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UT System RFP - Provide Construction Photo Documentation Services

Open Date: 07/17/15 02:00 PM

Agency Requisition Number: ORM-RC-06192015-01

NOTE: You will need to download all of the following files for complete specifications and other required document, including a HUB subcontracting plan(if required).

Help: Right Click to and choose "save file as" or "save target as" to your computer.

-**Package 1** size: 175021 (in bytes) Type: Specification Format: Acrobat PDF Files

-**Package 2** size: 131478 (in bytes) Type: Additional Specification(s) Format: Acrobat PDF Files

-**Package 3** size: 525218 (in bytes) Type: Additional Specification(s) Format: Acrobat PDF Files

The University of Texas System ("University") is soliciting proposals in response to this Request for Proposal for Selection of a Vendor to Provide Construction Photo Documentation Services. The Services are more specifically described in Section 5.4 (Scope of Work) of this RFP. This will be an umbrella contract entered into by UT System for the benefit of its institutions. Specific projects under the agreement will be instituted on an institution basis based on the submission of a Request for Services by the institution and payment will be made directly by that institution.

Agency: UNIVERSITY OF TEXAS SYSTEM (720)

Open Date: 07/17/15 02:00 PM

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Previous Price Paid: N/A

Solicitation type: 14 Days or more for entire solicitation package

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Contact Information:

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Email: pdurbin@utsystem.edu

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REQUEST FOR PROPOSAL

by

The University of Texas System

for

**Selection of a Vendor to Provide
Construction Photo Documentation Services**

RFP No. ORM-RC-06192015-01

Submittal Deadline: July 17, 2015

Issued: June 19, 2015

REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of University

The University of Texas System ("**UTS**") was established pursuant to the Texas Constitution of 1876. In 1881, Austin was designated the site of the main academic campus and Galveston as the location of the medical branch. The University of Texas at Austin first opened in 1883, and eight years later, John Sealy Hospital in Galveston (now a part of The University of Texas Medical Branch at Galveston) established a program for university-trained medical professionals. In addition to the original academic campus located in Austin, UTS now includes additional academic campuses in El Paso, Dallas, Arlington, San Antonio, the Permian Basin (Odessa), Tyler, and the Rio Grande Valley (Brownsville and Edinburg). Health institutions for medical education and research have expanded beyond the original Galveston medical campus to include the M.D. Anderson Cancer Center (Houston), the Southwestern Medical Center at Dallas, and the Health Science Centers at Houston, San Antonio, and Tyler. The UTS is also responsible for management of the 2.1 million acres of the Permanent University Fund Lands in West Texas. This acreage is predominantly leased for oil, gas and mineral interests, or other surface interests such as grazing. The fifteen institutions of UTS have emerged among the nation's premier educational enterprises.

The Board of Regents of The University of Texas System consists of nine regents who serve without compensation. Regents are appointed by the Governor of the State of Texas and confirmed by the Texas State Senate to staggered six-year terms. The administrative offices of UTS are located in Austin, Texas.

1.2 Background and Special Circumstances

During construction, remodeling, and demolition events, as well as other circumstances that would call for these services, The University of Texas System requires photo documentation services.

1.3 Objective of this Request for Proposal

The University of Texas System ("**University**") is soliciting proposals in response to this Request for Proposal for Selection of a Vendor to Provide Construction Photo Documentation Services. The Services are more specifically described in **Section 5.4** (Scope of Work) of this RFP.

This will be an umbrella contract entered into by UT System for the benefit of its institutions. Specific projects under the agreement will be instituted on an institution basis based on the submission of a Request for Services by the institution and payment will be made directly by that institution.

1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections

51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System ("UT System"), which is comprised of nine academic and six health universities described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until **2:00 PM**, Central Prevailing Time on **07/15/2015** (the "**Submittal Deadline**").

2.2 University Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following University contact ("**University Contact**"):

Patrick Durbin
Assistant Director of Risk Control
The University of Texas System
210 West 6th Street
CTJ Suite B.140E
Austin, Texas 78701
pdurbin@utsystem.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to **written communications** forwarded to University Contact. University Contact must receive all questions or concerns **no later than 07/03/2015**. University will have a reasonable amount of time to respond to questions or concerns. It is University's intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

The successful Proposer, if any, selected by University in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as the "**Contractor**."

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) services to University, (2) total overall cost to University, and (3) project management expertise. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of Contractor will be based on the information provided by Proposer in its proposal. University may give consideration to additional information if University deems such information relevant.

The criteria to be considered by University in evaluating proposals and selecting Contractor, will be those factors listed below:

2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- 2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

- 2.3.2.1 the cost of goods and services;
- 2.3.2.2 the reputation of the Proposer and of the Proposer's goods or services;
- 2.3.2.3 the quality of the Proposer's goods or services;
- 2.3.2.4 the extent to which the goods or services meet the University's needs;
- 2.3.2.5 the Proposer's past relationship with the University;
- 2.3.2.6 the total long-term cost to the University of acquiring the Proposer's goods or service.

2.4 Key Events Schedule

Issuance of RFP	06/19/2015
Deadline for Questions/Concerns (ref. Section 2.2 of this RFP)	07/03/2015
Submittal Deadline (ref. Section 2.1 of this RFP)	2:00 PM Central Prevailing Time on 07/17/2015

2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “**HUB**”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this Section 2.5 will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the Proposer is subject to review by University to ensure compliance with the HUB program.

2.5.2 University has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.

- 2.5.3 A HUB Subcontracting Plan (“**HSP**”) is required as part of Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX THREE** and incorporated for all purposes.

Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. Proposers that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Government Code.

Questions regarding the HSP may be directed to:

Contact: Stephanie Park
Office of HUB Development
The University of Texas System
210 West 6th Street
Suite B.140E
Phone: 512-499-4378
Email: spark@utsystem.edu

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a newly modified version of the HSP in accordance with the terms of **APPENDIX THREE** that sets forth all changes requested by Contractor, (2) Contractor provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by University and Contractor to conform to the modified HSP.

- 2.5.4 Proposer must submit three (3) originals of the HSP to University at the same time it submits its proposal to University (ref. **Section 3.2** of this RFP.) The three (3) originals of the HSP must be submitted under separate cover and in a separate envelope (the “HSP Envelope”). Proposer must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:

2.5.4.1 the RFP No. (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP), both located in the lower left hand corner of the top surface of the envelope,

2.5.4.2 the name and the return address of the Proposer, and

2.5.4.3 the phrase “HUB Subcontracting Plan”.

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements will be rejected by University and returned to the Proposer unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Proposer’s HSP Envelope prior to opening the proposal submitted by the Proposer, in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer’s HSP that are required by this RFP. A Proposer’s failure to submit the number of completed and signed originals of the HSP that are required by this RFP will result in University’s rejection of the proposal submitted by that

Proposer as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to the Proposer unopened (ref. **Section 1.5** of **APPENDIX ONE** to this RFP). **Note:** The requirement that Proposer provide three originals of the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal as specified in **Section 3.1** of this RFP.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Proposer must submit a total of ten (10) complete and identical copies of its *entire* proposal. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of at least one (1) copy of the submitted proposal. The copy of the Proposer's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1** of this RFP) and should be delivered to:

Jennifer Murphy
Director of Accounting & Purchasing
The University of Texas System Administration
210 West 6th Street
Room B.140E
Austin, TX 78701

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of ninety (90) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, the Terms and Conditions (ref. **Section 4** of this RFP), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer 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:

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);
- 3.4.1.2. Terms and Conditions (ref. **Section 4** of this RFP);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.5 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFP)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. Section 4 of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).

SECTION 4**GENERAL TERMS AND CONDITIONS****4.1 General**

The terms and conditions contained in this Section 4 or, in the sole discretion of University, terms and conditions substantially similar to these terms and conditions, will be included in any contract or agreement that results from this RFP (ref. Section 1.4 of APPENDIX ONE). If Proposer takes exception to any terms or conditions set forth in this Section 4, Proposer will submit a list of the exceptions as part of its proposal in accordance with Section 5.3.1 of this RFP. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the "**Contractor.**"

4.2 Payment

University agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act (“**Act**”), Chapter 2251, *Government Code*. Pursuant to the Act, payment shall be deemed late on the 31st day after the later of: 1) the date the performance of the Services under this Agreement are completed, or 2) the date University receives an invoice for the Services. University will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (University’s fiscal year begins September 1) that does not fall on a Saturday or Sunday. University will have the right to verify the details set forth in Contractor’s invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action. The cumulative amount of all payments will not exceed the amount of this Agreement.

4.3 Tax Exemption

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322.

4.4 Prompt Payment Discount

Notwithstanding any other provision of this Agreement, University is entitled to a “**Prompt Payment Discount**” of ____% off of each payment that University submits within ____ days after University’s receipt of Contractor’s invoice for that payment.

4.5 Contractor's Obligations

- 4.5.1 Contractor will perform the Services in compliance with all applicable federal, state and local, laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor’s response to University’s procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.5.2 Contractor will call to University’s attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.5.3 Contractor warrants and agrees that the Services will be accurate and free from any material defects. Contractor’s duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor’s skill and knowledge in performing the Services.

- 4.5.4 Contractor will, at its own cost, correct all material defects in the Services as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Services within a reasonable time, then University may correct the defective Services at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Services that University may have at law or in equity.
- 4.5.5 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Services to be duly registered and/or licensed under all applicable federal, state and local, laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Services.
- 4.5.6 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.5.7 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (ref. **Section 4.25**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. "**Personnel**" means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.

4.5.8 Contractor represents and warrants that: (i) the Services will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

4.6 Reserved

4.7 Family Code Child Support Certification

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

4.8 Tax Certification

If Contractor is a taxable entity as defined by Chapter 171, *Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

4.9 Payment of Debt or Delinquency to the State

Pursuant to Sections 2107.008 and 2252.903, *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.

4.10 Loss of Funding

Performance by University 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 of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University shall issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

4.11 Notices

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

If to University: Dr. Scott Kelley
Executive Vice Chancellor for Business Affairs
The University of Texas System
201 West 7th Street
Austin, Texas 78701

with copy to: The Office of Risk Management
The University of Texas System
210 West 6th Street
Room B.140E
Austin, Texas 78701
Attention: Patrick Durbin

If to Contractor: _____

Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Government Code*, then Contractor will send that notice to University as follows:

Dr. Scott Kelley
Executive Vice Chancellor for Business Affairs
The University of Texas System
201 West 7th Street
Austin, Texas 78701

with copy to: The Office of Risk Management
The University of Texas System
210 West 6th Street
Room B.140E
Austin, Texas 78701
Attention: Patrick Durbin

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

4.12 State Auditor's Office

Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

4.13 Venue; Governing Law

Travis County, Texas, shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

4.14 Breach of Contract Claims

4.14.1 To the extent that Chapter 2260, *Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

4.14.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to

University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of University, or the other officer of University as may be designated from time to time by University by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

4.14.1.2 If the parties are unable to resolve their disputes under Section 4.14.1.1, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

4.14.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

4.14.2 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

4.14.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

4.15 Compliance with Law

Contractor will perform the Services in compliance with all applicable federal, state and local, laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

4.16 Records

Records of Contractor's costs, any reimbursable expenses pertaining to the Services and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final payment or abandonment of the Services, unless University otherwise instructs Contractor in writing.

4.17 Insurance

4.17.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

4.17.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Work is to be performed for University.

4.17.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

4.17.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

4.17.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 5.1.1 Employer's Liability; 5.1.2 Commercial General Liability; and 5.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

- 4.17.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.
- 4.17.1.7 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$1,000,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.
- 4.17.1.8 Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.

4.17.2 Contractor will deliver to University:

- 4.17.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
- 4.17.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insured for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

4.17.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 5**.

4.17.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

4.17.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Patrice Reisen-Hicks

Address: The University of Texas System
The Office of Risk Management
220 West 7th Street
Austin, Texas 78701

4.17.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.

4.18 Indemnification

4.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM, AND ITS RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY “INDEMNITEES”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “CLAIMS”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

4.18.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

4.19 Ethics Matters; No Financial Interest

Contractor and its employees, agents, representatives and subcontractors have read and understand University’s Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University’s Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

4.20 Undocumented Workers

The *Immigration and Nationality Act* (8 United States Code 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 4.28**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

4.21 Force Majeure

Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare services during the occurrence.

4.22 Entire Agreement; Modifications

This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.

4.23 Captions

The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

4.24 Waivers

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

4.25 Ownership and Use of Work Material

- 4.25.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Services (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 4.25.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 4.25.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Services or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not to be used by any person other than University on other projects unless expressly authorized by University in writing.
- 4.25.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 4.25.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Services rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

4.26 Confidentiality and Safeguarding of University Records; Press Releases; Public Information

Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "**University Records**"). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its

improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

4.26.1 Notice of Impermissible Use. If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

4.26.2 Return of University Records. Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

4.26.3 Disclosure. If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.

4.26.4 Press Releases. Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

4.26.5 Public Information. University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* ("**TPIA**"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure

under TPIA) available in a format reasonably requested by University that is accessible by the public.

4.26.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

4.26.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

4.27 HIPAA Compliance

Contractor agrees that it will execute a HIPAA Business Associate Agreement (“BAA”) with University and the BAA will be in the form set forth in **Exhibit** , HIPAA Business Associate Agreement, attached and incorporated for all purposes.

4.28 Default and Termination

4.28.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon fifteen (15) days’ written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.

4.28.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days’ advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

4.28.3 Termination under **Sections 4.28.1** or **4.28.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.

4.28.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University’s curative actions.

4.28.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

4.29 Binding Effect

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

4.30 Severability

In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

4.31 Limitation of Liability

EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

Contractor will receive no financial compensation for delay or hindrance to the Work. In no event will University be liable to Contractor or its employees, agents, representatives or subcontractors, for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance, including a force majeure occurrence, and even if such delay or hindrance results from, arises out of, or is due, in whole or in part, to the negligence, breach of contract or other fault of University. Contractor's sole remedy in any such case will be an extension of time.

In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, neither party will be entitled to recover attorneys' fees, costs or other related expenses from the other party.

4.32 Assignment and Subcontracting

Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Government Code*, and 34 Texas Administrative Code ("**TAC**") Sections 20.101 through 20.108. The benefits and burdens of this Agreement are assignable by University.

4.33 Historically Underutilized Business Subcontracting Plan

Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract the Services in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) (ref. **Exhibit** ____). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “TPSS”). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University 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 University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.

4.33.1 **Changes to the HSP.** If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 4.19** to replace the HSP with the revised subcontracting plan.

4.33.2 **Expansion of the Services.** If University expands the scope of the Services through a change order or any other amendment, University will determine if the additional Services contains probable subcontracting opportunities *not* identified in the initial solicitation for the Services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 4.28** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

4.34 Responsibility for Individuals Performing Services; Criminal Background Checks

Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the Services, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Services on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Services on University's premises.

Prior to commencing performance of the Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List.

Responsibility for Individuals Performing Services; Criminal Background Checks

Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Prior to commencing the Services, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Services, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Services.

Prior to commencing performance of the Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals assigned to perform the Services.

4.35 Limitations

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

4.36 Survival of Provisions

No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive such expiration or termination.

4.37 Relationship of the Parties

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venture, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

4.39 Quality Assurance

Contractor will (a) comply with all applicable standards of the Joint Commission ("**Joint Commission**"); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University of a licensed independent practitioner's privileging file; and (e) provide University with periodic reports of its quality assurance indicators and/or permit University to conduct periodic quality assurance audits of the Services.

4.40 External Terms

This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement ("**External Terms**"). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrink wrap, click wrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

4.41 Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance

Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

4.42 Debarment

Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

4.43 Office of Inspector General Certification

Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>

4.44 Access to Documents

To the extent applicable to this Agreement, in accordance with Section 1861(v)(l)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

4.45 Affirmative Action

A written copy of Contractor's Civil Rights "**Affirmative Action Compliance Program**" is attached as **Exhibit** ____ to this Agreement and incorporated for all purposes, or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement is attached as **Exhibit** ____ to this Agreement and incorporated for all purposes.

4.46 OSHA Compliance

To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

4.47 Discrimination Prohibited

UNIVERSITY AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(A), 60-300.5(A) AND 60-741.5(A) (COLLECTIVELY, THE "**REGULATIONS**"). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UNIVERSITY AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the “**Contractor.**”

5.2 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer’s proposal:

5.3.1 If Proposer takes exception to any terms or conditions set forth in **Section 4** of this RFP, Proposer will submit a list of the exceptions.

Link to UTS165 <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>

Pursuant to UTS165, “**Information Resources**” means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

Pursuant to UTS165, “**Data**” means recorded data, regardless of form or media in which it may be recorded, which constitute the original data necessary to support the business of UT System or original observations and methods of a study and the analyses of such original data that are necessary to support research activities and validate research findings. Data includes, but is not limited to: printed records, observations and notes; electronic data; video and audio records, photographs and negatives:

5.4 Scope of Work

Contractor will provide the following services to University:

5.4.1 General

- Comprehensive documentation of construction progress and post-inspection milestones.
- Navigation, storage, and remote Internet access to the documentation throughout the project construction.

- The documentation company will meet with University or Institution to identify project specific needs and appropriate documentation intervals based on milestones and common or custom elements requiring detailed photo sets prior to start of the work.
- The documentation company will develop a baseline schedule analysis based on University's or Institution's milestones to evaluate and estimate appropriate photo set intervals and durations and present to University or Institution for approval.
- The documentation company will determine and provide optimal photograph locations/perspectives (hot spots) based on the site plans and building floor plans and present to University or Institution for approval prior to the start of work.

5.4.2 Required Documentation Elements

- Provide and link each photo set to the appropriate location on the site plan and floor plans as provided by University or Institution. Indexing and navigation system will utilize actual construction drawings, making such drawings interactive in an online interface. For all documentation referenced herein, indexing and navigation must be organized by both time (date-stamped) and location throughout the project. Documentation will combine indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones.
- Provide online web hosting for the duration of the documentation process on a secure and dedicated website. Documentation will be accessible online through the use of an internet connection. Documentation will allow for multiple user access, simultaneously, online. Access shall be secure and accomplished through individual passwords.
- Provide progression photo sets to document construction progress for all trades and tracked at monthly intervals. Progression photo sets are performed at pre-determined intervals throughout the duration of construction and broadly track all aspects of construction through time. Monthly progression documentation will comprehensively track both the exterior and interior construction of the building.
- Provide monthly site progression photos taken from key perspectives along the perimeter of the site plan, perimeter of the building pads and other locations where site work is to be intensive.
- Provide bi-weekly exterior progression photos to track 360 degrees around site and each building.
- Provide monthly interior progression photos to track all interior improvements beginning when stud work commences and continuing until project completion.
- Provide Pre-construction site mobilization survey built set capturing all existing site, curb, and gutters, sidewalks and adjoining parking lots and buildings surrounding all four sides of the site as determined by University or Institution.
- Provide detailed pre-slab built set that includes pre-slab utilities work and site utilities documented post-inspection and prior to pouring slabs and/or backfilling. This process will include all underground and in-slab utilities within the building(s) envelope(s) and utility runs in the immediate vicinity

of the building(s) envelope(s). Indexing and navigation accomplished through interactive site utility plans.

- Provide detailed interior mechanical, electrical, and plumbing (MEP) built set that includes mechanical, electrical, plumbing and all other systems to be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process will include all finished systems located in the walls and ceilings of all buildings at the project. Indexing and navigation accomplished through interactive architectural plans.
- Provide site detailed set creating a visual as built of various mechanical, electrical, plumbing systems in slabs and underground drainage and retention system. All images are linked to floor plans to be photographed prior to pouring concrete.
- As directed by University or Institution, provide exterior detailed set creating a visual as built of various architectural building components with high concentration of photos and perspectives that focus on details such as stucco and stone detailing, window flashing details and entry lobby systems.
- Provide interior detailed set creating a visual as built of interior walls prior to insulation and after sheet rock is installed capturing all electrical wires and light fixtures, plumbing fixtures, and piping and HVAC ductwork and grilles.
- Provide finished detailed set complete documentation of all exterior, site and landscape, interiors including ALL walls, floors, and ceilings at Final Acceptance of the project.
- If required, provide detailed LEED set that documents specific credits indentified by the LEED Consultant to satisfy the LEED Certification requirements.
- Miscellaneous events that occur while a shoot is being conducted, but do not fit into building or site envelope (i.e. Materials arriving on site), or events captured by University or Institution independently, will be dated, labeled and inserted into a section in the navigation structure entitled “Slideshows” allowing this information to be stored in the same “place” as the formal documentation.

5.4.3 Support, Coordination, and Documentation

- The documentation company is to provide coordination of photo shoots and attend construction team meetings a minimum of once a month and provide a minimum of 2 times per month updates to University or Institution regarding the status of the documentation, status of the photo shoots, the availability of new Progressions or Built Sets viewable online and anticipated future shoot dates.
- All online domain/web hosting, security measures and redundant server back-up of the documentation to be furnished.
- Technical support related to using the system or service is furnished during initial set up of user groups and throughout the project process.
- Provide copies in electronic media format containing the final copies of the documentation (the “Permanent Record”) with the indexing and navigation system embedded (and active).

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

Ref.: Construction Photo Documentation Services

RFP No.: ORM-RC-06192015-01

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the emergency and recovery services related to disaster events services required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Pricing for Services Offered

6.2 Delivery Schedule of Events and Time Periods

6.3 University's Payment Terms

University's standard payment terms for services are "Net 30 days." Proposer agrees that University will be entitled to withhold _____ percent (_____%) of the total payment due under the Agreement until after University's acceptance of the final work product. Indicate below the prompt payment discount that Proposer will provide to University:

Prompt Payment Discount: _____%_____days/net 30 days

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

**APPENDIX ONE
PROPOSAL REQUIREMENTS**

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone number and FAX number to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to such party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)*. Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form that (i) includes terms and conditions substantially similar to the terms and conditions set forth in **Section 4** of this RFP, and (ii) is otherwise acceptable to University in all respects (the “**Agreement**”).

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. University will open the HSP Envelope submitted by a Proposer prior to opening the Proposer’s proposal in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer’s HUB Subcontracting Plan (also called the HSP) that are required by this RFP (ref. **Section 2.5.4** of the RFP.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting such negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At University's sole option and discretion, University may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University will defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of University.

After submission of a proposal but before final selection of Contractor is made, University may permit a Proposer to revise its proposal in order to obtain the Proposer's

best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of Evaluation Methodology

By submitting a proposal, Proposer acknowledges (1) Proposer's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5** of **APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFP), [c] the Specifications and Additional Questions (ref. **Section 5** of this RFP), [d] the terms and conditions set forth in **Section 4** of this RFP, and [e] all other requirements and specifications set forth in this RFP; and (2) Proposer's recognition that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.

- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5** of this RFP). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing the Services to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

Proposer should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFP No. (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Proposer should be clearly visible.

Proposer must also submit the number of originals of the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. **Section 2.5** of the RFP.)

Upon Proposer's request and at Proposer's expense, University will return to a Proposer its proposal received after the Submittal Deadline if the proposal is properly identified. University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

University will not accept proposals submitted by telephone, proposals submitted by Facsimile ("**FAX**") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's submittal of a written explanation and documentation evidencing a reason acceptable to University, in University's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Proposer certifies that any terms, conditions, or

documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on University that are not set forth in this RFP or in the Appendices to this RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified herein and that such intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

1.9.7 Page Size, Binders, and Dividers

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

1.9.8 Table of Contents

Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Proposer includes supplemental information or non-required attachments with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

1.9.9 Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

SECTION 2**EXECUTION OF OFFER**

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

2.1 By signature hereon, Proposer represents and warrants the following:

- 2.1.1 Proposer acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer; (3) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
- 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
- 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
- 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
- 2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in Section 4 of this RFP, under which Proposer will be required to operate.
- 2.1.6 If selected by University, Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
- 2.1.7 If selected by University, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
- 2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Proposer acknowledges that University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.9 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS'

FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.

- 2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP may be applied directly to any debt or delinquency that Proposer 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.
- 2.2 By signature hereon, Proposer offers and agrees to furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP.
- 2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Proposer may be removed from all proposal lists at University.
- 2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.
- 2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

- 2.6** By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7** By signature hereon, Proposer certifies as follows:
- "Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in the Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate."
- 2.8** By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Proposer.
- 2.9** By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.10** By signature hereon, Proposer represents and warrants that all products and services offered to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- 2.11** Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Proposer.
- 2.12** If Proposer will sell or lease computer equipment to the University under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), *Health & Safety Code*, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, *Health & Safety Code* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Section 361.952(2), *Health & Safety*

Code, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term “computer equipment” means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

2.13 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation then Proposer’s Corporate Charter Number: _____

RFP No.: ORM-RC-06192015-01

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer will explain the reason when responding N/A or N/R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

- 3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.
- 3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.
- 3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.
- 3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).
- 3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.
- 3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to Section 231.006, *Family Code*, and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act*, Chapter 552, *Government Code*, and other applicable law.

3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
 - 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in the RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.

3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: The University of Texas _____

Ref.: _____ Services related to the _____

RFP No.: ORM-RC-06192015-01

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO

AGREEMENT

(See posted separate file)

APPENDIX THREE
HUB SUBCONTRACTING
(See posted separate file)



NON-EXCLUSIVE CONSTRUCTION PHOTO DOCUMENTATION AGREEMENT

This Non-Exclusive Construction Photo Documentation Agreement between The University of Texas System (“**UTS**”) and Contractor (“**Agreement**”) is made and entered into effective as of September 1, 2015 (the “**Effective Date**”), by and between **UTS**, an agency and institution of higher education established under the laws of the State of Texas (“**University**”), and _____, (“**Contractor**”), Federal Tax Identification Number 13636404025.

Whereas, UTS needs certain services during construction, remodeling, and demolition events, as well as other circumstances that would call for these services, The University of Texas System requires photo documentation services.

Whereas, Contractor specializes in providing the services desired by UTS; and

Whereas, UTS wishes to purchase and Contractor agrees to provide the Covered Services (as hereinafter defined) subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and also in consideration of the premises and mutual promises herein contained, UTS and Contractor agree as follows:

1. SCOPE OF WORK.

- 1.1 Contractor will perform the scope of the work (“**Work**”) set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, to the satisfaction of UTS and in accordance with the schedule (“**Schedule**”) for the Work set forth in **Exhibit B**, Rate Schedule, attached and incorporated for all purposes. Time is of the essence in connection with this Agreement. UTS will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (“**Applicable Laws**”), for the performance of the Work.
- 1.3 Contractor's Performance of Covered Services. U.T. System is entering into this Agreement in reliance on Contractor's special skills and expertise with respect to performing the Covered Services. Contractor accepts the relationship of trust and confidence established between U.T. System and Contractor by this Agreement. Contractor agrees to use its best efforts, skill, judgment, and abilities in performing the Covered Services, and to cooperate with U.T. System in providing the Covered Services. Contractor acknowledges and agrees that the implementation of safe, alternative methods for the performance of Covered Services that would provide cost savings is an important aspect of this Agreement. Contractor agrees to use all reasonable efforts, within the limits of

Applicable Laws (defined in **Section 4** of this Agreement), to propose safe, alternative methods for the performance of Covered Services to reduce costs and liabilities to U.T. System and the U.T. Institutions.

- 1.4 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Work, will become a part of the Work and will be subject to the terms and conditions of this Agreement.

2. The Project.

The Work will be provided as requested by each institution in conjunction with all other related, necessary and appropriate services (the "Project").

3. TIME FOR COMMENCEMENT AND COMPLETION.

The term ("**Initial Term**") of this Agreement will begin on the Effective Date and expire on August 31, 2016. UTS will have the option to renew this Agreement for four (4) additional one (1) year terms (each a "**Renewal Term**"). The Initial Term and each Renewal Term are collectively referred to as the ("**Term**").

4. CONTRACTOR'S OBLIGATIONS.

- 4.1 Contractor will perform the Work in compliance with (a) all Applicable Laws, and (b) the *Rules and Regulations* of the Board of Regents of The University of Texas System at <http://www.utsystem.edu/bor/rules/>, the policies of The University of Texas System at <http://www.utsystem.edu/bor/procedures/policy/>; and the institutional rules, regulations and policies of University of Texas System, collectively, "**University Rules**"). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform the Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will call to UTS's attention in writing all information in any materials supplied to Contractor (by UTS or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.4 Contractor warrants and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by UTS nor will Contractor be released from any liability by reason of any approval by UTS, it being agreed

that UTS at all times is relying upon Contractor's skill and knowledge in performing the Work.

- 4.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then UTS may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that UTS may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work.
- 4.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 Contractor shall observe and comply with all applicable laws, regulations, ordinances, orders, executive orders and directives (collectively, "Applicable Laws") of any governmental authority with jurisdiction, shall be in compliance with all applicable registration, license, and permit requirements at all times.
- 4.10 Contractors shall obtain, and, prior to the effective date of this Agreement, provide copies to the U.T. Institutions of all required governmental permits, licenses, registrations, and approvals (including amendments) necessary to provide the Covered Services.
- 4.11 **Premises Rules.**

If this Agreement requires Contractor's presence on any UTS's premises or in any UTS's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable UTS rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

5. CONTRACT AMOUNT.

- 5.1 So long as Contractor has provided UTS with its current and accurate Federal Tax Identification Number in writing, UTS will pay Contractor for the performance of the Work as more particularly set forth in **Exhibit C**, Payment for Services, attached and incorporated for all purposes.
- 5.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable (with the exception of local franchise fees) as a result of the execution or performance of this Agreement.
- 5.3 UTS, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("**TAC**") Section 3.322.

6. PAYMENT TERMS.

- 6.1 At least ten (10) days before the end of each calendar month during the Term of this Agreement, Contractor will submit to University an invoice covering the services performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay (each a "**Progress Payment**") to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.
- 6.2 Within ten (10) days after final completion of the Work and acceptance of the Work by University or as soon thereafter as possible, Contractor will submit a final invoice ("**Final Invoice**") setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by University, University will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.
- 6.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in **Exhibit C**, Payment for Services.

- 6.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 6.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 6.7 University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 6.8 Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 12.14**.
- 6.9 Notwithstanding any other provision of this Agreement, University is entitled to a "**Prompt Payment Discount**" of ___% off of each payment that University submits within ___days after University's receipt of Contractor's invoice for that payment.

7. OWNERSHIP AND USE OF WORK MATERIALS.

- 7.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

8. DEFAULT AND TERMINATION.

- 8.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon fifteen (15) days’ written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.
- 8.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days’ advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
- 8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University’s curative actions.

9. INDEMNIFICATION.

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTS, AND HOLD HARMLESS UTS, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY “**INDEMNITEES**”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTS, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UTS WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UTS AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

10. RELATIONSHIP OF THE PARTIES.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of UTS. Contractor will not bind nor attempt to bind UTS to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

11. INSURANCE.

11.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A:VII or better, and in amounts not less than the following minimum limits of coverage:

11.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Work is to be performed for UTS.

11.1.2 Commercial General Liability Insurance with limits of not less than:

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

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury

(including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- 11.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$10,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

Pollution liability coverage equivalent to that provided under the ISO pollution liability broadened coverage for covered autos endorsement (CA 99 48), and the Motor Carrier Act endorsement (MCS 90) shall be attached as required or allowed by applicable state laws and if allowed by state law, the Motor Carrier Act endorsement (MCS 90) shall be added.

The contractor shall cause Certificates of Insurance evidencing the above coverage to be provided promptly upon request.

- 11.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$5,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; and 11.1.3 Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

- 11.1.5 Pollution Legal Liability with limits not less than:
\$5,000,000 per occurrence (coverage exclusive to UTS and exclusive of legal defense costs)
\$10,000,000 aggregate (coverage exclusive to UTS)

Pollution policy must cover all services included in the attached scope of services.

11.2 Contractor will deliver to UTS:

- 11.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

- 11.2.2 ***All insurance policies*** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the "Board of Regents of The University of Texas System and The University of Texas System" as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-

going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

11.2.3 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and The University of Texas System. ***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and The University of Texas System. No policy will be canceled until after thirty (30) days' unconditional written notice to UTS. ***All insurance policies*** will be endorsed to require the insurance carrier providing coverage to send notice to UTS thirty (30) days prior to any cancellation, or non-renewal relating to any insurance policy required in this **Section 15**. Contractor will be responsible to notify UTS of any material change.

11.2.4 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by UTS prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

11.2.5 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the UTS Contact Coordinator.

11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by UTS. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed.

12. MISCELLANEOUS.

12.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit D**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on UTS; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by UTS.

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

inaccurate.

- 12.3 **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“**Chapter 171**”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- 12.5 **Loss of Funding.** UTS performance of its duties and obligations 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 of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UTS will issue written notice to Contractor and UTS may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UTS.
- 12.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and UTS and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both UTS and Contractor.
- 12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that UTS may continue to provide healthcare services during the occurrence.
- 12.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 12.9 **Governing Law.** Travis, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

- 12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 12.11 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information; Non-Disclosure Agreement.** Under this Agreement, Contractor may receive from or on behalf of UTS or Institution or have access to, records or record systems (collectively, "**University Records**"). Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by UTS in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and (4) comply with the UTS's rules, policies, and procedures regarding access to and use of UTS's computer systems. At the request of UTS, Contractor agrees to provide UTS with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.
- 12.11.1 **Notice of Impermissible Use.** If Contractor maintains University Records and an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to UTS and Institution within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide UTS and Institution with all information requested by UTS or Institution regarding the impermissible use or disclosure.
- 12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records received from or on behalf of UTS if any will be (1) returned to UTS, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide UTS with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to UTS in writing the destruction of University Records.
- 12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 16.11**.
- 12.11.4 **Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of UTS in connection with the Project, or release

any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of UTS.

12.11.5 **Public Information.** UTS strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (“**TPIA**”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to UTS, Contractor will make any information created or exchanged with UTS pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by UTS that is accessible by the public.

12.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if UTS reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, UTS may immediately terminate this Agreement without notice or opportunity to cure.

12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

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

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

12.14 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will 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 mail, 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:

If to UTS: Dr. Scott Kelley
 Executive Vice Chancellor for Business Affairs
 The University of Texas System
 201 West 7th Street
 Austin, Texas 78701

with copy to: Patrick Durbin
 Office of Risk Management
 The University of Texas System
 210 West 6th Street

Suite B.140E
Austin, Texas 78701

If to Contractor:

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to UTS pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to UTS as follows:

Dr. Scott Kelley
Executive Vice Chancellor for Business Affairs
The University of Texas System
201 West 7th Street
Austin, Texas 78701

with copy to: Office of Risk Management
The University of Texas System
210 West 6th Street
Suite B.140E
Austin, Texas 78701
Attention: Patrick Durbin
Email: pdurbin@utsystem.edu
Fax: 512-499-4524

or other person or address as may be given in writing by UTS to Contractor in accordance with this Section.

- 12.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- 12.16 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.
- 12.17 **Limitation of Liability.** EXCEPT FOR UTS'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UTS WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION

OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UTS TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UTS, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UTS HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

12.18 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.7, 13, 16.5, 16.9, 16.10, 16.11, 16.13, 16.16, 16.17, 16.19** and **16.21**.

12.19 **Breach of Contract Claims.**

16.19.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by UTS and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

16.19.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to UTS in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that UTS allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer or another officer may be designated from time to time by UTS by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

12.19.1.2 If the parties are unable to resolve their disputes under **Section 16.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by UTS.

12.19.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by UTS nor any other conduct, action or inaction of any representative of UTS relating to this Agreement constitutes or is intended to constitute a waiver of UTS's or the state's sovereign immunity to suit and (ii) UTS has not waived its right to seek redress in the courts.

12.19.2 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

12.19.3 UTS and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

12.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, UTS may terminate this Agreement in accordance with **Section 12**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

12.21 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UTS (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UTS'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER

PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UTS EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

- 12.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand UTS's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, UTS's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/SOCcombined.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause UTS employees to violate UTS's Conflicts of Interest Policy, provisions described by UTS'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.
- 12.23 **Enforcement.** Contractor agrees and acknowledges that UTS is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Work. Contractor's services provide a peculiar value to UTS. UTS cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause UTS irreparable injury and damage. Contractor, therefore, expressly agrees that UTS will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- 12.24 **Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. **Exhibit H**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to UTS in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPSS"). Submission of compliance reports will be required as a condition for payment under this Agreement. If UTS determines that Contractor has failed to subcontract as set out in the HSP, UTS 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 UTS determines that Contractor failed to implement the HSP in good faith, UTS, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. UTS may also revoke this Agreement for breach and make a claim against Contractor.
- 12.24.1 **Changes to the HSP.** If at any time during the Term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by UTS; and (c) if UTS approves changes to the HSP, this

Agreement must be amended in accordance with **Section 16.6** to replace the HSP with the revised subcontracting plan.

12.24.2 **Expansion of the Work.** If UTS expands the scope of the Work through a change order or any other amendment, UTS will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If UTS determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by UTS without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 12** and will be subject to any remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. UTS may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

12.25 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform the Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement. Prior to commencing the Work, Contractor will (1) provide UTS with a list ("**List**") of all individuals who may be assigned to perform the Work, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on UTS's campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Work.

Prior to commencing performance of the Work under this Agreement, Contractor will provide UTS a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide UTS an updated certification letter each time there is a change in the individuals assigned to perform the Work.

UTS and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

THE UNIVERSITY OF TEXAS SYSTEM

CONTRACTOR:

By: _____
Name: Dr. Scott Kelley
Title: Executive Vice Chancellor For
Business Affairs

By: _____
Name: _____
Title: _____

Approved as to Content:

By: _____
Name: Patrick Durbin
Title: Manager of Risk Control

Attach:

EXHIBIT A – Scope of Work

EXHIBIT B – Rate Schedule

EXHIBIT C – Payment for Services

EXHIBIT D – Hub Subcontracting Plan

EXHIBIT A

SCOPE OF WORK

Contractor will provide the following services to University:

General

- Comprehensive documentation of construction progress and post-inspection milestones.
- Navigation, storage, and remote Internet access to the documentation throughout the project construction.
- The documentation company will meet with University or Institution to identify project specific needs and appropriate documentation intervals based on milestones and common or custom elements requiring detailed photo sets prior to start of the work.
- The documentation company will develop a baseline schedule analysis based on University's or Institution's milestones to evaluate and estimate appropriate photo set intervals and durations and present to University or Institution for approval.
- The documentation company will determine and provide optimal photograph locations/perspectives (hot spots) based on the site plans and building floor plans and present to University or Institution for approval prior to the start of work.

Required Documentation Elements

- Provide and link each photo set to the appropriate location on the site plan and floor plans as provided by University or Institution. Indexing and navigation system will utilize actual construction drawings, making such drawings interactive in an online interface. For all documentation referenced herein, indexing and navigation must be organized by both time (date-stamped) and location throughout the project. Documentation will combine indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones.
- Provide online web hosting for the duration of the documentation process on a secure and dedicated website. Documentation will be accessible online through the use of an internet connection. Documentation will allow for multiple user access, simultaneously, online. Access shall be secure and accomplished through individual passwords.
- Provide progression photo sets to document construction progress for all trades and tracked at monthly intervals. Progression photo sets are performed at pre-determined intervals throughout the duration of

construction and broadly track all aspects of construction through time. Monthly progression documentation will comprehensively track both the exterior and interior construction of the building.

- Provide monthly site progression photos taken from key perspectives along the perimeter of the site plan, perimeter of the building pads and other locations where site work is to be intensive.
- Provide bi-weekly exterior progression photos to track 360 degrees around site and each building.
- Provide monthly interior progression photos to track all interior improvements beginning when stud work commences and continuing until project completion.
- Provide Pre-construction site mobilization survey built set capturing all existing site, curb, and gutters, sidewalks and adjoining parking lots and buildings surrounding all four sides of the site as determined by University or Institution.
- Provide detailed pre-slab built set that includes pre-slab utilities work and site utilities documented post-inspection and prior to pouring slabs and/or backfilling. This process will include all underground and in-slab utilities within the building(s) envelope(s) and utility runs in the immediate vicinity of the building(s) envelope(s). Indexing and navigation accomplished through interactive site utility plans.
- Provide detailed interior mechanical, electrical, and plumbing (MEP) built set that includes mechanical, electrical, plumbing and all other systems to be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process will include all finished systems located in the walls and ceilings of all buildings at the project. Indexing and navigation accomplished through interactive architectural plans.
- Provide site detailed set creating a visual as built of various mechanical, electrical, plumbing systems in slabs and underground drainage and retention system. All images are linked to floor plans to be photographed prior to pouring concrete.
- As directed by University or Institution, provide exterior detailed set creating a visual as built of various architectural building components with high concentration of photos and perspectives that focus on details such as stucco and stone detailing, window flashing details and entry lobby systems.
- Provide interior detailed set creating a visual as built of interior walls prior to insulation and after sheet rock is installed capturing all electrical wires and light fixtures, plumbing fixtures, and piping and HVAC ductwork and grilles.
- Provide finished detailed set complete documentation of all exterior, site and landscape, interiors including ALL walls, floors, and ceilings at Final Acceptance of the project.
- If required, provide detailed LEED set that documents specific credits indentified by the LEED Consultant to satisfy the LEED Certification requirements.
- Miscellaneous events that occur while a shoot is being conducted, but do not fit into building or site envelope (i.e. Materials arriving on site), or

events captured by University or Institution independently, will be dated, labeled and inserted into a section in the navigation structure entitled “Slideshows” allowing this information to be stored in the same “place” as the formal documentation.

Support, Coordination, and Documentation

- The documentation company is to provide coordination of photo shoots and attend construction team meetings a minimum of once a month and provide a minimum of 2 times per month updates to University or Institution regarding the status of the documentation, status of the photo shoots, the availability of new Progressions or Built Sets viewable online and anticipated future shoot dates.
- All online domain/web hosting, security measures and redundant server back-up of the documentation to be furnished.
- Technical support related to using the system or service is furnished during initial set up of user groups and throughout the project process.
- Provide copies in electronic media format containing the final copies of the documentation (the “Permanent Record”) with the indexing and navigation system embedded (and active).

EXHIBIT B

RATE SCHEDULE

EXHIBIT C

PAYMENT FOR SERVICES

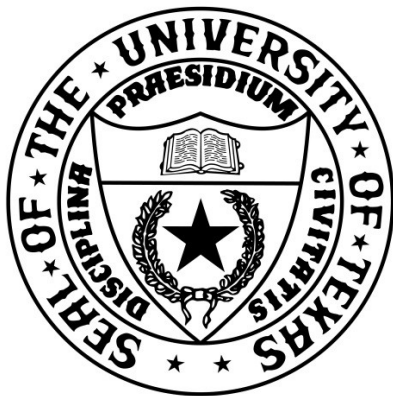
EXHIBIT D

HUB SUBCONTRACTING PLAN

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
JANUARY 2015

APPENDIX III

POLICY ON UTILIZATION HISTORICALLY UNDERUTILIZED BUSINESSES VENDOR/COMMODITIES



**The University of Texas System
Office of HUB Development
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

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**The University of Texas System
Office of HUB Development**

POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

Introduction

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), the Board of Regents of The University of Texas System, acting through the Office of HUB Development shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the "Texas Comptroller"), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race, ethnic and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all business in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26% for all other services contracts, and
- 21.1% for commodities contracts.

The University of Texas System shall make a good faith effort to meet or exceed the above stated goals to assist HUBs in receiving a portion of the total contract value of all contracts that UT System expects to award in a fiscal year. The University of Texas System may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, chapter 2161, Subchapter F.

NOTE: The goals above are the State of Texas HUB goals. For purposes of this procurement, The University of Texas System goals listed in the Special Instructions on page 11 will apply.

SUMMARY OF REQUIREMENTS
Historically Underutilized Business (HUBs) Subcontracting Plan (HSP)

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, UT System has adopted “**EXHIBIT H, Policy on Utilization of Historically Underutilized Businesses**”. The policy applies to all contracts with an expected value of \$100,000 or more. The Board of Regents of The University of Texas System is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System, “UT System” or the “University” will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan (HSP) will result in rejection of the Response.**
2. If subcontracting opportunities are probable UT System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[34 TAC §20.14 (d) (1)(A)(B)(C)(D) (2) (3)(A)(B)(C)(D)(E)(F) (4)(A)(B)]**.
 - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **Section 3 –Self Performance [34 TAC §20.14 (d) (5) (A) (B) (C) (D)]**.
3. If subcontracting opportunities are not probable UT System will declare such probability in its invitations or bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **Section 3 – Self Performance Justification**.
 - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. **Competitive Sealed Proposals (CSP):** Respondents shall submit a HUB Subcontracting Plan (packaged separately) twenty-four (24) hours following the Response submission date and time or as prescribed by the project manager.
6. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, UT System shall follow the procedures listed in the Policy. If accepted by the

University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with UT System. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort.** Any revisions after the submission of the HSP shall be approved by the HUB Coordinator.

7. **Design Build (DB) and Construction Manager @ Risk (CM@R) responses:** Respondents to a "design build" or "construction manager-at-risk" purchase solicitation shall include the Letter of HUB Commitment in their Response attesting that the Respondent has read and understands the Policy on Historically Underutilized Businesses (HUBs), and a HUB Subcontracting Plan for all preconstruction and construction services including a HUB Subcontracting Plan as prescribed by the Texas Comptroller specific to construction services identifying first, second and third tier subcontractors. Respondents proposing to perform Part 1 preconstruction services with their own resources and employees shall submit, as part of their HSP, the Self Performance Justification.
8. **DB and CM@R HUB Contract Requirements:** Contractors engaged under design-build and construction manager-at-risk contracts shall submit a HUB Subcontracting Plan for all preconstruction and construction Phase Services, and, must further comply with the requirements of this Policy by developing and submitting a HUB Subcontracting Plan for each bid package issued in buying out the guaranteed maximum or lump sum price of the project. The HSP shall identify first, second and third tier subcontractors.
9. The University of Texas System shall reject any Response that does not include a fully completed HSP as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**
10. **Changes to the HUB Subcontracting Plan:** Once a Respondent's HSP is accepted by UT System and becomes a provision of the contract between Respondent and UT System, the Respondent can only change that HSP if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to UT System for review; (c) UT System (including UT System's HUB Coordinator) approves Respondent's proposed changes to its HSP; and (d) UT System and the Respondent amend their contract (in writing signed by authorized officials of both parties) in order to replace the contract's existing HSP with a revised HSP containing the changes approved by UT System.
11. **Expansion of Work:** If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, UT System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "additional work"), UT System will determine if the additional work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If UT System determines that probable subcontracting opportunities exist for the additional work, then the Respondent must submit to UT System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HSP must be approved by UT System and the Respondent (including UT System's HUB Coordinator) before (a) the contract may be amended by UT System and the Respondent to include the additional work and the amended HSP and (b) the Respondent performs the additional work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by UT System for any additional work (i) without complying with 34 TAC Section 20.14 or (ii) before UT System and that Respondent amend their contract to include a revised HSP that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with UT System. As a result of such breach, UT System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. The University may report a Respondent's nonperformance under a

contract between that Respondent and UT System to the Texas Comptroller in accordance with 34 TAC Sections 20.10 through 20.18.

12. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with UT System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 10 above.
13. The University of Texas System shall require a professional services firm, contractor or vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a **HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
14. If the University of Texas System determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, UT System, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC Section 20.14, (g) (1) related remedies of nonperformance to professional services firms, contractor and vendor implementation of the HSP.
15. In the event of any conflict between this “Summary of Requirements” and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
16. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://utsystem.edu/offices/historically-underutilized-business/hub-forms>. For additional information contact the Office of HUB Development, The University of Texas System, 512/499/4530.

**Other Services/Vendor/Commodities HSP
Summary of Attachments Required from Respondents**

	Letter of Transmittal Page 8	Letter of HUB Commitment Page 9	HUB Subcontracting Plan (HSP) Pages 11-18	Progress Assessment Report (PAR) Page 19
1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.				
1. A. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X		X	
1.B. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.				
2.A. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. B. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent proposes to subcontract any part of the work.	X		X	
3. INDEFINITE DURATION/INDEFINITE QUANTITY CONTRACTS: Submit with initial qualifications. Attachments required from the Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
4. CHANGES IN THE HUB SUBCONTRACTING PLAN AFTER AWARD: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	
5. REPORTING: Progress Assessment Report (PAR) required with all payment requests. The submittal of this attachment is a condition of payment.				X

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB and Federal Small Business Program
The University of Texas System
201 W. 6th St., Room B.140E
Austin, Texas 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear Mr. Hay,

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 11.

Select one of the following:

- _____ 32.9% for all special trade construction contracts
- _____ 26% for all other services contracts
- _____ 31.04% for commodities contracts

Subcontractors	No. of Subcontractors	Total Subcontract \$ Value	Total Estimated HUB %	% Minority Owned	% Woman Owned	% Service Disabled Veteran
HUB						
NON-HUB						
TOTAL						

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller HUB Certification document.

Should we discover additional subcontractors claiming Historically Underutilized Business status during the course of this contract we will notify you of the same. In addition, if for some reason a HUB is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Project Executive)

cc: Contract Administrator

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB and Federal Small Business Program
The University of Texas System
201 W. 6th St., Room B.140E
Austin, TX 78701

RE: Historically Underutilized Business Plan for (Project Title): _____
Project Number: _____ - _____

Dear Mr. Hay:

In accordance with the requirements outlined in the specification section "HUB Participation Program", I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number _____.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).

Good Faith Effort will be documented by a two part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One of the HSP Quick Checklist located on page 10 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the Good Faith Effort will be documented per instructions in Attachment B (page 16-17) and Option Three of the HSP Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.

Sincerely,

(Project Executive)

cc: Contract Administrator



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

Option One -If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2c. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Two - If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2c. - No
- Section 2d. - Yes
- Section 4 - Affirmation
- GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Three - If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - Yes, I will be subcontracting portions of the contract
- Section 2b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2c. - No
- Section 2d. - No
- Section 4 - Affirmation
- GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2b.
- Letter of Transmittal

Option Four - If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:

- Section 1 - Respondent and Requisition Information
- Section 2a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 - Self Performing Justification
- Section 4 - Affirmation
- Letter of HUB Commitment

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

- Other Services HUB Goal – 26%**
- Commodities HUB Goal – 31.04%**
- Special Trades HUB Goal – 32.9%**

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method B (Attachment B). See instruction for Option three on the HSP Quick Check List. No other Good Faith Effort method will be accepted.
- Responses for Miscellaneous Services Agreements for indefinite duration/indefinite quantity- Two (2) part process:
 1. Submit a Letter of HUB Commitment (page 9) and a Good Faith Effort described in Option Four.
 2. Submit a revised HSP prior to execution of each contract process as described in Option Three of Quick Check List.
- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP) as described in Option Four.
- Prime contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

SECTION-1: RESPONDENT AND REQUISITION INFORM

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified** HUBs with which you have a **continuous contract*** in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**".

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- **Yes** (If *Yes*, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- **No** (If *No*, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>.

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB

Company Name	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
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	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, to continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

CompanyName	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

CompanyName	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select on .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable



HUB Subcontracting Plan (HSP)

Prime Contractor Progress Assessment Report

Rev. 10/14

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: _____ Date of Award: _____ Object Code: _____
 Contracting Agency/University Name: _____
 Contractor (Company) Name: _____ State of Texas VID : _____
 Point of Contact: _____ Phone #: _____
 Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to Contractor: \$ _____

Report HUB and Non-HUB subcontractor information

*Note: Texas certified HUB status can be verified on-line at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>

Subcontractor's Name	*Texas certified HUB? (Yes or No)	Subcontractor's VID or HUB Certificate Number <small>(Required if Texas certified HUB)</small>	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid this Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code <small>(Agency Use Only)</small>
			\$ -	\$ -	\$ -	
			\$ -	\$ -	\$ -	
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Signature: _____ Title: _____ Date: _____
 Printed Name: _____ Phone No. _____