proposed Job Order. Such request ("**Initial Request**") will be communicated to Contractor in writing by facsimile, E-mail or any other such reasonable communication, and Contractor shall make its best efforts to comply with such Initial Request within ten (10) business days. Upon receipt of Contractor's response to the Initial Request, Owner and Contractor will attempt to finalize a mutually acceptable Service plan and schedule with regard to the proposed Job Order ("**Project Proposal**"). The Owner may accept, reject or seek modification of any Project Proposal. Should Owner deem the Project Proposal acceptable, Owner and Contractor will execute and enter into a Job Order Contract.

3.04 **Notice to Proceed Date:** Subsequent to execution of a Job Order Contract by Owner and Contractor, the Owner will issue to the Contractor a written notice to proceed (the "**Notice to Proceed**"). The Notice to Proceed will authorize the Contractor to begin the Work identified in the Job Order Contract on the date specified in the Notice to Proceed. The Contractor will not begin Work on the Project until Contractor receives the Notice to Proceed. The Contractor shall complete the Work within the number of days specified in the Job Order, subject to extensions of time approved by the Owner through a Change Order. The time set forth for completion of the Work for each Job Order Contract is an essential element of the Job Order Contract.

3.05 **Space License for Work Storage Container:** During the Initial Term or any Renewal Term, Owner may permit Contractor to utilize space no larger than \_\_\_\_\_ (\_\_\_) by \_\_\_\_\_ (\_\_\_) square feet on Owner's premises (the "**Space**") for Contractor to locate a storage container such as a Conex container ("**Storage Container**") in the Space if Owner determines the Storage Container is reasonably necessary for Contractor to perform its obligations under this Agreement. The location of the Space, and the structure and aesthetics of the Storage Container will be satisfactory to Owner in all respects. Should Owner permit Contractor to utilize the Space for the Storage Container, Contractor will be provided use of the Space in accordance with the terms and conditions of the attached and incorporated Space License set forth in **Exhibit 3**.

## ARTICLE 4 CONTRACTOR'S GENERAL RESPONSIBILITIES

4.01 **Project Manager:** The Contractor shall manage the Work on any project authorized pursuant to this Agreement. The Contractor shall provide all labor and material necessary and reasonably inferable for the complete performance of any Work authorized pursuant to this Agreement.

4.02 **Standard of Care:** 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 Job Order Contract schedule.

4.03 **Compliance with Laws:** Contractor shall perform the Work in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Job Order (collectively, “**Applicable Laws**”).

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

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

4.06 **Phasing:** The Contractor shall not proceed beyond any previously authorized phase of the Work for a project unless authorized by the Owner in writing, except at the Contractor’s own financial risk. Applicable phases of the scope of work shall be identified in the Project Proposal.

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

4.08 **Documentation:** The Contractor shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of Work and as reasonably requested by Owner. The Contractor shall bear the cost of providing all plans, specifications and other documents used by the Contractor and its consultants.

4.09 **Project Cost Estimating:** The Contractor will obtain and use, at Contractor’s expense, for automation and estimation standardization purposes, the *4BT-CE Open JOC Building in Cloud Construction Cost Data* (collectively, the “**Software**”).

## ARTICLE 5 ACCEPTANCE OF WORK

5.01 **Owner’s Satisfaction:** All Work performed under this Agreement shall be completed to the satisfaction of the Owner’s Administrator and Owner Project Manager assigned to the Job Order (ref. Section 12.27). The Owner Administrator shall decide all questions regarding Contractor’s performance under the Agreement and Job Order Contracts and such decisions shall be final and conclusive.

5.02 **Correction of Work:** Should Contractor’s Work not conform to the requirements of this Agreement and a Job Order Contract as determined by the Owner’s Administrator, Owner may order the Contractor to correct the Work at no additional expense to the Owner or deduct the cost of correcting the Work from any other monies payable to the Contractor.

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

## ARTICLE 6 COST PROPOSALS

6.01 **Required for Each Project:** Contractor shall include a cost proposal for each Project Proposal. The cost proposal shall identify the pre-priced items, the non-pre-priced items, and any other costs proposed to be included in the cost of the Work for a Job Order Contract.

6.02 **Pre-priced Items:** Pre-priced items are pre-described and pre-priced tasks based on a unit price guide and coefficient multiplier. The cost for each Project Proposal and Job Order Contract should be based substantially on the use of pre-priced items.

6.02.1 The **Unit Price Guide** is a compilation of real property repair, rehabilitation, alteration, maintenance, and minor construction tasks, along with associated units of measure and unit prices designated or provided by the Owner to be used in administration of this Agreement. Unit prices include direct material, labor and equipment cost, but not indirect costs or profit. The Unit Price Guide for this Agreement is

4BT-CE Open JOC Building in Cloud Construction Cost Data

which is hereby incorporated by reference. The most current edition of the Unit Price Guide shall be adopted prior to each Contract Year.

6.02.2 **The Coefficient Multiplier** is a numerical factor which is applied to the Unit Price Guide unit prices to cover all of the Contractor's other costs in performing the Work of a Job Order Contract including, but not limited to, general and administrative and other overhead costs, insurance costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, Contractor's profit, and indirect costs. The Coefficient Multipliers for this Agreement is:

Coefficient during Normal Working Hours  
(Monday – Friday 6:00am – 6:00pm): \_\_\_\_\_

Coefficient during Non-Normal Working Hours  
(Monday - Friday 6:00pm – 6:00am, Weekends, & Holidays): \_\_\_\_\_

6.03 **Non-Pre-priced Items:** Non-Pre-priced items are the necessary, but incidental, parts of Work under a Job Order that are not susceptible to unit pricing using the pre-priced tasks in the Unit Price Guide. The proposed cost of all non-pre-priced items in the cost proposal shall include all Contractor cost items otherwise included in the coefficient multiplier used for pre-priced items. No coefficient multiplier shall be applied to non-pre-priced items. Non pre-priced items shall not exceed ten percent (10%) of the total cost for any Job Order Contract, unless an excess over such ten percent (10%) limit is (i) caused solely and directly because University has requested the inclusion of certain proprietary products in the Job Order, (ii) pre-approved by Owner Administrator (ref. **Exhibit A, Sample Agreement, Section 12.27, Owner's Representative**); and (iii) caused by the cost of the proprietary product that is determined to be a reasonable value by Owner Administrator, at the University's discretion.

6.04 **Other Costs:** Extraordinary costs that are unique to a specific Job Order and not generally or reasonably included in the coefficient multiplier may be added only if authorized or confirmed in writing by the Owner in a Job Order Contract or Change Order. Such extraordinary costs may be calculated as a lump sum for the Work or on a "Not to Exceed" basis.

## ARTICLE 7 PAYMENT

The Owner shall pay the Contractor for Work performed on a Job Order Contract, subject to allowable additions and deductions, and make payment in accordance with the Uniform General and Supplementary General Conditions.

## ARTICLE 8 DISPUTE RESOLUTION

**Government Code Chapter 2260 Controls:** Contractor's claims for breach of this Agreement that are not resolved informally are governed by Texas Government Code, Chapter 2260, as it may be amended from time to time, unless preempted by other applicable law. The submission, processing and resolution of Contractor's claims are governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

## ARTICLE 9 HISTORICALLY UNDERUTILIZED BUSINESSES

9.03 **HUB Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") attached and incorporated into this Agreement as **Exhibit 4**. Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to Owner in the format required by the Purchasing Division of the State of Texas Comptroller's Office or any successor agency (collectively, "**Comptroller**"). Submission of compliance reports will be required as a condition for payment under this Agreement. If Owner determines that Contractor has failed to subcontract as set out in the HSP, Owner will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If Owner determines that Contractor failed to implement the HSP in good faith, Owner, in addition to any other remedies, may report nonperformance to the Comptroller in accordance with 34 TAC [§§20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). Owner may also revoke this Agreement for breach and make a claim against Contractor.

9.01 **Changes to the HSP.** Owner understands that Contractor may need to modify or update its HSP during the Term. If at any time during the Term, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); and (b) the changes must be reviewed by and receive prior written approval from Owner's HUB Office. Contractor and Owner anticipate that review by Owner's HUB Office of any changes to the HSP will typically be completed via email or similar technology.

## ARTICLE 10 LIQUIDATED DAMAGES

The Job Order Contract may include an amount that will be deducted from the Job Order cost for each consecutive calendar day after the completion date established by the Job Order Contract that any Work, including the correction of deficiencies found during the final testing and inspection, is not completed. The specified deducted amount in a Job Order Contract will be deducted not as a penalty but as liquidated damages representing the parties' estimate at the time of Job Order Contract execution of the damages which the Owner will sustain for late completion.

## ARTICLE 11 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

11.01 The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of Work of the Job Order.

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

11.03 The Contractor shall provide at "Substantial Completion" of any Work, a notarized affidavit to the Owner stating that no asbestos containing materials or work was provided, installed, furnished or added to the Work.

11.04 The Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

11.05 All materials used in completion of Contractor's obligations under a Job Order Contract shall be certified as non Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of its subcontractors and assigns:

- 11.05.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
- 11.05.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos);
- 11.05.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

11.06. Every subcontractor shall provide a notarized statement that no ACBM has been (i) used or provided in completion of Contractor's obligations under a Job Order Contract, or (ii) left on Owner's premises or any Work site.

11.07 The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the completion of Contractor's obligations under a Job Order Contract to the Texas Department of Health licensed inspector or Owner's designated Architect, Engineer or other Owner designee who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

11.08 At "Final Completion" of the Work, the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during Work.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

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

12.02 **Confidentiality:** The Contractor shall treat any Owner supplied information or information pertaining to Owner's business as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement or as authorized by the Owner in writing.

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

12.04 **Subcontracting:** Contractor agrees not to subcontract any part of a Job Order Contract without the prior written consent of Owner. If subcontracting is permitted, Contractor must (i) identify the subcontractor(s) to Owner prior to any subcontractor beginning work; and (ii) comply with the HSP requirements of Article 9.

12.5 **Loss of Funding:** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "**Legislature**") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

12.06 **Open Records:** 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.

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

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

12.09 **Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

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

12.11 **Eligibility Certification:** Pursuant to Section 2155.004, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

12.12 **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.

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

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

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

12.16 **Governing Law and Venue:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Bexar County, Texas.

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

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

12.19 **Products and Materials Produced in Texas:** If Contractor will provide services under this Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, Contractor shall 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.

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

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

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

12.23 **Ethics Matters/No Financial Interest:** Contractor and its employees, agents, representatives and subcontractors have read and understand Owner's Conflicts of Interest Policy available at <http://www.utsa.edu/hop/chapter4/4-31.cfm>, Owner's Standards of Conduct Guide available at <http://www.utsa.edu/acrs/Compliance/eguide/home.html>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

12.24 **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 Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

12.25 **Criminal Background Checks.** Each individual who is assigned to perform any of Contractor's duties under this Agreement will be an employee of Contractor or an employee of a permitted subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing its duties under this Agreement. Prior to commencing any operations on Owner's premises, Contractor will at its expense (1) provide Owner with a list ("**List**") of all its employees and the company names of permitted subcontractors who may be assigned to perform services on Owner's premises, (2) have an appropriate criminal background screening performed concerning all its employees assigned to perform services on Owner's premises; and (3) ensure its subcontractors perform an appropriate criminal background screening on all individuals assigned by each subcontractor to perform services on Owner's premises. Contractor and its subcontractors will determine on a case-by-case basis whether each individual is qualified to provide such services. Neither Contractor nor its subcontractors will knowingly assign any individual to provide services on Owner's premises who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. Contractor will update the List each time there is a change in its employees or permitted subcontractors assigned to perform services on Owner's premises.

Prior to commencing any Job Order Contract or any other services under this Agreement, Contractor will provide Owner a letter signed by an authorized representative of Contractor certifying compliance with this Section.

12.26 **No Publication.** Contractor will not make any press releases, public statements, or advertisement referring to this Agreement, or release any information relative to this Agreement or any Work authorized under this Agreement for publication, advertisement or any other purpose, without the prior written approval of the Owner.

12.27 **Owner's Representative.** The Owner designates Owner's Assistant Vice President of Facilities Engineering & Project Management or his/her designees (the "**Owner Administrator**") as its representative for the purpose of administering this Agreement. For each Job Order, the Owner Administrator may designate a representative ("**Owner Project Manager**") to act partially or wholly for Owner in connection with the Job Order. Contractor shall coordinate its Work for each Job Order Contract through Owner Project Manager or as otherwise directed by Owner Administrator.

**ARTICLE 13           NOTICES**

13.01 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing and delivered to the designated representative of the Contractor or Owner as set forth in Section 13.02. Written notice may be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received.

13.02 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

If to Owner:                   The University of Texas at San Antonio  
  Attn: Assistant V.P. for Engineering & Project Mgmt.  
  One UTSA Circle  
  San Antonio, TX 78249  
  email: [paul.goodman@utsa.edu](mailto:paul.goodman@utsa.edu)

*With Copies to:*           The University of Texas at San Antonio  
  Attn: Vice President for Business Affairs  
  One UTSA Circle  
  San Antonio, TX 78249  
  Fax: 210-458-4187  
  Email: [vpbaoffice@utsa.edu](mailto:vpbaoffice@utsa.edu)

If to Contractor:           [Name of Contractor]  
  Attn: \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_  
  Email: \_\_\_\_\_

IN WITNESS WHEREOF, Owner and Contractor have executed and delivered this Agreement effective as of the date identified above.

**CONTRACTOR**

**OWNER**

\_\_\_\_\_

**The University of Texas at San Antonio**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**EXHIBITS**

The Following Exhibits are incorporated by reference for all purposes:

- Exhibit 1** Job Order Contract
- Exhibit 2** Change Order to Job Order Contract
- Exhibit 3** Space License
- Exhibit 4** HUB Subcontracting Plan

**Exhibit 1**  
**JOB ORDER CONTRACT**

This Job Order Contract (this "**Contract**") is effective as of \_\_\_\_\_, 201\_, ("**Effective Date**") and is entered into by and between The University of Texas at San Antonio ("**Owner**") and \_\_\_\_\_ ("**Contractor**").

This Contract will be governed by all terms and conditions of that certain Job Order Contracting Agreement (the "**Agreement**") entered into between Owner and Contractor on January 1, 2018.

If there is a conflict among the provisions in this Contract or the Agreement, the provision requiring Contractor to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- (1) The Agreement;
- (2) This Contract.

**1. Job Order Scope of Work**

Contractor shall furnish all of the materials and perform all of the work to \_\_\_\_\_ as more particularly described in the attached Scope of Work for Owner's Project Number \_\_\_\_\_.

**2. Contractor Fees**

- 2.1 Value of pre-priced work based on the Unit Price Guide and Coefficient:
- 2.2 Value of non-pre-priced work:
- 2.3 Total Fixed Price stipulated sum for this Job Order ("**Fee Cap**") is \_\_\_\_\_:

**3. Completion**

- 3.1 Completion Date for this Job Order is \_\_\_\_\_ (\_\_\_\_) days after issuance of the Notice to Proceed.
- 3.3 Liquidated Damages (if different than as set forth in Agreement):

IN WITNESS WHEREOF, Owner and Contractor have executed and delivered this Contract as of the Effective Date.

**CONTRACTOR**

**OWNER**

\_\_\_\_\_

**The University of Texas at San Antonio**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Exhibit 2

CHANGE ORDER  
TO JOB ORDER CONTRACT BETWEEN OWNER AND CONTRACTOR  
UNDER JOB ORDER CONTRACTING AGREEMENT

This Change Order Number [redacted] (“Change Order”) is made as of [redacted], 20[redacted] (“Change Effective Date”) by and between:

the **Owner:** The University of Texas at San Antonio

and **Contractor:** \_\_\_\_\_

for that certain  
**Job Order Contract:** entered into between Owner and Contractor related to the Project entitled [redacted] under Owner’s Project Number PP-[redacted].

Owner and Contractor desire to modify the Job Order Contract as more particularly set for below

1. **Modifications to Job Order**

1.1 **The Job Order Scope of Work** will be modified as stated below.

**EXAMPLE ONLY:** Add the following Work: Contractor will repair and prepare and apply elastomeric coating to the roof of Owner’s Power and Dynamics Science Laboratory (PDSL) in accordance with the same specifications and requirements utilized for the Work performed for Owner’s Science and Engineering Lab as described in the Job Order.

1.2 **Contractor Fees** will be modified as follows:

**EXAMPLE ONLY:** The current Fee Cap will be increased by \$ [redacted], which will modify the Fee Cap to equal \$ [redacted].

1.3 **The Completion Date** will be modified as follows:

[redacted]

2. **Terms.** This Change Order will be governed by the terms and conditions of that that certain *Job Order Contracting Agreement* entered into between Owner and Contractor on January 2, 2018 (the “**Agreement**”). The Job Order Contract and the Agreement are collectively called the “**Contracts.**”

2. **Defined Terms; Validity.** Except as provided in this Change Order, all terms used in this Change Order that are not otherwise defined will have the respective meanings ascribed to such

terms in the Contracts. Except as specifically modified and amended herein, all of the terms, provisions, requirements, and specifications contained in the Contracts remain in full force and effect.

- 3. **Governing Law.** This Change Order will be construed and governed by the laws of the state of Texas.

Owner and Contractor have executed and delivered this Change Order as of the Change Effective Date.

**CONTRACTOR**

**OWNER**

\_\_\_\_\_

**The Owner of Texas at San Antonio**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Exhibit 3**  
**SPACE LICENSE**

**1. Limited Access: Space License.**

Owner licenses the Space in its current, "as is" condition to Contractor for use by Contractor and its employees, representatives, agents, and subcontractors in the performance of the Services and for no other purpose. This is a non-exclusive license to use the Space. Owner may enter the Space at any time for any reason, provided that Owner will enter the Storage Container only as described in Section 2. Contractor, its employees, representatives, agents, and subcontractors, will have the right to use and access the Space solely to perform the Work. No unlawful activities will be permitted in the use of the Space. Contractor will comply with all Applicable Laws in connection with the use of the Space. Contractor will cause all of its employees, representatives, agents, and subcontractors to observe and comply with all Applicable Laws.

Contractor will not modify, alter or repair the Space or any other Owner facilities without the prior written approval of Owner and with project management of renovations by Owner.

Contractor will not harm the Space or make any use of the Space that is offensive as determined by Owner. Upon expiration or termination of this Agreement for any reason, Contractor will remove the Storage Container and all Contractor-owned equipment and other effects, repair any damage caused by the removal, and peaceably deliver up the Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any personal property of Contractor not removed within two (2) days following expiration or termination of the Agreement will be deemed abandoned by Contractor and Owner may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

Contractor will not suffer any mechanic's lien to be filed against the Space or the adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Space for Contractor. Nothing in this Agreement will be construed as the consent of Owner to subject Owner's estate in the Space or adjoining facilities to any lien.

The Space is sufficiently equipped for Contractor to provide the Work in accordance with the terms and conditions of this Agreement.

OWNER WILL NOT PROVIDE ANY UTILITY SERVICE TO THE SPACE. OWNER WILL NOT PROVIDE ANY TELECOMMUNICATIONS SERVICE TO THE SPACE.

OWNER WILL NOT BE LIABLE TO CONTRACTOR, OR CONTRACTOR'S EMPLOYEES, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, GUESTS OR INVITEES (COLLECTIVELY, "**CONTRACTOR PARTIES**"), FOR ANY LOSS, EXPENSE OR DAMAGE EITHER TO PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF THE SPACE, OR DUE TO ANY ACT OF ANY EMPLOYEE OR AGENT OF OWNER, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. OWNER, ITS EMPLOYEES, REPRESENTATIVES AND AGENTS WILL NOT BE LIABLE FOR AND CONTRACTOR WAIVES ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY CONTRACTOR PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON THE SPACE OR THE ADJOINING GROUNDS OR FACILITIES. CONTRACTOR WILL PAY ON DEMAND OWNER'S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF CONTRACTOR UNDER THIS LICENSE.

## **2. Owner Right to Access Storage Container**

NOTWITHSTANDING ANY TERM TO THE CONTRARY HEREIN, OWNER'S POLICE PERSONNEL SHALL HAVE THE RIGHT TO ACCESS THE STORAGE CONTAINER AT ANY TIME. CONTRACTOR WILL ENSURE THAT OWNER'S POLICE HAVE A METHOD FOR ENTERING THE STORAGE CONTAINER AT ANY TIME.

IN ADDITION, OWNER AND OWNER'S AGENTS, REPRESENTATIVES AND EMPLOYEES SHALL HAVE THE RIGHT TO ACCESS THE STORAGE CONTAINER AT ALL REASONABLE TIMES UPON PRIOR WRITTEN NOTICE AND AT ANY TIME IN CASE OF AN EMERGENCY, FOR THE PURPOSES OF PERFORMING OWNER'S OBLIGATIONS UNDER THIS AGREEMENT, REVIEWING AND INSPECTING THE SPACE AND STORAGE CONTAINER, DETERMINING WHETHER CONTRACTOR IS IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT, AND FOR OTHER REASONABLE PURPOSES.

## **3. Identification and Refusal of Entry**

Contractor acknowledges that Owner has the rights to (i) require identification from any person on the Owner's premises, (ii) refuse entry to persons having no legitimate business on the Owner's premises, and (iii) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized Owner representatives in the exercise of Owner's rights described in the preceding sentence.

## **4. Damage, Loss, Injury**

Contractor will be responsible for any and all injury, loss and damage to persons or property to the extent caused by Contractor's employees, agents, subcontractors, or representatives. At Owner's option, Contractor will promptly repair, to the satisfaction of Owner, any damage Contractor, its employees, representatives, agents, or subcontractors, cause to Owner's property, or Owner may repair the damage and Contractor will promptly reimburse Owner for the cost of the repair.

## **5. Waste & Cleanliness**

Contractor, at its sole cost and expense, will maintain the Space in clean condition, and provide for the removal of all garbage in the Space. Contractor will dispose of all such garbage in trash receptacles as directed by Owner.

## **6. Security Service**

Owner will provide security service to the Space to the same extent and in the same manner as is provided by Owner to other similarly situated Owner structures. Contractor will cooperate with Owner's Police Department in all matters including the reporting of suspected security violations. Contractor will immediately report any evidence of security breaches or criminal activity to Owner's Police Department. **NOTWITHSTANDING ANY TERM OR CONDITION HEREIN TO THE CONTRARY, OWNER SHALL NOT BE LIABLE FOR, AND TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR RELEASES OWNER, ITS AGENTS AND EMPLOYEES, FROM, ANY INJURY, DAMAGE OR LOSS SUFFERED BY CONTRACTOR, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR INVITEES, ARISING OUT OF OR RELATED TO THE PROVISION OF SECURITY SERVICES TO THE SPACE EXCEPT WITH RESPECT TO THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH SECURITY PERSONNEL.**

**Exhibit 4**  
**CONTRACTOR'S HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN**